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

THIRD SECTION

CASE OF STECK-RISCH AND OTHERS v. LIECHTENSTEIN

(Application no. 63151/00)

JUDGMENT

STRASBOURG

19 May 2005

FINAL

19/08/2005

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 Steck-Risch and Others v. Liechtenstein,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs A. GYULUMYAN,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 14 February 2004 and 28 April 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 63151/00) against the Principality of Liechtenstein lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Liechtenstein nationals, Mrs Maria Karolina Steck-Risch, Mr Anton Georg Risch, Walter Risch, Paul Arnold Risch and Mamertus Risch (“the applicants”), on 12 October 2000.

2. The applicants were represented by Mr W.L. Weh, a lawyer practising in Bregenz.

3. The applicants alleged, in particular, that one judge of the Constitutional Court lacked impartiality and that the Administrative Court failed to give them an opportunity to reply to the opposite party's comments on their appeal.

4. The application was allocated to the Third 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. By a decision of 10 October 2002 the Court declared the application partly inadmissible and communicated the above complaints plus one further complaint to the respondent Government. By a decision of 14 February 2004 the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1926, 1927, 1930, 1937 and 1939 respectively. The first and second applicants live in Vaduz, the third applicant lives in Schaan and the fourth and fifth applicants live in Triesen.

9. The applicants, who are siblings, were joint owners (one-fifth each) of two adjacent plots of land in Schellenberg, registered under files nos. 55/IV and 67/IV of the Schellenberg land register, which they inherited in 1983.

10. On 29 September 1972, when the property at issue still belonged to the applicants' father, the Schellenberg municipality issued a provisional area zoning plan (*Zonenplanfestsetzungsbeschluss*) designating the two parcels of land as non-building land. Before that, the property was not covered by any area zoning plan.

11. On 14 May 1980 the Schellenberg Municipal Council (*Gemeinderat*) dismissed an appeal by the applicants' father.

12. On 24 November 1981 the area zoning plan (*Zonenplan*) was approved by the Liechtenstein Government.

13. The applicants' request for a change of the designation of their land into building land (*Bauland*), dated 24 August 1994, was to no avail.

14. On 15 July 1997 the applicants claimed compensation of 4.9 million Swiss Francs (CHF) for damage allegedly incurred due to the designation of their land as non-building land. They claimed that that designation amounted to *de facto* expropriation.

15. On 2 June 1998 the Liechtenstein Government, sitting *in camera*, dismissed their claim. They found that the impugned designation of the applicants' property, not previously subject to any area zoning plan, as non-building land did not amount to a *de facto* expropriation conferring a right to compensation. In particular, the applicants' land had not been opened up for building, nor had there been any plans of the municipality to prepare it for development.

16. On 18 June 1998 the applicants filed an appeal against the above Government decision with the Liechtenstein Administrative Court (*Verwaltungsbeschwerdeinstanz)*. They claimed, *inter alia*, that the elements on which the Government had based their decision had not been established in adversarial proceedings. In particular, the applicants alleged that they had not been given an opportunity to present their views on the question of whether or not their land had been opened up for development purposes, which, in fact, had been the case. Thus, they requested that the parties be heard on the matter and that an inspection of the property be carried out. Further, they requested that the Administrative Court obtain the minutes of the Schellenberg Municipal Council's meeting of 5 July 1995,

which showed that the municipality had considered the possibility of including their property in a building area.

17. On 21 October 1998 the Schellenberg municipality, as respondent, filed submissions (*Gegenschrift*) requesting the Administrative Court to dismiss the appeal. They referred to the reasons underlying the designation of the applicants' property as non-building land and claimed that the applicants' predecessor had not appealed against the area zoning plan. Further, the municipality contested the applicants' assertion that the said property had been opened up. Contrary to the applicants' assertions, the adjacent parcels had equally been designated as non-building land. The municipality also submitted the minutes referred to by the applicants. The municipality's comments were not served on the applicants.

18. On 25 June 1999 the Administrative Court, sitting *in camera*, dismissed the applicants' appeal. The Court was presided over by judge G.W.

19. In its decision, the Administrative Court described the conduct of the proceedings so far, including a detailed summary of the comments submitted by the Schellenberg municipality, noting that the conditions for compensation were not met, *inter alia* because the applicants' property had not been opened up. The neighbouring parcels were also undeveloped. When the zoning plan was issued, the applicants could not legitimately expect a designation of their property as building land.

Pointing out that the applicants had filed very detailed written submissions, the Administrative Court found that they had been given sufficient opportunity to submit their arguments and evidence.

20. On 7 July 1999 the applicants filed a complaint with the Constitutional Court (*Staatsgerichtshof*) under Section 23 of the Constitutional Court Act (*Staatsgerichtshofsgesetz*), claiming that the principle of equality of arms had been infringed in that the Administrative Court had based its decision on new submissions made by the Schellenberg municipality (concerning the issue of whether the applicants' predecessors had appealed against the zoning plan and concerning the question of whether the applicants' property had been opened up), to which they had had no opportunity to reply.

They also complained about procedural defects, in particular that the Administrative Court had failed to hear them and to carry out an inspection of the property at issue. In sum they asserted that the Administrative Court's decision violated their right to property.

21. On 10 February 2000 the Constitutional Court informed the applicants of the composition of the panel of five judges that would examine their case in private on 29 February 2000.

22. Subsequently, on 21 February 2000, the applicants filed a challenge for bias against H.H., one of the panel judges, claiming that he was to be disqualified on account of his partnership in a law firm

(*Kanzleigemeinschaft*) with G.W., i.e. with the presiding judge of the proceedings before the Administrative Court.

23. On 29 February 2000 the Constitutional Court, sitting *in camera*, dismissed the applicants' complaint, confirming that the designation of their property as non-building land did not amount to a *de facto* expropriation requiring compensation.

24. Bearing in mind that the principle of equality of arms was a basic element of the fairness of proceedings, it agreed in principle with the applicants' argument that they should have been afforded an opportunity to be informed of and to comment upon the Schellenberg municipality's observations in reply to their appeal. In that regard, the Court observed that the submissions in issue had contained new information, in particular, the alleged fact that the applicants' predecessor had never filed an objection against the area zoning plan. If established, that fact would have had a negative effect on the applicants' legal position. However, the Constitutional Court noted that this submission had not played any role in the Administrative Court's decision. Thus, no prejudice had resulted from this procedural deficiency. Considering these special circumstances as well as the fact that the proceedings as a whole had been adversarial, the Constitutional Court concluded that the applicants' procedural rights had not been impaired.

25. As far as the applicants' allegations of bias were concerned, the Constitutional Court, referring to an academic commentary on Liechtenstein administrative law, recalled that a country of the size of Liechtenstein had limited human resources in the public sector. It stressed that, in such circumstances, questions of replacement should be dealt with cautiously if one did not wish to jeopardise the proper functioning of the Liechtenstein authorities. The court pointed out that, by virtue of section 6 of the Constitutional Court Act, a judge of the Constitutional Court, being at the same time a judge at another Liechtenstein court had to be disqualified from proceedings where a complaint concerned a decision issued by that court. However, the Constitutional Court found that the same did not apply in cases where a judge was merely acquainted with a judge who had taken part in the impugned decision. Moreover, it noted that, in a State based on the rule of law, the quashing of a decision by the Constitutional Court was nothing unusual and did not cast doubt on the professional skills of the judges involved in that decision. In those circumstances, the Court found that the applicants' fears of bias could not be considered to be objectively justified.

26. The Constitutional Court's decision was served on the applicants on 14 April 2000.

II. RELEVANT DOMESTIC LAW

A. Composition of the Constitutional Court

27. Section 2 of the Constitutional Court Act (*Staatsgerichtshofgesetz*) concerns the composition of the Constitutional Court. It provides as follows:

> “1. The Constitutional Court shall consist of the President, his alternate, four additional members and their alternates, all of whom serve part-time.
>
> 2. The President, the Vice-President, two additional members and their alternates must be native citizens of Liechtenstein; at least two members and their alternates must be versed in the law.”

28. Section 4 of the Constitutional Court Act regulates the election of the Constitutional Court's judges. So far as material, it reads as follows:

> “1. The members of the Constitutional Court and their alternates shall be elected by Parliament for a term of five years.
>
> 2. If, for whatever reasons, the State Court cannot be properly constituted even with the use of alternates, the necessary supplementary elections shall be held for the case in question.”

B. Rules on challenging judges for bias

29. Section 7 of the National Administrative Justice Act (*Landesverwaltungspflegegesetz*) provides that officials, including the members of the Administrative Court, may be challenged, *inter alia*, in the following cases:

> “(b) if the official in question ... can expect a substantial advantage or disadvantage depending on the outcome of the administrative matter;
>
> ...
>
> (d) if there is any other sufficient reason to doubt the impartiality of the official in question, in particular if the official in question is too close a friend or foe of one of the parties to a legal or administrative dispute.”

30. By virtue of section 6 (3) of the Constitutional Court Act, these rules also apply to the judges of the Constitutional Court.

THE LAW

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

31. The applicants raised complaints under Article 6 § 1 of the Convention, which insofar as relevant, reads as follows:

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

A. The alleged lack of impartiality of Constitutional Court judge H.H.

1. The parties' submissions

32. The applicants complained that H.H., one of the judges of the Constitutional Court deciding on their complaint against the Administrative Court's decision, lacked impartiality as he and G.W., who had presided over the proceedings before the Administrative Court, were partners in a law firm.

33. Referring to the Court's case-law, the applicants emphasised that even appearances are of importance where a judge's objective impartiality was at stake. It was therefore not decisive whether judges G.W. and H.H. only shared offices, as submitted by the Government, or whether they lived on common earnings, as they had initially alleged. What was decisive was that they were colleagues in the same law-office and, thus, had a long-established personal relationship and appeared as a unit to the outside. In these circumstances, the applicants had an objective justification to fear that Constitutional Court judge H.H. might have discussed the case with judge G.W. at an earlier stage or that he might hesitate to overturn the Administrative Court's decision in which his colleague sat as president as such a decision could have had negative effects for the reputation of the law-office.

34. As far as the Government argued that disqualification of judges should not be assumed lightly, the applicants replied that this was more important in a dispute between private individuals. However, in the present case the applicants were opposed to the State authorities. It was therefore all the more important to avoid the participation of a judge who lacked impartiality. The possible scarcity of qualified human resources in a small State could not justify such a shortcoming. Apparently, there would not have been any difficulty to replace judge H.H. with an alternate judge.

35. The Government contended that there was nothing to indicate that judge H.H. lacked the necessary impartiality. They argued, in particular,

that under section 7 of the National Administrative Justice Act a judge may be challenged if he is "too close a friend of one of the parties to the dispute", while the fact the he is a friend or an acquaintance of another judge who has decided on the dispute is not considered a ground for bias. The additional argument that judge H.H. was a partner in the same law-office as judge G.W., who had presided over the proceedings before the Administrative Court, did not affect that position, all the more so as judges H.H. and G.W. were only sharing offices while each of them dealt with his own cases and earned his own income.

36. The fact that H.H. and G.W. were sharing offices could not justify the applicants' fears of bias. In their capacity as judges they were bound by professional secrecy and therefore prevented from discussing a given case. In a State governed by the rule of law it was a normal feature of the judicial system that the Constitutional Court could set aside the judgment of a lower court. Such a decision would not have had any negative repercussions on the law firm in which H.H. and G.W. were partners.

37. The Government conceded that it would have been possible to replace judge H.H. with one of the two alternate judges having Liechtenstein citizenship, or if they had likewise been unable to sit, with an *ad hoc* judge appointed by Parliament pursuant to section 4 § 2 of the State Court Act. However, the disqualification of a judge should not be assumed lightly. The right to have one's case dealt with by a properly constituted court could be violated not only if a disqualified judge participated in the decision but also if a judge was disqualified without sufficient grounds. In the present case, there was no appearance of a lack of impartiality and the recourse to an alternate or *ad hoc* judge who was necessarily less experienced than judge H.H., a senior member of the Constitutional Court, was therefore not justified.

2. The Court's assessment

38. According to the Court's constant case-law, the existence of impartiality must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, by ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, for instance, *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII; *Pétur Thor Sigurđsson v. Iceland*, no. 39731/98, § 37, ECHR 2003-IV; *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, § 41, 23 November 2004).

39. The Court notes at the outset that the complaint is to be seen against the background of a part-time judiciary operating in a small country like Liechtenstein, where the same persons perform double functions as judges, on the one hand, and as practicing lawyers, on the other. The Court has no reason to doubt that legislation and practice on the part-time judiciary can

be framed so as to be compatible with Article 6. As usual in proceedings originating in an individual application, the Court will confine itself, so far as possible, to an examination of the concrete case before it (see *Wettstein*, cited above, § 41).

40. The subjective impartiality of a judge must be presumed until there is proof to the contrary (ibid, § 43). The applicants have not adduced any evidence to cast doubt on judge H.H's personal impartiality.

41. What is at stake, therefore, is the objective impartiality of judge H.H. Here it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. This implies that, in deciding whether in a given case there is legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (*Wettstein*, cited above, § 44; *Pétur Thor Sigurđsson*, cited above, § 37).

42. In the present case, judge H.H., as a member of the Constitutional Court, was called upon to decide on the applicants' appeal against the Administrative Court's judgment, in which G.W., who was his law-office colleague, had acted as presiding judge.

43. In the *Wettstein* case, the Court's finding that the applicant's fear that judge R. lacked the necessary impartiality was objectively justified was mainly based on the dual role of R: there was an overlapping in time of two sets of proceedings in which R. had exercised the function of judge in one case and that of legal representative of the party opposing the applicant in the other. Whereas the fact that R. and one other judge were also office colleagues of another lawyer who had represented the party opposing the applicant in another set of proceedings was considered to be of minor importance (ibid., §§ 47- 48).

44. The Court notes at the outset that neither judge H.H. nor judge G.W. exercised any dual functions in the present case. The applicants based their allegation that judge H.H. lacked impartiality on the simple fact that both judges were partners in their capacity as practising lawyers.

45. In the Court's view, the nature of this partnership is of importance when determining whether the applicants' fears were objectively justified. It notes that, according to the Government, H.H. and G.W. merely shared their office premises but did not obtain a common income. The applicants who had initially claimed that H.H. and G.W. were living of common earnings, did not contest this. They rather argued that the mere fact that they were office colleagues created an appearance justifying their fear that H.H. lacked impartiality.

46. Although appearances are of importance where a judge's objective impartiality is at stake (*Pétur Thor Sigurđsson*, cited above, § 37), the Court has to subject the specific circumstances of the case to careful scrutiny. Given that H.H. and G.W. only shared office premises, the Court considers that their partnership did not involve any professional or financial dependence that may cast doubt on H.H.'s impartiality. This distinguishes the present case from a case in which the court found a violation of Article 6 § 1 as the judge in question had professional and financial ties with the party opposing the applicant: He performed duties as an appeal court judge and those of an associate professor in receipt of an income from the university which was the applicant's opponent in the proceedings at issue (*Pescador Valero v. Spain*, no. 62435/00, § 27, ECHR 2003-VII).

47. The Court further points out that doubts as to a judge's independence and objective impartiality may arise where that judge is, in a context outside the proceedings, a subordinate of one of the parties (see *Sramek v. Austria*, judgment of 22 October 1984, Series A no. 84, p. 20, § 42; *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 282, §§ 75-76). No such relationship of subordination existed in the present case. G.W and H.H. were equal and independent partners in their law-office. The Court is not convinced either by the applicants' argument that it might have had negative repercussions on their law-office, had the Constitutional Court quashed the Administrative Court's judgment. The quashing of a lower court's decision by a supreme jurisdiction is a normal feature in any legal system, which does not cast doubt on the competence of the judges who gave the decision.

48. Finally, there is nothing to indicate that the H.H. and G.W. were particularly close friends, in other words, that their relationship went beyond a professional relationship as office colleagues. Nor is there any indication that, despite their obligation to observe professional secrecy as judges, they had shared any substantial information concerning the applicants' case which would have led judge H.H. to reach a preconceived view on the merits of the case.

49. In sum, having particular regard to the lack of any form of dependence between judges G.W. and H.H., be it professional, financial or hierarchical, the Court finds that the mere fact that they were sharing offices, does not suffice to justify objectively the applicants' fears that judge H.H. lacked impartiality.

50. Accordingly, there has been no violation of Article 6 § 1 in this respect.

B. The alleged breach of the principle of equality of arms

51. The applicants submitted that the principle of equality of arms had been infringed in that the Schellenberg municipality's comments on their

appeal against the Liechtenstein Government's decision of 2 June 1998 had not been communicated to them.

52. They contended in particular that the Administrative Court's decision not only gave a detailed summary of the comments of the Schellenberg municipality but also relied on them in its establishment of the facts, in particular regarding the question of whether the property at issue was opened up for construction. In any case, the Schellenberg municipality was the respondent in the proceedings before the Administrative Court and its comments were of vital interest to the applicants.

53. The Government asserted that the present case had to be distinguished from *Ziegler v. Switzerland* (no. 33499/96, 21 February 2002). According to the Constitutional Court's findings, the Administrative Court had not relied on the submissions of the Schellenberg municipality. Thus, this procedural irregularity did not entail any prejudice for the applicants.

54. The Court reiterates that, in civil proceedings, the principle of equality of arms implies that each party must be afforded a reasonable opportunity to present his or her case - including evidence – under conditions that do not place him/her at a substantial disadvantage vis-à-vis his/her opponent (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 33).

55. The concept of a fair trial, of which equality of arms is one aspect, implies the right for the parties to have knowledge of and to comment on all evidence adduced or observations filed (see, for instance, *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 108, § 24, and *Ziegler*, cited above, § 33).

56. In the present case, the Schellenberg municipality, being the opposing party in the compensation proceedings at issue, filed comments on the applicants' appeal to the Administrative Court, requesting it to dismiss that appeal. It is not contested that these comments were not served on the applicants and that they had no opportunity to reply to them. This deficiency it not remedied by the fact that the applicants could complain to the Constitutional Court, as the latter does not carry out a full review of the case.

57. The Court is not convinced by the Government's argument that, in contrast to the *Ziegler* case (cited above), the Administrative Court did not rely on these comments. It is true that that Court did not rely on the municipality's assertion that the applicants' father had not filed an objection against the area zoning plan. However, it did have regard to its submissions on the question of whether the applicants' land was opened up for building. In any case, the municipality's observations contained a reasoned opinion on the merits of the applicants' appeal. The Court has repeatedly held that in such a situation the effect which the observations actually had on the judgment is of little consequence. What is particularly at stake here is the litigants' confidence in the workings of justice, which is based on, *inter alia*,

the knowledge that they have had the opportunity to express their views on every document in the file (*Nideröst-Huber*, cited above, p. 108, §§ 27, 29; *Ziegler*, cited above, § 38).

58. In the present case, respect for the right to a fair trial, guaranteed by Article 6 § 1 of the Convention, required that the applicants be given an opportunity to have knowledge of and to comment on the observations submitted by the opposing party, namely the Schellenberg municipality. However, the applicants were not afforded this possibility.

59. Consequently, there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. Under the head of pecuniary damage the applicants submitted that their land would be worth 8,6 million Swiss francs (CHF), if it were designated as building land, which – in their contention – would be the case had the violations of the Convention not occurred. They claimed CHF 2,236,000 as compensation for the loss of utility value since the beginning of the proceedings at issue. The applicants did not allege that they suffered any non-pecuniary damage.

62. The Government contested the applicants' claim for pecuniary damages in their entirety. They argued that it was not transparent how the applicants calculated the sum claimed as compensation for alleged pecuniary damage. In any case, there was no causal link between the violations at issue and the pecuniary damage claimed.

63. The applicants replied that even if one accepted the lack of a causal link, which they did not, they had suffered pecuniary damage as a result of the delay and the uncertainty as to the designation of their property, caused by proceedings which were not in conformity with the Convention.

64. The Court observes that there is no causal link between the breaches complained of and the violation found. It holds that it is not called upon to speculate what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (see, for instance, *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Consequently, no award is made under the head of pecuniary damage.

B. Costs and expenses

65. The applicants claimed CHF 23,906.40 for costs incurred in the domestic proceedings, composed of CHF 3,640 for fees of the Administrative Court and CHF 20,266,40 for cost and expenses incurred before the Constitutional Court. Moreover, the applicants claimed CHF 36.291,10 for costs incurred in the Convention proceedings. The latter were based on a lump sum agreement, fixing CHF 18,587.10 as payment for the lodging of the application, CHF 8,852 for the observations in reply and CHF 8,852 for the proceedings on the merits. The applicants' emphasised that the case was complex and that its preparation necessitated extensive research.

66. The Government contended that the applicants' claim was excessive. As to the costs of the domestic proceedings, the Government asserted that the costs of the proceedings before the Administrative Court were not incurred to prevent the alleged violations of the Convention. The costs incurred before the Constitutional Court were based on an excessive estimate of the value of the property at issue. In the Government's view a total amount of CHF 4,703.80 would be appropriate for this part of the proceedings. However, a reduction should be made as the proceedings before the Constitutional Court did not exclusively relate to the alleged violations of the Convention.

Secondly, as to the costs claimed for the Convention proceedings, the Government argued that, again, the claim was based on an excessive estimate of the value in dispute and that moreover, as the applicants had agreed to pay a lump sum for their representation, it was not possible to verify the details of their counsel's activity. In any case only two complaints out of the initial five were declared admissible.

67. In accordance with its case-law, the Court will consider whether the costs and expenses claimed were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, among many other authorities, *Wettstein*, cited above, § 56).

68. The Court agrees with the Government that the costs of the proceedings before the Administrative Court were not incurred to prevent the violation found. As to the costs of the proceedings before the Constitutional Court, they were only in part incurred in order to complain about the violation of the principle of equality of arms. Moreover, the costs claimed are excessive. The Court considers an amount of EUR 3,000 as appropriate.

69. As to the costs claimed for the Strasbourg proceedings, the Court finds them excessive. It notes that only two of the complaints raised were declared admissible. It therefore awards EUR 7,000 in respect of the Convention proceedings.

70. In sum, the Court awards EUR 10,000 for costs and expenses.

C. Default interest

71. 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.

D. Further requests

72. The applicants requested the Court, as part of their just satisfaction claim, to order a re-opening of the domestic proceedings.

73. The Court reiterates that it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (see, among many others *Assanidze v. Georgia*, no. 71503/01, § 202, ECHR 2004-II). Only in very exceptional circumstances has the Court ordered individual measures of redress (ibid, §§ 202-203). No such circumstances pertain in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the alleged lack of impartiality of Constitutional Court judge H.H.;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that there was a breach of the principle of equality of arms;

3. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 10,000 (ten thousand 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar

Boštjan M. ZUPANČIČ President