Review of case law of the European Court of Human Rights applicable in cases where a person is sued under an invalid address and sentenced

I claim that suing a person using a false address as his place of abode and obtaining a final verdict thereby, without an oral hearing and just on the basis of plaintiff's submissions, is illegal in light of Article 6 § 1 of the Convention because of being in conflict with the principles of equality of arms and of adversarial proceeding. The following quotations from the Strasbourg case law support this legal theorem:

- There is a whole line of case law of the ECHR that renders suing a party under an invalid address and obtaining an order for payment thereby incompatible with the human right defined in Article 6 § 1 of the Convention:
  - In **Brandstetter v. Austria, 1991, § 66** the Court held that the principle of *equality of arms* and the principle that *proceedings should be adversarial* were both features and fundamental rights within the wider concept of a fair trial, referred to in Article 6 § 1 of the Convention.
  - In **Ruiz-Mateos v. Spain, 1993, § 63** the view was reiterated and further it was held that *„the right to an adversarial trial means the opportunity for the parties to have knowledge of and comment on the observations filed or evidence adduced by the other party"*. In the context of the present case it should be highlighted that the courts have accepted the fact that I was unaware of the original proceeding XXV Nc 262/14 (because they considered the 3-month term for lodging my complaint preserved and did not see any problem here, yet the complaint was lodged in November 2015, that is, over a year after the order for payment was issued in the original case XXV Nc 262/14). Lack of opportunity to have knowledge of and to comment on the observations filed or evidence adduced by my landlord Piotr Krajewski was clearly caused by nothing else than a procedural error: using a false, outdated address as my place of abode.
  - The quoted stance from Ruiz-Meteos v. Spain, 1993, § 63 was later reiterated in **McMichael v. the United Kingdom, 1995, § 80**.
  - The same view was reiterated also in **Vermeulen v. Belgium, 1996, § 33**.
  - In **Lobo Machado v. Portugal, 1996, § 31** the passage from Ruiz-Mateos v. Spain, 1993 was quoted once again and it was further stated as regards a particular plea: *„the fact that it was impossible for Mr X to obtain a copy of it and reply to it before judgment was given infringed his right to adversarial proceedings"*.
  - The passage from Ruiz-Mateos v. Spain was further quoted in **Van Orshoven v. Belgium, 1997, § 41**.
  - The passage was also further quoted in **Kress v. France, 2001, § 74**.
  - In **Nideröst-Huber v. Switzerland, 1997, § 24** it was paraphrased the following way: *„the concept of a fair trial also implies in principle the right for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed"*.
  - In **APEH Üldözötteinek Szövetsége and Others v. Hungary, 2000, § 42** the court ruled in an even stronger voice: *„It is inadmissible for one party to make submissions to a court without the knowledge of the other and on which the latter has no opportunity to comment"*. Not just lack of an „opportunity to have knowledge of", but simply lack of

actual knowledge about submissions from the other party (which then of course results in no opportunity to comment on them) constitutes a violation of one's right to a fair trial. This problem of existence or nonexistence of an opportunity, and of whether a blame can be assigned to the absent/non-informed party itself when evidence as to their blame is not fully convincing or simply nonexistent, will be approached in the footer of this whole plea from yet another side, namely, basing on the criteria of possible risk and uncertainty.

- In **Krčmář and Others v. the Czech Republic, 2000, § 42** the Court stated the following: *„A party to the proceeding must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance”*.

- One might try to find an excuse from the statement that I did not participate in the proceeding XXV Nc 262/14 of the Circuit Court in Warsaw (Sąd Okręgowy w Warszawie) and was not informed about it and that, consequently, the principle of equality of arms and of adversarial proceedings was infringed in the concept that allegedly „I myself waived my rights connected with these principles”. Yet that cannot be taken as the case; the Court has stated not once that waiver of the said right from Article 6 § 1 of the Convention must be done in an unequivocal manner:
  - In **Neumeister v. Austria, 1974, § 36** the following was held: *„The Court observes that particularly in the specific field covered by the Convention, the waiver of a right, even the mere right to a sum of money, must result from unequivocal statements or documents.”*
  - This judgment was later cited in **Albert and Le Compte v. Belgium, 1983, § 35**, where it was reiterated that any waiver of a right following from the Convention must be done *„in an unequivocal manner”*; and we can translate this into the following words: „must be done so that no doubt is left as to what is the correct interpretation of an act or ommission allegedly constituting the waiver”.
  - The same was reiterated literally in **Håkansson and Sturesson v. Sweden, 1990, § 66**.
  - The same was reiterated literally in **Exel v. the Czech Republic, 2005, § 46**.

  As no such "undoubtful" waiver can be found, pointed out and assigned to me in the case at issue: XXV Nc 262/14 and as in particular I have even observed the duty of official registration of place of abode in 2014 (save for the 4-month period between January 2014 and 6 May 2014 during which it would be practically impossible to register these addresses, because they were in hotels and were subject to change every 3 days), and in particular I observed this duty in the interesting period from May 2014 during which the writ against me was submitted,
  it thus cannot be said that any of my rights following from Article 6 § 1 of the Convention were disabled in case XXV Nc 262/14 due to my own waiver.
  It is further noteworthy that intentional non-reception of court letters done with the intent of gaining advantage or „rescuing” oneself from a judicial issue is a silly, irrational attitude and also (likely as a consequence) one manifested by just a small fraction of the population (in particular in Poland people are not so unwise as to massively ignore judicial proceedings in the hope of gaining some advantage thereby, or for whatever other reason). Thus, in light of these big-scale social proportions and big-scale frequencies of particular attitudes, all likelihood was with the option that I had really no intent to escape the proceeding XXV Nc 262/14 and to waive my right to defend myself.

- Going further as to the consequences of Article 6 of the Convention, there is a whole line of case law of the ECHR that stresses the necessity of guaranteeing the right to an oral hearing:
  - It was ruled that where a court had acted as the *„first and only instance"* in a particular proceeding and where *„its jurisdiction was not limited to matters of law, but also extended to factual issues"*, Article 6 § 1 of the Convention guaranteed a right to an oral hearing (**Fredin v. Sweden (no. 2), 1994, § 22**).
  - The view was held also in **Fischer v. Austria, 1995, § 44**: *„Furthermore, there do not appear to have been any exceptional circumstances that might have justified dispensing with a hearing. The ... Court was the first and only judicial body before which X's case was brought; it was able to examine the merits of his complaints; the review addressed not only issues of law but also important factual questions. Thus being so, and having due regard to the importance of the proceedings in question for the very existence of X's tipping business, the Court considers that his right to a »public hearing« included an entitlement to an »oral hearing«".*
  - The same was repeated in Allan Jacobsson v. Sweden (no. 2), 1998, § 46 and in Håkansson and Sturesson v. Sweden, 1990, § 64.
  - In **Stallinger and Kuso v. Austria, 1997, § 51** the Court held again that only *„exceptional circumstances"* can justify dispensing with an oral hearing.
  - The analysis of the words used in summary of the cited judgments leads to the conclusion that what was important for the existence of the right to an oral hearing in these samples of case law was not whether the law provided for the possibility of multiple instances or no, but whether a particular court was in fact the only instance involved in handling the case. Such comprehension is also supported by the very nature of the European Court of Human Rights, because its primary role is not opinionating national laws in general, but handling concrete cases of alleged violations of human rights; in doing so it makes no difference whether the law was good but was applied badly or, alternatively, whether the law itself was the very source of the problem. These alternatives are simply not material to the essence of ECHR judgments and the genesis of these judgments, later generalized in the form of generic case law.
  - Likewise, in **Göç v. Turkey [GC], 2002**, the applicant was not given an oral hearing before the first instance court; Turkey sought to rely on the fact that there could have been an oral hearing before the Court of Cassation and, as the applicant had not sought a hearing before that Court, he had waived his right. Still, the Grand Chamber found that the denial of an oral hearing breached Article 6 of the Convention. In **§ 47** the Court held again that *„in proceedings before a court of first and only instance the right to a »public hearing« in the sense of Article 6 § 1 entails an entitlement to an »oral hearing« unless there are exceptional circumstances that justify dispensing with such a hearing"*.
  - In **Salomonsson v. Sweden, 2000, § 36** the Court reiterated that *„Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance"*.

It should be noted that in the present case there is no doubt, despite what the courts might have been saying, that I was in fact sued using a false outdated address as my alleged place of abode. Even the court of the first instance admitted that since January 2014 (*i.e., „after leaving the rented house"*) I lived *„in various hotels, in my mother's flat or in rented flats"*: the fact that I stayed subsequently in a lot of hotels one after another for months was not denied, the appropriate documentary evidence

was accepted; and should that be not enough, I even submitted a CD with videos of my sign-ups in hotels, where in some cases the camera of my smartphone caught and photographed as part of a film even invoices demonstrating dates of purchase (such as *e.g.* in a video from Hotel Gromada) – besides, courts could choose to interrogate hotels and to request further documentary evidence from them. Anyway, since May 2014 when this „nomadic mode of life" ended for me, which was accidentally also the time when case against me got eventually filed, I lived in a flat at Geodetów st. 2/75 in Warsaw and this fact was attested to by a lot of documentary evidence, videos (e.g. 1: signing the rental agreement with the landlords in the flat – several high-quality videos; and 2: passing money to the landlords), as well as by filed photocopies (incl. parts of the rental agreement and instances of usage of the address), by prosecutors' and court files and by proposed witnesses. My proposals of witnesses, made for example during a hearing in the first instance or within pleadings in the second instance, were *completely ignored* without slightest explanation, perhaps due to a *possibility* the Polish procedural law gives to judges in case of submitting evidence not along with the initial pleading but later (so called „late evidence"). Such attitude as presented is full of negligence with regard to the human right of having a fair hearing: it accepts situations where this human right is violated -- the judge does not care about that, but instead makes use of his right to ignore „late evidence". Yet it is already established in case law of the European Court that courts must give sufficient reasons where they refuse requests to have witnesses called and that the refusal must not be tainted by arbitrariness (Wierzbicki v. Poland, § 45; published also on http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf). What instead has happened in my case was an arbitrary judicial rejection of possible evidence, a rejection marked with negligence of the problem of whether the right to a fair hearing of the party in a previous proceeding was observed or no. This problem has also been described in my draft of a cassation, which I attached to the present complaint for informative purposes and for reference.

Further, even were it not so certain that my address was other than the one specified in the electronic writ, just the high risk that it was so should be enough to make my domestic courts continue examining the case for resumption or even admit that resumption was admissible (instead of rejecting it). After all, the Polish law requires the complainant to make the existence of a ground for resumption just *probable* and not certain (cf. Article 410 § 2 of the Code of Civil Procedure). Accepting a high risk that there was no fair trial in a case is equal to accepting a substantial probability that there was no fair trial and yet there would be no remedy for that. It is thus a very wrong practice, and especially when taken as a general rule: because accepting (in such cases) a substantial probability of failure of human rights guarantee means also, according to the mathematic principle „the law of large numbers", simply accepting the existence of a proportional fraction of cases where these human rights would not be preserved. In other words, it would be enough to see a multitude of similar cases (*i.e.*, with similar state of evidence) treated in a likewise

way in order to be certain that a part of them (roughly equal to the the probability that the verdict as to resumption was unjust) resulted in violations of a human right. The judicial attitude which accepts a high risk that there was no fair trial and at the same time still rejects a case for resumption would therefore amount to accepting violations of the human right specified in Article 6 § 1 of the Convention, which is illegal. Therefore, a violation exists not only in cases where it was obviously impossible for a party to actually participate in the proceeding, as per the quoted already established case law (direct violation), but it exists also (as violation through illegal way of adjudicating) when the court handling the subsequent complaint for resumption -- which is in Poland the only way to repair the original violation of the right to a fair trial – *neglects to examine evidence* in favour of the complainant, sued under an allegedly false address, or where the court rejects the case quickly – hastly and riskfully, or where it imposes *high thresholds as regards the acceptance of evidence* of the said complainant, despite the fact that he was not participating the original proceeding actively and did not even receive any mail from the court regarding that proceeding when it was being handled.