

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

FIFTH SECTION

CASE OF SCHÄDLER-EBERLE v. LIECHTENSTEIN

(Application no. 56422/09)

JUDGMENT

STRASBOURG

18 July 2013

FINAL

09/12/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Schädler-Eberle v. Liechtenstein,

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

Angelika Nußberger, *President,*
Mark Villiger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 18 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 56422/09) 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 a Liechtenstein national, Ms Karolina Schädler-Eberle ("the applicant"), on 14 October 2009.

2. The applicant was represented by Mr W.L. Weh, a lawyer practising in Bregenz, Austria. The Liechtenstein Government ("the Government") were represented by Ms A. Frick, Minister of Justice, and by their Agent, Mr D. Ospelt, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Liechtenstein to the Council of Europe.

3. The applicant alleged, in particular, that the Administrative Court's refusal to take evidence in an adversarial manner in a public, oral hearing had violated her rights under Article 6 of the Convention.

4. On 24 January 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1925 and lives in Triesenberg.

A. Background to the case

6. On 25 and 27 February 2000 a land development plan (*Zonenplan*) was adopted by referendum in the Municipality of Triesenberg. According to that plan, two plots of land owned by the applicant fell within a zone in which the construction of buildings was not authorised.

B. The municipality's decision

7. By submissions of 28 March 2000 the applicant, who was represented by counsel throughout the proceedings, lodged an objection with the Municipality of Triesenberg. She contested the lawfulness of the land development plan, which she considered in breach of her right to equality and to protection of her property and requested that the plots of land in question be designated as building land.

8. On 15 November 2000 the Municipality of Triesenberg dismissed the applicant's objection. It found, in particular, that the applicant's plots of land were not fully developed for lack of complete water installations. Her real property had not been classified as building land in the municipality's land development plan at issue, which was the first land development plan ever adopted for the area in question, for reasons of protection of the environment and of the landscape as the plots of land were situated outside the area inhabited throughout the year. It had been justified to treat the area in which the applicant's plots of land were situated in a different manner than three areas which were fully developed and on large parts of which buildings had already been erected.

9. The decision was issued and sent to the applicant on 22 January 2001.

C. The Government's decision

10. On 27 and 28 April 2004 the Liechtenstein Government dismissed the complaint made by the applicant on 7 February 2001 about the municipality's decision. They considered the land development plan to be lawful. Endorsing the reasons given by the municipality, they argued, in particular, that even if the applicant's plots of land may have been building land under the provisional building rules of 1983, the applicant did not have a claim that her plots of land, which were not fully developed, should be designated as building land in the municipality's first land development plan. That plan defined the use of the real property covered by it for the first time in accordance with the law. The citizens of Triesenberg had been aware that there would be a land development plan, as prescribed by law, in the future and the authorities had not undertaken to designate the applicant's plots of land as building land. The Government considered that it had not been necessary to hear the parties in person or to inspect the property in

question as the relevant facts were clear from the applicant's submissions and the documents relating to the land development plan.

D. The proceedings before the Administrative Court

11. On 14 May 2004 the applicant lodged a complaint against the Government's decision with the Liechtenstein Administrative Court (*Verwaltungsgerichtshof*). She requested the Administrative Court to obtain certain documents concerning the land development plan from the municipality, to hold a public oral hearing, to designate her plots of land as building land or to grant her compensation for her factual expropriation and to declare the referendum adopting the land development plan void. The applicant further asked the court to question several witnesses whose submissions would show that the referendum had been manipulated.

12. On 2 June 2004 the Municipality of Triesenberg submitted observations to which the applicant replied on 12 June 2004.

13. On 14 June 2004 the Municipality of Triesenberg submitted further documents and photographs on the court's request. The court informed the applicant thereof and further obtained the Government's file and extracts from the land register on the plots of land in question.

14. On 30 June 2004 the Administrative Court, without having held a public oral hearing, dismissed the applicant's complaint.

15. The Administrative Court found that there was nothing to indicate that Triesenberg's land development plan as submitted to the citizens and as adopted by referendum had breached the applicant's legitimate expectations that her real property be designated as building land. Even assuming that, as alleged by the applicant, prior to the referendum on the land development plan, officials of the municipality had raised her hopes that the applicant's plots of land could be designated as building land at some point in the future, it was clear that in the land development plan to be adopted by referendum, those plots of land were not designated as building land. Therefore, it was not necessary to take the evidence offered by the applicant or to hold a public oral hearing.

16. Having regard to the documents submitted by the applicant, there was also no proof that the referendum of 25 and 27 February 2000 had been unlawfully manipulated.

E. The proceedings before the Liechtenstein Constitutional Court

1. The parties' submissions before the Constitutional Court

17. On 26 August 2004 the applicant, who was from then on represented by counsel, lodged a constitutional complaint with the Liechtenstein Constitutional Court against the decision taken by the Administrative Court.

18. The applicant complained under Article 6 of the Convention that despite her express request and despite the fact that none of the authorities previously involved in the proceedings had held an oral hearing, the Administrative Court had refused to take evidence in an adversarial manner in an oral public hearing, contrary to its practice in comparable cases. In particular, it had not examined the witnesses she had named. Instead, that court had taken a lot of evidence and had obtained observations and replies only in a written procedure.

19. Referring to her complaints made before the Administrative Court, she further complained under Article 6 of the Convention about the procedure of adoption of the land development plan in Triesenberg. Relying on Article 1 of Protocol no. 1 to the Convention, she also argued that the unlawful land development plan had disproportionately interfered with her property rights.

20. The applicant requested the Constitutional Court to hold an oral hearing.

21. In its reply to the applicant's observations, the Administrative Court confirmed that, contrary to previous proceedings before it in which Triesenberg's land development plan had been at issue, it had indeed not held a public oral hearing in the applicant's case. It argued that the situation of the plots of land concerned was commonly known and clearly shown on the photographs in the file and that the applicant had been given the opportunity to comment on the few documents obtained by it in writing. Moreover, in proceedings concerning land development, it did not, as a rule, hold public oral hearings.

22. On 15 May 2006 the Liechtenstein Constitutional Court held a public hearing. The composition of the court subsequently changed, without a new hearing being held despite the applicant's request.

2. The Constitutional Court's judgment

23. On 4 November 2008 the Constitutional Court, in its deliberations in private, decided to dismiss as inadmissible the applicant's request to declare void the referendum of 25 and 27 February 2000 on the land development plan in the Municipality of Triesenberg as the applicant had failed to lodge a separate complaint in respect of that referendum with the Government. It further rejected the remainder of the applicant's complaints as ill-founded. It found, however, *ex officio* that the applicant's right to a hearing within a

reasonable time under the Liechtenstein Constitution and Article 6 § 1 of the Convention had been violated in the proceedings before it as the proceedings had been too long. It ordered that therefore, Liechtenstein was to bear the applicant's costs of the proceedings, amounting to statutory lawyer's fees of some 2,960 Swiss francs (CHF), and the court costs, amounting to CHF 1,700 (file no. StGH 2004/58).

24. The Constitutional Court's judgment, served on the applicant's counsel on 14 April 2009, gave the following reasons.

(a) Lack of a public oral hearing before the Administrative Court

25. As regards the applicant's complaint that the Administrative Court had failed to hold a public oral hearing, the Constitutional Court found that under Article 6 § 1 of the Convention, which the applicant could rely on in the proceedings before it, as a rule, an oral hearing had to be held.

26. However, when ratifying the Convention, Liechtenstein had made extensive reservations concerning, *inter alia*, the publicity of hearings as prescribed by Article 6 § 1. That reservation was to be considered as complying with Article 57 of the Convention. Even though some of the statutes to which the reservation applied had been changed in the meantime, such as the Constitutional Court Act, the reservation concerning the publicity of the proceedings has not been withdrawn.

27. In determining whether the proceedings before the Administrative Court complied with the Constitution, the Constitutional Court found that the National Administrative Justice Act (*Gesetz über die allgemeine Landesverwaltungspflege*) of 21 April 1922 (see paragraph 36 below) was applicable to the proceedings before the Administrative Court. It considered the reservation made by Liechtenstein in relation to Article 6 § 1 of the Convention, as far as, *inter alia*, that Act was concerned, to be valid. Therefore, the requirement of a public hearing, and thus the requirement of an oral hearing under Article 6 § 1 of the Convention did not apply to the proceedings before the Administrative Court.

28. The Constitutional Court noted, however, that under its recent case-law, the principle of a public hearing had to be considered as a vital aspect of the right to a fair trial and was thus part of the foundations of a democratic State governed by the rule of law. The applicant could be understood to have also complained about the lack of a fair trial as she had complained under Article 6 of the Convention that the Administrative Court had refused to take evidence in an adversarial manner in the course of a public oral hearing. The right to a fair trial under Article 6 § 1 was not covered by any reservation made by Liechtenstein when ratifying the Convention and was also protected by the Liechtenstein Constitution. The European Court of Human Right's case-law on the scope of the right to a fair trial under Article 6 therefore had to be taken into account in the proceedings at issue.

29. The Constitutional Court noted that under Article 100 § 4 of the National Administrative Justice Act (see paragraph 36 below), the Administrative Court had discretion in deciding whether or not to hold an oral hearing, but it had to exercise that discretion in accordance with fundamental procedural rights. The Administrative Court had argued that an oral hearing had not been necessary because the applicant's submissions, even if correct, did not warrant the conclusion that the land development plan was unlawful. In the proceedings before the Constitutional Court, the Administrative Court had further argued that the situation of the plots of land concerned had been commonly known and clearly shown on the photographs in the file.

30. The Constitutional Court agreed that the Administrative Court had been in a position to determine all factual and legal questions by having regard to the parties' written observations and the documents contained in the file. Moreover, the legal question whether in the course of the referendum on the land development plan the principles of good faith and of the protection of legal interests had been respected and whether the referendum had been manipulated had not been complex.

31. Therefore, having regard to the principles developed in the Strasbourg Court's case-law concerning a public oral hearing (the court referred, in particular, to *Schuler-Zgraggen v. Switzerland*, 24 June 1993, Series A no. 263; *Speil v. Austria* (dec.), no. 42057/98, 5 September 2002; and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-IV), the applicant's right to a fair trial had not been violated by the Administrative Court's refusal to hold a public oral hearing. The Administrative Court had thus exercised its discretion under Article 100 § 4 of the National Administrative Justice Act in accordance with fundamental procedural rights.

(b) The remainder of the applicant's complaints

32. The Constitutional Court considered that the applicant had failed to exhaust domestic remedies in relation to her further complaints under Article 6 and Article 1 of Protocol no. 1 of the Convention because she had not submitted these complaints to the lower authorities and the Administrative Court.

33. The Constitutional Court further argued that, in any event, the land development plan had not breached the applicant's right to property. The failure to designate the applicant's plots of land as building land in the municipality's first land development plan did not deprive her of a possession, but merely regulated the use of her real property. There were also no exceptional circumstances indicating that the applicant's real property had to be designated as building land and she could not, therefore, claim compensation.

34. Moreover, the Constitutional Court found that the applicant's complaint under Article 6 about the procedure of adoption of the land development plan in Triesenberg was ill-founded, in particular because the applicant had had access to the Administrative Court, an independent and impartial tribunal with full jurisdiction on both facts and law under Article 100 § 2 of the National Administrative Justice Act (see paragraph 36 below).

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. The National Administrative Justice Act

35. Section 100 of the National Administrative Justice Act (*Landesverwaltungspflegegesetz*) of 21 April 1922 (LGBl. (Official Gazette) 1922, no. 24) was amended by the Act of 27 November 2003 on the Amendment of the National Administrative Justice Act, which entered into force on 20 January 2004 (see LGBl. (Official Gazette) 2004, no. 33). The term "(Administrative) Complaints Instance" *((Verwaltungs-) Beschwerdeinstanz*) was replaced in that provision by "Administrative Court" (*Verwaltungsgerichtshof*).

36. Section 100 of the National Administrative Justice Act of 21 April 1922, on the Administrative Court's jurisdiction, as amended and in the version in force at the time of the present proceedings, insofar as relevant, provides as follows:

> "(2) The Administrative Court shall have the powers and obligations of a court of full jurisdiction (unlimited review) with regard to any matter brought to it by way of a complaint in so far as no rights or legally recognised interests of parties individually are at issue.
>
> (3) Accordingly, the Administrative Court may of its own motion order a hearing involving the appearance of the parties to present oral argument, take evidence, and in general conduct the whole proceedings anew.
>
> (4) However, the Administrative Court may also, if it considers an oral hearing of the parties to be unnecessary, or if the parties have not expressly requested such a hearing, review the contested decision on the basis of the files ..."

37. According to court practice, hearings before the Administrative Court are not open to the public.

B. Council of Europe documents relating to reservations to the Convention

38. In its Recommendation 1671 (2004), entitled "Ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights", adopted on 7 September 2004, the Parliamentary Assembly of the Council of Europe found:

> "... 6. Some member states, when ratifying the Convention, entered one or more reservations under its Article 57 and some of these reservations, entered several years ago, have not been withdrawn.
>
> 7. Such reservations are permitted to the extent that legislation in force at the time in the territory of the contracting party is not in conformity with a particular provision of the Convention. They should not therefore be of a permanent nature and should be confined to the period required to bring the legislation in question into conformity with the Convention. ...
>
> 9. It must nevertheless be acknowledged that numerous states have in fact withdrawn reservations, declarations or derogations, as is the intended practice. The Assembly welcomes such conduct and congratulates the states in question for their commitment to the protection of human rights and their respect for the principles of international law.
>
> 10. The Assembly consequently recommends that the Committee of Ministers invite the States Parties to the European Convention on Human Rights to: ...
>
> 10.2. withdraw any reservations which they made upon ratifying the European Convention on Human Rights after, where appropriate, amending the legislation which justified the reservation in order to bring it into conformity with the Convention, within three years of the adoption of the present recommendation; ..."

39. In the reply adopted by the Committee of Ministers on 8 June 2005, at the 929th meeting of the Ministers' Deputies, to Parliamentary Assembly Recommendation 1671 (2004), the Committee of Ministers agreed with the desirability of withdrawal of reservations made to the Convention or its protocols (see document CM/AS(2005)Rec1671 final, § 2). It did not consider it appropriate to fix, as the Assembly suggested, a general three-year deadline for the withdrawal of reservations (see ibid., § 8).

III. LIECHTENSTEIN'S RESERVATION IN RESPECT OF ARTICLE 6 OF THE CONVENTION

40. The reservation contained in Liechtenstein's instrument of ratification, deposited on 8 September 1982 and modified with a declaration contained in a letter from the Permanent Representative on 23 May 1991, registered at the Secretariat General on 24 May 1991, in relation to Article 6 § 1 of the Convention reads as follows:

"In accordance with Article 64 of the Convention [Article 57 since the entry into force of the Protocol No 11], the Principality of Liechtenstein makes the reservation that the principle that hearings must be held and judgments pronounced in public, as laid down in Article 6, paragraph 1, of the Convention, shall apply only within the limits deriving from the principles at present embodied in the following Liechtenstein laws:

- Act of 10 December 1912 on civil procedure, LGBl. 1912 No. 9/1

- Act of 10 December 1912 on the exercise of jurisdiction and the competence of the courts in civil cases, LGBl. 1912 No. 9/2

- Code of Criminal Procedure of 18 October 1988, LGBl. 1988 No. 62

- Act of 21 April 1922 on non-contentious procedure, LGBl. 1922 No. 19

- Act of 21 April 1922 on national administrative justice, LGBl. 1922 No. 24

- Act of 5 November 1925 on the Supreme Court (``Haute Cour''), LGBl. 1925 No. 8

- Act of 30 January 1961 on national and municipal taxes, LGBl. 1961 No. 7

- Act of 13 November 1974 on the acquisition of immovable property, LGBl. 1975 No. 5.

The statutory provisions of criminal procedure relating to juvenile delinquency, as contained in the Act on Criminal Procedure in Matters of Juvenile Delinquency of 20 May 1987, LGBl. 1988 No. 39."

41. The relevant part of the French version of that reservation provides:

« Conformément à l'article 64 de la Convention [article 57 de la Convention depuis l'entrée en vigueur du Protocole No 11], la Principauté de Liechtenstein émet la réserve que le principe de la publicité des audiences et du prononcé des jugements, contenu dans l'article 6, paragraphe 1, de la Convention, ne s'appliquera que dans les limites dérivées des principes qui trouvent actuellement leur expression dans les lois liechtensteinoises suivantes :

...

- Loi du 21 avril 1922 sur la justice administrative nationale, LGBl. 1922 No 24

... »

42. The modifications to the original reservation contained in Liechtenstein's instrument of ratification, made with a declaration dated 23 May 1991, concerned only the references to the Code of Criminal Procedure (a new version of 1988 having replaced the previous version of 1913) and to the statutory provisions of criminal procedure relating to juvenile delinquency.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A PUBLIC ORAL HEARING

43. The applicant complained that the Administrative Court's failure to hold a public oral hearing, in which evidence should have been taken in an adversarial manner, had breached her rights guaranteed by Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "1. 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

44. The Government contested that argument.

A. Admissibility

45. The Government asserted that the Court could not deal with the applicant's complaint that there had not been a public hearing before the Administrative Court in the proceedings concerning the classification of the applicant's property in a land development plan since those proceedings were covered by Liechtenstein's reservation in respect of Article 6 of the Convention.

46. The applicant contested that view.

47. The Court considers that the Government's objection is closely related to the merits of the applicant's complaint. It will therefore examine it together with the merits of this complaint.

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

B. Merits

1. Liechtenstein's reservation in respect of Article 6

(a) Compliance of the reservation with Article 57

49. The Court therefore has to determine, at the outset, whether Liechtenstein's reservation at issue is in conformity with Article 57 of the Convention, which provides:

> "1. Any state may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
>
> 2. Any reservation made under this article shall contain a brief statement of the law concerned."

(i) The parties' submissions

(α) The Government

50. In the Government's submission, the reservations made by Liechtenstein on ratification of the Convention complied with Article 57 of the Convention and were thus valid. The validity of the reservations had been repeatedly thoroughly examined and confirmed by the Constitutional Court. This was true, in particular, for the reservation made with regard to Article 6 § 1 of the Convention concerning the principle that hearings must be held and judgments be pronounced in public.

51. The Government argued, in particular, that the reservation at issue could not be considered as a prohibited reservation of a general nature. The wording of the reservation referred to a specific Convention Article, Article 6 § 1, and, more specifically, to the requirement that "... everyone is entitled to a fair and public hearing ..." and that "[j]udgment shall be pronounced publicly".

52. The reservation further contained an exhaustive list of Liechtenstein laws to which it applied, including the Act of 21 April 1922 on national administrative justice here at issue. Moreover, a statement of the contents of the national laws concerned had been made in the reservation in that the latter referred to "the limits deriving from the principles at present embodied in the following Liechtenstein laws ...". Thereby, it had been clarified that these laws contained different rules, diverging from those laid down in Article 6 § 1 of the Convention, on the public nature of proceedings at the time of Liechtenstein's ratification of the Convention.

53. The Government further submitted that the current version of Article 100 § 4 of the National Administrative Justice Act, at issue in the present application, was still covered by the reservation. Since the time Liechtenstein has made its reservation, the said provision had only been changed in that the term "Administrative Complaints Instance" had been replaced by "Administrative Court", without its content having been modified.

(β) The applicant

54. The applicant considered that the reservation made by Liechtenstein on its ratification of the Convention was incompatible with Article 57 of the Convention and thus invalid. She argued that as the purpose of reservations was to allow the respondent State during an interim period to adapt its national legislation so that it met the standards of the Convention, the reservation was by now already obsolete for lapse of time. It was further doubtful whether the modification, by Liechtenstein, of its reservation in 1991, following ratification of the Convention, was valid.

55. Furthermore, the applicant submitted that the reservation was invalid, in any event, for being incompatible with the public order of the Council of Europe. Under the present-day standards of the Convention, it had to be considered as contrary to European public order to allow national courts an unfettered discretion as to whether or not to hold a hearing. It also rendered the case-law of the Liechtenstein courts inaccessible to the public.

56. Moreover, in the applicant's submission, the reservation in question did not meet the specific requirements laid down in Article 57 of the Convention. She argued that the reservation, by attempting to exempt from the applicability of Article 6 all procedures before a court in Liechtenstein, covered the entirety of Liechtenstein's legal order. It therefore amounted to a prohibited reservation of a general character. She referred, *inter alia*, to the Court's judgment in the case of *Belilos v. Switzerland* (29 April 1988) in support of her argument.

57. The applicant further claimed that the reservation failed to comply with paragraph 2 of Article 57 as it did not contain a brief statement of the law concerned. Such a statement would have been impossible as it would have had to comprise Liechtenstein's whole legal order. The applicant relied, *inter alia*, on the Court's judgments in the cases of *Weber v. Switzerland* (22 May 1990) and *Gradinger v. Austria* (23 October 1995) to support her view.

58. In addition, the new version of the National Administrative Justice Act, at issue in the present application and applying to the Administrative Court, was no longer covered by the reservation. Changing "Administrative Complaints Instance" into "Administrative Court" in the relevant law was not simply a change of terms, but a substantive change, given that the new tribunal was to conform to the minimum standards of a court. The

reservation was therefore not applicable to the Administrative Court. The applicant relied on the Court's judgment in the case of *Stallinger and Kuso v. Austria* (23 April 1997) in that context.

(ii) The Court's assessment

(α) Recapitulation of the relevant principles

59. In order for a reservation to be applicable to the case at issue, the measures or proceedings complained of must have been governed by the law(s) covered by the reservation (compare, for instance, *Gradinger v. Austria*, 23 October 1995, § 39, Series A no. 328-C; *Koslova and Smirnova v. Latvia* (dec.), no. 57381/00, 23 October 2001; and *Dacosta Silva v. Spain*, no. 69966/01, §§ 34, 37, ECHR 2006-XIII).

60. The Court reiterates that, in order to be valid, a reservation to the Convention must satisfy the following conditions: (i) it must be made at the moment the Convention is signed or ratified (Article 57 § 1, first sentence); (ii) it must relate to a particular provision of the Convention (Article 57 § 1, first sentence); (iii) it must relate to specific laws in force at the moment of ratification (Article 57 § 1, first sentence); (iv) it must not be a reservation of a general character (Article 57 § 1, second sentence); and (v) it must contain a brief statement of the law concerned (Article 57 § 2; see also *Shestjorkin v. Estonia* (dec.), no. 49450/99, 15 June 2000; and *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 45, 2 November 2010 with many further references).

61. As to the requirement that the reservation must relate to specific laws in force at the moment of ratification, the Court considered that that condition was not complied with where a new legislative provision was not essentially identical to the provision in force at the time of ratification, but extended the measures covered by the reservation, such as the domestic courts' power to refuse to hold a public hearing (see *Fischer v. Austria*, 26 April 1995, § 41, Series A no. 312; compare also *Stallinger and Kuso v. Austria*, 23 April 1997, § 48, Reports 1997-II; *Eisenstecken v. Austria*, no. 29477/95, § 25, ECHR 2000-X; and *Dacosta Silva*, cited above, § 37).

62. The Court reiterates that Article 57 § 1 (former Article 64 § 1) of the Convention requires precision and clarity. The term "reservation of a general character" denotes in particular a reservation which does not refer to a specific provision of the Convention or is couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope (see *Belilos v. Switzerland*, 29 April 1988, § 55, Series A no. 132; *Shestjorkin*, cited above; *Koslova and Smirnova*, cited above; and *Steck-Risch v. Liechtenstein* (dec.), no. 63151/00, ECHR 2004-II).

63. As regards the "brief statement of the law concerned" required by Article 57 § 2, the Court reiterates that this requirement both constitutes an evidential factor and contributes to legal certainty. The purpose of

Article 57 § 2 is to provide a guarantee – in particular for the other Contracting Parties and the Convention institutions – that a reservation does not go beyond the provisions expressly excluded by the State concerned. This is not a purely formal requirement, but a condition of substance (see *Belilos*, cited above, § 59; *Weber v. Switzerland*, 22 May 1990, § 38, Series A no. 177; *Steck-Risch*, cited above; and *Dacosta Silva*, cited above, § 37).

64. That requirement does not mean, however, that it is necessary to provide a description, even a concise one, of the substance of the texts in question. A reference to the Official Gazette – preceded by an indication of the subject-matter of the relevant provisions – makes it possible for everyone to identify the precise laws concerned and to obtain any information regarding them and provides a safeguard against any interpretation which would unduly extend the field of application of the reservation (see *Chorherr v. Austria*, 25 August 1993, § 20, Series A no. 266-B; and *Steck-Risch*, cited above; compare also *Shestjorkin*, cited above; and *Koslova and Smirnova*, cited above, where an annex to the reservation contained, in addition, a brief outline of the main aim and scope of each law).

65. Finally, in the Court's case-law, reservations, which restrict the fundamental rights protection guaranteed by the Convention, have been interpreted narrowly (compare, *inter alia*, *Eisenstecken*, cited above, §§ 24-30; *Schmautzer v. Austria*, 23 October 1995, § 31, Series A no. 328-A; *Umlauft v. Austria*, 23 October 1995, § 34, Series A no. 328-B).

(β) Application of these principles to the present case

66. The Court notes at the outset that the proceedings before the Administrative Court, which refused to hold a public oral hearing, were governed by the National Administrative Justice Act of 21 April 1922, section 100 § 4 of which authorised that court not to hold a hearing in certain circumstances. The said Act on national administrative justice was covered by Liechtenstein's reservation in respect of Article 6 § 1. The reservation is therefore applicable to the present case.

67. As to the validity of that reservation, the Court observes that it has already had an opportunity to examine the reservation's conformity with Article 57 of the Convention as regards a public hearing in its decision in the case of *Steck-Risch* (cited above). In that decision, it found that the reservation complied with Article 57 of the Convention. The Court considered, in particular, that the reservation referred to a specific provision of the Convention, namely Article 6 § 1, and to one specific requirement contained therein, namely that hearings must be held and judgments pronounced in public. It did not, therefore, attain the degree of generality prohibited by the second sentence of Article 57 § 1 (see *Steck-Risch*, cited above).

68. Moreover, in the case of *Steck-Risch* (cited above), the Court confirmed that the reservation at issue contained a "brief statement of the law concerned", as required by Article 57 § 2. It was clear that the reservation excluded from the scope of Article 6 – as far as the publicity of hearings and the public pronouncement of judgments were concerned – proceedings which were covered by the laws enumerated. The title of each law gave an indication of its subject-matter and was followed by a reference to the Official Gazette, which made it possible for everyone to identify precisely which laws were covered and to obtain information about them.

69. The Court further notes that the applicant in the present case forwarded a number of additional arguments for the Court to hold that the reservation at issue was invalid. She submitted, in general, that the reservation had become obsolete for lapse of time as the purpose of reservations was only to allow a respondent State to adapt its national legislation to the standards of the Convention during an interim period which had expired.

70. The Court observes that it has been stressed by the Parliamentary Assembly, in its Recommendation 1671 (2004), that reservations should not be of a permanent nature. They should be confined to the period required to bring the legislation in question into conformity with the Convention and should be withdrawn afterwards (§§ 7 and 10.2 of the Recommendation, see paragraph 38 above). Nevertheless, a reservation made in conformity with Article 57 of the Convention remains valid as long as it has not been withdrawn by the respondent State.

71. The Court further takes note of the applicant's argument that the reservation at issue, which allowed domestic courts an unfettered discretion whether or not to hold a hearing, was invalid for being incompatible with the public order of the Council of Europe. The Court does not agree with this view either. It is sufficient for it to observe in that context that it has previously recognised as valid a similar reservation made by a different Contracting Party (see *Helle v. Finland*, 19 December 1997, §§ 43-47, *Reports* 1997-VIII; and *Laaksonen v. Finland*, no. 70216/01, § 24, 12 April 2007).

72. The applicant in the present case further contested that the reservation at issue still related to a law in force at the moment of Liechtenstein's ratification of the Convention in 1982. She argued that the new version of the National Administrative Justice Act, at issue in the present application and applying to the Administrative Court, was no longer covered by the reservation because the change of "Administrative Complaints Instance" into "Administrative Court" in it was a substantive change to that Act.

73. The Court notes that Liechtenstein's reservation refers to the National Administrative Justice Act of 21 April 1922, which is still in force. It further considers that the replacement of the term "Administrative

Complaints Instance" into "Administrative Court" in that Act, and in particular in its section 100, did not extend the domestic court's power to refuse to hold a public hearing compared to the provision in force at the time of Liechtenstein's ratification of the Convention.

74. Finally, as regards the applicant's complaint about the modification, by Liechtenstein, of its reservation in 1991, after ratification of the Convention, the Court recalls that the silence of the depositary or the Contracting States does not deprive the Convention institutions of the power to make their own assessment on the validity of a reservation (see *Belilos*, cited above, § 47). It notes, however, that the modification made by the Government with a declaration dated 23 May 1991 to the original reservation in the instrument of ratification of the Convention on 8 September 1982, in any event, did not concern the National Administrative Justice Act by which the domestic proceedings here at issue were governed.

75. In sum, the reservation made by Liechtenstein in respect of Article 6 § 1 complies with the requirements of Article 57 of the Convention and is therefore valid.

(b) Scope of the reservation

76. The Court must therefore examine the scope of that reservation, that is, in how far that reservation dispenses it from examining the applicant's complaint under Article 6. It notes that the latter encompasses several aspects, including the right to a public hearing – that is, a hearing to which the public is admitted – , the right to an oral hearing of the case before the Administrative Court (possibly without the public being present) (compare already *Steck-Risch*, cited above) and the right to adversarial, fair proceedings. Only the first aspect of the complaint, concerning the lack of publicity of the hearing before the Administrative Court, is clearly covered by Liechtenstein's reservation.

(i) The parties' submissions

(α) The Government

77. The Government took the view that the reservation made by Liechtenstein in respect of the publicity of proceedings barred the Court from examining the applicant's complaint about the Administrative Court's failure to hold a public oral hearing, notably also under the aspect of the right to a fair trial.

78. The Government conceded that the Constitutional Court had found in the present proceedings that the principle of a public hearing was a vital aspect of the right to a fair trial. Thereby, that court closed a gap in the Liechtenstein catalogue of fundamental rights which did not expressly protect that principle. It had further found that the right to a fair trial was

also laid down in Article 6 of the Convention and was not directly covered by a reservation on ratification.

79. However, the Constitutional Court was free to interpret the Liechtenstein Constitution in that manner, because it was not bound by any reservations in respect of the Convention when applying fundamental rights derived from the Constitution.

80. Conversely, in the Government's submission, the Court was obliged to respect the reservations made by Liechtenstein in relation to the Convention when examining a breach of the right to a public hearing. In particular, unlike the Constitutional Court, the Court did not have jurisdiction to examine the right to a public hearing as an aspect of the right to a fair trial. The right to a public hearing and the right to a fair hearing were two different procedural rights explicitly laid down in Article 6 § 1, which the Court had to examine separately. If the Court considered these two rights as inseparably interconnected, it could examine the respect of the right to a fair trial only in so far as it did not concern the public nature of the proceedings to which the reservation applied.

(β) The applicant

81. The applicant argued that the reservation made by Liechtenstein in respect of the publicity of proceedings did not extend to holding an oral hearing with the parties alone, including the questioning of witnesses. Article 6 § 1 guaranteed three distinct rights, namely the right to a controversial oral hearing, the right to a public hearing and the right to a public pronouncing of the judgment. Under the Court's case-law, reservations had to be interpreted in a restrictive manner (the applicant referred, *inter alia*, to *Schmautzer*, cited above). Liechtenstein's reservation only concerned the publicity of the hearing and the public pronouncing of judgments. It did not cover oral hearings, be it in camera, with the parties alone being present.

(ii) The Court's assessment

(α) Recapitulation of the relevant principles

82. The Court notes at the outset that, unlike the right to a "fair" and "public" hearing, the right to an "oral" hearing is not expressly laid down in Article 6 § 1. However, it is well established in the Court's case-law that, as a rule, Article 6 § 1 entails an entitlement to an "oral hearing", that is, a hearing of the parties (and / or their representatives) in person by the court, whether conducted in public or in private. The Court has, on many occasions, considered the right to an "oral" hearing as an aspect of the right to a "public" hearing. It has repeatedly reiterated in that context that the entitlement to a "public hearing" necessarily implied the right to an "oral hearing" (see, *inter alia*, *Döry v. Sweden*, no. 28394/95, § 37, 12 November

2002; compare also *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263). It further found that in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entailed an entitlement to an "oral hearing" unless there were exceptional circumstances that justified dispensing with such a hearing (see, *inter alia*, *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, § 46, Reports 1998-I; *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005; *Schelling v. Austria*, no. 55193/00, § 30, 10 November 2005; *Jussila v. Finland* [GC], no. 73053/01, § 42, ECHR 2006-XIII; *Kugler v. Austria*, no. 65631/01, § 46, 14 October 2010; and *Andersson v. Sweden*, no. 17202/04, § 47, 7 December 2010).

83. However, the Court has equally stressed, on numerous occasions, the intrinsic link between the right to a "public" and the right to a "fair" hearing (see, in particular, *Jussila*, cited above, §§ 42, 48). It reiterates that the public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for instance, *Pretto and Others v. Italy*, 8 December 1983, § 21, Series A no. 71; *Speil v. Austria* (dec.), no. 42057/98, 5 September 2002; and *Martinie v. France* [GC], no. 58675/00, § 39, ECHR 2006-...).

84. The Court has further considered that if, as a consequence of a valid reservation, an applicant could not derive from the Convention any general right to an oral hearing, such a reservation did not exempt the domestic courts from ensuring the fairness of the proceedings. It remained for the Court to examine, in these circumstances, whether the proceedings before the domestic courts as qualified by the reservation were fair within the meaning of Article 6 (compare *Laukkanen and Manninen v. Finland*, no. 50230/99, § 38, 3 February 2004; *Laaksonen*, cited above, §§ 25, 32; and *V. v. Finland*, no. 40412/98, § 61, 24 April 2007).

85. Finally, the Court recalls that one of the elements of a fair hearing within the meaning of Article 6 § 1 is the right to adversarial proceedings; each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see, amongst others, *Mantovanelli v. France*, 18 March 1997, § 33, Reports 1997-II). Moreover, the requirement of "equality of arms" implies that each party must be afforded a

reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, for instance, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274; and *Helle*, cited above, §§ 53-54).

(β) Application of these principles to the present case

86. In determining the scope of Liechtenstein's reservation to the Convention in the light of the above case-law, the Court notes that, according to the wording of that reservation, Liechtenstein declared "that the principle that hearings must be held and judgments pronounced in public (in the French text: "que le principe de la publicité des audiences et du prononcé des jugements ...", see paragraph 41 above), as laid down in Article 6, paragraph 1, of the Convention, shall apply only within the limits deriving from the principles at present embodied in the following Liechtenstein laws ...", *inter alia*, the National Administrative Justice Act (see paragraph 40 above). Section 100 § 4 of the latter Act provides that the Administrative Court may, "if it considers a hearing of the parties to be unnecessary ... review the contested decision on the basis of the files" (see paragraph 36 above).

87. The Court considers that the applicant's complaint about the Administrative Court's failure to hold a public oral hearing comprises two aspects. By referring to a "public" hearing, it addresses, on the one hand, the right to a hearing to which the public and the press are admitted. As shown above (see paragraph 83), the publicity of hearings in that sense serves to render the administration of justice transparent and to subject it to public scrutiny. By referring to an "oral" hearing, on the other hand, reference is made to a hearing of the parties (and / or their representatives) in person by the court, possibly without the public being present (see paragraph 82 above). This serves to allow both parties to present their arguments to the court, to clarify, in particular, questions of fact in an oral exchange and to examine evidence and assess its credibility by hearing also the comments of the parties concerned. An oral hearing can therefore be vital in ensuring adversarial proceedings and thus the fairness of the proceedings as a whole.

88. The Court notes that in the case of *Steck-Risch* (cited above), it found that the complaint about the failure to hold a public hearing and that about the lack of an oral hearing were two distinct issues. In that case, it could, however, leave open the question whether Liechtenstein's reservation under Article 6 § 1 covered not only the complaint about the lack of publicity, but also that about the failure to hold an oral hearing with the parties. The applicant in that case, unlike the applicant in the present case, had, in any event, not exhausted domestic remedies in respect of the latter complaint.

89. In the present case, the Court considers that the wording of Liechtenstein's reservation, in so far as it refers to the principle that

"hearings must be held and judgments pronounced in public, as laid down in Article 6, paragraph 1, of the Convention" is not clear in its scope. Unlike, for instance, Finland's reservation in respect of the right to a public hearing, which expressly states that "Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right ..." (see for that reservation and its interpretation, for instance, *V. v. Finland*, cited above, § 60), it does not give a clear indication of whether or not it addresses the right to an oral hearing. It could either be read as referring only to "hearings ... in public" or to "hearings" alone, as opposed to "judgments pronounced in public"; only the latter interpretation would point towards oral hearings being covered by the reservation.

90. It is true that Liechtenstein's reservation in respect of Article 6 refers to the limits deriving from the principles embodied in the National Administrative Justice Act. Section 100 § 4 of that latter Act expressly provides that the Administrative Court may review the contested decision on the basis of the files "if it considers a hearing *of the parties* to be unnecessary" (emphasis added). The latter Act thus refers to oral hearings of the parties. This does not, however, become clear from the wording of the reservation as such.

91. Likewise, the reference to Article 6 § 1 of the Convention does not give a clear indication of the scope of the reservation. The second sentence of Article 6 § 1, in allowing the exclusion of the press and public – but not of the parties – from the hearing, is an argument for considering that only the publicity of hearings is covered by the reservation. Under the Court's case-law in respect of Article 6 § 1, the right to an "oral" hearing has been considered as an aspect of the right to a "public" hearing (see paragraph 82 above), which is clearly covered by Liechtenstein's reservation in respect of Article 6. However, the Court has equally stressed the intrinsic link between the right to a "public" and the right to a "fair" hearing and found that publicity contributed to the achievement of the aim of Article 6 § 1, namely a fair trial (see paragraph 83 above), in respect of which Liechtenstein did not make a reservation.

92. The Court recalls that reservations must be interpreted restrictively (see paragraph 65 above). Neither the right to a fair hearing nor the right to an oral hearing has expressly been mentioned in Liechtenstein's reservation in respect of Article 6 and an interpretation of that reservation does not lead to the clear conclusion that oral hearings are covered by it. Therefore, Liechtenstein's reservation covers the right to a public hearing, but not the right to an oral hearing.

93. The applicant's complaint about the lack of an oral hearing is not, therefore, incompatible *ratione materiae* with the provisions of the Convention. The Court is therefore competent to examine the applicant's complaint under Article 6 in this respect.

2. Compliance with Article 6 § 1

(a) The parties' submissions

(i) The Government

94. The Government submitted that, even assuming the Court's jurisdiction to examine the applicant's complaint which they contested, the failure of the Administrative Court to hold an oral hearing had not violated Article 6 § 1 of the Convention. The reasons given by the Administrative Court for not holding a public hearing were in accordance with this Court's case-law on permissible restrictions on the publicity of hearings. That case-law was quoted in the Constitutional Court's judgment in the present case, the reasoning of which the Government endorsed.

(ii) The applicant

95. The applicant considered that she had had a right to a public oral hearing under Article 6. The Administrative Court's unlimited discretion to hold or not to hold a hearing had breached that provision. There had not been any exceptional circumstances which would have allowed that court to dispense with a hearing in her case.

96. The applicant further stressed that, as had been confirmed by the Government, hearings with the parties had taken place in several comparable cases before the Administrative Court. As the Court had confirmed in its judgment in the case of *Kugler* (cited above), it was necessary to hold an oral hearing and to take evidence in an adversarial manner in urban planning cases before the only genuine court instance capable of assessing the case in its entirety, which, in the present case, had been the Administrative Court. The applicant further argued that the witnesses which she had named should have been heard by the Administrative Court.

(b) The Court's assessment

(i) Recapitulation of the relevant principles

97. The Court reiterates that in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see the references in paragraph 82 above). The obligation to hold a hearing is therefore not absolute. The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may

be justified only in rare cases (see *Andersson*, cited above, § 48; and *Jussila*, cited above, § 42).

98. There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' written observations and other written materials (see *Jussila*, cited above, § 41; and also *Allan Jacobsson*, cited above, § 49; and *Döry*, cited above, § 37).

99. The Court has further acknowledged that the national authorities may have regard to the demands of efficiency and economy and found, for example, that the systematic holding of hearings could be an obstacle to the particular diligence required, for instance, in social security cases – which are generally rather technical and are often better dealt with in writing – and ultimately prevent compliance with the reasonable-time requirement of Article 6 § 1 (see, in particular, *Jussila*, cited above, § 42; and *Schuler-Zgraggen*, cited above, § 58; *Miller*, cited above, § 29; *Schelling*, cited above, § 30; *Brugger v. Austria*, no. 76293/01, §§ 21-22, 26 January 2006; *Martinie*, cited above, § 41; and *Andersson*, cited above, § 48).

100. Moreover, a hearing may be dispensed with if a party unequivocally waives his or her right thereto (see, for instance, *Fischer*, cited above, § 44) and there are no questions of public interest making a hearing necessary (see, for instance, *Döry*, cited above, § 37).

101. The overarching principle of fairness embodied in Article 6 is, as always, the key consideration (see *Jussila*, cited above, § 42, with further references).

(ii) Application of these principles to the present case

102. In determining whether Article 6 § 1 conferred on the applicant the right to an oral hearing before the Administrative Court in the circumstances of the case, the Court notes at the outset that the Administrative Court was the first and only tribunal vested with full jurisdiction to examine the merits of the applicant's case. Moreover, as the applicant explicitly requested a hearing before that court, there is no question of her having waived her right thereto. The applicant thus had a right to an oral hearing before the Administrative Court unless there were exceptional circumstances relating to the nature of the issues to be decided which justified dispensing with such a hearing.

103. The Court observes that the applicant considered an oral hearing in her case necessary, in particular, because the Administrative Court should have questioned several witnesses she had named. She argued that the witnesses' submissions would have proved that the referendum in which the land development plan at issue was adopted had been manipulated. The Court further notes that the Administrative Court had considered it unnecessary to hear these witnesses in person because, even assuming that

the applicant's allegations, which she wished to prove by this witness's evidence, were correct, the land development plan was lawful.

104. The Court takes note, in this connection, of the Administrative Court's finding that the witnesses named by the applicant were to confirm that the land development plan had been "manipulated" in that officials of the municipality had raised hopes, prior to the adoption of that plan, that the applicant's plots of land could be designated as building land at some point in the future. Therefore, even if the witnesses had been called to a hearing in support of the applicant's allegation of such manipulation, it is difficult to see how evidence of hopes as distinct from any enforceable undertaking could constitute evidence of manipulation. Further, it would have been clear that in the land development plan that had yet to be adopted by referendum, the applicant's plots of land had not, in fact, been designated as building land (see paragraph 15 above). The Administrative Court could therefore reasonably hold that the witnesses, even if they had been called, would not have cast doubts on the lawfulness of the land development plan at issue.

105. Moreover, that court considered that the situation of the plots of land concerned was commonly known and clearly shown on the photographs in the file. In the domestic court's view, it was therefore not necessary to take additional evidence offered by the applicant in order to clarify the facts of the case. In the Administrative Court's assessment of the case before it, which cannot be considered as unreasonable, there were not, therefore, any contested facts relevant to the outcome of the case or any issues of credibility which necessitated further clarification in a hearing.

106. Further, the Administrative Court obtained documents and photographs concerning the land development plan, as requested by applicant, and gave the applicant an opportunity to reply to the Municipality of Triesenberg's observations in writing and to comment on the evidence obtained by the court. The applicant therefore had knowledge of and could comment on all evidence adduced or observations filed with a view to influencing the court's decision, as required in adversarial proceedings. Finally, there is nothing to indicate that by the Administrative Court's written conduct of the proceedings, the applicant was not afforded an opportunity, as required by the principle of "equality of arms", to present her case, including her evidence, under conditions that did not place her at a substantial disadvantage vis-à-vis the opposing Municipality of Triesenberg.

107. In these circumstances, the Court accepts that the Administrative Court could fairly and reasonably decide the applicant's case concerning the designation of her property as non-building land on the basis of the parties' written observations and other written materials.

108. The foregoing considerations are sufficient to enable the Court to conclude that there were circumstances, as defined by its case-law (see, in particular, paragraphs 97-99 above), which justified the absence of an oral

hearing in the applicant's case. Respect for the overarching principle of a fair trial does not lead to a different conclusion.

109. It follows that in this part of the application, in so far as it falls within the Court's competence *ratione materiae*, there has been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. Relying on Article 6 of the Convention, the applicant further complained that the land development plan of the Municipality of Triesenberg was adopted by a secret vote of its citizens, and not by judges, in a referendum which had been manipulated in that wrong information had been given and false promises had been made to the voters. Moreover, the legality of the land development plan and that of the procedure for its adoption had not been fully examined in the proceedings before the domestic authorities and courts, but had only been tested for lack of arbitrariness.

111. In the applicant's submission, the allegedly unlawful land development plan had also disproportionately interfered with her right to respect for her property under Article 1 of Protocol no. 1 to the Convention in that it had designated her land, which was suitable for construction, as non-building land without awarding her compensation.

112. The Court has examined the remainder of the applicant's complaints as submitted by her. However, having regard to all material in its possession, the Court finds that, even assuming the exhaustion of domestic remedies in all respects, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

113. It follows that the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of a public oral hearing under Article 6 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 of the Convention.

Done in English, and notified in writing on 18 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Angelika Nußberger President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Nußberger, Lemmens and Jäderblom is annexed to this judgment.

A.N.
J.S.P.

CONCURRING OPINION OF JUDGES NUSSBERGER, LEMMENS AND JÄDERBLOM

1. We voted with our colleagues in finding that there had been no violation of Article 6 of the Convention. We disagree, however, with the reasoning of the majority. In our opinion the absence of an oral hearing is covered by Liechtenstein's reservation relating to Article 6 § 1 of the Convention.

2. We agree with the majority's conclusion that the reservation is valid (see paragraphs 59-75). Our disagreement relates to the interpretation given by the majority to the reservation (see paragraphs 82-93).

Our analysis starts with the text of the reservation. Since Liechtenstein drafted its reservation in English and French, we have looked at both versions. We note, with the majority, that the wording of the reservation refers to the publicity of hearings, not to hearings as such (see paragraph 89 of the judgment). The question is, however, what this reference to the "publicity" of hearings encompasses. More specifically, should it be understood as including a reference to the oral character of proceedings?

In interpreting the reservation, made in 1982, the case-law of the Convention organs existing at that time should be taken into account. We would like to refer in particular to two reports of the European Commission of Human Rights from 1981. In these reports the Commission examined whether purely written proceedings (at the cassation stage) complied with the requirement of a "public hearing" (see *Sutter v. Switzerland*, no. 8209/78, Commission report of 10 October 1981, and *Axen v. Germany*, no. 8273/78, Commission report of 14 December 1981). Both cases were referred to the Court. At the time of the depositing of Liechtenstein's instrument of ratification, the right to oral proceedings was therefore a contentious issue. If the Court recognised such a right, it was likely that it would do so by considering it as an aspect of the right to a "public hearing".[1] We conclude from all this that the reference to the "public hearing" requirement in Liechtenstein's reservation should not necessarily be interpreted as referring exclusively to the publicity requirement. On the contrary, given the circumstances, the wording used lends itself to an

[1] The Court did indeed eventually examine the complaint from the point of view of the requirement of a "public hearing". It held that the absence of such a hearing did not infringe Article 6 § 1 of the Convention in either of the two cases (*Axen v. Germany*, 8 December 1983, Series A, no. 72, and *Sutter v. Switzerland*, 22 February 1984, Series A, no. 74).

interpretation covering the more general requirement of oral proceedings as well.

More importantly, the reservation itself refers to the principles (concerning the public character of hearings and the public pronouncement of judgments) embodied in a number of Liechtenstein laws, including the Act of 21 April 1922 on national administrative justice. The relevant provision of that act is Section 100 § 4, which provides that the Administrative Court can decide "on the basis of the files", that is to say, after purely written proceedings, if an "oral hearing" is considered unnecessary or not requested by the parties. The reference to this provision is a clear indication that Liechtenstein intended to have the reservation cover not only the public character of the hearing, but also, more generally, the oral character of the proceedings.

Furthermore, a strict interpretation such as the one followed by the majority would lead to the conclusion that non-public oral proceedings are, just like public oral proceedings, an option envisaged by the Convention. This contradicts, however, the underlying philosophy of Article 6 of the Convention according to which judicial proceedings have to be transparent. Excluding the public is allowed only in exceptional circumstances (see the second sentence of Article 6 § 1) and can never be the general rule. While Article 57 of the Convention allows States to make a reservation in respect of a particular provision of the Convention and thus to exclude the applicability of a given rule, this must nevertheless not be done in such a way that the remainder of the Convention provision cannot stand on its own. Holding, like the majority does, that Liechtenstein refused only to be bound by the obligation to hold public hearings, and not by the obligation to have oral proceedings, leads to such a result. Indeed, to consider that Liechtenstein is obliged only to organise – as a matter of principle – oral proceedings, and not to ensure that the hearings are public, strips the requirement of a public hearing of its character as a general rule.

On the basis of the above-mentioned elements, we conclude that the purely written character of the proceedings before the Administrative Court is covered by Liechtenstein's reservation. In so far as the applicant complains of the lack of an "oral hearing", we consider that her complaint is incompatible *ratione materiae* with the provisions of the Convention.

3. In so far as the applicant complains of the refusal by the Administrative Court to take the additional evidence proposed by her, and in particular its refusal to hear the witnesses she had proposed, we believe that this is a separate complaint which has to be examined from the standpoint of the right to a fair trial.

We agree with the majority that it was not unreasonable for the Administrative Court to consider that it was able to decide the case on the basis of the material already available to it, and that there was no need to seek further clarification (see paragraphs 104-105).

Therefore, we do not discern any violation of the applicant's right to a fair trial in this regard.