CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TAMMINEN v. FINLAND

(Application no. 40847/98)

JUDGMENT

STRASBOURG

15 June 2004

FINAL

05/07/2004

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 Tamminen v. Finland,

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 S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 40847/98) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Eero Reino J. Tamminen ("the applicant"), on 17 April 1998.

2. The applicant, who had been granted legal aid, was represented by Mr Pentti Virolainen, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen, Director, Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 of the Convention that the Court of Appeal had refused to hear a witness whom he had nominated.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth 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.

6. By a decision of 23 September 2003, the Court declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1947 and lives in Helsinki.

9. In 1987 the applicant founded a company called "Oy Finnish Options and Futures Exchanges Ltd" (hereinafter "FOFE").

10. FOFE went into liquidation on 12 August 1993 and was finally dissolved on 16 May 1994.

11. In the liquidation proceedings the applicant filed his claim against the estate, claiming 1,106,715 Finnish marks (FIM; approximately EUR 186,000), plus interest, in respect of unpaid salaries and other claims related to his employment contract with FOFE. As the estate contested most of the applicant's claims, the parties instituted civil proceedings against each other before the District Court (*käräjäoikeus, tingsrätt*) of Helsinki. The estate of FOFE argued that the applicant had not been an employee of the company but had rather held an executive position as he had owned all its shares, and insisted that the applicant be ordered to reimburse to the estate certain assets he had allegedly transferred from the company to himself before the company was dissolved. The claims made by the parties against each other were jointly considered by the District Court.

12. It appears that at least one of the main issues in the civil proceedings was whether the applicant had been in an executive position in the company or not.

13. During a preparatory hearing at the District Court, on 15 August 1995, the representatives of FOFE named, among others, Mr J.S., President of the Board of Directors of FOFE, Mr S.L. and Mr A.P., both former members of FOFE's Board of Directors and Mr A.P. also its former Executive Director, to give evidence on their behalf. The applicant named Mr J.N, former Managing Director of FOFE, the above-mentioned Mr J.S., and Mr E.S., to be heard as his witnesses concerning his position in the company.

14. In his written observations of 26 September 1995 to the District Court in respect of the estate's claims the applicant stated, *inter alia*, as follows:

> "The estate of FOFE has called Mr S.L. and Mr A.P., both of whom were members of its Board of Directors and the latter also its Executive Director, to give evidence. We will also hear them in respect of exactly the same issues on which we will examine Mr J.S.
>
> With the support of the above-mentioned witnesses we will prove that [the applicant] has not had any close connections with FOFE since he resigned from its Board of Directors on 3 June 1992, and that he has had no decisive position in the company."

15. At another preparatory hearing, on 4 October 1995, FOFE repeated that they would call A.P. as a witness. The applicant named the witnesses he had named on 15 August 1995 and further named Mr M.S. who would give evidence about the applicant's tasks. The District Court decided on the same day that A.P. would be summoned by the court *ex officio*.

16. At yet another preparatory hearing in the case, on the morning of 11 October 1995, FOFE repeated their intention to hear A.P. as their witness. According to the District Court's minutes from that last preparatory hearing the applicant had named four witnesses, namely Mr J.N., Mr J.S., Mr E.S. and Mr M.S. Witness Mr A.P. was mentioned in the list of the adverse party's witnesses only.

17. Thereafter the District Court decided that the preparatory stage of the proceedings had ended and that the main hearing would be held that same day at ten o'clock.

18. A.P. failed to appear before the District Court on 11 October 1995, having informed the court in advance that he would be in Estonia at the time of the hearing and would not be available until 26 and 27 October 1995. The estate of FOFE withdrew their request to call A.P. as a witness. Thereupon the applicant appointed A.P. as a witness on his behalf and requested that the main hearing be adjourned until 27 October 1995. The District Court rejected the applicant's request, holding, in the light of the other evidence, that the hearing of A.P. was not likely to be of assistance for discovering the truth. The District Court's decision was repeated in its judgment delivered on 26 October 1995, in which it was found that the applicant had not been an employee but rather had occupied a leading position in FOFE. Most of the applicant's claims were rejected, with the exception of FIM 300,000 (approximately EUR 50,000) for unpaid salaries. The applicant was, *inter alia*, ordered to refund FIM 1,191,425 (approximately EUR 200,000) to FOFE in compensation for the assets he had transferred from the company. He was also ordered to pay FIM 137,242.18 (approximately EUR 23,000) in compensation for FOFE's legal fees and expenses.

19. On 27 November 1995 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätt*), requesting an oral hearing and calling A.P. as his witness. He argued that the hearing of A.P. as a former Executive Director of FOFE would be necessary for ascertaining the truth in respect of the applicant's status in the company. He noted that A.P. had informed the District Court of his journey to Estonia at the time of the hearing but had simultaneously given the dates when he would be available. A.P. had been summoned by phone to appear before the District Court only a few days before the hearing of 11 October 1995. It had been impossible for him to cancel his business meeting in Estonia at such short notice. The applicant alleged that his request to adjourn the hearing in order to call A.P. as a witness had been inconvenient for the presiding judge of the District Court in respect of the timetable for the drafting of the decision. The hearing of

A.P. was even more important at this stage as the District Court had not found the statement of J.S. to be credible in every aspect. If the court had heard A.P., who would have confirmed that the applicant had not been in any decisive position in FOFE, it would have been difficult for the District Court to decide as it did.

20. The Court of Appeal upheld the District Court's decision on 20 February 1997, rejecting the applicant's request to hold an oral hearing. The Court of Appeal stated as follows:

> "...[The applicant] has called nine witnesses before the Court of Appeal. In so far as he has called Mr A.P., the Court of Appeal notes that A.P. had been appointed as a witness in the District Court only during the main hearing. According to Chapter 6, Section 9, of the Code of Judicial Procedure a party must not, in a case amenable to settlement, adduce a circumstance or evidence that he has not adduced in the preparation of the case, unless he establishes a probability that he had a valid reason for not doing so. [The applicant] has not established such a valid reason for appointing A.P. as a witness only at the main hearing. Thus, the appointment of A.P. as a witness must be regarded as if it had only taken place during the Court of Appeal proceedings. In so far as new witnesses have been appointed and new evidence appearing in the annexes to the applicant's letter of appeal has been invoked, [the applicant] has not established a probability that he was unable to adduce the circumstance or evidence in the District Court or that he had a justifiable reason for not doing so. ... No such reason has been established in respect of the written submissions and their annexes submitted by the parties to the Court of Appeal after the relevant time-limit had elapsed, excluding the parts concerning the proposed stay of execution. In accordance with Chapter 25, Section 14, subsection 2, and Section 20, subsection 2, as well as Chapter 26, Section 5, of the Code of Judicial Procedure, the Court of Appeal leaves the submissions and their annexes unexamined, excluding the request concerning stay of execution, and rejects [the applicant's] request to hold an oral hearing. Thus also the request to return the case to the District Court is rejected as being unnecessary."

21. The applicant applied to the Supreme Court (*korkein oikeus, högsta domstolen*) for leave to appeal, noting that the District Court had refused to call A.P. as a witness because it had found that it was unnecessary in the light of the other evidence invoked. The District Court had, thus, found that the applicant had not been prevented from calling him had the hearing of his evidence been necessary. The Court of Appeal had, however, found that the applicant had appointed A.P. as his witness only at a stage of the proceedings when he was already precluded from doing so, i.e. at the main hearing. The applicant had, however, appointed A.P. as his witness already in a preparatory meeting on 15 August 1995 and repeated the request on 26 September 1995 in his written observations to the District Court. He had also had a relevant reason to request that A.P. be heard as the estate of FOFE – which had originally called A.P. as a witness – had withdrawn their request only at the main hearing. A.P. had been the Executive Director of FOFE and, as such, was in the best position to give a statement of the applicant's position in the company for the period from 28 October 1992 until the insolvency proceedings. Therefore the applicant found it very

important that the Supreme Court would hear A.P. as a witness or, alternatively, return the case to a lower court in order to hear the witness.

22. On 22 October 1997 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. According to Chapter 5, Section 19 (1052/1991) of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalk*), the evidence that is going to be presented and what is intended to be proved with each piece of evidence, must be determined during the preparation of the hearing. This means that the parties must, during the preparatory hearings, name all those persons whom they wish to call as witnesses in the main hearing.

24. According to Chapter 6, Section 9, a party must not in the main hearing adduce a circumstance or evidence that he has not adduced in the preparation, unless he establishes a probability that he had a valid reason for not doing so. Should the party show a valid reason, however, he may adduce the new circumstance or piece of evidence in the main hearing irrespective of the provisions of Chapter 6, Section 9 of the Code of Judicial Procedure.

25. The purpose of the provisions of Chapter 6, Section 9 is to ensure compliance with the fair trial requirements. It is a requirement of a fair trial that the adverse party is informed beforehand of each piece of evidence (including witnesses) to be presented in the main hearing.

26. There are separate provisions concerning the submission of new evidence before a Court of Appeal in Chapter 25, Section 17 of the Code of Judicial Procedure. Before the entry into force of the Act amending the Code of Judicial Procedure (165/1998) the said provisions were contained in Chapter 25, Section 14, subsection 2 (1052/1991). According to these provisions, in a civil case, the appellant shall not in the Court of Appeal refer to other circumstances or evidence than those presented in the District Court, unless he establishes a probability that he was not able to refer to the circumstance or evidence in the district court or that he had a justifiable reason for not doing so.

27. Even if a party to the proceedings, under Chapter 5, Section 19 of the Code of Judicial Procedure, has named his witnesses in the preparatory hearing, or had a valid reason for not invoking a certain circumstance or piece of evidence before the main hearing or the court of appeal hearing, the court may refuse to examine such a circumstance or piece of evidence as it considers clearly unnecessary. According to Chapter 17, Section 7 (571/1948) of the Code of Judicial Procedure, if a piece of evidence that a party wishes to present pertains to a fact that is not material to the case or that has already been proven, or if the fact can be proven in another manner

with considerably less inconvenience or cost, the court shall not admit this piece of evidence.

28. Chapter 5, Section 17 (1052/1991) of the Code of Judicial Procedure provides that the court shall conduct the preparation in such a manner that the case can be dealt with in a continuous main hearing. The aim of this provision is to avoid adjournments of the main hearing.

29. Chapter 17, Section 26, subsection 3 (1056/1991) provides that the court shall see to the calling of witnesses to court, unless this has been entrusted to a party in accordance with Chapter 11, Section 2, according to which, on the request of a party, the court may in a civil case entrust the service of a notice to the party, if it deems there to be justified grounds for this.

THE LAW

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

30. The applicant complains of a refusal by the courts to hear a witness A.P. in civil proceedings relating to claims arising out of the liquidation of his company. Article 6 § 1 of the Convention provides as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

A. The parties' submissions

1. The applicant

31. The applicant claimed that he had named Mr A.P. as his witness during the preparatory hearings at the District Court and that he was not heard before the domestic courts as the domestic authorities failed to fulfil their duties. He submitted that he had named Mr A.P. as his witness in his statement of 26 September 1995 which indicated that also he wished to hear Mr A.P. He also informed the court of what he intended to prove with this witness, whom he considered was a key witness able to give evidence about his position in the company after he had resigned from management.

32. When, however, the witness failed to appear before the court on 11 October 1995 because of a business journey and the estate informed the court of its decision to waive its right to hear him, the applicant's counsel had requested that Mr A.P. be heard on the matter and that the hearing be adjourned until a certain date in order to do so. The District Court refused to

do so, reasoning that there was no need to hear Mr A.P., taking into account all the other evidence already submitted to the court. It was, thus, clear that the District Court did not refuse to hear Mr A.P. as a witness because he had not been properly called to give evidence.

33. The applicant argued that as the proposed evidence had been proposed in time in the District Court he should not have been barred from adducing that evidence in the Court of Appeal. The fact that the District Court had refused to hear the witness on another ground, *i.e.* on the ground that the proposed evidence was unnecessary under the circumstances, had no relevance for the matter.

34. The applicant emphasised that his desire to hear Mr A.P. was expressed both orally and in writing at an early stage of the proceedings. Thus, his right to hear Mr A.P. was not precluded in the District Court. In any event, the fact that the naming party had waived, at a later stage of the proceedings, its right to hear Mr A.P. provided the applicant with a valid reason, within the meaning of Chapter 6, Section 9 of the Code of Judicial Procedure, to call the relevant witness at that stage of the proceedings, i.e. during the main hearing. It was not contested by the Government that the applicant had done that.

2. The Government

35. The Government argued that the applicant failed to name A.P. as his witness until the main hearing before the District Court. In his statement of 26 September 1995 the applicant listed his witnesses which did not include A.P. and only gave an indication that he wanted to question A.P. on certain issues. If A.P. was a "key witness" as alleged, the applicant should have named him as his witness as well. However, the applicant first expressed a wish to name the witness in the main hearing when his request for an adjournment for that purpose was rejected by the District Court. As he had known of A.P.'s absence on 10 October 1995, he could also have taken up the matter in the preparatory hearing preceding the main hearing and thus avoided the preclusion rules. The Court of Appeal found in its judgment that the applicant had not presented a valid reason for not naming A.P. as a witness before the District Court until a late stage and that thus he had not properly named him as a witness until the appeal proceedings. By virtue of the then Chapter 25, Section 14, subsection 2 of the Code of Judicial Procedure (existing Chapter 25, section 17, subsection 1), the Court of Appeal therefore rejected the applicant's request to name A.P. as a witness before the Court of Appeal.

36. The Government recalled that civil proceedings were conducted in two parts, namely the preparatory hearing and the principal hearing. During the preparatory hearing all disputed and undisputed facts were recorded in the minutes, and the evidence and proposed witnesses were listed. This aimed at concentrating and expediting the principal hearing, no new

evidence or adjournments being permitted unless there were exceptional reasons. The Government noted that neither the applicant nor his legal counsel made any objections to the contents of the minutes of the preparatory hearings, held on 15 August, 4 October 1995 and 11 October 1995, which minutes they admitted they had received.

37. There was no reason why the applicant could not have named A.P. as his witness as well as the estate, as had happened in respect of the witness J.S. He would however have been partly liable for the costs. As the applicant himself was a lawyer and was represented, the Government did not consider that it should be held responsible for his failure to name a particular witness. The fact that the District Court called A.P. *ex officio* to the main hearing had no relevance in this connection. According to Chapter 17, section 26, subsection 3 of the Code of Judicial Procedure, the presumption was that witnesses were summoned by the court (see section 2.2. above), even though in practice the parties to civil proceedings often called their own witnesses.

B. The Court's assessment

38. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46; *Garcia Ruiz v. Spain* [GC] no. 30544/96, ECHR 1999-I, § 28). Similarly, it is in the first place for the national authorities, and notably the courts, to interpret domestic law and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. This principle has been applied in particular in cases concerning the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals (see, for example, *Tejedor Garcia v. Spain*, judgment of 16 December 1997, *Reports* 1997-VIII, § 31; *Cañete de Goñi v. Spain*, no. 55872/00, ECHR 2000-VIII, § 44) and must also be considered as extending to the application of procedural rules concerning the nomination of witnesses by parties (*mutatis mutandis*, *Wierzbicki v. Poland*, no. 24541/98, judgment of 18 June 2002). That said, the Court's task remains to ascertain whether the proceedings in their entirety, including the way in which evidence and procedural decisions were taken, were fair (see, *inter alia*, *Vidal v. Belgium*, judgment of 22 April

1992, Series A no. 235-B, pp. 32-33, § 33; *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A, no. 247-B, § 34).

39. The Court recalls that in the present case the Court of Appeal refused to hear the witness A.P. nominated by the applicant on the basis that the applicant had failed properly to name him as his witness before the main hearing in the District Court. It is apparent however that the District Court made no finding itself that the applicant had failed adequately to bring to their attention his intention to have A.P. questioned as a witness. Its refusal to order an adjournment in order to allow A.P. to attend was based rather on its assessment that A.P.'s testimony was not necessary for deciding the issues in the case.

40. Furthermore, it is not disputed that during the preparatory stage of the District Court proceedings the applicant in his written submissions of 26 September 1995 stated that he wished questions to be put to A.P. and specified the relevance of the testimony which he hoped to adduce. His desire to have A.P. appear was therefore brought to the attention of the court. While the Government have pointed out that the rules requiring the proper nomination of witnesses before the main hearing served the crucial purpose of preventing undue delay and maintaining the fairness and efficiency of the proceedings, there was in the circumstance of this case no negative element of surprise or ambush arising from the applicant's application at the main hearing for A.P. to be heard. It could not be construed as an attempt to call a totally new witness at the last minute. It may also be noted that the bar on naming witnesses at the stage of the main hearing is not absolute but may be subject to exception where the party has a valid reason or can point to a new circumstance (Chapter 6, Section 9, see paragraph 24 above in Relevant domestic law and practice). The fact that the applicant's adversary in these proceedings withdrew their request to have A.P. heard as their witness when he failed to appear would arguably constitute a new circumstance.

41. The Court concludes therefore that the Court of Appeal's refusal to hear A.P., based on grounds which were not relied on by the lower court, may be regarded in the above circumstances as disclosing unfairness not compatible with the requirements of the Convention.

42. There has, accordingly, been a violation of Article 6 § 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 claimed that as a result of the District Court decision of 26 October 1995 he had lost the amounts which he had to pay to the estate of the company, 44,737 euros (EUR). He had also had to pay other debts to the company by 5 June 2002, EUR 481,631; he had lost compensation under insurance contracts of EUR 51,792; and incurred debts of EUR 115,430 on the agreement which he had entered into with a bank on 5 June 2002 to deal with his various liabilities, in respect of which he claimed interest also. In his letter of 7 January 2004, he stated that he had claimed a total of EUR 130,000 but that he estimated his total damage to amount to EUR 2,000,000.

45. The Government disputed that there was any causal link between the violation alleged and the loss claimed. The basis of the claims was, furthermore, vague, if not non-existent. They noted that the sum which he had been ordered to pay by the District Court had also been upheld by the Court of Appeal.

46. The Court recalls that according to its established case-law there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (former Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; *Cakıcı v. Turkey*, judgment of 8 July 1999, *Reports* 1999-IV, § 127). In the present case, it has found a violation of Article 6 § 1 of the Convention arising out of the Court of Appeal's reasons for rejecting the applicant's request for a witness to be heard. It is not possible to speculate what would have been the outcome in these proceedings or elsewhere if the Court of Appeal had taken a different approach. In the circumstances therefore the Court does not make any award under this head.

B. Non-pecuniary damages

47. The applicant claimed EUR 161,972 plus 16% interest in respect of the District Court decision, plus lost salary estimated at EUR 6,500 per month plus interest since 12 August 1993 as he had not been employed for

long periods due to the proceedings and had lost the possibility of working as a banker and broker.

48. The Government did not consider that these claims had any real basis and that for any violation found under Article 6 § 1 non-pecuniary compensation should not exceed EUR 1,000.

49. Having regard to the nature of the breach in this case, the Court finds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage, if any, sustained by the applicant.

C. Costs and expenses

50. The applicant claimed EUR 37,639 for the fees of his lawyer, Mr Äijälä, in the domestic proceedings; EUR 701.50 for translation of an expert legal opinion; and the fees of his lawyer, Mr Virolainen, amounting to some EUR 24,254.77. This made a total of EUR 62,595.27.

51. The Government considered that as the applicant had been granted legal aid in the domestic proceedings in issue his costs and expenses had already been covered. They doubted that the translation costs could be regarded as necessary, as the domestic courts had not considered that they fell under legal aid in the domestic proceedings. As regarded the fees of Mr Virolainen, they noted that all his invoices save one concerned other domestic proceedings after the final decision in this case. As regarded the sum of EUR 6,670.35 claimed for proceedings in Strasbourg, they considered that the number of hours, 40.5, was excessive and pointed out that the hourly rate of EUR 135 exceeded the domestic legal aid rate of EUR 84 (EUR 100 for more complex cases). They submitted that no more than EUR 3,500 should be awarded under this head.

52. The Court recalls the established principle in relation to domestic legal costs is that an applicant is entitled to be reimbursed those costs actually and necessarily incurred to prevent or redress the breach of the Convention, to the extent that the costs are reasonable as to quantum (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom* (*Article 41*), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). While it appears that the applicant's appeal to the Supreme Court in respect of the Court of Appeal's decision may be regarded as proceedings brought to redress the breach of the Convention complained of by him, it appears that the applicant received free legal aid. It is not therefore apparent that the costs claimed by the applicant were actually incurred. As regards the invoices which appear to relate to other domestic litigation in which the applicant engaged after the conclusion of his Supreme Court application, these have not been shown to have any connection with breach complained of in this case. The Court makes no award.

53. As regards the Strasbourg costs, the Court notes, as pointed out by the Government, that only one invoice put forward relates to his application

before it. However, having regard to the limited number of issues, and the procedure adopted, in this case, the Court finds the amount claimed cannot be regarded as either necessarily incurred or reasonable as to quantum (see, amongst other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The expert opinion which was submitted may be regarded as relevant to the applicant's complaints and its translation costs may be taken into account. Deducting the legal aid paid by the Council of Europe, the Court therefore awards the sum of EUR 2,800, plus any value-added tax that may be chargeable, for legal costs and expenses in the proceedings before this Court.

D. Default interest

54. 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 6 § 1 of the Convention;

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

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, EUR 2,800 (two thousand eight hundred euros) in respect of costs and expenses, plus 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 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President