



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

FOURTH SECTION

CASE OF HANNU LEHTINEN v. FINLAND

(Application no. 32993/02)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Hannu Lehtinen v. Finland,

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

Lech Garlicki, *President*,
Giovanni Bonello,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 32993/02) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Finnish national, Mr Hannu Juhani Lehtinen (“the applicant”), on 4 September 2002. The applicant died on 30 September 2005. However, his widow, Mrs Terhi Johanna Lehtinen, and his children Ms Oona Liisa Kivimäki, Ms Essi Emelia Kivimäki and Ms Iisa Linnea Kivimäki expressed their wish to pursue the application. For practical reasons Mr Hannu Juhani Lehtinen will continue to be called “the applicant” in this judgment.

2. The applicant was represented by Mr O. Taurén, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged a violation of Article 6 § 1 and 6 § 3 (d) of the Convention on account of the lack of an oral hearing and the refusal to hear his evidence and that of three witnesses.

4. On 21 May 2007 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and was resident in Siltakylä at the time of his death.

A. The tax inspection

6. At the material time the applicant was the majority owner of a limited liability company providing bakery and café services. The company is not an applicant before the Court.

7. In 1999 the Uusimaa Tax Office carried out a tax inspection of the company's books for the years 1996-1998. The tax inspector interviewed the applicant and three persons who were working, or had worked, for the company: Mr T.L., Ms H.T. and Mr R.L. He drew up an inspection report dated 2 September 1999 and two inspection letters dated 6 September 1999. He found that there were deficiencies in the company's book-keeping and that it had failed to enter as income part of the retail sales during the tax years 1996, 1997 and 1998. Basing himself on the company's turnover, books and the remaining cash register printouts, he estimated the amounts at 140,000 Finnish marks (FIM), FIM 100,000 and FIM 130,000 respectively. He considered that the missing sales should be treated as disguised payments of dividends for the purposes of assessing the tax liability of both the company and the applicant and therefore the applicant's estimated income should be increased by the above amounts.

8. The Tax Office requested the company to submit its observations regarding the alleged errors in its tax returns for the fiscal years 1996-1998. In its observations of 23 August 1999 the company contested the allegation that certain sales had not been entered in the books. On 24 September 1999 the company and the applicant submitted their joint observations maintaining that all sales had been entered in the books and that the applicant had not received any disguised payments of dividends.

9. The decisions taken in respect of the applicant's increased tax liability are mentioned below.

B. The Uusimaa Tax Office and Tax Rectification Board's decisions

10. On 10 and 22 November 1999 the Tax Office increased the applicant's estimated income for the above-mentioned years by FIM 129,000, FIM 90,000 and FIM 130,000 respectively. Following a rectification of the applicant's tax liability, the amount of the disguised

payments of dividends was reduced to FIM 121,000 for 1998. Tax surcharges of FIM 5,000 and FIM 3,000 were imposed on the applicant for the years 1996 and 1997.

11. Following the applicant's requests, the Tax Rectification Board, on 31 May and 20 July 2000, partly upheld his claims for reductions. It reduced the disguised payments of dividends to FIM 85,000, FIM 60,000 and FIM 85,000 for the tax years 1996 to 1998. It also reduced the amount of tax surcharges for the years 1996 and 1997 to FIM 4,000 and FIM 2,000 respectively.

C. The proceedings in the Helsinki Administrative Court

12. The applicant appealed to the Administrative Court, requesting an oral hearing of his evidence and that of witnesses Mr T.L., Ms H.T. and Mr R.L. proving that the company had not made any sales that had not been entered as income and that the applicant had not received any benefits which could be considered disguised payments of dividends.

13. The Tax Office obtained the observations of the Tax Ombudsman, the written statement of the Tax Office and the applicant's observations in reply.

14. On 13 June 2001 the Administrative Court rejected the request for an oral hearing. It reasoned:

"The Administrative Court considers that an oral hearing is manifestly unnecessary having regard to the evidence submitted to it and the nature of the case. The case can thus be decided without an oral hearing."

The court also rejected the appeal, giving the following reasons:

"The amounts of money which the applicant is considered to have received by way of disguised payment of dividends

On the basis of the circumstances observed during the tax inspection, not all the company's sales have been entered in the books. In estimating the amount of the missing sales, the documents in the tax inspection file show that the Tax Office has already taken into consideration the company's statement of errors entered in the cash register. In its decisions the Rectification Board partly upheld the company's claims and reduced the estimated amounts of disguised payments of dividends accordingly.

The applicant was the majority owner of [the company] and, up until 2 December 1998, Chairman of its Board. He worked for the company full time. He counted the contents of the cash register daily and was responsible for sending the money to the bank. In addition, he took care of the company's purchases, payment of salaries and all money transactions. Therefore, and as there is no suggestion to the contrary, the sales which have not been entered in the books can be considered to have been used by the applicant for his own benefit. As the applicant, for reasons referred to in section 57 of the Taxation Procedure Act, has failed to declare part of the income for the tax years 1996 to 1998, which has consequently not been subject to taxation, the payment of the taxes not claimed has had to be ordered in a reassessment procedure.

The increase in the applicant's income by way of disguised payments of dividends to FIM 85,000, FIM 60,000 and FIM 85,000 respectively for the tax years 1996-1998 cannot be considered too high. As the applicant must be considered to have produced, knowingly or through gross negligence, false tax returns concerning the aforementioned years, tax surcharges have also had to be imposed. The tax surcharges concerning 1996 and 1997 cannot be considered excessive. There is no reason to alter the Rectification Board's decision on the basis of the appeal."

D. The proceedings in the Supreme Administrative Court

15. On 9 August 2001 the applicant requested leave to appeal. Should the Supreme Administrative Court not find it possible to alter the decision, he requested that the case be sent back to the Administrative Court for an oral hearing. On 8 March 2002 the Supreme Administrative Court refused leave to appeal. It reasoned:

"The applicant's appeal concerns disguised payments of dividends added to his income by way of reassessment. There is no reason to bring the case before the Supreme Administrative Court in the interests of the application of the law in other similar cases or the uniformity of legal practice. Nor has there been any manifest error in the examination of the case. There are likewise no pressing economic reasons to grant leave to appeal. Since none of the grounds for granting leave to appeal laid down by section 70 of the Taxation Procedure Act applies, the Supreme Administrative Court refuses to grant leave to appeal and therefore will not rule on the applicant's appeal."

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. Section 38(1) of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslagen*; as amended by Act no. 433/1999) provides that an oral hearing must be held if requested by a private party. An oral hearing may, however, be dispensed with if a party's request is ruled inadmissible or immediately dismissed or if an oral hearing is clearly unnecessary due to the nature of the case or other circumstances.

17. In this regard, the explanatory report of the Government Bill (no. 217/1995) for the enactment of the Administrative Judicial Procedure Act states that an oral hearing contributes to a focused and immediate procedure but since it does not always bring any added value it is important that the flexibility and cost effectiveness of the administrative procedure is not undermined. An oral hearing is to be held when it is necessary for the clarification of the issues and the hearing can be considered beneficial for the case as whole.

18. During the period from 2000 to 2006 the Supreme Administrative Court did not hold any oral hearings in tax matters. As to the eight administrative courts, appellants requested an oral hearing in a total of 603 cases. The courts held an oral hearing in 129 cases. There is no

information about how many of these taxation cases concerned the imposition of a tax surcharge. During the first six months of 2006, the administrative courts held a total of 20 oral hearings in tax matters.

19. Witnesses who have been called by a party or the administrative authority that made the decision or the hearing of whom the appellate body considers necessary may be heard in the oral hearing. A party may be heard under oath concerning circumstances of special relevance to the resolution of the matter. Chapter 17, sections 18-39, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) apply to the hearing of witnesses (section 39 of the Administrative Judicial Procedure Act as amended by Act no. 433/99).

20. Testimony must be oral. A witness must not refer to a written statement. However, the witness may use written notes as a memory aid (Chapter 17, section 32(1)). A statement that a witness has previously given to the court or to the public prosecutor or the police may be read out in connection with the hearing of the witness only if, in his or her testimony, the witness retracts his or her earlier statement, or explains that he or she cannot or will not testify (section 32(2)).

21. A written statement of a private nature, a pre-trial investigation record or a statement entered or stored in another document must not be admitted as evidence unless otherwise provided in an Act (Chapter 17, section 11(1), of the Code of Judicial Procedure; Act no. 690/1997). Section 11(2-3) lists exceptions to the prohibition on using written preliminary investigation material. For example, if a witness cannot be questioned in the main hearing or outside the main hearing, the court may allow the pre-trial investigation record or another document or statement to be taken into account in a hearing. The Administrative Judicial Procedure Act contains no restriction on the use of pre-trial investigation material in the consideration of a case.

22. The said Act provides that the statement of reasons must indicate which facts and evidence have affected the decision and on which legal grounds it is based (section 53).

23. Section 29 of the Taxation Procedure Act (*laki verotusmenettelystä, lagen om beskattningsförfarande*; Act no. 1558/1995 as in force for the fiscal years 1996-1998) included provisions on the distribution of disguised payments of dividends and provided that if it was evident that a partnership or some other corporation had paid a sum of money to a shareholder, to the spouse, a child, parent or another relative of a shareholder as a salary, gift salary, partial salary, housing benefit, representation or travel expenses, insurance fee, or a comparable credit considered more than reasonable or if the corporation had paid any one of the persons cited a sum of money as a purchase price, rent, interest, provision or some other expense that was essentially higher or had him or her pay less than the norm, a reasonable tax was imposed on the sum. If a partnership, by buying its shares or by

decreasing the value of its share capital, had distributed assets to its shareholders and if it was evident that the distribution of the assets had been carried out for the purpose of evading tax on dividends, the assets distributed were to be regarded in this respect as taxable income to the taxpayer.

24. Section 32(1) (as in force at the relevant time) provided that if there was a minor deficiency or error in the tax return or some other piece of information or document, and the taxpayer failed to comply with a verifiably sent request to correct the error or if the taxpayer submitted the tax return, piece of information or document too late without proper justification, a maximum tax surcharge of EUR 168.19 could be imposed on the taxpayer. Section 32(2) provided that if a taxpayer submitted a tax return or some other piece of information or document with essential deficiencies or errors or did not submit them until he or she had received a verifiably sent request, a maximum tax surcharge of EUR 840.94 could be imposed on the taxpayer. Section 32(3) provided that if a taxpayer knowingly or through gross negligence submitted an essentially erroneous tax return or some other piece of information or document or did not submit a tax return at all, a tax surcharge of 5 to 30 per cent on the added income and 0.5 to 1 per cent of added assets would be imposed, to a maximum of EUR 840.94, unless there were special reasons not to do so. Such a tax surcharge was also imposed when a taxpayer declared income incorrectly, whether knowingly or through gross negligence.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

25. The applicant complained about the refusal of the Administrative Court to hold an oral hearing and to hear testimony from the applicant and three witnesses proposed by him.

Article 6 § 1 and 6 § 3 (d) of the Convention, in their relevant parts, read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

26. The Government contested that argument. They conceded, however, that Article 6 under its criminal head was applicable to the tax surcharge proceedings.

A. Admissibility

27. The Court notes at the outset that the applicant died on 30 September 2005, after having lodged his application under Article 34 of the Convention. It points out that in various cases in which an applicant has died during the course of Convention proceedings, it has taken into account the statements of the applicant’s heirs or of close members of his family expressing their wish to pursue the application (see, *inter alia*, *Kalló v. Hungary*, no. 30081/02, § 24, 11 April 2006). The Court considers that the applicant’s heirs, who have stated their intention to continue the proceedings, have a legitimate interest in obtaining a finding of a breach of the applicant’s rights guaranteed by Article 6 § 1 and 6 § 3 (d) of the Convention (see, *mutatis mutandis*, *Dalban v. Romania* [GC], no. 28114/95, §§ 1 and 39, ECHR 1999-VI).

28. Accordingly, the Court finds that the applicant’s heirs have standing to continue the present proceedings.

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

B. Merits

1. The parties’ submissions

The applicant

30. The applicant submitted that, following the tax inspection carried out in his company, additional tax and tax surcharges were imposed as it was claimed that he had produced false tax returns. He was considered to have received disguised dividends, which meant that he was considered guilty of tax fraud and false accounting under the Penal Code. The proceedings had concerned these matters. Before the courts, the case had been open for review as to the facts and had turned on the applicant’s credibility. Therefore an oral hearing would have been necessary. The purpose of

hearing the witnesses proposed was to prove that the company had not failed to enter any sales in the books, that the applicant had not gained any benefit which could have been considered tantamount to disguised payments of dividend, that he had not produced false tax returns and was not guilty of tax fraud and false accounting. The Administrative Court's decision had not examined these issues. The applicant had been denied the opportunity to have his witnesses heard and present his crucial evidence.

31. It was true that Mr T.L., Ms H.T. and Mr R.L.'s written statements had been on the file but the problem was that the Administrative Court had completely ignored this evidence. The applicant rejected the Government's submission that the courts could use the written statements of the above-mentioned witnesses as evidence without hearing their testimony. He referred to section 39 of the Administrative Judicial Procedure Act which provided that a person might be called as a witness by a party, by the administrative authority who had delivered the decision or by the appellate body if necessary. If a written witness statement of a private nature was referred to in evidence, the witness had to be heard orally unless it was unnecessary or there was a special impediment. According to the applicant, this meant that if a witness was not heard orally in the Administrative Court, the court would not attach any importance or relevance to a written statement of a private nature by that person. On the other hand, Chapter 17, section 11, of the Code of Judicial Procedure explicitly prohibited the use of such a written statement, if the court did not allow it for some special reason, which in practice was exceptional.

32. The applicant argued that the present case greatly differed from the facts of the case of *Jussila v. Finland* ([GC], no. 73053/01). In the present case, the question was whether the applicant had produced, knowingly or through gross negligence, false tax returns and thereby committed offences, that is, the issue was what had really happened concerning the sales in the small bakery and café. This would not simply have constituted "additional information" but would have been crucial and decisive information for the whole case.

33. At the time of giving their written statements, Mr T.L. and Ms H.T. no longer worked for the applicant's company. They had been questioned by the police in March 2003, repeating their written statements, submitted to the Administrative Court, which proved that the reassessment and tax surcharges were unfounded and that the applicant had not produced false tax returns and consequently not committed any offence. If this evidence had been taken into account, the court would not have reached the same conclusion. An oral hearing in the Administrative Court would have been absolutely necessary.

34. The fact that the applicant had had the opportunity to put forward his case in writing and comment on the submissions of the tax authority did not make any difference to the crucial procedural shortcoming.

The Government

35. The Government submitted that the sanction imposed on the applicant was a consequence of a tax inspection carried out in the company and the tax penalties imposed on it. These matters made up an interconnected whole. The appreciation of the need for an oral hearing seemed, therefore, to be more important for the case of the company.

36. Comparing the case of *Jussila v. Finland* (cited above) to the present case, it was clear that the aim of hearing witness evidence would have been to prove that the taxation had been carried out on incorrect grounds. Another common denominator in these cases was the claim that the book-keeping could not be considered erroneous. What was different in the present case was the higher amount of the tax surcharges and the fact that the applicant had not strived to have the opposing party heard, but to have persons examined who came from his own operational environment and sphere of influence. The written statements by Mr T.L., Ms H.T. and Mr R.L. had been in the file, and the Administrative Judicial Procedure Act included no provision preventing their use as a basis for examination. In the circumstances of the case, the legal presumption of the benefits gained from sales off the books being turned into disguised dividends did not require an oral hearing either, considering in particular the facts which would have been examined by hearing witnesses.

37. The Government emphasised that, although the applicant had not been afforded an oral hearing, he had had an opportunity, which he had used, to provide replies to and comments on all memoranda and written statements by the tax authorities throughout the proceedings. There was nothing to indicate that questions of fact or law would have emerged which could not have been adequately resolved on the basis of the case file and the written observations by the applicant. No additional information could have been gathered by hearing evidence from the applicant or the witnesses proposed.

38. As to the applicant's argument that if witnesses were not heard orally in the Administrative Court the court did not attach any relevance to written statements, the Government noted that, under the Government Bill on the Administrative Judicial Procedure Act (HE 217/1995 vp, p. 68) the regulation mentioned would not change the current situation in a decisive manner. It states:

“Its essential significance would be in obliging the judicial authority to assess in all cases whether there are grounds for omitting an oral hearing when written testimony is invoked. Thus, it would not be possible to take account of written testimony without such an assessment”.

According to the Government, the last sentence did not mean that the testimony was not taken into account; it meant that the need to arrange an oral hearing must first be assessed separately. The testimony always had the

same evidentiary value, even when an oral hearing was omitted in this context.

39. As to the applicant's reference to the witnesses' statements given to the police in 2003, these could not have influenced the matter before the administrative courts since leave to appeal had been refused in 2002.

2. *The Court's assessment*

40. Article 6 is applicable under its criminal head to tax surcharge proceedings (see *Jussila v. Finland*, § 38). Regarding the parties' differing views on the role or impact of the taxation procedure as regards criminal proceedings, the Court notes that under Finnish practice the imposition of a tax surcharge does not prevent criminal charges being brought for the same conduct. That is, however, done in separate proceedings before a criminal court.

41. As to the right to an oral hearing, the applicable principles are outlined in the judgment in the case of *Jussila v. Finland* (§§ 40-45). The Court does not doubt that checking and ensuring that the taxpayer has given an accurate account of his or her affairs and that supporting documents have been properly produced may often be more efficiently dealt with in writing than in oral argument (see *Jussila v. Finland*, § 47).

42. In the present case the applicant requested an oral hearing of his evidence and that of the witnesses Mr T.L., Ms H.T. and Mr R.L.

43. This case can be distinguished from the case of *Jussila* in which Mr Jussila's purpose in requesting a hearing was to challenge the reliability and accuracy of the report on the tax inspection by cross-examining the tax inspector and obtaining supporting testimony from his own expert since, in his view, the tax inspector had misinterpreted the requirements laid down by the relevant legislation and given an inaccurate account of his financial position. The reasons for requesting a hearing in the case of *Jussila* therefore concerned in large part the validity of the tax assessment, which as such fell outside the scope of Article 6, although there was the additional question of whether the applicant's book-keeping had been so deficient as to justify a surcharge. The Administrative Court, which took the measure of inviting written observations from the tax inspector and a statement from an expert chosen by the applicant, found in the circumstances that an oral hearing was manifestly unnecessary as the information provided by the applicant himself formed a sufficient factual basis for the consideration of the case. For those reasons, the Court in the *Jussila* case found that the lack of an oral hearing did not give rise to a breach of Article 6.

44. In its decision of 13 June 2001 the Administrative Court rejected the present applicant's request for an oral hearing, finding that this was manifestly unnecessary considering the evidence already submitted and the nature of the case.

45. The applicant argued that there were issues of credibility which required oral presentation of evidence to prove that the company had not failed to enter any sales in the books and that he had not received any benefits from the company that could be regarded as disguised dividends.

46. The Court will therefore examine whether the protection of the applicant's interests required the holding of an oral hearing before the Administrative Court.

47. The Court observes that, pursuant to section 38(1) of the Administrative Judicial Procedure Act, an oral hearing must be held if requested by a private party. An oral hearing may, however, be dispensed with if a party's request is ruled inadmissible or immediately dismissed or if an oral hearing is clearly unnecessary due to the nature of the case or other circumstances. The explanatory report of the relevant Government Bill states that an oral hearing contributes to a focused and immediate procedure, but since it does not always bring any added value, it is important that the flexibility and cost effectiveness of the administrative proceedings are not undermined. An oral hearing is to be held when necessary for the clarification of the issues and the hearing can be considered beneficial for the case as whole.

48. In the present case the Administrative Court was called upon to examine the case as regards both the facts and the law. The applicant disputed the facts upon which the imposition of tax surcharges was founded, requesting an oral hearing of witness evidence in order to elucidate the relevant events. The Administrative Court had to make a full assessment of the case. The crucial question concerned the clarification of facts and the credibility of the statements of the applicant and the three witnesses who had been working for the company. Nevertheless, the Administrative Court decided, without a public hearing, to uphold the decision. The Court finds that, in the circumstances of the present case, the question of the credibility of the written statements could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant and by the witnesses proposed.

49. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the refusal to hold an oral hearing in the Administrative Court.

50. In view of the Administrative Court's firm conclusion that an oral hearing could be dispensed with, the Court considers that it is not necessary to examine separately whether the rights of the defence were violated by reason of the court's refusal to hear oral evidence.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. Under the head of pecuniary damage the applicant claimed 30,657.12 euros (EUR) for the taxes and tax surcharges which he had been ordered to pay, plus 11 per cent interest from the date of payment (11 December 2000). The applicant considered that there was a clear causal link between the damage and the alleged violation.

53. Under the head of non-pecuniary damage he claimed EUR 100,000 for suffering and distress. It could not be ruled out that the unfair and wrong treatment which the applicant had received in this matter from the Finnish authorities and throughout the Finnish legal system had been a contributing factor to his fatal illness (cancer). The criminal investigation had lasted for several years from 21 December 1999 and the criminal court proceedings had not even begun when the applicant died on 30 September 2005. These delayed proceedings were in violation of Article 6 of the Convention. In consequence, the applicant had not been able to return to working life or run any business activity. Because of unfounded taxation, the applicant had lost all his small assets. The Court should make a higher award than usual.

54. The Government argued that there was no direct causal link between the pecuniary damage and the alleged violation. Accordingly, no compensation for pecuniary damage should be awarded.

55. The Government submitted that the present application did not concern the length of proceedings and that any reference to a lengthy pre-trial investigation as a basis for damage could not therefore be considered. The award should not exceed EUR 4,000.

56. The Court cannot speculate about the outcome of the proceedings had they been in conformity with Article 6. The Court has found a violation of the applicant's right to a fair trial but finds no sufficient causal link between that violation and any pecuniary damage. This claim must therefore be rejected.

57. As to non-pecuniary damage, the Court notes that the application does not concern the length of proceedings and that therefore no award can be made in this regard. The Court has found that the applicant's close heirs may claim compensation for non-pecuniary damage (see, *inter alia*, *Ernestina Zullo v. Italy* [GC], no. 64897/01, § 149, 29 March 2006). The Court accepts that the lack of guarantees of a fair trial has caused the

applicant non-pecuniary damage, which cannot be made good by the mere finding of a violation. The Court, making its assessment on an equitable basis, awards the applicant EUR 3,000.

B. Costs and expenses

58. The applicant claimed EUR 9,151.44 (inclusive of value-added tax) plus 11 per cent interest from 8 September 2002 for the costs and expenses incurred before the domestic courts and EUR 8,052 (inclusive of VAT) for those incurred before the Court, plus 11 per cent interest to accrue 30 days after delivery of the judgment.

59. The Government submitted that, in the national proceedings, the costs and expenses which related to the present complaint, namely those concerning the request for an oral hearing, may amount to a maximum of EUR 2,000 (including VAT). As to costs and expenses before the Court, they considered the claim somewhat high taking into consideration that there was only one complaint to deal with. Accordingly, in the Government's view, EUR 7,000 (including VAT) was reasonable for these costs and expenses.

60. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

61. In the present case, regard being had to the information in its possession and the above criteria, the Court awards EUR 3,000 (inclusive of VAT) for the domestic proceedings. As to the Strasbourg proceedings, the Court notes that the application was examined under the joint procedure provided for under Article 29 § 3 of the Convention. It considers it reasonable to award the applicant the sum of EUR 5,000 (inclusive of VAT) for the proceedings before the Court.

C. Default interest

62. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the refusal to hold an oral hearing in the Administrative Court;
3. *Holds* that it is not necessary to examine separately the applicant's complaint under 6 § 3 (d) of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant's heirs, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following amounts:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant's heirs, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President