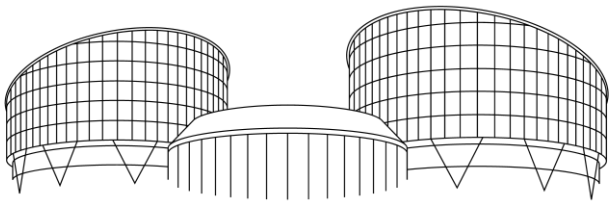

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

**CASE OF POHOSKA v. POLAND**

*(Application no. 33530/06)*

JUDGMENT

STRASBOURG

10 January 2012

**FINAL**

*10/04/2012*

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

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

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

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

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 December 2011,

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

# PROCEDURE

1. The case originated in an application (no. 33530/06) 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, Ms Danuta Pohoska ("the applicant"), on 25 July 2006.

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

3. The applicant alleged that a criminal case against her had not been examined by an independent and impartial court and that she had been denied access to the Supreme Administrative Court.

4. On 30 August 2010 the President of the Fourth Section decided to give notice of the application to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Elbląg.

## A. Criminal proceedings against the applicant

6. In a criminal case in which the applicant was accused of causing minor bodily harm to a certain D.Ł., in the context of a long-running neighbourhood dispute between them, the applicant requested that judges of the Elbląg Regional Court be disqualified from dealing with her case. She indicated that D.Ł. was the brother of Judge M.K.P., a supervising judge at that court.

7. By a decision of 17 May 2000 the Gdańsk Court of Appeal allowed her request and transferred the case to the Włocławek District Court. It was of the view that those judges of the Elbląg Regional Court who had declared that they knew the victim of the alleged offence personally could not sit in the case as it would cast doubt on their impartiality. Similarly, the judges of that court who had not made such a declaration should be disqualified, as the existence of a link between the victim of the alleged offence and the supervising judge justified the view that their impartiality could also be open to doubt. The court referred to Article 6 of the Convention, guaranteeing the right to a fair hearing by an impartial court, and to Article 45 of the Constitution.

8. In another criminal case against the applicant, concerning similar charges where D.Ł. was also a victim of the alleged offence, on 4 April 2001 the Gdańsk Court of Appeal gave a similar decision, disqualifying the judges of both the Elbląg District Court and Regional Court on similar grounds. The case was, likewise, transferred to the Włocławek District Court.

9. On 28 September 2004, in another case in which D.Ł. was the accused and the applicant the victim of the alleged offence, the Gdańsk Court of Appeal held that twenty-seven of the judges of the Elbląg Regional Court (including Judges I.L. and N.B.; see paragraphs 19 and 19 below) should be disqualified as there were doubts as to their impartiality. The applicant had been arrested following a complaint submitted to the prosecuting authorities by D.Ł. Moreover, the twenty-seven disqualified judges had declared that circumstances obtained which could have given rise to doubts as to their impartiality. Four other judges were not disqualified as they had declared that no such doubts arose in respect of them.

10. On 23 November 2004, in a case in which the applicant sought compensation for unjustified arrest and detention in connection with a criminal case in which she had ultimately been acquitted, the Gdańsk Court of Appeal held that all of the judges of the Elbląg Regional Court should be disqualified. It was of the view that there were doubts as to their impartiality. This was so because the applicant had been arrested and subsequently detained in a case in which D.Ł. was the victim of the alleged offences. Certain of the judges had declared that they knew D.Ł. personally.

This set of circumstances justified the transfer of the case to the Włocławek Regional Court.

11. Subsequently, D.Ł. requested that criminal proceedings be instituted against the applicant on charges of giving false testimony against him in another set of proceedings.

12. By a decision of 7 January 2005 the Elbląg District Court submitted a request to the Supreme Court that the case be transferred for examination by another court. It referred to the applicant's doubts as to the impartiality of the judges of the district court arising in connection with D.Ł. having a family link to the superior of those judges. It further referred to the previous cases in which the applicant had been involved. It was of the view that the reputation of the judiciary and the confidence which the courts should inspire in the public, in particular as to their impartiality, warranted the case being examined by another court.

13. On 18 March 2005 the Supreme Court dismissed the request. It held that the fact that the victim of the alleged offence was the brother of one of the judges of "a regional court (apparently in Elbląg)" ("*sędziego Sądu Okręgowego (prawdopodobnie w Elblągu*)"), even taken together with the fact that the applicant had sought to have all the judges of the Elbląg District Court and Elbląg Regional Court disqualified, was insufficient to give rise to doubts as to the impartiality of these judges. It was not in the interests of the administration of justice to abuse the possibility for cases to be transferred to another court.

14. Subsequently, on 26 April 2005 the Elblag District Court, in a single-judge panel composed of Assessor E.M. (an assessor is a junior judge), dismissed the applicant's request that K.S., another assessor assigned to examine her case, be disqualified. It held that no circumstances obtained that would show that K.S. might lack impartiality. No reference was made either to the specific facts of the case, to the relationship between D.Ł. and the supervising judge or to the decisions of the Gdańsk Court of Appeal summarised above.

15. On 25 August 2005 the Elbląg District Court, presided over by Assessor K.S., found the applicant guilty of giving false evidence against D.Ł. and A.Ch., in that she had falsely informed the prosecuting authorities that they had caused damage to her orchard. The court sentenced her to one year's imprisonment, suspending that sentence for a probationary period of one year, during which the applicant's conduct would be supervised by a court officer.

16. On 8 October 2005 the applicant appealed. She submitted, *inter alia*, that the court had lacked impartiality because D.Ł. was the brother of the supervising judge at the Elbląg Regional Court. The existence of family links between the victim and the supervising judge on the one hand, and the hierarchical professional link between the latter and all the other judges of the Elbląg courts on the other hand, had compromised the impartiality of the

court. She further referred to the fact that in one of the orders to the court's secretariat by which Assessor K.S. organised the procedure she had referred to the applicant as "the convicted person" (*skazana*). This demonstrated that even before the judgment had been given, that assessor had already prejudged the outcome of the proceedings. She further submitted that the court had wrongly established the facts and had committed errors in the legal assessment of the case.

17. The prosecution also appealed against the judgment, arguing that the court had erred in the application of the substantive provisions of criminal law.

18. Subsequently, the applicant requested that Judges N.B., I.L. and E.M. of the Elbląg Regional Court not be assigned to the bench which was to examine her appeal. She reiterated that the fact that D.Ł. was the brother of the supervising judge was capable of casting doubt on the impartiality of the judges of that court.

On 20 January 2006 the Elbląg Regional Court dismissed her request. It noted that the applicant had already unsuccessfully requested in that case that the judges of the Elbląg courts withdraw from the case, relying on the same circumstances. Hence, there were no grounds on which to allow her request in respect of the judges of the Regional Court. It further noted that the judges assigned to examine the applicant's appeal had declared that they did not know any of the parties to the case personally.

19. By a judgment of 27 January 2006, served on the applicant on 15 March 2006, the Elbląg Court of Appeal, composed of Judges I.L., N.B. and E.M., dismissed the applicant's appeal. It was of the view that the arguments concerning the assessment of the evidence by the first-instance court were ill-founded. As to the applicant's argument based on the alleged lack of impartiality of the District Court, the court noted that on 26 April 2005 the applicant's request that assessor E.M. should step down had been dismissed. The circumstances of the case had not indicated that there could have been any bias on the part of the judge who had examined the case and the applicant's arguments in this respect were unconvincing.

20. The court allowed the prosecution's appeal in part and quashed the part of the judgment imposing a supervision order on the applicant.

### B. Administrative proceedings

21. In 1994 the Elbląg District Court found the applicant's neighbours guilty of breaching planning and building regulations by building a house over the garage on their land, contrary to applicable law. In the ensuing sets of proceedings, the applicant sought to have the illegal construction demolished.

22. On 15 September 2005 the applicant complained to the Olsztyn Regional Administrative Court about the authorities' failure to take steps in

order to have the construction comply with planning and building regulations.

23. On 12 April 2006 the Olsztyn Regional Administrative Court gave a judgment. It found that the applicant's complaint was justified and ordered the District Construction Supervision to give a decision in the applicant's case within one month. On 22 May 2006 the Regional Administrative Court's judgment was served on the applicant with its written reasons. On that date, the thirty-day time-limit for lodging a cassation appeal against the judgment started to run.

24. By letter dated 20 June 2006, posted on 21 June 2006, the applicant requested the court to grant her legal aid. By a decision of 12 July 2006 legal aid was granted. By letter of 23 August 2006 the local District Chamber of Legal Advisers (*Okręgowa Izba Radców Prawnych*) informed the applicant that, upon the court's request dated 17 August 2006 the case had been assigned to J.S. The court informed the applicant thereof by letter of 25 August 2006. On 31 August 2006 the applicant gave a power of attorney to J.S. On 4 September 2006 certain documents from the case file were served on J.S., following his request dated 1 September 2006. By a legal opinion dated 3 October 2006 J.S. informed the court and the applicant that there were no legal grounds on which he could prepare a cassation appeal and that, in any event, the applicant had no legal interest in lodging it because the judgment of the Regional Administrative Court had been in her favour.

## II. RELEVANT DOMESTIC LAW

25. Article 41 of the Code of Criminal Procedure provides as follows:

> "A judge shall be disqualified if such circumstances obtain as could give rise to justified doubts about his or her impartiality in a given case".

26. The tasks entrusted to the supervising judges are governed by the Ordinance on Supervision Over the Court's Administrative Functions (*rozporządzenie Ministra Sprawiedliwości w sprawie trybu sprawowania nadzoru nad działalnością administracyjną sądów*), issued by the Minister of Justice. Its section 2 provides that the ministerial supervision shall be carried out through, *inter alia*, supervision audits (*wizytacje* and *lustracje*). Under sections 4 and 5, presidents of appellate and regional courts are charged with the administrative supervision of courts within areas of their territorial jurisdiction. Section 9 provides that presidents of appellate and regional courts shall appoint supervising judges for the purposes of the administrative supervision from among particularly knowledgeable judges. Under section 12, the supervising judges shall carry out their tasks by conducting supervision audits in courts; by attending hearings and submitting their observations to judges and administrative staff concerned;

by participating in deliberations and judicial trainings, by suggesting that disciplinary proceedings be instituted in respect of judges and by examining whether complaints about the administrative aspects of judicial work are well-founded. Pursuant to section 13 § 1 of the Ordinance, a president of a regional court may charge the supervising judges with the preparation of assessments of whether an assessor should be promoted to a judicial post.

27. Article 540 § 3 of the Code of Criminal Procedure provides for the possibility of reopening proceedings following a judgment of the European Court of Human Rights. It reads as follows:

> "The proceedings shall be reopened for the benefit of the accused when such a need results from a decision (*rozstrzygnięcie*) of an international body acting on the basis of an international agreement ratified by the Republic of Poland."

28. The relevant domestic law and practice concerning the position of assessors in the judicial system is extensively summarised in the Court's judgment in the case of *Henryk Urban and Ryszard Urban v. Poland*, no. 23614/08, §§ 17-24, 30 November 2010.

29. The relevant domestic law and practice concerning the procedure for lodging cassation appeals with the Supreme Administrative Court against judgments of the Regional Administrative Courts are stated in the Court's judgment in the case of *Subicka v. Poland*, no. 29342/06, §§ 12-21, 14 September 2010.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS LACK OF INDEPENDENCE AND IMPARTIALITY

30. The applicant complained that the court which had heard the criminal case against her had not been independent and impartial. She relied on Article 6 § 1 of the Convention, which reads, in so far as relevant:

> "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

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

## B. Merits

32. The applicant submitted that the criminal case against her in which the second-instance judgment had been given by the Elbląg Regional Court on 27 January 2006 had not been examined by an impartial court.

33. The Government submitted that they would abstain from making any submissions on the merits of that complaint.

### *1. General principles*

34. The Court recalls that in determining whether a body can be considered as "independent" – notably of the executive and of the parties to the case – regard must be had, *inter alia*, to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 78, Series A no. 80; *Findlay v. the United Kingdom*, 25 February 1997, § 73, *Reports of Judgments and Decisions* 1997-I; *Incal v. Turkey*, 9 June 1998, § 65, *Reports* 1998-IV; *Brudnicka and Others v. Poland*, no. 54723/00, § 38, ECHR 2005-II; and *Luka v. Romania*, no. 34197/02, § 37, 21 July 2009). Furthermore, the irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence and thus included in the guarantees of Article 6 § 1 (see *Campbell and Fell*, cited above, § 80). The Court further recalls that the requisite guarantees of independence apply not only to a "tribunal" within the meaning of Article 6 § 1 of the Convention, but also extend to "the judge or other officer authorised by law to exercise judicial power" referred to in Article 5 § 3 of the Convention (see *McKay v. the United Kingdom* [GC], no. 543/03, § 35, ECHR 2006-X).

35. The Court further reiterates that it is of fundamental importance in a democratic society that the courts inspire confidence in the public. To that end, Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach – that is, endeavouring to ascertain the personal conviction or interest of a given judge in a particular case – and an objective approach – that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53, and *Grieves v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII (extracts)).

36. In applying the subjective test, the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example,

sought to ascertain whether a judge has displayed hostility or ill will or has arranged to have a case assigned to himself for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86). The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 58, Series A no. 43).

37. Although in some cases it may be difficult to procure evidence with which to rebut the presumption, it must be remembered that the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III). In other words, the Court has recognised the difficulty of establishing a breach of Article 6 on account of subjective partiality and for this reason has, in the vast majority of cases raising impartiality issues, focused on the objective test. However, there is no watertight division between the two notions, since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (the objective test) but may also go to the issue of his or her personal conviction (the subjective test) (see *Kyprianou v. Cyprus*, [GC], no. 73797/01, § 119, ECHR 2005-XIII).

38. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect, even appearances may be of some importance (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; *Morel v. France*, no. 34130/96, § 42, ECHR 2000-VI and *Kyprianou v. Cyprus* [GC], cited above, § 118, ECHR 2005-XIII). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III, and *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

*2. Application of the above principles to the present case*

39. Turning to the circumstances of the present case, the Court observes that the applicant was involved in a long-running dispute with one of her neighbours, D.Ł. Against the background of that dispute, a number of administrative and criminal cases were conducted concerning various disagreements and incidents between the applicant and that neighbour.

40. The Court first observes that the applicant did not adduce any evidence to substantiate personal bias on the part of the judges of the Elbląg Regional Court dealing with the criminal case against her. It remains to be

ascertained whether the appearance of impartiality was observed under the objective test.

41. In this connection, the Court notes that the applicant's neighbour, and opponent in a number of the cases, happened to be the brother of a supervising judge at the Elbląg Regional Court. In the Polish judicial system, such a judge is responsible for supervision of the quality of decisions produced by judges of the Regional Court and the district courts and of the manner in which they handle their case-management duties. The supervisor's functions can have a bearing on a judge's professional career and advancement. The Gdańsk Court of Appeal, having regard to the relationship between D.Ł. and the supervising judge, on a number of occasions, held that the judges of the Elbląg courts should withdraw from the applicant's cases.

42. The Court is of the opinion that it cannot be excluded that a situation where domestic courts find it appropriate that judges should withdraw from examining a case, but subsequently the same judges are called upon to examine another case involving the same parties, is capable of raising issues under Article 6 of the Convention. However, the Court observes that it is not necessary, in the circumstances of the present case, to examine in detail this particular aspect of the case, for the following reasons.

43. The Court notes that in the applicant's case Assessor E.M. dismissed the applicant's request that K.S., another assessor assigned to examine her case, be disqualified. No reference was made in this decision either to the relationship between D.Ł. and the supervising judge or to the earlier decisions of the Gdańsk Court of Appeal. In this connection, the Court observes that at the material time the supervising judges were responsible for preparing assessments of assessors' suitability for judicial functions (see paragraph 26 above).

44. Furthermore, the Court notes that at the relevant time assessors were appointed by the Minister of Justice provided that they met a number of specific conditions stipulated in the Law of 27 July 2001 (as amended) on the Organisation of Courts (*Prawo o ustroju sądów powszechnych*; hereinafter "the 2001 Act") 2001 Act (section 134 § 1). The Minister could confer on an assessor the authority to exercise judicial power in a district court, subject to approval by the board of judges of a regional court and for a period not exceeding four years (section 135 § 1). Under section 134 § 5 of the 2001 Act the Minister could remove an assessor, including those who were vested with judicial powers.

45. The Court observes that the Polish Constitutional Court considered the status of assessors in its leading judgment of 24 October 2007 (see *Henryk Urban and Ryszard Urban v. Poland*, cited above, §§ 19-24). The Constitutional Court found that the manner in which Poland had legislated for the status of assessors was deficient since it lacked the guarantees of independence required under Article 45 § 1 of the Constitution, guarantees

which are substantively identical to those under Article 6 § 1 of the Convention. As a result, the Constitutional Court set aside the regulatory framework governing the institution of assessors as laid down in the 2001 Act.

46. The Court has already held, having had regard to the findings of the Constitutional Court, that a court composed of assessors was not independent within the meaning of Article 6 § 1 of the Convention, the reason being that an assessor could have been removed by the Minister of Justice at any time during their term of office and that there were no adequate guarantees protecting them against the arbitrary exercise of that power by the Minister (see, *Henryk Urban and Ryszard Urban v. Poland*, cited above, §§ 51-53).

47. The Court thus concludes, having regard to the circumstances of the case seen as a whole, that there has been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS ACCESS TO COURT

48. The applicant complained under Article 6 § 1 of the Convention that she had been denied access to the Supreme Administrative Court.

Article 6 § 1 reads, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

### A. The parties' arguments

49. The applicant submitted that she had been denied access to the Supreme Administrative Court.

50. The Government referred to a resolution of the Supreme Court given in September 2000. That court had held that a lawyer assigned to a case under the legal-aid scheme was entitled to refuse to lodge a cassation appeal in civil proceedings, if he or she was of the view that this remedy offered no reasonable prospects of success. The Government stressed that the notion of legal aid was not to be understood as either providing legal representation in all proceedings or assigning successive legal-aid lawyers to a case. The lawyers' tasks could not be perceived as following their clients' instructions and wishes uncritically and lodging remedies against their better judgment. In the present case, the applicant had been granted legal aid. The legal-aid lawyer had been diligent in preparing a legal opinion. Moreover, the applicant had failed to act diligently. She had been served with the judgment of the Regional Administrative Court on 22 May 2006. It had been on that date that the thirty-day time-limit had started to run. However, she had

submitted her request for legal aid only one day before the expiry of that time-limit.

### B. The Court's assessment

51. The Court has already had occasion to set out at length the relevant principles derived from its case-law in this area (see *Siałkowska v. Poland*, no. 8932/05, §§ 99-107, 22 March 2007; *Smyk v. Poland*, no. 8958/04, §§ 54-59, 28 July 2009; and *Subicka v. Poland*, no. 29342/06, § 40, 14 September 2010). It adopts those principles for the purposes of the instant case.

52. In the present case, the Court notes that the judgment of the Regional Administrative Court was in the applicant's favour as that court found that the applicant's complaint was justified. However, even assuming that the applicant could claim to be a victim of a breach of the Convention, the Court observes that the second-instance judgment, together with its written reasons, was served on the applicant on 22 May 2006. It was on that date that the thirty-day time-limit for lodging the cassation appeal started to run. However, the Court observes that the applicant submitted her request for legal aid on 21 June 2006, only one day before the expiry of that time-limit. It has not been shown or even argued that this delay was justified by any special circumstances for which the applicant could not be held responsible, or that she could not have been aware of the time-limit within which a cassation appeal had to be submitted to the highest court. The court, having received her request, examined it speedily and granted her request on 12 July 2006.

53. Having regard to the delay with which the applicant availed herself of her procedural right, the Court is of the view that she failed to display the diligence which should normally be expected from a party to civil proceedings (see *Pretto and Others v. Italy*, 8 December 1983, § 33, Series A no. 71; *Bąkowska v. Poland*, no. 33539/02, §§ 53-54, 12 January 2010; and *Staniszewski v. Poland*, no. 28157/08, 5 October 2010, §§ 32-33).

54. Therefore, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 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.

## III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS UNFAIRNESS

55. The applicant complained that the courts had wrongly assessed the evidence and, as a result, had failed to establish the facts of the case correctly and had given erroneous judgments.

56. The Court reiterates that, 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 in which it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

57. 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.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 60,000 zlotys (PLN) in respect of pecuniary and non-pecuniary damage arising out of the circumstances of the criminal case.

60. The Government submitted that the applicant's claim was excessive and that there was no causal link between the circumstances of the case and the damages claimed.

61. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have suffered some non-pecuniary damage in connection with the circumstances of the criminal case against her. It awards her the sum of 1,000 euros (EUR).

62. The Court further reiterates that when an applicant has been convicted despite a potential infringement of his or her rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded. The most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, if requested (see, among many other authorities, *Öcalan v. Turkey* [GC],

no. 46221/99, § 210 *in fine*, ECHR 2005-IV, *Popov v. Russia*, no. 26853/04, § 264, 13 July 2006; *Vladimir Romanov v. Russia*, no. 41461/02, § 118, 24 July 2008). In the present case the Court takes note of the particular link of dependence which the law established between the assessors and supervising judges. Against that background, the Court is of the view that in the circumstances of the case the most suitable way to redress the breach of the applicant's rights would be to re-open the proceedings in the case. The Court notes, in this connection, that Article 540 § 3 of the Polish Code of Criminal Procedure provides that criminal proceedings shall be reopened if the Court finds a violation of the Convention.

### B. Costs and expenses

63. The applicant did not make any claim in respect of costs and expenses.

### C. Default interest

64. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged lack of impartiality on the part of the criminal courts admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards lack of impartiality on the part of the courts which examined her criminal case;

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, EUR 1,000 (one thousand euros) plus any tax that may be chargeable thereon, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President