

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

FIRST SECTION

CASE OF ZAKRZEWSKI v. POLAND

(Application no. 63277/19)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Increase of applicant's prison sentence following cassation appeal by Prosecutor General and re-examination of the case after he served more than half of the sentence and was released on parole • Domestic courts' failure to strike a fair balance between the applicant's interest and the need to ensure the effectiveness of the justice system • Lack of assessment of any fundamental defects of the criminal proceedings and of any consideration of the applicant's situation did not meet the Court's case-law standards

Prepared by the Registry. Does not bind the Court.

STRASBOURG

14 November 2024

This version was rectified on 6 March 2025
under Rule 81 of the Rules of Court

FINAL

14/02/2025

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Zakrzewski v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić*, President*,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 63277/19) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Łukasz Zakrzewski ("the applicant"), on 27 November 2019;

the decision to give notice to the Polish Government ("the Government") of the complaints concerning Article 6 § 1 of the Convention and Article 4 § 1 of Protocol No. 7 to the Convention;

the parties' observations;

Having deliberated in private on 8 October 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application concerns the applicant's prison sentence, which, as a result of a cassation appeal lodged by the Minister of Justice/Prosecutor General, was increased after he had served more than half of the original sentence and had already been released from prison on parole.

THE FACTS

2. The applicant was born in 1990 and lives in Zakrzów. He was represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry for Foreign Affairs.

4. The facts of the case may be summarised as follows.

5. On 22 November 2016 the applicant's home, where he lived with his brother and mother, was raided by the police in search of narcotics. During the search over five kilograms of marijuana was discovered. The applicant stated that he had found the drugs in a forest and brought them home. He later withdrew those statements, saying that he had made them in order to protect a member of his family (he refused to reveal the person's identity), and

refused to give any further explanations. Prior to his arrest he had not had a criminal record.

6. On 23 May 2017 the Opole Regional Court (*Sąd Okręgowy*) convicted the applicant of unlawful possession of a large amount of narcotics under section 53(2) of the Act of 29 July 2005 on Prevention of Drug Addiction (*Ustawa o przeciwdziałaniu narkomanii*) and, applying extraordinary mitigation (*nadzwyczajne złagodzenie kary*), sentenced him to two years' imprisonment. The minimum penalty provided for in section 53(2) was three years' imprisonment (see paragraph 23 below). The court noted that the applicant had had an impeccable reputation prior to his arrest and that there was no proof that he had attempted to distribute the drugs; punishing him with even the most lenient penalty prescribed for such an offence would therefore be flagrantly disproportionate.

7. On 6 October 2017 the Wrocław Court of Appeal (*Sąd Apelacyjny*) amended the first-instance judgment by additionally imposing punitive damages (*nawiązka*) in the amount of 1,000 Polish zlotys (PLN) (approximately 220 euros (EUR)), which was to be paid to a drug rehabilitation facility. In its written reasoning, the appellate court indicated that the court of first instance had rightly considered that the imposition of even the lowest penalty provided for by law would be disproportionately severe, in view of the applicant's attitude and personal situation and the circumstances of the offence. In that connection, the court referred to the fact that the applicant had no previous criminal record, led an acceptable lifestyle and provided assistance to his family.

8. On 26 February 2018 the applicant began to serve his prison sentence at Głubczyce Prison.

9. On 22 March 2018 the Minister of Justice/Prosecutor General (hereinafter only "the Prosecutor General") lodged a cassation appeal (*kasacja*) with the Supreme Court (*Sąd Najwyższy*). He argued that the penalty imposed on the applicant had been flagrantly too lenient (*rażąca niewspółmierność kary*), owing to a manifestly unreasonable application of extraordinary mitigation.

10. On 3 April 2018 the applicant was served with a copy of the cassation appeal.

11. On 10 January 2019 the governor of Głubczyce Prison asked the Opole Regional Court to release the applicant on parole (*warunkowe przedterminowe zwolnienie*). In his request he indicated that the applicant's behaviour had been very good, his social rehabilitation was going well and there was a low risk of him reoffending.

12. On 13 February 2019 that court released the applicant on parole, applying a two-year probation period. It ordered him to regularly report to a parole officer (*kurator sądowy*) and to take up employment. In the reasoning of its decision, the court indicated that on 15 January 2019 the applicant had acquired the right to apply for release on parole, and that his sentence would

end on 15 January 2020. The court also pointed out that the request for the applicant's release on parole had been made by the prison governor and that the prosecutor had not objected to that request.

13. Following his release, the applicant took up two jobs – as a driver at weekends and as a welder in Austria. He was in constant contact with his parole officer, who stated that his return to society was going well.

14. The applicant and his court-appointed defence counsel appeared at the cassation hearing on 28 March 2019 in the Supreme Court. The prosecutor supported the cassation appeal, whereas the applicant asked for it to be dismissed as manifestly ill-founded and submitted a certificate of his release from prison and a decision on his conditional release from serving the remainder of the sentence.

15. On the same day the Supreme Court quashed the judgment of 6 October 2017 and remitted the case to the Wrocław Court of Appeal for re-examination. It found that the application of extraordinary mitigation had not been justified under the law. Consequently, the penalty imposed had been flagrantly lenient. The Supreme Court did not take note of the applicant's release on parole, despite having been made aware of it by the applicant's lawyer.

16. The Supreme Court held that the assessment of whether an offender met the conditions provided for in Article 60 § 2 of the Criminal Code (*Kodeks Karny*) was clearly a matter for the sentencing court, which should present arguments to justify its finding that, in the circumstances of the case, there were grounds for such a course of action. Nor could there be any doubt that the particularly justified cases referred to in Article 60 § 2 of the Criminal Code differed significantly from ordinary cases, which were governed by standard sentencing guidelines. Those guidelines provided for the application of the potential penalties falling within the relevant statutory limits. However, the application of extraordinary mitigation without proving at the same time that it was actually justified by special circumstances did not constitute a breach of substantive law, but fully justified a finding that the penalty imposed under such conditions was grossly disproportionate.

17. The Supreme Court further stated that with regard to the applicant, the requirement to prove that there had been special circumstances to justify the imposition of a sentence below the lower statutory limit had not been met in a manner that could be approved. In its view, the appellate court, in justifying its decision in that respect, had duplicated the arguments of the court of first instance regarding the applicant's lack of a prior criminal record, his socially acceptable lifestyle and that fact that he provided assistance to his family. The Supreme Court agreed with the Prosecutor General that the grounds for the decision provided by the appellate court had in fact concerned only general circumstances of the case that should have only had a minor impact on the sentence, and therefore extraordinary mitigation should not have been applied in the applicant's case.

18. On 23 May 2019 the Opole Regional Court quashed its decision of 13 February 2019 and discontinued the applicant's parole proceedings. It held that, owing to the fact that the Supreme Court had quashed the final judgment of the Wrocław Court of Appeal, there was no longer any final judgment pursuant to which he could serve a sentence.

19. On 30 May 2019 the Wrocław Court of Appeal amended the judgment of the Opole Regional Court of 23 May 2017 and sentenced the applicant to three years' imprisonment and a fine of PLN 500 (EUR 125). It upheld the imposition of punitive damages and argued that the trial court had failed to show that there had been "a particularly justified case" in which even the most lenient sentence provided for the offence in question would be too severe for the applicant. While considering the arguments made by the prosecutor, who had originally requested that the applicant be sentenced to four years' imprisonment, the court took into account the time served by the applicant in prison and his release on parole ordered at the request of the governor of Głubczyce Prison and concluded that in the light of those circumstances, the sentence requested by the prosecutor would be too severe.

20. The sentence credited the period served in pre-trial detention by the applicant, in this case from 22 November 2016 to 2 January 2017, and the period of the sentence served so far, from 26 February 2018 to 13 February 2019. The end date of the sentence was indicated as 14 September 2021.

21. On 14 October 2019 the applicant was taken to Strzelce Opolskie Prison to serve the remainder of his sentence.

22. On 29 April 2021 the Opole Regional Court, following a request by the applicant, ordered his immediate conditional release from serving the remainder of his three-year sentence and set a two-year probation period. In the reasoning for its decision, the court indicated that the applicant had already served more than half of his sentence; his conduct while serving his sentence had not raised any concerns; and there were grounds to assume that the applicant, while at liberty, would abide by the law and would not reoffend.

RELEVANT LEGAL FRAMEWORK

I. THE ACT OF 29 JULY 2005 ON PREVENTION OF DRUG ADDICTION

23. Section 53 of the Act on Prevention of Drug Addiction, in so far as relevant, reads:

> "(1) Whoever produces or transforms narcotics or psychoactive substances (...) is liable to a penalty from one to three years' imprisonment.
>
> ...
>
> (2) If the offence referred to in paragraph 1 or 1 (a) concerns a large quantity of narcotics or psychoactive substances (...) the perpetrator is liable to a fine and a penalty from three to twenty years' imprisonment."

II. THE CRIMINAL CODE

24. The Criminal Code, in so far as relevant, reads:

Article 60

"§ 2. The court may also apply extraordinary mitigation in particularly justified cases when even the lowest penalty prescribed for the offence in question would be incommensurate, and particularly:

...

(2) taking into consideration the attitude of the perpetrator, particularly if he or she has attempted to repair the damage or prevent damage from occurring,

...

§ 6. Extraordinary mitigation shall consist of the imposition of a penalty below the lower statutory level, or the imposition of a penalty of lesser severity, in accordance with the following principles:

...

(2) if the act in question constitutes a crime, the court shall impose a penalty of no less than one-third of the lower statutory level."

Article 77

"§ 1. The court may conditionally release a person sentenced to a penalty of deprivation of liberty from serving the remainder of the sentence only when his or her attitude, personal characteristics and situation, his or her way of life prior to the commission of the offence, the circumstances thereof, and his or her conduct after the commission of the offence and while serving the penalty, justify the assumption that the perpetrator will, after release, abide by the law, and in particular that he or she will not reoffend.

..."

Article 78

"§ 1. A convicted person may be conditionally released after serving at least half of the sentence.

... "

Article 82

"§ 1. If during the probation period and in the course of the following six months, conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release.

..."

III. THE CODE OF CRIMINAL PROCEDURE

25. The Code of Criminal Procedure (*Kodeks Postępowania Karnego*), in so far as relevant, reads:

Article 521

"§ 1. The Prosecutor General or Ombudsman may lodge a cassation appeal against any final decision terminating the proceedings.

..."

Article 523

"§ 1. A cassation appeal may be lodged only on the grounds of violations listed in Article 439 or another flagrant breach of the law, if it might have had a significant impact on the content of the judgment. A cassation appeal may not be lodged solely because of the incommensurate nature of the penalty.

§ 1a. The limitation referred to in the second sentence of § 1 shall not apply to a cassation appeal lodged by the Prosecutor General in proceedings concerning a charge of a serious crime (*zbrodnia*).

..."

Article 524

"§ 1. The time-limit for a cassation appeal lodged by the parties to the proceedings shall be thirty days from the day of the delivery of a ruling with reasoning.

...

§ 3. A cassation appeal lodged to the detriment of a convicted person cannot be accepted after one year from the day on which the conviction became final."

Article 538

"§ 1. Upon the quashing of the judgment, the execution of the penalty shall cease and the sentence already served shall be included within the term of the new sentence, in the event that the defendant is later convicted again.

..."

THE LAW

I. SCOPE OF THE CASE AND COMPLAINTS

26. The Court considers that the present application raises issues of the right to a fair trial, in particular regarding the principle of legal certainty and, therefore, finds it necessary to clarify the scope of the case, together with the provisions under which the complaints are to be examined. The applicant complained under Article 4 § 1 of Protocol No. 7 to the Convention that he had been tried again and punished with a second sentence after his early release from prison. The Court, being the master of the characterisation to be given in law to the facts of any case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), considers it more appropriate in the circumstances of the present case to examine this complaint under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

1. The parties' submissions

27. The Government argued that the applicant had failed to exhaust the available domestic remedies. In particular, they pointed out that he should have lodged a constitutional complaint with the Constitutional Court challenging the compatibility with the Constitution of the relevant provisions of the Code of Criminal Procedure, in particular Article 523 § 1a, which allowed for the lodging of a cassation appeal solely because of the incommensurate nature of the penalty in the case of a charge of a serious crime. The applicant could have claimed that that provision of the Code of Criminal Procedure was unconstitutional, given that under the first sentence of Article 42 § 1 of the Constitution of Poland, only a person who had committed an act prohibited by a statute in force at the moment of its commission, and which was subject to a penalty, could be held criminally responsible. In addition, under Article 45 § 1 of the Constitution, everyone had the right to a fair and public hearing of his or her case, without undue delay, before a competent, impartial and independent court. These provisions provided for a comparable level of protection to that secured by Article 6 § 1 of the Convention and Article 4 § 1 of Protocol No. 7 to the Convention.

28. The Government further submitted that the present application was incompatible with Article 4 § 1 of Protocol No. 7 to the Convention. In particular, they argued that the applicant had not been "tried again" in the proceedings which had followed the Supreme Court's decision to quash the judgment of the second-instance court.

29. As regards non-exhaustion of domestic remedies, the applicant commented that the Government had failed to indicate how such a complaint could be lodged and which provisions the applicant should have challenged before the Constitutional Court. In the applicant's view, that argument was unreasoned and vague.

30. As regards the alleged incompatibility *ratione materiae* with the provisions of the Convention and the Protocols thereto, the applicant maintained that Article 4 of Protocol No. 7 to the Convention was applicable to his case.

2. The Court's assessment

31. The Court reiterates that it has already held that a constitutional complaint in Poland is an effective remedy for the purposes of Article 35 § 1 of the Convention only in a situation in which the alleged violation of

constitutional rights and freedoms has resulted from the application of a legal provision which can reasonably be questioned as unconstitutional. Furthermore, such a provision has to constitute the direct legal basis for the individual decision in respect of which the violation is alleged. Thus, the constitutional complaint procedure cannot serve as an effective remedy if the alleged violation has resulted only from the erroneous application or interpretation of a statutory provision which, in its content, is not unconstitutional (see, most recently, *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, § 198, 7 May 2021).

32. In the present case, the applicant alleged a violation of his Convention rights in the decisions of the domestic courts and their interpretation and application of the relevant provisions of the Code of Criminal Procedure. The Court points to the established case-law of the Constitutional Court, to the effect that constitutional complaints based solely on an allegedly erroneous interpretation of a legal provision are excluded from its jurisdiction unless an applicant contests a provision as understood in well-established and long-standing case-law of the courts; as a result, such a complaint cannot be deemed an effective remedy within the meaning of Article 35 § 1 of the Convention. Therefore, a constitutional complaint cannot be regarded as an effective remedy in the applicant's case (see, for example, *Długołęcki v. Poland*, no. 23806/03, § 25, 24 February 2009, and *Y v. Poland*, no. 74131/14, §§ 51-52, 17 February 2022).

33. For these reasons, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

34. As regards the Government's objection concerning the alleged incompatibility *ratione materiae* of the present application with Article 4 § 1 of Protocol No. 7, the Court considers that, bearing in mind the scope of the case and the complaints referred to above (see paragraph 26), it is not necessary to examine whether Article 4 § 1 of Protocol No. 7 to the Convention is applicable to the facts of the case.

35. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

36. The applicant submitted that he had been deprived of his right to a fair trial in breach of Article 6 § 1 of the Convention. He argued that in his case, the reopening of proceedings had been ordered after the judgment convicting him had become final and he had been released on parole. Moreover, no new facts had been presented and no fundamental defects had been discovered in his first trial. The reopening of proceedings had been ordered solely because the courts had differed in their assessment of the extraordinary mitigation

applied, and with the exclusive aim of increasing the penalty originally imposed.

37. The Government argued that there had been no violation of Article 6 § 1 of the Convention. The remedy of an extraordinary appeal was regulated in the relevant provisions of the Code of Criminal Procedure and its scope had been made clear to the applicant. In particular, it was impossible to allow a cassation appeal lodged to the detriment of a convicted person after the expiry of one year from the date on which the conviction had become final. It followed that the possibility of lodging an extraordinary appeal to the detriment of a convicted person was limited in time, including for the Prosecutor General. The Government further maintained that all procedural guarantees had been observed in the applicant's case: he had had a State-appointed defence lawyer and a copy of the cassation appeal had been served on him. He and his defence lawyer had also participated in the hearing before the Supreme Court.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

38. The Court observes that the relevant Convention principles have been summarised as follows (see *Tığrak v. Turkey*, no. 70306/10, § 48, 6 July 2021, referring to *Brumărescu v. Romania* [GC], no. 28342/95, §§ 61-62, ECHR 1999-VII, and *COMPCAR, s.r.o.v. Slovakia*, no. 25132/13, §§ 63-64, 9 June 2015):

> "The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question.
>
> - That principle does not allow a party to seek the reopening of proceedings merely for the purpose of a rehearing and a fresh decision on the case. The mere possibility of there being two views on the subject is not a ground for re-examination.
>
> - Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character. Higher courts' powers to quash or alter binding and enforceable judicial decisions should be exercised for the purpose of correcting fundamental defects. That power must be exercised so as to strike, to the maximum extent possible, a fair balance between the interest of an individual and the need to ensure the effectiveness of the system of justice.
>
> - The relevant considerations to be taken into account in this connection include, in particular, the effect of the reopening and any subsequent proceedings on the applicant's individual situation, whether the reopening resulted from the applicant's individual situation, and whether the reopening resulted from the applicant's own request; the grounds on which the domestic authorities overturned the judgment in the applicant's case; the compliance of the procedure at issue with the requirements of domestic law; the existence and operation of procedural safeguards in the domestic legal system

capable of preventing abuses of that procedure by the domestic authorities; and other pertinent circumstances of the case.

- In a number of cases the Court, while addressing the notion of 'a fundamental defect', has stressed that merely considering that the investigation in the applicant's case was 'incomplete and one-sided' or led to an 'erroneous' acquittal cannot itself, in the absence of jurisdictional errors or serious breaches of court procedure, abuses of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice, indicate the presence of a fundamental defect in the previous proceedings."

39. The review of a final and binding decision should not be treated as an appeal in disguise, and the principle of legal certainty may be set aside in order to ensure a correction of fundamental defects or miscarriage of justice (see, for example, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX) or to rectify "an error of fundamental importance to the judicial system", but not for the sake of legal purism (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009).

40. The Court has held that a conviction ignoring key evidence constitutes a miscarriage of criminal justice, and that leaving such errors uncorrected may seriously affect the fairness, integrity and public reputation of judicial proceedings (see *Lenskaya v. Russia*, no. 28730/03, §§ 39-40, 29 January 2009, and *Giuran v. Romania*, no. 24360/04, § 39, ECHR 2011 (extracts)). Similarly, the Court has found that the upholding, after review proceedings, of a conviction which breached the right to a fair trial amounted to an error of assessment which perpetuated that breach (see *Yaremenko v. Ukraine (no. 2)*, no. 66338/09, §§ 52-56 and 64-67, 30 April 2015). Moreover, the arbitrary reopening of criminal proceedings, in particular to the detriment of a convicted person, infringes the right to a fair trial (see *Savinskiy v. Ukraine*, no. 6965/02, § 25, 28 February 2006; *Radchikov v. Russia*, no. 65582/01, § 48, 24 May 2007; and *Ştefan v. Romania*, no. 28319/03, § 18, 6 April 2010).

41. The Court has also considered other stages in criminal proceedings where the applicants were no longer "persons charged with a criminal offence" but persons "convicted" as a result of judicial decisions deemed final under domestic law. Given that "criminal charge" is an autonomous notion and having regard to the impact which the procedure for examining an appeal on points of law may have upon the determination of a criminal charge, including the possibility of correcting errors of law, the Court has found that such a procedure is covered by the safeguards of Article 6 (see *Meftah and Others v. France* [GC], nos. 32911/96 and 2 others, § 40, ECHR 2002-VII), even where it is treated as an extraordinary remedy in domestic law and concerns a judgment against which no ordinary appeal lies. By the same token, the Court has held that the safeguards of Article 6 are applicable to criminal proceedings in which the competent court began by examining the admissibility of an application for leave to appeal with a view to having a conviction quashed (see *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 54, Series A no. 115).

42. It transpires from the general principles set out above that Article 6 of the Convention is applicable, in its criminal aspect, to criminal proceedings concerning remedies classified as extraordinary in domestic law, where the domestic court is called upon to determine the charge. The Court therefore examines the issue of the applicability of Article 6 to extraordinary remedies by seeking to establish whether, during the consideration of the remedy in question, the domestic court was required to determine the criminal charge.

(b) Application of the above principles to the present case

43. The Court observes that the present case concerns the cassation appeal lodged by the Prosecutor General more than five months after the applicant's final conviction. This appeal must be distinguished from the cassation appeal that could have been lodged by the parties to the proceedings within the time-limit of thirty days from the day of the delivery of a ruling with reasoning[1] (see paragraph 25 above), which would have amounted to a continuation of the criminal proceedings (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 121-22, ECHR 2000-XI). In the Court's view, in particular circumstances of the present case the effects of the cassation appeal lodged by the Prosecutor General after the expiry of the general thirty-day statutory time-limit, must be assessed in the light of the principles governing the reopening of the proceedings.

44. In this regard, the Court notes that the applicant was convicted by a final judgment on 6 October 2017 (see paragraph 7 above) and started serving his prison sentence on 26 February 2018. On 22 March 2018 the Prosecutor General lodged a cassation appeal, arguing that the penalty imposed on the applicant had been flagrantly too lenient (see paragraph 9 above). On 13 February 2019 the Opole Regional Court ordered the applicant's release on parole (see paragraph 12 above). Shortly after the applicant's release, on 28 March 2019, the Supreme Court quashed the judgment of the Wrocław Court of Appeal and remitted the case to that court for re-examination. The Supreme Court failed to explain in its judgment what had been the fundamental defects of the criminal proceedings that needed correction (see *Tığrak,* cited above, § 48). It focused in its reasoning on indicating that the application of extraordinary mitigation of the penalty had not been sufficiently justified by the courts of first and second instance (see paragraph 17 above).

45. The Court notes, moreover, that the reasoning of the Supreme Court's judgment of 28 March 2019 contained no consideration whatsoever of the effect of the re-examination of the case and of any subsequent proceedings on the applicant's individual situation. In particular, no attention was given to the fact that the applicant had already served more than half of his sentence and had been released from prison on parole following proceedings initiated

[1] Rectified on 6 March 2025

by the prison governor. Similarly, no specific assessment of the applicant's situation was made in the judgment of the Wrocław Court of Appeal of 30 May 2019, delivered after the re-examination of the case. Admittedly, that court did note that the applicant had been released on parole at the request of the prison governor, but only to support the argument that the penalty requested by the prosecutor would be too severe (see paragraph 19 above). In the light of the above, the Court considers that the reasoning of the rulings given by both the Supreme Court and the Court of Appeal did not meet the required standards such as to show that they struck a fair balance between the interest of the applicant and the need to ensure the effectiveness of the justice system (ibid. § 48).

46. As regards the existence and operation of procedural safeguards, the Court accepts that the cassation appeal was lodged by the Prosecutor General within the statutory time-limit, namely less than one year after the applicant's final conviction, and that the procedural safeguards existing in the domestic legal system were observed in the proceedings in the applicant's case. In particular, he was served with a copy of the Prosecutor General's cassation appeal, was able to participate in the hearing before the Supreme Court and was represented by his defence lawyer (see paragraphs 10 and 14 above). However, the Court considers that the lack of assessment of any fundamental defects of the criminal proceedings as well as the lack of any consideration of the applicant's situation did not meet the Court's case-law standards as regards the right to a fair trial under Article 6 § 1 of the Convention (ibid. § 48).

47. There has accordingly been a violation of that provision in respect of the principle of a fair trial.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

49. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 24,580 in respect of pecuniary damage.

50. The Government considered those amounts excessive and unjustified.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

52. The applicant also claimed EUR 1,650 for the costs and expenses incurred before the Court.

53. The Government left the assessment of this claim to the Court's discretion.

54. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,650 for the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,650 (one thousand six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President