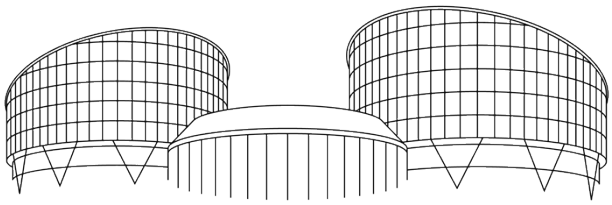

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RICHERT v. POLAND

(Application no. 54809/07)

JUDGMENT

STRASBOURG

25 October 2011

FINAL

25/01/2012

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

In the case of Richert v. Poland**,**

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

Nicolas Bratza, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 4 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 54809/07) 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 Andrzej Richert ("the applicant"), on 29 November 2007.

2. The applicant, who had been granted legal aid, was represented by Mr M. Romanowski, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that the criminal case against him had not been examined by a tribunal established by law.

4. On 29 March 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972.

6. On an unspecified date in 2004 the Gdańsk Regional Prosecutor lodged a bill of indictment against the applicant and other persons with the

Gdańsk Regional Court. The applicant was charged with attempted murder committed in the context of organised crime.

7. On 20 August 2004 the Criminal Division of the Gdańsk Regional Court requested the President of that court for the secondment of a judge from the district court, L.M., to the bench appointed to examine the applicant's case. The following dates for hearings to be held were specified in that letter: 26 October, and 16 and 23 November 2004.

8. By a letter of the President of the Regional Court, dated 23 August 2004, the judge was seconded for the purpose of attending the three hearings requested. The letter referred to the agreement of the board of the assembly of the Regional Court's judges to the secondment which had been given on an unspecified date.

9. Subsequently, hearings in the applicant's case were held on these first three dates and then later on 14 December 2004, 25 January, 3 and 15 March, 14 and 19 April, 19 May, 17 June, 12 July and 3 October 2005.

10. By a letter of 10 October 2005 the President of the Criminal Division of the Regional Court requested the President of that court to clarify the terms of Judge L.M.'s secondment, referring to certain doubts as to the time frame within which it was valid. He requested clarification on whether she had been seconded only for the three dates specified in the secondment letter of 23 August 2004 or for the whole examination of the case, until the first-instance judgment.

11. In his reply of 11 October 2005 the President of the Regional Court stated that Judge L.M. had been seconded with effect from 26 October 2004 until a first-instance judgment was given in the case.

12. On 12 October 2005 the President of the Criminal Division of the Gdańsk Regional Court asked the President of that court to second Judge L.M. to the case for a hearing to be held on 3 November 2005. His request was granted by the President's letter of 13 October 2005, specifically referring to that date.

13. On 26 October 2006 the President of the Criminal Division of the Gdańsk Regional Court stated in a letter to the President of that court that Judge L.M.'s original secondment had covered the hearings held on: 26 October, 16 and 23 November 2003, 14 December 2004, 25 January, 3 and 15 March, 14 and 19 April, 19 May, 17 June, 12 July and 3 October 2005.

14. Subsequently, there was a change of practice concerning the secondment, in that Judge L.M. was seconded by separate letters of 4 and 14 November 2005 for hearings to be held on 10 and 16 November 2005 respectively.

15. On the latter date the court gave a judgment and found the applicant guilty of attempted murder.

16. The applicant appealed, complaining essentially about various aspects of the admissibility and assessment of the evidence by the first-instance court.

17. On 11 October 2006 the Gdańsk Court of Appeal partly upheld and partly amended the contested judgment.

18. The applicant lodged a cassation appeal with the Supreme Court.

19. In additional pleadings of 6 August 2007 he raised another ground for appeal. He drew the Supreme Court's attention to the doubts which had arisen during the proceedings as to the correctness of the procedure concerning the secondment of Judge L.M., its time frame and its compliance with the requirements of section 77 of the Law on the Structure of Courts of Law as to the procedural requirements that a secondment had to meet. He argued that it was necessary to examine whether his case had been examined by a tribunal established by law. He indicated that he could not substantiate this ground with further details based on a closer examination of the case file because it had already been forwarded to the Supreme Court.

20. By a decision of 20 September 2007 the Supreme Court dismissed the appeal. The operative part of the decision read:

> "1) dismisses the cassation appeal as manifestly ill-founded,
>
> 2) holds that the court costs of the cassation proceedings be borne by the appellant."

That decision contained no written grounds.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Composition of criminal courts

21. 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 a statute. "

22. Section 77(1) of the Law on the Structure of Courts of Law (*Prawo o ustroju sądów powszechnych*) provides that the Minister of Justice may second a judge to carry out his or her duties in another court. 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.

Section 24 of that Law provides that no more than one judge seconded from another court can sit on a bench of a court at any one time.

23. The Supreme Court has examined in a number of judgments the procedural arrangements for the secondment of a judge to sit on the bench of another court.

24. In its decision of 21 November 2001 (I KZP 28/01) it examined a situation where two judges of a district court were promoted to a regional court during proceedings pending before the district court. They continued to participate in the proceedings until the first-instance judgment was given. It held that it had been in breach of section 24 of the Law on the Structure of Courts of Law and the prohibition that only one judge seconded from another court could sit on a bench (see paragraph 22 above). A district-court bench comprising two judges promoted to a higher court during the proceedings, if formal and individual decisions on their secondment had been given, was not properly composed within the meaning of Article 439 § 1 item 2 of the Code of Criminal Procedure (see paragraph 30 below).

The court observed that the procedural shortcomings listed in Article 439 § 1 of the Code breached the fundamental principles of a fair hearing, setting minimal procedural standards for the rule of law in a democratic State. If such shortcomings occurred, they always resulted in the judgment on the merits of the case being quashed, regardless of whether they had any influence on the substantive outcome of the proceedings and even where they had not been raised by the appellant. Certain legal writers were of the view that the legislator had put in operation a presumption that such shortcomings always had an impact on the merits of a case.

The court observed that one of the fundamental principles of the administration of justice was that a judge was to carry out his or her function in a given court determined in the nomination act issued by the President. However, the laws governing judicial organisation allowed for judges to be assigned to another court with a view to carrying out their judicial duties for limited periods of time and with their consent. For a judge to be able to sit on a bench of another court, at either a higher, lower or the same level of jurisdiction, a formal decision on secondment was necessary. Such a decision was not of a merely organisational character; it conferred a judicial role on a judge sitting on that bench.

25. In a resolution of 26 September 2002 (I KZP 28/2002) the Supreme Court held that a judge could be seconded to sit on a bench of another court either for a period of thirty consecutive days in one year, or for thirty non-consecutive days, for example, the dates of hearings. It noted that there were discrepancies in the practice. Certain presidents of the courts were of the view that only the first approach was correct, while others maintained that it was also acceptable to second judges for successive hearings in a case examined by another court, held on non-consecutive days if their number

did not exceed thirty per year. The court held that it was improper to second a judge without concrete dates indicated in the secondment decision, or merely for the examination of a specified case, if such a secondment did not refer to concrete dates.

26. In its judgment of 1 October 2002 (V KK 114/02) the Supreme Court examined a situation where a judge had obtained secondment for a specified period to sit on a bench of another court and had continued to do so after that period had ended, in the absence of a new decision on his secondment. It held that only a decision to second a judge to another court made it possible for him or her to sit on a bench of another court. In the absence of such a decision the composition of the court had been incorrect, within the meaning of Article 439 of the Code of Criminal Procedure. This procedural shortcoming amounted to a flagrant breach of the minimum standards of a fair hearing ("*rażąca obraza minimalnego standardu prawidłowego postępowania*"). The court referred to the resolution of 21 November 2001 (see paragraph 24 above).

27. In a judgment of 22 August 2007 (II KK 197/07) the Supreme Court held that the assignment of a judge to another bench did not comply with the applicable legal requirements if the local board of the assembly of judges had given only a blanket agreement for all judges of that court to be seconded to other courts. That agreement had to be given on each and every occasion in respect of an individual judge.

28. In an interlocutory decision of 19 September 2006 (III KO 21/06) the Supreme Court held that a decision on a judge's secondment had not been issued correctly if it lacked an indication of the concrete dates of hearings or other measures in which a seconded judge was to participate. It further noted that such a shortcoming did not render the proceedings void within the meaning of Article 439 of the Code of Criminal Procedure. The court reiterated that a judge could not be assigned to a bench of another court for more than thirty days during one year.

B. Grounds for a cassation appeal

29. Under the 1997 Code of Criminal Procedure ("the Code"), which entered into force on 1 September 1998, a party to criminal proceedings can lodge an appeal with the Supreme Court against any final decision of an appellate court which had terminated criminal proceedings. The relevant part of Article 523 § 1 of the Code provides:

> "A cassation appeal may be lodged only on the grounds referred to in Article 439 [these include a number of fundamental procedural irregularities, such as incorrect composition of the trial court; lack of legal assistance in cases where such assistance was compulsory; breach of the rules governing jurisdiction in criminal matters; trying a person *in absentia* in cases where his presence was obligatory and thus depriving him of an opportunity to defend himself, etc.] or on the ground of another flagrant breach of law provided that the judicial decision in question was affected as a result of

that breach. A cassation appeal shall not lie against the severity of the penalty imposed (*niewspółmierności kary*)."

30. Article 439 of the Code, in so far as relevant, reads:

"The appellate court shall, regardless of the scope of the appeal and the grounds raised by the party and regardless of whether the procedural shortcoming has had any impact on the substance of a decision, set a decision aside if: ...

(2) the composition of the court was improper;"

Under Article 518 of the Code, Article 439 is applicable *mutatis mutandis* in the cassation proceedings.

THE LAW

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

31. The applicant complained that his criminal case had not been decided by a "tribunal established by law" within the meaning of Article 6 § 1 of the Convention which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

33. The applicant argued that Judge L.M. had been assigned to the case contrary to the provisions of domestic law.

34. The applicant submitted that on 23 August 2004 that judge had been seconded to sit on the bench of the Regional Court for three hearings. Subsequently, another secondment had been authorised in October 2005, but only with retrospective effect for the period between 24 November 2004, when the initial secondment had expired, and 3 October 2005.

35. The applicant complained that the proceedings had been unfair in that the Supreme Court had failed to state the reasons for the dismissal of his cassation appeal. As a result, it had failed to explain why it had

dismissed his argument concerning the allegedly unlawful composition of the first-instance court. He pointed to the risk of arbitrariness in this respect.

36. The Government submitted that the composition of the Regional Court had been in full compliance with the domestic law. The procedure allowing for the secondment of judges was regulated at a statutory level by the Law on the Structure of Courts of Law as required by the Court's case-law. Its provisions specified precise conditions and situations where a judge could be seconded to sit on a bench of another court. That period could not exceed thirty days per year, provided that the judge agreed and that the board of the assembly of judges had given its assent to the secondment. In the applicant's case all these requirements had been met. Judge L.M. had been seconded by the President of the Regional Court with the board's consent. The period of her secondment had not exceeded the period of thirty days set by that Law. Any irregularities consisting in the absence of the President's decision on secondment issued prior to the hearings held between 14 December 2004 and 3 October 2005 had not, in the Government's view, invalidated that secondment.

37. The Government referred to the Court's decision in the case of *Iwańczuk v. Poland* ((dec.) no. 39279/05, 17 November 2009). The Court had declared that case inadmissible, having regard, *inter alia*, to the fact that the applicant had failed to adduce any evidence that the assignment of a judge from another bench had cast any doubt on that judge's impartiality or independence, factors closely related to the notion of a "tribunal established by law" and relevant also for the assessment of the fairness of the proceedings.

38. The Government argued that the first-instance judgment in the present case had been challenged by the applicant by way of an appeal and that his appeal had been examined by the appellate court. Hence, the applicant's guilt had ultimately been determined by the latter court, the composition of which had not been contested by the applicant.

39. They argued that the applicant had been aware that Judge L.M. had been seconded from the lower court for the purposes of his case. The courts had not been under any legal obligation to attach the secondment documents to the case file.

40. The Government further stated that they wished to refrain from making submissions concerning the applicant's argument that the Supreme Court had failed to give sufficient grounds for its decision by which it had dismissed the applicant's cassation appeal.

41. The Court reiterates that the expression "a tribunal established by law" reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols. "Law", within the meaning of Article 6 § 1, comprises in particular the legislation on the establishment and competence of judicial organs (see, *inter alia*, *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002). Accordingly, if a

tribunal does not have jurisdiction to try a defendant in accordance with the provisions applicable under domestic law, it is not "established by law" within the meaning of Article 6 § 1 (compare *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, §§ 99 and 107-08, ECHR 2000-VII).

42. The object of the term "established by law" in Article 6 of the Convention is to ensure that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from parliament (see *Coëme and Others*, cited above, § 98, and *Gurov v. Moldova*, no. 36455/02, § 34, 11 July 2006).

43. The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000, and *Posokhov v. Russia*, no. 63486/00, § 39, ECHR 2003-IV). A tribunal established by law must satisfy a series of conditions such as the independence of its members and the length of their terms of office, impartiality and the existence of procedural safeguards (see *Coëme and Others*, cited above, § 99).

44. The Court notes that under the provisions of the Law on the Structure of Courts of Law it was, and remains, possible to assign judges to sit on benches in courts other than their own. However, certain legal requirements have to be met in order to safeguard judicial independence, to prevent the composition of benches being manipulated in any way and to guarantee a fair hearing. Presidents of courts are empowered to second a judge, provided that he or she agrees thereto and that the board of the assembly of judges of that court gives its assent. Moreover, the applicable provision of the Law on the Structure of Courts limits the period for which such an assignment can be made to thirty days per year.

45. Certain difficulties and discrepancies in judicial practice arose in connection with the interpretation of the term "tribunal established by law" in the context of judges being assigned to other courts to examine criminal cases. The Supreme Court acknowledged the existence of these difficulties in its resolution of 26 September 2002. It considered it necessary to adopt a resolution clarifying certain procedural aspects of judicial secondments. It held that the practice by certain presidents of courts of seconding judges "for the examination of a particular case", without setting precise temporal limits, was inappropriate. The Supreme Court held that the temporal limitation was of significant importance as it served the purposes of preserving judicial independence. It held that the term "for thirty days" could be understood as either thirty consecutive days or thirty days of hearings within one year.

46. Hence, the Court notes that the issue was sufficiently important to prompt the Supreme Court to issue a resolution, a special form of judicial decision given by that court only where there were discrepancies in judicial

practice, with a view to clarifying them, in the interests of judicial certainty and harmonisation of case-law.

47. The same approach was reiterated in its decision of 19 September 2006 (see paragraph 28 above). In another decision, the Supreme Court stressed the importance of an individual agreement of the board of the assembly of judges for a judicial secondment (see paragraph 27 above). In a number of cases that court held that the absence of a formal decision on a judge's assignment rendered the proceedings void. In another decision it was stated that the assignment should indicate either the dates of hearings or the precise dates of other measures, if a judge was seconded for purposes other than a hearing (see paragraph 28 above). Hence, the procedural conditions of judicial secondments were determined by the Law on the Structure of Courts of Law and further specified by the case-law of the Supreme Court.

48. Turning to the circumstances of the present case, the Court observes that the President of the Regional Court seconded Judge L.M., by his letter of 23 August 2004, to sit on the bench of the Regional Court appointed to examine the applicant's case. However, only three hearing dates were specified in that letter: 26 October, and 16 and 23 November 2004. He referred to the agreement to her secondment given by the board of the assembly of judges. Hence, it is not open to doubt that in respect of these three hearings all the requirements were met: the formal assignment, the consent of the board and precise dates indicated in the assignment. Further, it was common ground between the parties that Judge L.M. had not objected to her assignment to the applicant's case.

49. However, later on, ten hearings in the applicant's case were held in 2005 without any specific document allowing for that judge's assignment to the bench of the Regional Court. A year later, in October 2005, doubts arose as to whether the composition of the first-instance court had complied with the provisions of the domestic law. These doubts were expressed in the letter of the President of the Criminal Division of the Regional Court of 10 October 2005. He asked the President of that court to clarify the terms of the judge's secondment. In his reply, the President stated that the judge had been seconded from 26 October 2004 until a first-instance judgment was to be given in the case. Subsequently, in a letter of 26 October 2005 the President of the Criminal Division told the President of the Regional Court that Judge L.M.'s secondment had covered the hearings held on: 26 October, 16 and 23 November 2003, 14 December 2004, 25 January, 3 and 15 March, 14 and 19 April, 19 May, 17 June, 12 July and 3 October 2005.

50. The Court observes that the President's letter of 26 October 2005 was meant to authorise the secondment with retrospective effect. However, no arguments have been submitted to the Court to show that under the applicable provisions of the domestic law, as interpreted by the Polish

courts, the retrospective authorisation of a secondment request was one of the lawful procedural methods for assigning judges to other benches.

51. The Court notes the Government's argument that the first-instance judgment was challenged by way of appeal and that the applicant has not contended that he did not receive a fair hearing before the court of appeal. It further observes that the applicant did not in fact raise the matter of Judge L.M.s secondment before the court of appeal. On the other hand, he did bring that complaint to the attention of the Supreme Court in the context of the cassation proceedings, referring to doubts which had arisen during the proceedings as to whether the assignment of Judge L.M. to the first-instance bench sitting in his case had complied with the applicable legal requirements. It recalls in this connection that the possibility certainly exists that a higher or the highest court might, in some circumstances, make reparation for defects including defects with respect to the independence and impartiality of the lower court (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86; *Kyprianou v. Cyprus* [GC], no. 73797/01, § 134, ECHR 2005-XIII; and *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, § 54, 30 November 2010). In the instant case, the cassation court had the power to quash the applicant's conviction and to order a re-trial, even if the matter of the composition of the first-instance bench had not been submitted to the court of appeal for examination.

52. It has not been argued, let alone shown, that that ground of the cassation appeal was so clearly unfounded that it was unnecessary for the Supreme Court to consider it. The Court notes that the correspondence between the President of the Criminal Division and the President of the Regional Court shows that they were uncertain about whether in the applicant's case the secondment of Judge L.M. had respected the applicable procedural requirements. Hence, it cannot be said that the applicant's arguments advanced in his pleadings in support of his cassation appeal manifestly lacked any factual or legal basis.

53. The Court further notes that under the applicable provisions of the domestic law the incorrect composition of a tribunal was one of the grounds to be examined by all appellate courts, including in the context of cassation proceedings, regardless of whether the appellant raised that ground in the appeal. Moreover, such a shortcoming rendered the proceedings void (see paragraph 29 above).

54. Accordingly, since the issue of the composition of the court would have been decisive for the outcome of the case, the Supreme Court should have addressed the submission in its judgment. Instead, it dismissed that appeal merely by way of a formulaic statement, habitually used in the context of criminal cassation proceedings for the purposes of disposing of manifestly ill-founded appeals.

55. In this connection, the Court reiterates the general principle adopted in its case-law according to which it is in the first place for the national

courts themselves to interpret the provisions of domestic law. The Court's jurisdiction to review the correctness of the judicial application of the domestic law is limited (see, among many other authorities, *Bugajny and Others v. Poland*, no. 22531/05, §§ 65-66, 6 November 2007; *Urban*, cited above, § 51). However, in the absence of an authoritative determination by the Polish judicial authority that the retrospective authorisation of a judge's assignment to the examination of a criminal case was a method compliant with the domestic law, the Court does not have any basis on which it could accept that the composition of the first-instance court between 27 October 2004 and 11 October 2005 complied with the applicable requirements of the domestic law.

56. Cumulatively, these circumstances do not permit the Court to conclude that the Gdańsk Regional Court, which heard the applicant's case from 24 November 2004 to 3 October 2005, could be regarded as a "tribunal established by law".

57. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicant complained, relying on Article 6 of the Convention, that the proceedings had been unfair in that the courts had wrongly assessed evidence, erred in establishing the facts of the case and incorrectly applied the applicable domestic law.

59. However, the Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

60. In the present case the applicant's complaints are limited to challenging the result of the proceedings. The applicant does not contend that the judges who sat in his case (including Judge L.M.) lacked independence or impartiality. Assessing the circumstances of the case as a whole, the Court finds no indication that any decisions on the admissibility and assessment of the evidence were in breach of the applicant's right to a fair hearing.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 54,000 euros (EUR) in respect of pecuniary damage, consisting in loss of earnings throughout the period when he was serving his prison sentence, and EUR 100,000 for non-pecuniary damage.

64. The Government contested the applicant's claims.

65. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

66. Moreover, with regard to the applicant's claim for non-pecuniary damage, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction.

B. Costs and expenses

67. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the domestic courts and before the Court.

68. The Government contested that claim.

69. The Court notes that the applicant did not submit bills or other documents to demonstrate the costs borne in connection with the domestic proceedings or with the proceedings before the Court. It considers the amount paid to the applicant by way of legal aid for the proceedings before the Court quite adequate in the circumstances. It declines to award any further sum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible as regards the complaint that the case was not examined by a "tribunal established by law" and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the fact that the applicant was convicted by a tribunal which was not "established by law";

3. *Holds* that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

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

Done in English, and notified in writing on 25 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President