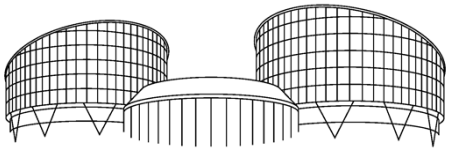

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DRIDI v. GERMANY

(Application no. 35778/11)

JUDGMENT

STRASBOURG

26 July 2018

FINAL

26/10/2018

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

In the case of Dridi v. Germany,

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

Erik Møse, *President,*
Angelika Nußberger,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 3 July 2018,

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

PROCEDURE

1. The case originated in an application (no. 35778/11) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Abdelhamid Dridi ("the applicant"), on 7 June 2011.

2. The applicant was represented by Mr J. Arif, a lawyer practising in Hamburg. The German Government ("the Government") were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

3. The applicant alleged a violation of his rights under Article 6 §§ 1 and 3 (b) and (c) of the Convention in the criminal proceedings against him.

4. On 14 March 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 and lives in Cadiz.

A. Background to the case

6. On 2 March 2009 the Hamburg District Court, after having served a summons on the applicant to appear at the address that he had at that time in

Hamburg, convicted the applicant of assault and sentenced him to forty day-fines of 25 euros (EUR) each and allowed him to pay his fine in instalments in the light of his economic situation. The District Court had, at the applicant's request, authorised Mr Arif – at that time still a law student – to act as defence counsel under Article 138 § 2 of the Code of Criminal Procedure (see paragraph 19 below).

7. The applicant and the public prosecutor lodged appeals. The prosecutor's appeal was directed merely against the sentencing. Thereafter, the applicant moved to Spain to work as a chef in a hotel and communicated his new address to the court.

B. The appeal proceedings before the Regional Court

8. On 24 April 2009 the Hamburg Regional Court withdrew the authorisation of Mr Arif to act as defence counsel, while at the same time rejecting the application lodged by Mr Arif for the applicant to be released from the obligation to appear in person at the appeal hearing. This decision was served on the applicant in Spain.

9. Also on 24 April 2009 the Regional Court fixed the date for the oral hearing of the applicant's appeal to 9.10 a.m. on 13 May 2009. It decided to serve the summons on the applicant via public notification because the applicant had moved abroad. The summons was displayed on the court's noticeboard from 27 April until 12 May 2009.

10. On 12 May 2009 Mr Arif learned by telephone of the Court of Appeal's decision of that same day to overturn the Regional Court's decision in respect of his authorisation to act as counsel for the applicant and of the appeal hearing having been scheduled for the next morning. He applied by fax for the hearing to be adjourned, citing the fact that he was going to be out of town the next day. He furthermore asked that documents from the case file – in particular the public prosecutor's appeal – be sent to him. The presiding judge ordered that a copy of that appeal and of the decision to serve the summons of the applicant by public notification be sent to the applicant's lawyer. This proved impossible, as the lawyer's fax machine had no receiving function. The lawyer was offered access to the file at the courthouse the following day at 8 a.m. (that is to say immediately before the hearing), which he declined, stating that he would be out of town.

11. On 13 May 2009 the Regional Court refused, in a separate decision, an application lodged by the applicant's lawyer for the appeal hearing to be adjourned. It stated that the lawyer had waived his right to be summoned within the respective time-limit because he had known about the date of the appeal hearing (as evidenced by his fax of the previous day), and that the properly summoned applicant had failed to appear without providing any reason. Simultaneously, the Regional Court dismissed the applicant's appeal without an assessment of the merits, in accordance with Article 329 of the

Code of Criminal Procedure (see paragraph 19 below), because he had not appeared at the appeal hearing (without any sufficient excuse, and despite having been summoned), nor had he been represented by a lawyer in a permissible manner.

C. The proceedings for restoration of the *status quo ante*

12. On 10 March 2010 the Regional Court dismissed the applicant's application for the restoration of the *status quo ante*. It found that the requirements for the serving of a summons by means of public notification, as set out in Article 40 §§ 2 and 3 of the Code of Criminal Procedure (see paragraph 19 below), had been met. The applicant's lawyer had waived his right to be summoned, and his application for an adjournment had not relied on the failure to comply with the time-limit for serving a summons but had rather invoked scheduling problems, which he had not described in greater detail.

13. On 15 April 2010 the Court of Appeal upheld that decision. It considered that the applicant had been properly summoned to the appeal hearing because the requirements for service by public notification, as set out in Article 40 § 2 of the Code of Criminal Procedure, had been met. The summons to attend the hearing before the District Court had been served on the applicant's previous address in Germany and he had lodged the appeal in question. As regards his interest in having the District Court's judgment reviewed, it had been his responsibility to ensure that it was possible for the summons to appear at the appeal hearing to be served in Germany. As a result of his move to Spain it had not been possible to serve the summons at his previous address in Hamburg. It had thus been acceptable for the summons to be served by public notification. There had been neither an obligation to undertake an attempt to serve the summons at the applicant's new address abroad prior to serving it via public notification nor one to notify him at that address that the summons had been served by public notification. The applicant had also not specifically authorised (under the first sentence of Article 145a § 2 of the Code of Criminal Procedure) his lawyer to receive summonses (see paragraph 19 below). Moreover, the applicant had not convincingly shown that he had been prevented through no fault of his own from appearing at the appeal hearing, as required by Article 44 § 1 of the Code of Criminal Procedure (see paragraph 19 below), because the applicant's lawyer had not provided an affidavit to support his claim that he had advised the applicant, on 12 May 2009, that the latter did not need to attend the hearing because he had not been summoned. As his appearance in person had been ordered (see paragraph 8 above), it had not been possible to carry out the appeal hearing in his absence.

D. The subsequent proceedings before the Court of Appeal and the Federal Constitutional Court

14. On 16 July 2010 the Court of Appeal rejected an appeal on points of law lodged by the applicant against the Regional Court's judgment of 13 May 2009 as ill-founded, finding that the review of the Regional Court's judgment had not revealed any legal errors that had been detrimental to the applicant.

15. On 16 November 2010 the Federal Constitutional Court declined to consider a constitutional complaint lodged by the applicant, without providing reasons (no. 2 BvR 2147/10). The decision was served on the applicant's lawyer on 10 December 2010.

E. The Government's unilateral declaration

16. Following communication of the case and unsuccessful friendly settlement negotiations, on 8 July 2016 the Government informed the Court of their intention to resolve the issue raised by the application. They produced a unilateral declaration, in which they acknowledged violations of Article 6 §§ 1 and/or 3 (c), as well as Article 6 § 3 (b) and (c) of the Convention and offered to pay the applicant a sum to cover any pecuniary and non-pecuniary damage together with any costs and expenses. The Government requested that the Court strike out the application in accordance with Article 37 § 1 of the Convention.

17. By a letter to the Court of 30 August 2016 the applicant indicated that he was not satisfied with the terms of the unilateral declaration. The aim he pursued with the present application was a reopening of the criminal proceedings against him and a subsequent acquittal. He argued that, under domestic law, such a reopening could not be achieved if the Court struck the case out of its list, but required a judgment finding a violation. Furthermore, the compensation offered was insufficient.

18. By a submission of 14 October 2016 the Government confirmed that there was – and in fact, there still is – no case-law of the domestic courts regarding whether Article 359 no. 6 of the Code of Criminal Procedure, which provides for the reopening of criminal proceedings following a judgment of the Court finding a violation (see paragraph 19 below), also applies to violations acknowledged by the Government by way of a unilateral declaration. This question was for the domestic courts to assess. They acknowledged that the provision had, in practice, been construed narrowly.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 35a, second sentence

"Where an appeal on fact and law may be lodged against [a] judgment, the defendant shall also be informed of the legal consequences arising out of Article 40 § 3 and Articles 329 and 330."

Article 40 [as applicable at the relevant time]

"(1) If service on an accused upon whom a summons to the main hearing has not yet been served cannot be effected in Germany in the prescribed manner, and if compliance with the provisions for service abroad appears impracticable or will presumably be unsuccessful, service via public notification shall be admissible. Service shall be considered effected once two weeks have elapsed since the notice was displayed.

(2) If the summons to the main hearing has previously been served upon the defendant, then service on him by public notification shall be admissible if it cannot be effected within the country in the prescribed manner.

(3) In proceedings concerning an appeal on fact and law lodged by the defendant, service via public notification shall already be admissible if it is not possible to serve documents at an address at which documents were last served or which the defendant last provided."

Article 44

"If a person is prevented from complying with a time-limit through no fault of his own, he shall be granted restoration of the *status quo ante* upon application. ..."

Article 45 [as applicable at the relevant time]

"(2) The facts justifying the application shall be substantiated at the time at which the application [for restoration of the *status quo ante*] is lodged, or during the proceedings concerning the application. ..."

Article 138 [as applicable at the relevant time]

"(1) Attorneys admitted to practice before a German court, as well as professors of law ... may be engaged as defence lawyer.

(2) Other persons may be engaged only with the approval of the court. ..."

Article 145a

"(2) A summons for the accused may be served on a defence lawyer only if he is expressly authorised to receive summonses by a power of attorney recorded in the files. ..."

Article 217 [as applicable at the relevant time]

"(1) A time-limit of at least one week must elapse between service of the summons ... and the day of the main hearing.

(2) If this time-limit has not been observed, the defendant may request the suspension of the hearing at any time prior to the commencement of his examination on the charge.

(3) The defendant may waive observance of this time-limit."

Article 329 [as applicable at the relevant time]

"(1) If at the beginning of a main hearing neither the defendant nor, in cases in which this is permitted, a representative of the defendant has appeared, and if no adequate reason has been given for the failure to appear, the court shall dismiss an appeal lodged by the defendant on fact and law without hearing the merits of the case. ...

(3) The defendant may request restoration to the *status quo ante* within one week of service of the judgment under the conditions specified in Articles 44 and 45. ..."

Article 359

"The reopening of proceedings concluded by a final judgment shall be admissible for the benefit of a convicted person ...

6. ... if the European Court of Human Rights has held that there has been a violation of the European Convention on the Protection of Human Rights and Fundamental Freedoms or of its Protocols and the judgment of the domestic court was based on that violation."

III. RELEVANT EUROPEAN UNION LAW

20. Article 5 of the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000 (2000/C 197/01) provides that member States should send procedural documents intended for persons who are in the territory of another member State to them directly by post.

THE LAW

I. THE GOVERNMENT'S UNILATERAL DECLARATION

21. The relevant general principles on unilateral declarations have recently been summarised in *Jeronovičs v. Latvia* ([GC], no. 44898/10, §§ 64-71, ECHR 2016) and *Aviakompaniya A.T.I., ZAT v. Ukraine* (no. 1006/07, §§ 27-33, 5 October 2017).

22. The Court reiterates that, as a rule, where a violation of Article 6 of the Convention is found, a retrial or the reopening of the proceedings, if requested, represents in principle an appropriate form of redressing that violation (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 50 and 52, ECHR 2017 (extracts), with further references). The Court finds no reason to hold otherwise in the circumstances of the present case

(see paragraph 16 above), where the Convention violations were acknowledged by the Government, also having regard to the applicant's submission that the aim he pursued with the present application was the reopening of the criminal proceedings against him and a subsequent acquittal (see paragraph 17 above).

23. It is therefore necessary to address the question of whether a procedure by which such a reopening can be requested is available to the applicant. The Court welcomes the fact that Germany, in line with its obligation to abide by the Court's final judgments, has established a procedure which allows for the examination of the question of whether the reopening of criminal proceedings is warranted in particular cases where the Court, in a judgment, has found a violation of the Convention (Article 359 no. 6 of the Code of Criminal Procedure, see paragraph 19 above).

24. However, the Court finds that it cannot be said with a similar degree of certainty that such a procedure would be available were the Court to accept the Government's unilateral declaration and strike the case out of its list. It has regard to the Government's submission that there is no case-law of the domestic courts on the question of reopening criminal proceedings on the basis of this Court's decisions approving a unilateral declaration and that Article 359 no. 6 of the Code of Criminal Procedure has, in practice, been construed narrowly (see paragraph 18 above). The situation in the present case is thus comparable to that in *Hakimi v. Belgium* (no. 665/08, §§ 21 and 29, 29 June 2010). The present case is distinct from *Molashvili v. Georgia* ((dec.), no. 39726/04, §§ 33 and 36, 30 September 2014), in which the Government explicitly acknowledged in its unilateral declaration that the applicant would be entitled to apply for the reopening of the criminal proceedings in accordance with the pertinent provision of domestic law, which allowed for such a reopening if this Court had established in a judgment or in a decision that there had been a breach of Convention.

25. Accordingly, the Court accepts the applicant's submission and finds that under German law neither the Government's unilateral declaration nor a decision of the Court striking out the application from its list provide the same assured access to a procedure allowing for the examination of the question of reopening domestic criminal proceedings as would a Court judgment finding a violation of the Convention.

26. For the above reasons, the Court cannot find that it is no longer justified to continue the examination of the application. Moreover, respect for human rights, as defined in the Convention and its Protocols, requires it to continue the examination of the case. The Government's request for the application to be struck out of the list of cases under Article 37 of the Convention must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (C) OF THE CONVENTION

27. The applicant alleged a breach of his rights under Article 6 §§ 1 and 3 (c) of the Convention because the summons to the hearing in his appeal proceedings had been served by way of public notification, despite the fact that he had given notice of his new address in Spain. Consequently, he had learned too late of the date of the oral hearing and his appeal had been dismissed after he had not appeared. Article 6 §§ 1 and 3 (c) of the Convention, in so far as relevant, read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

28. The Government maintained their unilateral declaration of 8 July 2016 and accepted that there had been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention and/or his right to defend himself under Article 6 § 3 (c) of the Convention because the summons by public notification had been, in the circumstances of the present case, not sufficient to enable the applicant to attend the hearing before the Hamburg Regional Court (see paragraph 16 above).

A. Admissibility

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

B. Merits

30. The Court reiterates that the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1. It therefore examines complaints relating to these rights under both provisions taken together (see *Neziraj v. Germany*, no. 30804/07, § 45, 8 November 2012). It also reiterates that the object and purpose of Article 6 of the Convention taken as a whole show that a person charged with a criminal offence is entitled to take part in the hearing (see *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-II).

31. The Court observes that the applicant was required to appear at the appeal hearing before the Hamburg Regional Court (see paragraph 8 above) and that his appeal was dismissed without an assessment of the merits because he had failed to appear at that hearing (see paragraph 11 above). The domestic courts considered that he had been properly summoned to appear at that hearing, as domestic law had allowed for the serving of the summons by way of public notification in his case (see paragraphs 11-14 above).

32. The Court furthermore observes that the applicant's address in Spain was known to the Regional Court, as that court's decision of 24 April 2009 was served at that address (see paragraph 8 above). There had been no unsuccessful attempts to serve court documents on the applicant (compare and contrast *Weber v. Germany* (dec.), no. 30203/03, 2 October 2007, which concerned civil proceedings). Even though the decision to schedule the appeal hearing was taken on that same day, the summons was neither served at that address in Spain, nor was the applicant otherwise notified of its having been served by way of public notification (see paragraph 9 above), despite the provision for procedural documents to be sent to the applicant by post under Article 5 of the EU Convention on Mutual Assistance in Criminal Matters of 29 May 2000 (see paragraph 20 above). Moreover, at the time that the summons was served, the applicant was not represented by his lawyer, whose authorisation had been withdrawn by the Regional Court (see paragraphs 8 above). The lawyer thus learned of the date of the hearing only the day before it was scheduled, and his application for an adjournment was refused (see paragraphs 10-11 above).

33. The foregoing considerations are sufficient to enable the Court to conclude that serving the summons to appear before the Regional Court via public notification was, in the circumstances of the present case, not sufficient to enable the applicant to attend the appeal hearing before that court. There has accordingly been a violation of the applicant's rights under Article 6 §§ 1 and 3 (c) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (B) AND (C) OF THE CONVENTION

34. The applicant alleged a breach of his rights under Article 6 §§ 1 and 3 (b) and (c) of the Convention, because the hearing before the Regional Court had not been adjourned, contrary to the request of his lawyer, whose authorisation had been withdrawn and then restored only a day before the hearing and who had not been properly summoned, had been unable to attend and had not had a chance to inspect the court's case file anew. His lawyer had thus neither been given adequate opportunity to access the court's case file to prepare for the applicant's defence nor adequate

opportunity to attend the appeal hearing. Article 6 §§ 1 and 3 (b) and (c) of the Convention, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

35. The Government maintained their unilateral declaration of 8 July 2016 and accepted that there had been a violation of the applicant's rights under Article 6 § 3 (b) and (c) of the Convention, since he had not been given adequate time or opportunity to prepare for his hearing before the Regional Court, and his lawyer had not been given adequate opportunity to attend the appeal hearing (see paragraph 16 above).

A. Admissibility

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

B. Merits

37. The Court reiterates that the right of those charged with a criminal offence to adequate time and facilities for the preparation of their defence, as guaranteed by Article 6 § 3 (b) of the Convention, and to effective legal assistance, as guaranteed by Article 6 § 3 (c) of the Convention, are elements of the concept of a fair trial (see *Tsonyo Tsonev v. Bulgaria (no. 2)*, no. 2376/03, § 34, 14 January 2010, with further references). As the requirements of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court examines complaints relating to these rights under both provisions taken together.

38. In the present case, the applicant's lawyer, whose authorisation had been withdrawn and then restored only the day before the hearing, learned of the date of the appeal hearing the day before it was scheduled to take place (see paragraph 10 above). He did not have a copy of the appeal lodged by the public prosecutor, which could also not be sent to him that day (see paragraph 10 above). The applicant's lawyer applied for the hearing to be adjourned, as he would be out of town at the day of the hearing (see

paragraph 10 above). That application was dismissed (see paragraph 11 above). In the light of that request, the Court considers that the applicant's lawyer did not waive the right to be summoned in a manner that allowed him to prepare the applicant's defence and to attend the hearing (compare and contrast *Tsonyo Tsonev (no. 2)*, cited above, §§ 35-36).

39. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's lawyer was neither given adequate opportunity to access the court's case file after the hearing had been scheduled in order to prepare the applicant's defence, nor to attend the appeal hearing. There has accordingly been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed an unspecified sum in respect of pecuniary damage, alleging that he had travelled from Spain to Hamburg and back by car to complain in person to the judge of the Regional Court after he had learned of its decision. As he did not keep any receipts of the expenses he had incurred during this journey, he asked the Court to make an estimate. He furthermore claimed EUR 3,500 in respect of non-pecuniary damage.

42. The Government contested whether the applicant had actually travelled from Spain to Hamburg and pointed out that he had not sufficiently substantiated that claim. In any event, there was no causal link between the violations found and the sum claimed in respect of alleged pecuniary damage. The amount claimed in respect of non-pecuniary damage was excessive and the applicant had not substantiated his claim in this regard. He could not cite the stigmatisation of a criminal conviction, since he had been convicted of similar offences several times before and it was not unlikely that the Regional Court would have upheld the District Court's judgment, even if the applicant's rights under the Convention had been respected. They maintained that the sum of EUR 1,500 offered in their unilateral declaration was adequate compensation for non-pecuniary damage, costs and expenses.

43. The Court does not discern any causal link between the violations found and the pecuniary damage which was claimed but not substantiated; it therefore rejects this claim.

44. The Court observes that Article 359 no. 6 of the Code of Criminal Procedure provides for the reopening of criminal proceedings following a judgment of the Court finding a violation (see paragraph 19 above). It considers that, in the circumstances of the present case, the finding of a violation thus constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

45. The applicant also claimed EUR 10,438.15 (including VAT) for the costs and expenses incurred before the domestic courts, comprising EUR 638.50 for court fees and EUR 9,799.65 for legal representation, and EUR 3,123.75 (including VAT) for his legal representation in the proceedings before the Court. He stated that additional costs and expenses would be incurred in respect of the intended reopening of the criminal proceedings. He submitted documents indicating court fees throughout the domestic proceedings amounting to a total of EUR 638.50, as well as two fee agreements with his legal representative concerning the respective hourly rates for the proceedings before the domestic courts and before this Court.

46. The Government pointed out that the violations found had occurred during the appeal proceedings and that there was no causal link between the violations found and the court fees before the court of first instance and for lodging the appeal against that court's judgment, which amounted to a total of EUR 300. They disputed that the applicant and his lawyer had actually concluded the fee agreement of 12 March 2009 concerning the proceedings before the domestic courts which the applicant had submitted. In its judgment of 2 March 2009 the District Court had allowed the applicant to pay his fine in instalments in the light of his economic situation (see paragraph 6 above). Before that court the applicant had asked that his lawyer be admitted despite his still being a law student because he did not have enough money to pay for a lawyer. Under these circumstances, it does not appear credible that the applicant had agreed to pay an hourly rate of EUR 120. In any event, such an hourly rate was excessive for legal representation by a law student, as were the sixty-eight working hours claimed. Submitting that the amount of statutory reimbursement for the proceedings before the Court of Appeal would have been EUR 636.65 and EUR 490.28 for those before the Federal Constitutional Court, they argued that the applicant's lawyer could realistically have claimed half of these amounts as he had not been a qualified attorney but only a law student at that time. While Mr Arif had qualified as an attorney in the meantime, the costs and expenses claimed for the proceedings before the Court were excessive. They argued that a sum of EUR 600.71 would correspond to the amount of statutory reimbursement and thus be adequate.

47. 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 have been 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 2,500, covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

48. 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. *Rejects* the Government's request to strike the application out of its list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention because the service of the summons by public notification was not sufficient to enable the applicant to attend the appeal hearing before the Regional Court;

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention because the applicant's lawyer was not given adequate opportunity to prepare the applicant's defence or to attend the appeal hearing;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

6. *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 2,500 (two thousand five hundred 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 amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 26 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Erik Møse
President