

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 12285/09
Anna DRYZEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 20 March 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Anna Dryzek, is a Polish national who was born in 1962 and lives in Shrewsbury. She is represented before the Court by Ms E. Kanonowicz, a lawyer practising in Wrocław. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. In May 2007 B.S. and A.S. filed a claim against the applicant with the Wrocław Regional Court. The claimants sought a judgment stipulating that the applicant was obliged to transfer to them the right of perpetual use of a plot of land and the title to a building situated on it. They alleged that the applicant had breached the preliminary contract on the sale of the above real estate.

4. The case was heard by a single-judge bench composed of a district court judge, P.G.-M., who had been seconded to the Wrocław Regional Court. Judge P.G.-M. acted as the president of the bench.

5. On 30 October 2007 the Wrocław Regional Court found against the applicant.

6. The applicant, who was represented by a lawyer, lodged a wide-ranging appeal against the judgment. She alleged that the first-instance court had committed a number of errors of law and fact when adjudicating the case. The applicant also claimed that the proceedings before the Wrocław Regional Court had been invalid in law on account of the unlawful composition of that court. She argued, relying on section 46 of the Courts Organisation Act (*Prawo o ustroju sądów powszechnych)*, that a district judge seconded to the regional court could not preside over cases heard by a single judge in that court unless specifically authorised by the Minister of Justice in accordance with this provision. The applicant requested the Court of Appeal to review whether Judge P.G.-M. had been duly seconded to the Regional Court and whether she had been authorised to preside over the bench.

7. On 21 December 2007 the Wrocław Court of Appeal dismissed the applicant's appeal as ill-founded. It examined first the applicant's plea of nullity of the proceedings and found in this respect as follows:

> "Responding to the first and most far-reaching allegation of nullity of the proceedings on account of incorrect secondment of the judge adjudicating at the first instance to exercise her functions in a different court, it should be noted that the Supreme Court resolution of 14 November 2007 delivered by the full bench [of that court] determined that the statutory competence of the Minister of Justice to second judges to carry out their functions in another court could be exercised in the Minister's stead or on his authorisation by the Secretary or the Under-Secretary of State.
>
> In view of those reasons there are no grounds to quash the judgment or to repeal the proceedings on account of nullity, since the condition stipulated in Article 379 (4) of the Code of Civil Procedure has not been met."

8. The applicant lodged a wide-ranging cassation appeal. She claimed that the Court of Appeal had not duly examined her argument about the unlawful composition of the Regional Court since the bench of the

first-instance court had been composed of one district judge seconded to the Regional Court. Further, the Court of Appeal, despite the applicant's request, had failed to examine whether the composition of the first-instance court had been in compliance with sections 46 § 1 and 77 § 1 of the Courts Organisation Act, namely whether Judge P.G.-M. had been duly seconded and authorised to preside over hearings. The Court of Appeal responded to only part of the argument based on section 77 § 1 of the Courts Organisation Act, by stating that the Minister's competence to second judges could have been exercised by the Secretary or the Under-Secretary of State. If a judgment was given by a district judge seconded to the regional court without the authorisation to preside over hearings, or if that judge was seconded by the Secretary or Under-Secretary of State where the latter had not been expressly so authorised by the Minister of Justice, then the proceedings would have been invalid in law. In this respect the applicant relied on Article 45 § 1 of the Constitution and Article 6 § 1 of the Convention.

9. She also argued that the record of the hearing before the first-instance court did not include information about the date and the manner of secondment of Judge P.G.-M. or whether she had been authorised to preside over hearings. In the absence of specific information in the case file as regards the date of secondment, its scope and the seconding authority, the applicant was unable to effectively challenge the legality of the composition of the bench without being provided with the relevant information by the court. Referring to the Supreme Court resolution of 14 November 2007, the applicant argued that secondment of judges by the Secretary or the Under-Secretary of State could be validly effected only if the Minister of Justice had specifically authorised them to exercise those competences at a given time. She submitted that the Court of Appeal had been required to review that issue in respect of the secondment of Judge P.G.-M., since the irregular composition of the court amounted to nullity of the proceedings.

10. She also alleged that the Court of Appeal had applied the substantive civil law erroneously in her case.

11. On 14 November 2008 the Supreme Court refused to entertain the applicant's cassation appeal. That decision was taken by a single judge sitting in camera. The Supreme Court held as follows:

> "...The defendant lodged a cassation appeal in which she requested that the judgment under appeal be quashed and the case remitted to the court of second instance for re-examination. She indicated as the grounds for admission of the appeal for examination that the proceedings were invalid in law, and stated that there was a significant legal issue in the case [and] that the cassation appeal was manifestly well-founded.
>
> The requirement, specified in Article 398 (4) § 1 (3) of the Code of Civil Procedure, that any request for a cassation appeal to be examined should be reasoned, has been met where the claimant demonstrates that there is a significant legal issue in the case,

[or] there is a need for the interpretation of legal provisions raising serious doubts or causing discrepancies in the courts' case-law, [or] when the proceedings are invalid in law, or when the cassation appeal is manifestly well-founded. The objective of the requirement stipulated in Article 398 (4) § 1 (3) of the Code of Civil Procedure can then be achieved only by relying on and justifying the existence of grounds which could constitute a basis for assessment of the admissibility of the cassation appeal. The Supreme Court may base its decision whether to hear a cassation appeal on those grounds alone.

In the present cassation appeal the request for its admission for examination was based on the grounds specified in Article 398 (9) § 1 (1, 3 and 4) of the Code of Civil Procedure. Detailed analysis of the reasons for the request for admission of the cassation appeal for examination does not permit a finding that the cited legal issue is in fact present in the case or that the cassation appeal is manifestly well-founded. There is no nullity of the proceedings in the case, either on the grounds indicated in the cassation appeal or on account of other grounds the Supreme Court takes into consideration – within the limits of the cassation appeal – of its own motion (Article 398 (13) § 1 of the Code of Civil Procedure."

B. Relevant domestic law and practice

1. Constitutional provisions

12. Article 45 § 1 of the Constitution reads:

"Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

Article 180 §§ 1 and 2 of the Constitution reads:

"1. Judges shall not be removable.

2. The removal of a judge from office, suspension from office, or the assigning of a judge to another bench or position against his will may only occur by virtue of a court judgment and only in situations prescribed in statute."

2. The Courts Organisation Act

13. The Act of 27 July 2001 (as amended) on the Organisation of Courts (*Prawo o ustroju sądów powszechnych*; hereinafter "the Courts Organisation Act") sets out comprehensively all matters related to the organisation and administration of courts of general jurisdiction. At the relevant time section 77 § 1 of the Courts Organisation Act provided, in so far as relevant:

"The Minister of Justice may second a judge, with his consent, to exercise judicial functions or administrative duties in another court ... for a limited period of time not extending two years or for unlimited period."

Furthermore, under subsection 8 of that section, the president of a regional court is also empowered to second a judge of a district court

to sit on a bench of a regional court for a period not longer than thirty days per year, provided that the board of the regional court's assembly of judges gives its consent (the so-called "small secondment").

14. Section 46 § 1 of the Courts Organisation Act stipulates that a bench of a court may be composed of only one judge [seconded] from a different court. Furthermore, a judge of a lower court may not act as the president of the bench. However, the Minister of Justice may authorise a district judge who is seconded to a regional court to preside over cases heard by the latter court at the first instance in a bench composed of one judge or one judge and two lay judges.

3. Resolution of the Supreme Court of 14 November 2007 (BSA I-4110 5/07)

15. Discrepancies arose in the case-law of the Supreme Court as regards whether the competence of the Minister of Justice under section 77 § 1 of the Courts Organisation Act to second a judge to a different court from that to which he was normally assigned could be delegated to the Secretary or the Under-Secretary of State in that ministry. The President of the Supreme Court requested the full bench of that court (judges of all chambers sitting jointly) to adopt a resolution with a view to harmonising the case-law.

16. On 14 November 2007 the Supreme Court, sitting as a full bench (eighty-one judges), issued a resolution. It held that the statutory competence of the Minister of Justice to second a judge to exercise judicial functions in another court could be delegated to the Secretary or Under-Secretary of State under the relevant provisions of the Council of Ministers Act (see *Wieczorek v. Poland* (dec.), no. 31264/04, 18 May 2010).

17. The Supreme Court observed that the laws governing judicial organisation allowed judges to exercise judicial functions in a different court from the one indicated in their nomination act. It found that secondment of a judge, with his consent, to carry out judicial functions in another court, could not be seen as contrary to Article 45 of the Constitution. Neither could it be considered incompatible with the constitutional principle of separation of powers. The Supreme Court underlined that any secondment under section 77 § 1 of the Courts Organisation Act always required the consent of a named judge and that such consent was the constitutive element of a secondment decision. It noted that a secondment under section 77 § 1 of the Courts Organisation Act served to satisfy the human resources needs of the courts when judges retired, resigned or died. It was aimed to ensure the continuity and efficiency of examination of cases by the courts. It observed that a decision on secondment signed by the Secretary or Under-Secretary of State should include some information to the effect that he acted on the explicit authorisation of the Minister of Justice.

4. Judgment of the Constitutional Court of 15 January 2009 (no. K 45/07)

18. On 29 September 2007 the National Council of the Judiciary (*Krajowa Rada Sądownictwa*) challenged before the Constitutional Court a number of provisions of the Courts Organisation Act, including its section 77 § 1. It argued that it was against the constitutional principles of separation of powers and the independence of the judiciary to vest the Minister of Justice with the competence to second a judge to a different court.

19. In its judgment of 15 January 2009 (case no. K 45/07), the Constitutional Court dismissed most of the objections to secondment. In particular, it held that secondment of a judge, with his consent, to exercise judicial powers in another court did not violate the constitutional principles relied on by the claimant. In this respect it concurred with the position of the Supreme Court expressed in the Resolution of 14 November 2007.

20. The Constitutional Court found that secondment of a judge by the Minister of Justice or a president of the court constituted a temporary exception to the rule that a judge was bound to the court to which he was assigned and in which he exercised judicial powers. The regulations on secondment were of an exceptional character in view of the constitutional guarantees of judicial independence. However, a judge was not removed from office by a virtue of a decision on secondment and his status stemming from the nomination to the office of judge did not change. The rules on secondment were introduced with the aim of ensuring efficiency of court proceedings.

21. On the other hand, the Constitutional Court struck down section 77 § 1 (2) of the Courts Organisation Act in so far as it allowed for the continuing exercise of judicial powers by a judge who had been seconded to the Ministry of Justice to carry out administrative duties. It also struck down as incompatible with the principle of separation of powers sections 77 § 7 (a) and (b) of the same Act, which provided for secondment of a judge without his consent.

5. Nullity of civil proceedings

22. Article 379 (4) of the Code of Civil Procedure provides, in so far as relevant:

> "The proceedings are invalid in law:
>
> (...)
>
> 4) if the composition of a court was contrary to the provisions of the law ..."

6. The practice of civil courts regarding nullity of proceedings in connection with the presence of a seconded judge on the bench

23. In its decision of 14 July 2000 (no. II UKN 366/00) the Supreme Court dealt with the validity of social security (civil) proceedings in which a bench of a regional court, sitting as a first-instance court, was composed of a seconded district court judge, acting as its president, and two lay judges. It held that in such a case the Minister's decision authorising a seconded district court judge to preside over cases heard by a regional court referred to in section 24 § 2 of the 1985 Act on the Organisation of Courts[1] had to be attached to the case file. If this was not the case then the proceedings were invalid on account of the irregular composition of the bench.

24. In its judgment of 14 April 2004 (no. III SK 26/04), the Supreme Court examined a cassation appeal against a judgment of the Warsaw Regional Court, the Court for the Protection of Competition and Consumers (*Sąd Ochrony Konkurencji i Konsumentów*). The judgment of the Regional Court, sitting as a first-instance court, was given by a single-judge bench, consisting of a seconded district judge. The Supreme Court noted that a judge could and should exercise judicial powers in a court to which he was assigned, and that the exceptions to this rule, allowing for adjudication in a given court by a judge who had been assigned to a different court, were strictly regulated by statute. One of the exceptions was provided in section 46 § 1 of the Courts Organisation Act. The principle established by this provision was that a district judge seconded to a regional court could not preside over cases heard by the regional court in single-judge formations unless he had been specifically authorised to do so by the Minister of Justice. A violation of this principle would lead to nullity of the proceedings. In the absence of the relevant information from the case file, the Supreme Court requested the President of the Warsaw Regional Court to provide explanations. From those explanations it emerged that the district court judge in question had been seconded to the Regional Court by the President of the Warsaw court in accordance with section 77 § 8 of the Courts Organisation Act but had not been authorised by the Minister of Justice to preside over cases heard by the regional court in a single-judge formation. In consequence, the Supreme Court found that the proceedings before the Regional Court had been invalid in law.

25. In the decision of 20 July 2007 (no. I CSK 201/07), the Supreme Court held that the absence from the case file of a secondment decision in respect of a regional judge seconded to the court of appeal under section 77 § 8 of the Courts Organisation Act was not sufficient to find that the composition of the bench was in breach of the law and consequently

1. This provision of the earlier Act on the Organisation of Courts was similar to section 46 § 1 of the Courts Organisation Act 2001.

lead to nullity of the proceedings (Article 379 (4) of the Code of Civil Procedure; hereinafter "the CCP"). It departed from the position adopted earlier by the Supreme Court in its decision of 14 July 2000 (no. II UKN 366/00), which it considered too strict. The Supreme Court found that the requirement to attach a secondment decision to the case file was not expressly provided in the Courts Organisation Act or the Code of Civil Procedure and that it was sufficient, as it was the established practice in civil courts, to mention in a decision that a bench included a seconded judge.

26. In its decision of 15 January 2008 (no. III UK 97/07), the Supreme Court in essence adopted the same stance as in the decision of 20 July 2007 referred to above.

27. In its judgment of 13 March 2008 (no. III CSK 337/07), the Supreme Court found that a court of appeal was not required automatically to examine a plea of nullity where a seconded district court judge presided in the single bench of a regional court and the case file did not contain specific authorisation to that effect under section 46 § 1 of the Courts Organisation Act. Such an obligation on a court of appeal would arise only in cases where following a request of a party or upon a request by a relevant authority there would be some evidence in the case file indicating that the decision to second a district court judge to a regional court did not include authorisation to preside in cases examined by the latter court in single-judge formation. The Supreme Court noted that a decision to second a district court judge to a regional court, with possible authorisation to preside, was included only in the personal file of a named judge. For those reasons it did not share the finding of the Supreme Court in its earlier decision of 14 July 2000 (no. II UKN 366/00).

28. The Supreme Court confirmed this approach in its judgment of 16 May 2008 (no. I UK 337/07). It held that failure to comply with the rules concerning the secondment of a judge or examination of a case by a seconded judge will result in nullity of the proceedings within the meaning of Article 379 (4) of the CCP. Secondly, the Supreme Court considered that the issue of compliance with the rules concerning secondment of judges should be distinguished from the issue of presence of records indicating the lawful composition of a bench. It held that it was not necessary to attach a decision on secondment to the case file of every case examined by the seconded judge. In this respect it disagreed with the approach of the Supreme Court in its decision of 14 July 2000 (no. II UKN 366/00). Thirdly, the Supreme Court held that a court at the second level of jurisdiction or the Supreme Court were not required automatically to consider compliance with the rules on secondment in every case where they examined a cassation appeal against a judgment given by a seconded judge, unless doubts as to such compliance arose. It noted that for pragmatic reasons any relevant concerns should be raised by the

parties or identified by a court itself. To require the court acting of its own motion to do more would be unreasonable and would involve it in numerous activities not connected with the examination of a case.

29. In the judgment of 24 June 2009 (no. II PK 286/08), the Supreme Court again confirmed the above approach. It found that the appellant who had alleged that the composition of a bench of the second-instance court was unlawful on account of the participation of a seconded judge had not substantiated his allegations beyond reference to some media reports. The Supreme Court took a similar position in its judgment of 12 January 2011 (no. II PK 129/10).

COMPLAINTS

30. The applicant complained under Article 6 § 1 of the Convention that the proceedings had been unfair since the Court of Appeal and the Supreme Court had failed to give adequate reasons for the dismissal of her arguments concerning the unlawful composition of the first-instance court. She further alleged, citing the same provision, that the Supreme Court had not given sufficient reasons for its decision refusing to hear her cassation appeal, and indicated that there was a risk of arbitrariness in this respect.

31. The applicant complained that the first-instance court was not a "tribunal established by law", as Judge P.G.-M. had been allegedly assigned to the bench contrary to the domestic law.

32. The applicant also alleged a breach of Articles 13 and 14 of the Convention with regard to the Supreme Court's decision refusing to hear her cassation appeal.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention (lack of sufficient reasons)

1. The Government's submissions

33. The Government first made observations with regard to the relevant domestic practice. They referred extensively to the resolution of the Supreme Court of 14 November 2007 and the Constitutional Court's judgment of 15 January 2009. They further referred to the Supreme Court decision of 15 January 2008 (no. III UK 97/07; see paragraph 26 above),

and underlined that even before that decision there was consistent domestic case-law that there was no legal obligation to make available to the parties to the court proceedings a decision on the secondment of a judge. In that decision the Supreme Court found that the absence from the case file of the decision on secondment of a judge had not amounted to nullity of the proceedings within the meaning of Article 379 (4) of the CCP. The absence of the decision from the case file did not prove that no such document existed, just as the absence of a nomination act did not prove that a judge had not been nominated in accordance with the law. Furthermore, the relevant court was not required to examine whether the secondment decision complied with the relevant regulations. The law did not require the secondment decision to be attached to the case file, nonetheless such a decision should be included in the personal file of a judge and made available to the president of the court (see, for comparison, the Supreme Court decision of 17 June 2003 in a criminal case, no. V KK 138/02).

34. They stressed that information on the secondment of a judge was public and well-known to the parties to a case in which that judge was presiding or in which he was sitting on the bench. The fact of the presiding judge's secondment was indicated on the cover of each volume of the case file, as well as in the composition of the court, which was mentioned on every copy of a decision or judgment delivered by that court; the same information was mentioned on the court's case list (*wokanda*). The fact of the secondment of a judge was indicated by the abbreviation *"del."* (sec.[onded]) added before the name of a judge. Therefore each party to a case was aware that a given judge had been seconded. They also stated that, everyone was allowed to seek access to a decision on secondment of a judge under the Act of 6 September 2001 on Access to Public Information, so it was open to the applicant to request the decision in respect of Judge P.G.-M. from the president of the relevant court.

35. As regards the merits, the Government observed that Article 6 § 1 of the Convention obliged courts to give reasons for their judgments. However, the extent of this obligation varied according to the nature of the decision and the statutory provisions in force in a given country. In the Polish civil procedure, the elements of the court's reasoning were specified in Article 328 § 2 of the CCP. This provision applied, by virtue of Articles 391 and 398^{28} of the CCP, also to the judgments given by the courts at the second level of jurisdiction and by the Supreme Court. However, according to the Supreme Court's case-law, there was no requirement for the reasoning of the second-instance court to include all the elements of the first-instance court's reasoning, as indicated in Article 328 § 2 of the CCP, but only those which were relevant to the appellate proceedings and essential for deciding on the case in the second-instance court (see, for comparison the Supreme Court decision of 13 March 2009, no. II CSK 537/08). The Government submitted that in the present

case all of the above elements had been included in the reasoning of the judgments delivered by the domestic courts in the applicant's case. The courts at both levels, as well as the Supreme Court (which decided only on the admissibility of the applicant's cassation appeal), paid proper attention to each of the applicant's requests and complaints and explained in detail the reasons why they did or did not accept them, citing the relevant provisions of the law. Accordingly, the Government submitted that the reasoning contained in the judgments given by the domestic courts in the applicant's case had been in full compliance with Article 6 § 1 of the Convention.

36. The domestic courts gave adequate consideration to the applicant's arguments as to the allegedly unlawful composition of the Wrocław Regional Court, which she had relied on in her appeal and the cassation appeal. The applicant raised objections concerning the composition of the Regional Court for the first time in her appeal against the judgment of that court. The Wrocław Court of Appeal dismissed the applicant's appeal on 21 December 2007. In its reasoning it considered in detail every argument raised by the applicant, starting with the most far-reaching allegation of nullity of the proceedings on account of the unlawful composition of the bench of the Regional Court (breach of Article 46 of the Courts Organisation Act). The Court of Appeal, having regard to the Supreme Court resolution of 14 November 2007, found that secondment of a judge by the Secretary or Under-Secretary of State had not resulted in nullity of the proceedings. In the Government's view, the Court of Appeal had adequately addressed the applicant's objection concerning the authorisation of the seconded judge to preside over her case.

37. The Supreme Court did not consider the issue of the allegedly unlawful composition of the Regional Court, as it decided only on the admissibility of the cassation appeal and not on the merits. Although one of the admissibility criteria for a cassation appeal was the invalidity of the proceedings at law (Article 398^9 § 1 (3) of the CCP) – which occurs when the composition of the court is contrary to the provisions of law – however, the issue of the legality of seconding judges by the Secretary and Under-Secretary of State in the Ministry of Justice had already been decided by the Supreme Court in the Resolution of 14 November 2007. Therefore, it was not necessary for the Supreme Court to consider whether nullity of the proceedings on account of the unlawful composition of the court had occurred.

2. The applicant's submissions

38. The applicant argued that neither the Wrocław Court of Appeal nor the Supreme Court had examined whether Judge P.G.-M. had been duly seconded and whether she had been authorised to preside over hearings. None of those courts indicated what decision served as the basis for the

secondment of that judge and who signed it, and when it was signed. Those courts also failed to determine whether the secondment decision included authority to preside over hearings. In order to reply to the applicant's concerns the courts should have analysed the documents on secondment and explained whether the judge had been duly seconded and authorised to preside over hearings.

39. The applicant submitted that in her appeal she had raised doubts about the composition of the Wrocław Regional Court which should have been examined of its own motion by the Wrocław Court of Appeal. However, the latter court in its reasoning simply referred to the provisions concerning secondment of judges and their interpretation in the Supreme Court's Resolution. That court did not indicate who had seconded Judge P.G.-M or when it had been done. The Court of Appeal did not further indicate what had been the basis for her authorisation to preside over hearings.

40. Furthermore, whereas in her cassation appeal the applicant argued that the Court of Appeal had failed to examine whether the first-instance bench had been duly composed, the Supreme Court refused to examine her cassation appeal and limited itself to stating that there were no grounds justifying its examination. The applicant submitted that Article 398^{13} of the CCP required the issue of the composition of a bench to be examined by the Supreme Court. The Supreme Court's decision resulted in a breach of Article 328 § 2 in conjunction with Article 398^{21} of the CCP. In those circumstances the domestic courts failed to provide reasons for their decisions, and thus acted arbitrarily and in breach of Articles 6 § 1 and 13 of the Convention.

41. The applicant argued that the Government had failed to prove that the composition of the first-instance court had been in accordance with the law. They did not produce a copy of the decision on secondment in respect of Judge P.G.-M. and her authorisation to preside over hearings. Accordingly, the Government's assertion that Judge P.G.-M. had been duly seconded and authorised to preside was groundless and the Court could not assess it.

42. In the applicant's view, the transfer of the Minister of Justice's competences, provided in sections 46 § 1 and 77 § 1 of the Courts Organisation Act to the Secretary of State on the basis of the Council of Ministers Act, was not permitted. In addition, the Minister's circular no. 241/06/DO of 13 June 2006 did not authorise the Secretary of State to exercise those competences. The Supreme Court resolution of 14 November 2007 could not be considered a valid legal basis for the transfer of those competences to the Secretary of State on the ground, among others, that a decision on secondment concerned issues related to the administration of justice *sensu stricto*. Furthermore, twenty-six judges of the Supreme Court had expressed dissenting opinions on the above resolution.

43. The applicant submitted that the decision on secondment of a judge was not accessible to a party to the proceedings, as it was included in the judge's personal file and the Act of 6 September 2001 on Access to Public Information (*ustawa o dostępie do informacji publicznej*) could not have been relied on to obtain access to such a document. The decision of the Secretary of State on secondment of Judge P.G.-M., to which the Government referred in their submissions, had been flawed, since those decisions could have been taken only by the Minister in person. Accordingly, the proceedings in the applicant's case were invalid in law. The domestic courts should have examined the decisions on the secondment of Judge P.G.-M. and her authority to preside over hearings, since the applicant had had no opportunity to consult them. Decisions on secondments concerned the professional status of a named judge and were included in his personal file. As such it was only the court which could have examined them, and it should have done so, as irregularity in respect of the composition of a bench would have resulted in nullity of the proceedings.

44. In response to the Government's decision to produce a copy of the decision on the secondment of Judge P.G.-M., the applicant referred to the Constitutional Court's judgment of 15 January 2009 in which that court found that the institution of secondment was a temporary exception from the rule that a judge was bound to the court to which he had been assigned and in which he exercised judicial functions. However, it appeared from the decision on the secondment of Judge P.G.-M. that she had been seconded for an unlimited period of time, which was contrary to the assertion of the Constitutional Court. Furthermore, the applicant claimed that the decision in the case of *Wieczorek* (cited above) was not relevant to the present case.

3. The Court's assessment

45. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. A function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the opportunity to appeal against it, as well as to have the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001; *Suominen v. Finland*, no. 37801/97, § 36-37, 1 July 2003; and *Kuznetsov and Others v. Russia*, no. 184/02, § 83, 11 January 2007).

46. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Hiro Balani v. Spain*, 9 December 1994,

§ 27, Series A no. 303-B; *Higgins and Others v. France*, 19 February 1998, § 42, RJD 1998-I; and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288; and *Pronina v. Ukraine*, no. 63566/00, § 23, 18 July 2006). Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see, *mutatis mutandis*, *Helle v. Finland*, 19 December 1997, § 59-60, *Reports of Judgments and Decisions* 1997-VIII). However, in special circumstances, an appellate court of final instance may be required to give fuller reasons for its judgment (see *Yanakiev v. Bulgaria*, no. 40476/98, § 72, 10 August 2006; *Gheorghe v. Romania*, no. 19215/04, § 50, 15 March 2007; *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, §§ 96-97, 28 June 2007; and *Velted-98 AD v. Bulgaria*, no. 15239/02, § 48, 11 December 2008).

47. In the present case the Court notes that in her appeal against the Wrocław Regional Court's judgment the applicant claimed that the first-instance proceedings were invalid in law on the grounds of the irregular composition of that court. She cited section 46 of the Courts Organisation Act and specifically alleged that District Judge P.G.-M. had not been duly seconded, in that she had not been authorised to act as the president of a bench in the regional court. The Wrocław Court of Appeal dismissed the plea of nullity of the proceedings by simply referring to the Supreme Court's Resolution of 14 November 2007, which had found that the Minister of Justice's competence to second judges could be delegated to the Secretary or the Under-Secretary of State.

48. In her subsequent cassation appeal to the Supreme Court the applicant claimed that the Court of Appeal had failed to duly examine her plea of nullity. She further pursued the issue of the unlawful composition of the bench, alleging that the secondment decision had not been in compliance with sections 46 § 1 and 77 § 1 of the Courts Organisation Act. At this stage of the proceedings she raised for the first time the argument that the Secretary or Under-Secretary of State could second a judge only if expressly authorised by the Minister of Justice. She also argued that there was no specific information in the case file as regards the date of secondment, its scope and the seconding authority, which made it impossible for her to challenge the legality of the secondment decision. In its decision of 14 November 2008 the Supreme Court refused to hear the applicant's cassation appeal. In the brief reasons given for the decision the Supreme Court found that the conditions for admissibility of the cassation appeal had not been made out. It also held that there had been no nullity of the proceedings on the grounds indicated in the cassation appeal (see paragraph 11 above).

49. In so far as the applicant asserts that the Minister of Justice could not delegate the power to second judges to the Secretary or Under-Secretary of State, the Court considers those arguments untenable as they are contrary to the resolution of the full bench of the Supreme Court adopted on 14 November 2007, which was subsequently endorsed by the Constitutional Court in its judgment of 15 January 2009. The Court itself, in *Wieczorek* decision, (cited above), considered the Supreme Court resolution and found that the stand taken by the Supreme Court was fully compatible with respect for judicial independence and for the separation of judicial and executive powers. The Court affirms this approach in the present case and finds that the position of the domestic courts regarding the constitutional admissibility of the secondment of a judge with his consent to another court by the Minister of Justice or the Secretary or Under-Secretary of State is in compliance with the requirements of Article 6 § 1 of the Convention.

50. As regards the nullity of civil proceedings in connection with the presence of a seconded judge on the bench, the Court notes that the domestic practice on this issue has evolved over time. In its early decisions (no. II UKN 366/00 and no. III SK 26/04; see paragraphs 23-24 above) the Supreme Court took the view that in cases of this kind a decision on secondment of a named judge should be attached to the case file, which would allow the higher court to examine any argument in relation to the validity of secondment. In its subsequent practice, starting from the decision of 20 July 2007 (no. I CSK 201/07; see paragraphs 25-29 above), the Supreme Court changed its approach and considered that the law did not provide for such a requirement. It further noted that the higher courts were not required to examine compliance with the rules on secondment automatically in every case, but only in cases where doubts as to compliance were raised by the parties or discerned by the court itself. The Court recalls that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, RJD 1997-VIII; *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011). It does not find anything objectionable in the evolution of the domestic practice described above towards what appears to be a more restrictive approach. It notes that in accordance with recent practice there was no legal obligation to attach a decision on secondment of a judge to the case file of a case in which such a judge sat. On the other hand, the Court observes that the domestic courts were under an obligation to review compliance with the rules on secondment of judges if a party to the proceedings raised substantiated allegations in this respect.

51. The Court has analysed the reasoning of the Court of Appeal and of the Supreme Court. It notes that the Court of Appeal did not respond to the

applicant's argument that the seconded Judge P.G.-M. had not been authorised by the Minister to preside over hearings. However, this omission of the Court of Appeal was rectified by the Supreme Court which in its decision refusing leave to appeal found that there was no nullity of the proceedings on the grounds indicated in the applicant's cassation appeal.

52. In so far as the applicant maintains that the Supreme Court's decision was inadequately reasoned, the Court recalls that in the case of *Wnuk v. Poland* ((dec.), no. 38308/05, 1 September 2009) it dealt with a similar complaint of lack of sufficient reasoning for a Supreme Court decision on application for leave to appeal. In that case the Court, having regard to its relevant case-law, found that in this context very limited reasoning could satisfy the requirements of Article 6 of the Convention and declared the complaint under Article 6 § 1 inadmissible (see paragraph 46 above). In the instant case, faced with a bare assertion of irregularity, there were no special circumstances which required the Supreme Court to give a fuller answer (compare and contrast, the cases cited in paragraph 46 *in fine*). The applicant did not raise in her cassation appeal any substantiated doubts with regard to the validity of the secondment of Judge P.G.-M. In consequence, the summary reasoning of the Supreme Court in respect of the admissibility of her cassation appeal does not give rise to any appearance of a breach of Article 6 § 1 of the Convention.

53. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 6 § 1 of the Convention ("tribunal established by law")

54. The applicant complained that the first-instance court had not been a "tribunal established by law", as Judge P.G.-M. had been allegedly assigned to the bench contrary to the domestic law.

55. The Government contested that argument. They referred to the *Wieczorek* decision (cited above) in which the Court found that a court composed of a duly seconded judge was a "tribunal established by law" and noted that the applicant did not submit any comments on this most relevant decision of the Court with regard to the issue of secondment of judges. Judge P.G.-M., who was adjudicating the applicant's case in the first-instance court, was a district judge seconded by the Minister of Justice on 28 March 2007 to the Wrocław Regional Court, with the right to preside in cases heard by that court in a bench composed of one judge, or of one judge and two lay judges. The secondment decision was signed by the Secretary of State in the Ministry of Justice and in the view of the Supreme Court resolution of 14 November 2007 such a secondment was in accordance with the law.

56. In the light of all the material in its possession and having regard to its findings in respect of the first complaint under Article 6 § 1 of the Convention, the Court does not find established that the Wrocław Regional Court was not a "tribunal established by law" as required by this provision.

57. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Other alleged violations of the Convention

58. Lastly, the applicant alleged a breach of Articles 13 and 14 of the Convention with regard to the Supreme Court's decision refusing to hear her cassation appeal.

59. The Court notes that the applicant contested the same decision under Article 6 § 1 of the Convention. It reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by more stringent requirements of Article 6 § 1 (see *Brualla Gómez de la Torre*, cited above, § 41). Furthermore, the Court finds that the complaint under Article 14 does not raise any issue in the case.

60. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

David Thór Björgvinsson
President