



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

FOURTH SECTION

**CASE OF PUHK v. ESTONIA**

*(Application no. 55103/00)*

JUDGMENT

STRASBOURG

10 February 2004

**FINAL**

*10/05/2004*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Puhk v. Estonia,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORREGO BORREGO,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 20 January 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 55103/00) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Mr Rain Puhk (“the applicant”), on 23 November 1999.

2. The applicant was represented by Ms S. Must, a lawyer practising in Tartu. The Estonian Government (“the Government”) were represented by their Agents, Ms M. Hion, First Secretary of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoës, Special Advisor to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged that his conviction under the criminal laws which had entered into force on 13 January 1995 and 20 July 1993 of acts committed prior to those dates amounted to retrospective application of criminal law in breach of Article 7 § 1 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 4 February 2003 the Court declared the application admissible.

7. The Government and the applicant each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1970 and lives in Tartu. At the material time he was the owner and manager of the company *AS Maarja*.

9. On 10 August 1995 the Tartu police instituted criminal proceedings against the applicant on charges of tax offences under Article 148-1 § 7 of the Criminal Code. In the course of the preliminary investigation the applicant was further charged with the offence of inadequate accounting under Article 148-4 of the Criminal Code as well as with falsification of documents.

10. On 6 October 1997 the Tartu prosecutor approved the bill of indictment, and the case was sent to the Tartu City Court (*Tartu Linnakohus*) for trial. The charges set out in the indictment related to acts and omissions of the applicant in the period from April 1993 to October 1995.

In particular, under Article 148-1 § 7 of the Criminal Code the acts which were the subject of the charges against the applicant concerned his failures to pay the required taxes, to file by the set deadline revenue statements for the year 1993, to inform the Tax Board of the change of his company's location, and to comply with the order of the Tax Board of 26 October 1995 to pay the required taxes. Under Article 148-4 of the Criminal Code the applicant was accused of having unsatisfactorily arranged his company's bookkeeping, in breach of the legal requirements. The existing records were incomplete and a number of documents had not been preserved, which made it impossible to determine the company's performance.

11. By a judgment of 17 February 1999 the Tartu City Court convicted the applicant of the offences under Article 148-1 § 7 of the Criminal Code and sentenced him to 4 years' imprisonment. It also found the applicant guilty of the offence under Article 148-4 of the Code and sentenced him to 4 months' imprisonment. As the latter sentence was absorbed by the former, the aggregate sentence imposed on the applicant was 4 years' imprisonment, which was suspended for 3 years.

The City Court found that the application of Article 148-1 § 7 of the Criminal Code, which had been in force as from 13 January 1995, was justified in the case on the grounds that the applicant's failure to pay the

required taxes had been intentional and continuous and his criminal activity had lasted until October 1995. It ordered the applicant to pay the city tax authorities 1,596,618.42 Estonian kroons in outstanding taxes. No fine or tax surcharge was imposed apart from the requirement to pay the taxes which were due under the relevant tax laws.

As regards the offence of inadequate accounting under Article 148-4 of the Criminal Code, which was in force as from 20 July 1993, the City Court noted that the applicant's company had operated from 5 May 1993 until 1 October 1993. During that period there had been no recording of its economic activity and it was impossible correctly to determine the company's performance, income, expenditure, profit, loss, debts, solvency or amount of its assets. The applicant had failed to comply with the obligations imposed on him by the Law on personal responsibility for the organisation of accounting. The law came into effect on 20 July 1993, i.e. at the time of the operation of the company, and the applicant, being its owner and manager, had to comply with the provisions of the law. The applicant also failed to adopt rules and procedures for bookkeeping and to secure the preservation of the relevant documents, as required under the Government decree of 6 July 1990 concerning the organisation of accounting.

12. On 26 February 1999 the applicant filed an appeal against the judgment to the Tartu Court of Appeal (*Tartu Ringkonnakohus*). He argued that in convicting him under Article 148-1 § 7 of the Criminal Code of acts committed prior to its entry into force on 13 January 1995, the City Court had applied the criminal law retrospectively. Before that date a conviction of the offences defined in Article 148-1 could follow only if the person concerned had been previously subjected to an administrative sanction for a similar offence.

The applicant further submitted that, in making him responsible for the inadequate bookkeeping in his company during the whole period from 5 May 1993 until 1 October 1993, the City Court had also applied retroactively Article 148-4 of the Criminal Code which had only been in force as from 20 July 1993.

13. On 3 May 1999 the Court of Appeal upheld the judgment of the City Court. It found that the acts with which the applicant was charged under Article 148-1 § 7 of the Criminal Code amounted to ongoing crimes. After his first criminal act on 16 April 1993 the applicant had embarked upon a criminal enterprise which had lasted until 26 October 1995, the day on which the Tax Board discovered the abuses and issued its order. Therefore, the City Court had correctly qualified his acts as falling under that law.

It also considered that the ongoing nature of the applicant's acts relating to inadequate accounting justified his conviction under Article 148-4 of the Criminal Code.

14. On 1 June 1999 the applicant lodged an appeal on points of law to the Supreme Court (*Riigikohus*) raising the same arguments as in his appeal to the Court of Appeal.

15. By a judgment of 7 September 1999 the Supreme Court dismissed his appeal. It held that, according to the principles of Estonian criminal law, the law to be applied to a criminal act was the law which had entered into force before the end of a criminal activity. As the applicant's criminal activity ended on 26 October 1995, his actions fell under the law in force at that time, i.e. Article 148-1 § 7 of the Criminal Code. The same reasons applied to the applicant's conviction of inadequate accounting under Article 148-4 of the Criminal Code.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The text of Article 148-1 of the Criminal Code, in force until 27 June 1993, was as follows:

**“Concealment of income or other objects of taxation, or evasion of submission of income tax returns:**

(1) Concealment of income or other objects of taxation, or submission of knowingly false data in financial statements, tax calculations, income tax returns or other documents relating to the calculation of taxes or payments and their transfer to the budget, or evasion of submission of an income tax return or failure to submit an income tax return on time, *if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(2) The same acts, if committed by a person who has a criminal record for a criminal offence prescribed in paragraph (1) of this article, are punishable by one to five years' imprisonment.”

17. The text of Article 148-1 of the Criminal Code, in force as from 27 June 1993 until 13 January 1995, was as follows:

**“Evasion of submission of income tax returns or other tax calculations, concealment of income or other objects of taxation, and tax evasion:**

(1) Evasion of submission of an income tax return, or failure to submit an income tax return on time, or submission of falsified data therein by a person who is required to submit an income tax return, *if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to one year's imprisonment;

(2) Concealment or reduction of income or other objects of taxation or increase of expenditure for the purpose of concealment or reduction of income or other objects of taxation, or failure to submit or failure to submit on time income tax returns, tax calculations, financial statements or other documents relating to the calculation of taxes or payments and their transfer to the budget, or failure to submit or failure to submit on time accounting documents, contracts or other documents necessary for the

assessment and verification of the correctness of taxes, or failure to comply with an order of the Tax Board, by a competent official who is required to perform the corresponding duties, *if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or up to three years' imprisonment;

(3) Failure to pay taxes or failure to pay taxes on time, or inadequate compliance or failure to comply with an order issued by the Tax Board for the compulsory collection of taxes by a bank, by a competent official who is required to perform the corresponding duties, *if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(4) Incorrect deduction or failure to deduct personal income tax from the wages (income) of employees, or failure to transfer deducted payments to the budget in full or in a timely manner, by a competent official who is required to perform the corresponding duties, *if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(5) The same acts, if committed by a person who has a criminal record for a criminal offence prescribed in paragraph (1), (2), (3) or (4) of this article are punishable by one to five years' imprisonment;

(6) Commission of acts prescribed in paragraph (1), (2), (3) or (4) of this article on a large-scale basis is punishable by up to seven years' imprisonment.”

18. The text of Article 148-1 of the Criminal Code, in force as from 13 January 1995, reads as follows:

**“Evasion of submission of income tax returns or other tax calculations, concealment of income or other objects of taxation, and tax evasion:**

(1) Evasion of submission of an income tax return, or failure to submit an income tax return on time, or submission of falsified data therein, *if such acts are intentionally committed by a person who is required to submit an income tax return, or if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to one year's imprisonment;

(2) Concealment or reduction of income or other objects of taxation or increase of expenditure for the purpose of concealment or reduction of income or other objects of taxation, or failure to submit or failure to submit on time income tax returns, tax calculations, financial statements or other documents relating to the calculation of taxes or payments and their transfer to the budget, or failure to submit or failure to submit on time accounting documents, contracts or other documents necessary for the assessment and verification of the correctness of taxes, or failure to comply with an order of the Tax Board, *if the specified acts are intentionally committed by a competent official who is required to perform the corresponding duties, or if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(3) Failure to pay taxes or failure to pay taxes on time, or inadequate compliance or failure to comply with a precept issued by the Tax Board for the compulsory

collection of taxes by a bank, *if such acts are intentionally committed by a competent official who is required to perform the corresponding duties, or if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(4) Incorrect deduction or failure to deduct personal income tax from the wages (income) of employees, or failure to transfer deducted payments to the budget in full or in a timely manner, *if such acts are intentionally committed by a competent official who is required to perform the corresponding duties, or if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(5) Submission of incorrect data or documents upon compulsory registration on the basis of an Act concerning a tax, or concealment of one's residence, place of employment or place of business from a tax authority, or evasion of payment of the taxes provided for in the Taxation Act in any other manner, *if such acts are intentionally committed by a competent official who is required to perform the corresponding duties or by a natural person, or if an administrative punishment has been imposed on the offender for a similar offence* [italics added], is punishable by a fine or detention or up to three years' imprisonment;

(6) The same acts, if committed by a person who has a criminal record for a criminal offence prescribed in paragraph (1), (2), (3), (4) or (5) of this article are punishable by one to five years' imprisonment;

(7) Commission of acts prescribed in paragraph (1), (2), (3), (4) or (5) of this article on a large-scale basis is punishable by three to seven years' imprisonment.”

19. Article 148-4 of the Criminal Code, in force as from 20 July 1993, provides as follows:

**“Inadequate organisation of accounting:**

Violation of the requirements provided for in legislation regulating accounting or reporting concerning the economic activities, including the commercial or financial activities, or assets of an economic unit, if such violation renders it impossible to correctly ascertain the economic performance, income, expenditure, profit, loss, debts, solvency or amount of assets of the economic unit, is punishable by a fine or deprivation of the right of employment in a particular position or operation in a particular area of activity, or up to one year's imprisonment.”

20. According to the practice of the Supreme Court, if a non-payment of taxes is intentional and continuous the latest version of Article 148-1 is applicable to acts which occurred prior to its entry into force provided that part of the criminal activity took place after the critical date. Criminal liability arises on two alternative, not cumulative, grounds: (1) if a person has committed the offence intentionally or (2) if a person has previously been subjected to administrative punishment for the same offence. Article 148-1 § 7 does not contain a separate offence, but it only qualifies the elements listed in §§ 1-5. Thus, a person may be convicted under Article 148-1 § 7 only if his acts encompass the elements of the offences set out in §§ 1-5. (Decision of the Criminal Division of the Supreme Court of

8 April 1997, *Riigi Teataja* III 1997, 14, 147; and decision of 27 January 1998, *Riigi Teataja* III 1998, 10, 104).

The Supreme Court has also considered that a constant and continuous violation of the obligation to declare one's sources of income and to pay the required taxes created a persisting criminal state (Decision of the Criminal Division of the Supreme Court of 8 April 1998, case no. 3-1-1-50-98).

The Supreme Court has upheld an accused's conviction under Article 148-4 of the Criminal Code concerning inadequate organisation of accounting between 1 January 1995 and 31 March 1996 (Decision of the Criminal Division of the Supreme Court of 31 March 1998, case no. 3-1-1-48-98).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 7 § 1 OF THE CONVENTION

#### *1.1. The applicant's conviction under the law of 13 January 1995*

21. The applicant complained that his conviction under the criminal law in force as of 13 January 1995 of acts committed prior to that date infringed the guarantee against retrospective application of criminal law set forth in Article 7 § 1 of the Convention, which provides:

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

#### **A. Arguments of the parties**

22. The applicant submitted that before 13 January 1995 a criminal conviction could be imposed only if a person had been previously subjected to an administrative punishment for a similar offence. However, he had no such previous punishment. The application of the concept of a continuing offence could not override the prohibition of the retroactive application of criminal law.

23. The Government maintained that the bill of indictment set clearly out the acts with which the applicant was charged as well as their legal characterisation. That applicant's conviction under Article 148-1 § 7 of the Criminal Code was in accordance with the provisions of the criminal law in effect at the time of the commission of the offence and the criminal law was not applied retroactively. The acts which were the subject of the charges

amounted to continuing offences, which ended on 26 October 1995, that is after the entry into force of the criminal law on 13 January 1995 which did not necessarily require a previous administrative punishment for its application. The courts gave detailed reasons for bringing the incriminated acts under that law. There was a constant case-law of the Supreme Court on the interpretation of Article 148-1 § 7 of the Criminal Code and on the concept of an ongoing offence in tax cases. The case-law was published and accessible to everyone. It was thus foreseeable to the applicant that his acts entailed criminal responsibility. The notion of an ongoing crime has been widely known in the Estonian criminal law and used for years. Therefore the conviction of the applicant and the application of the concept of an ongoing crime by the domestic court was neither arbitrary nor contrary to Article 7.

### **B. The Court's assessment**

24. The Court recalls that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *S.W. v. the United Kingdom and C.R. v. the United Kingdom*, judgments of 22 November 1995, Series A nos. 335-B and 335-C, pp. 41-42, § 35, and pp. 68 and 69, §§ 33, respectively).

25. According to the Court's case-law, Article 7 of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage: it also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crime nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment. From these principles it follows that an offence must be clearly defined in the law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable (*ibidem*, see also *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 22, § 52).

26. The Court observes at the outset that the present case is similar to that of *Veeber v. Estonia (no. 2)* (no. 45771/99, ECHR 2003-I) in which it found a violation of Article 7 § 1 of the Convention. It will examine the particular circumstances of the present case in the light of the application of the foregoing principles in that case (see paragraphs 31-37 of the aforementioned judgment).

27. In the instant case, the Court notes that the applicant was convicted under Article 148-1 § 7 of the Criminal Code, in force as from 13 January 1995, of tax offences which were committed in the period from April 1993 to October 1995.

It observes that the application of the criminal law of 13 January 1995 to subsequent acts is not at issue in the present case. The question to be determined is whether the extension of the law to acts committed prior to that date infringed the guarantee set forth in Article 7 of the Convention.

28. In this connection the Court recalls that it is not its task to rule on the applicant's criminal responsibility, that being primarily a matter for the assessment of the domestic courts, but to consider, from the standpoint of Article 7 § 1 of the Convention, whether the applicant's acts, at the time when they were committed, constituted offences defined with sufficient accessibility and foreseeability by the national law (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 51, ECHR 2001-II).

29. It notes that under Article 148-I of the Criminal Code tax evasion was an offence also prior to 13 January 1995, in particular in 1993-1994 when the applicant committed part of the incriminated acts. However, a prerequisite for criminal conviction under the law in force at that time was that the person concerned had been previously found liable and subjected to an administrative punishment for a similar offence.

The version of Article 148-1 of the Criminal Code which came into effect on 13 January 1995 maintained the element of a previous administrative sanction, but added the condition of intent in its text. The two conditions were alternative, not cumulative, making a person criminally liable if one of the conditions was satisfied. Thus, the fact that an administrative punishment had not previously been imposed on an accused did not bar his criminal conviction under that law.

However, the domestic courts brought under the 1995 law also the applicant's behaviour during the preceding two years, finding that it was part of a continuing criminal activity which lasted until October 1995.

30. The Court recalls that, by definition, a "continuing offence" is a type of crime committed over a period of time (see *Ecer and Zeyrek v. Turkey*, nos. 29295/95 and 29363/95, § 33, ECHR 2001-II). It notes that the applicant was charged with and convicted for having intentionally and continuously failed to pay the required taxes over a period of time. While the starting point of the applicant's conduct pre-dated the entry into effect of the law under which he was convicted, the conduct lasted beyond the critical date.

31. The Court observes that, according to the text of Article 148-1 of the Criminal Code before its amendment in 1995, a person could be held criminally liable for tax evasion only "if an administrative punishment ha[d] been imposed on the offender for a similar offence." The condition was thus

an element of the offence of tax evasion without which a criminal conviction could not follow.

It further observes that the conduct of which the applicant was convicted concerned for the most part the period prior to 13 January 1995 and that the sentence imposed on him – four years suspended imprisonment – took into consideration his behaviour both before and after that date. In these circumstances, the approach of the domestic courts could not but affect also the severity of the sanction.

32. As regards the Government's submission that the established case-law on the interpretation and application of Article 148-1 § 7 of the Criminal Code made the risk of conviction foreseeable to the applicant, the Court notes that the Supreme Court decisions referred to by the Government were taken on 8 April 1997, 27 January 1998 and 8 April 1998. The applicant's complaint concerns however his conduct in 1993 and 1994. During that period the applicant could not expect that at the first discovery of his behaviour he would risk a criminal conviction, considering the terms of criminal law in force at that time.

33. In the light of the above, the Court finds that the domestic authorities applied retrospectively the 1995 law to behaviour which did not previously constitute a criminal offence.

34. Consequently, there has been a violation of Article 7 § 1 of the Convention.

#### *1.2. The applicant's conviction under the law of 20 July 1993*

35. The applicant complained that in finding him guilty of the offence under Article 148-4 of the Criminal Code, which had entered into force on 20 July 1993, the national courts applied retrospectively the law to acts committed prior to that date.

#### **A. Arguments of the parties**

36. The applicant submitted that he could not be held responsible under Article 148-4 of the Criminal Code for the period prior to its entry into force on 20 July 1993. The application by the courts of the concept of a continuing offence allowed them to evade the prohibition of retrospective application of criminal law in Article 7 of the Convention.

37. The Government argued that Article 7 of the Convention had not been breached. Although the applicant's company lacked any bookkeeping as from 5 May 1993, this state of affairs continued after the entry into force of Article 148-4 of the Criminal Code on 20 July 1993. Moreover, the applicant had the obligation to keep proper accounting records also prior to that date, according to the Government decree of 6 July 1990.

It was further maintained that the present case was distinguishable from the *Veeber (no. 2)* case, cited above, in that most of the applicant's acts fell

within the period after 20 July 1993, from which date onwards the risk of criminal punishment was clearly foreseeable for the applicant.

The Government also referred to the jurisprudence of the Supreme Court concerning the application and interpretation of the law and the concept of an ongoing crime.

### **B. The Court's assessment**

38. The Court notes that the applicant was convicted under Article 148-4 of the Criminal Code for having failed adequately to organise bookkeeping in his company during the period of its activity from 5 May 1993 until 1 October 1993.

It observes that under the Government decree of 6 July 1990 the applicant was required to ensure proper bookkeeping in his company during the whole period of its operation (see paragraph 11 above). However, criminal liability for an infringement of the relevant rules was established only on 20 July 1993, when Article 148-4 of the Criminal Code took effect.

In applying the criminal law to the applicant's behaviour before the material date, the domestic courts found that it was part of a continuing offence which lasted beyond that date.

39. While it is true that the applicant's conduct concerned mostly the period after 20 July 1993, the length of the period to which the law was applied retrospectively is not decisive in considering whether or not the guarantees of Article 7 of the Convention have been respected.

40. Finally, the Court notes that the jurisprudence referred to by the Government relates to the years 1997-1998, whereas the applicant's complaint concerns a situation before 20 July 1993. In the absence of a law on criminal liability for inadequate organisation of accounting, the applicant could not foresee the risk of criminal punishment for his conduct during that period.

41. In these circumstances, the Court finds that the domestic courts applied retrospectively the 1993 law to behaviour which previously did not constitute a criminal offence.

42. Accordingly, there has been a violation of Article 7 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Pecuniary damage

44. The applicant submitted that he had been unjustly ordered to pay the tax authorities 1,596,618.42 Estonian kroons (EEK) upon his conviction. He claimed the reimbursement of EEK 92,280, a sum which he had already paid to the authorities.

45. The Government contested that claim.

46. The Court recalls that it will award monetary compensation under Article 41 only where it is satisfied that the loss or damage complained of was actually caused by the violation it has found. It notes that the applicant's claim relates to his obligation to pay outstanding taxes which were due under the relevant tax laws. Although the order to pay the required taxes was issued by the criminal court it was separate from the suspended sentence imposed on the applicant and did not involve a tax surcharge or a fine (see paragraph 11 above).

As there is no causal link between the sums claimed for pecuniary damage and the violation of Article 7 § 1 of the Convention, the Court rejects the applicant's claim under this head (see *Veeber v. Estonia (no.2)*, cited above, § 42).

### B. Non-pecuniary damage

47. The applicant claimed EEK 50,000 (approximately 3,196 euros (EUR)) for moral suffering and loss of working days caused by the criminal proceedings and his conviction.

48. The Government submitted that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to award a sum not exceeding EUR 2,000.

49. The Court considers that the applicant must have suffered distress which cannot be compensated solely by the finding of a violation. Deciding on an equitable basis, the Court awards the applicant EUR 3,000 for non-pecuniary damage.

### C. Costs and expenses

50. The applicant sought the reimbursement of EEK 23,600 (EUR 1,508.31) which he had paid for legal assistance in the domestic and Strasbourg proceedings.

51. The Government questioned whether the sum reflected the actual amount of work done by the applicant's lawyer and regarded the claim as excessive. They invited the Court to award an amount it considered reasonable.

52. The Court notes that the applicant has duly documented the sum claimed and allows it in full.

### D. Default interest

53. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 7 § 1 of the Convention on account of the retrospective application of the criminal law of 13 January 1995;
2. *Holds* that there has been a violation of Article 7 § 1 of the Convention on account of the retrospective application of the criminal law of 20 July 1993;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
    - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 1,508.31 (one thousand five hundred and eight euros and thirty one cents) in respect of costs and expenses;
    - (iii) any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate

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

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

Done in English, and notified in writing on 10 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President