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

FOURTH SECTION

**CASE OF WIESER AND BICOS BETEILIGUNGEN GmbH v. AUSTRIA**

*(Application no. 74336/01)*

JUDGMENT

STRASBOURG

16 October 2007

**FINAL**

*16/01/2008*

**In the case of Wieser and Bicos Beteiligungen GmbH v. Austria,**

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

Nicolas Bratza, *President*,
Josep Casadevall,
Giovanni Bonello,
Elisabeth Steiner,
Stanislav Pavlovschi,
Lech Garlicki,
Ljiljana Mijović, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 September 2007,

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

# PROCEDURE

1. The case originated in an application (no. 74336/01) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Gottfried Wieser, an Austrian national, and Bicos Beteiligungen GmbH, a limited liability company with its seat in Salzburg ("the applicants"), on 3 August 2001.

2. The applicants were represented by Mrs P. Patzelt, a lawyer practising in Salzburg. The Austrian Government ("the Government") were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicants alleged that the search and seizure of electronic data in the context of a search of their premises had violated their rights under Article 8 of the Convention.

4. By a decision of 16 May 2006, the Chamber declared the application admissible.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, who was born in 1949, is a lawyer practising in Salzburg. He is the owner and general manager of the second applicant, a holding company which is, *inter alia*, the sole owner of the limited liability company Novamed.

6. On 30 August 2000 the Salzburg Regional Court (*Landesgericht*), upon a request for legal assistance (*Rechtshilfeersuchen*) by the Naples Public Prosecutor's Office, issued a warrant to search the seat of the applicant company and Novamed. Both companies have their seats at the first applicant's law office.

7. The court noted that in the course of pending criminal proceedings concerning, *inter alia*, illegal trade in medicaments against a number of persons and companies in Italy, invoices addressed to Novamed, owned 100% by the applicant company, had been found. It therefore ordered the seizure of all business documents revealing contacts with the suspected persons and companies.

## A. The search of the applicants' premises and seizure of documents and data

8. On 10 October 2000 the search of the seat of the applicant company, which is also the first applicant's law office, was carried out by eight to ten officers of the Economic Crimes Department of the Salzburg police (*Wirtschaftspolizei*) and data-securing experts (*Datensicherungsexperten*) of the Federal Ministry of the Interior.

9. One group of officers searched the law office for files concerning Novamed or Bicos in the presence of the first applicant and a representative of the Salzburg Bar Association. All documents were shown to the first applicant and the representative of the Bar Association before seizure.

10. Whenever the first applicant objected to an immediate examination of a document seized it was sealed and deposited at the Salzburg Regional Court as required by Article 145 of the Code of Criminal Procedure (*Strafprozeßordnung* – see paragraph 33 below). All seized or sealed documents were listed in a search report which was signed by the applicant and the officers who had carried out the search.

11. Simultaneously, another group of officers examined the first applicant's computer systems and copied several files to disks. According to his statement before the Independent Administrative Panel (see paragraph 25 below), the IT specialist who normally serviced the computer systems was called upon to provide some technical assistance but left again after about half an hour. The representative of the Bar Association was informed about the search of the computer systems and was also temporarily present. When the officers had terminated the search of the computer systems, they left without drawing up a search report and, apparently, also without informing the first applicant about the results of the search.

12. Later the same day the police officers involved in the search of the applicants' electronic data drew up a data securing report (*Datensicherungsbericht*). Apart from a number of technical details

concerning the first applicant's computer systems, the report states that a complete copy of the server was not made. The search was carried out using the names of the companies involved and the names of the suspects in the Italian proceedings. A folder named Novamed containing ninety files was found plus one further file containing one of the search items. All the data were copied to disks. In addition, the deleted items were retrieved and numerous files which corresponded to the search items were found and also copied to disks.

13. On 13 October 2000 the investigating judge opened the sealed documents in the presence of the first applicant. Some documents were copied and added to the file while others were returned to the first applicant on the ground that their use would impinge on the first applicant's duty of professional secrecy.

14. The disks containing the secured data were transmitted to the Economic Crimes Department who printed out all the files. Both the disks and printouts were then handed over to the investigating judge.

### B. The applicants' complaint to the Review Chamber

15. On 28 November 2000 and 11 December 2000 respectively, the first applicant and the applicant company lodged complaints with the Review Chamber (*Ratskammer*) of the Salzburg Regional Court.

16. They submitted that the first applicant was the owner and manager of the applicant company but also the lawyer for a number of companies in which the latter held shares. They complained that the search of their premises and the seizure of electronic data had infringed the first applicant's right and duty of professional secrecy under section 9 of the Lawyers Act (*Rechtsanwaltsordnung*) in conjunction with Article 152 of the Code of Criminal Procedure as some officers had proceeded unobserved to examine and subsequently copy electronic data. The applicants submitted that the data contained the same information as the documents which had been examined in the presence of the first applicant. However, with regard to the electronic data, the first applicant had not been given an opportunity to object and have the disks sealed.

17. They further submitted that the search report did not mention that part of the search, nor did it mention which electronic data had been copied and seized. Furthermore, the search report had only been signed by three of the officers, but did not mention the names of all the officers who had been present at the search, omitting in particular the names of the data-securing experts of the Federal Ministry of the Interior.

18. On 31 January 2001 the Review Chamber dismissed the applicants' complaints.

19. It observed that the first applicant's computer data had been searched with the aid of particular search criteria. Files which corresponded to these search criteria had been copied to disks which had been seized.

20. However, there was no ground for holding that this seizure circumvented Article 152 of the Code of Criminal Procedure: the search of the first applicant's law office concerned exclusively documents which the first applicant had in his possession as an organ of Novamed and Bicos, and therefore did not concern a lawyer-client relationship.

21. It further observed that the search of the first applicant's law office was based on a lawful search warrant which included the search and seizure of electronic data. The procedural safeguards laid down in Article 145 of the Code of Criminal Procedure, namely the right of the person concerned to object to an immediate examination and to request the deposit of data seized with the Regional Court and a decision by the Review Chamber, also applied to the search of electronic data.

22. In the present case, however, the officers had, whenever asked, complied with the first applicant's requests to seal certain documents and deposit them with the Regional Court. Some of these documents had been returned by the court in order to ensure compliance with the applicant's duty of professional secrecy.

23. It therefore concluded that the applicants' complaints were unfounded. The Review Chamber's decision was served on 7 February 2001.

### C. The applicants' complaint to the Salzburg Independent Administrative Panel

24. In the meantime, on 20 and 21 November 2000 respectively, the first applicant and the applicant company lodged complaints with the Salzburg Independent Administrative Panel (*Unabhängiger Verwaltungssenat*). They submitted that the search and seizure of electronic data in the first applicant's office had been unlawful.

25. On 2 April, 11 June and 11 July 2001 the Independent Administrative Panel held public hearings at which it heard evidence from a number of witnesses.

The IT specialist in charge of the first applicant's computer facilities said that he had been called and had arrived at the office when the search of the premises was already under way. He had left again after half an hour. The officer in charge of the search stated that the first applicant had been informed about the search of his computer data. Two other officers stated that the search of the first applicant's computer systems had not begun until the arrival of his IT specialist and that the representative of the Bar Association had been temporarily present. This was confirmed by the representative of the Bar Association.

26. On 24 October 2001 the Salzburg Independent Administrative Panel dismissed the applicants' complaints. It found that they concerned alleged breaches of certain provisions of the Code of Criminal Procedure regulating searches. The officers who had carried out the search had possibly not fully complied with these provisions. They had, however, acted on the basis of the search warrant and not exceeded the instructions of the investigating judge. The search was therefore imputable to the court. Consequently, a review of lawfulness did not fall within the competence of the Independent Administrative Panel.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Provisions of the Code of Criminal Procedure relating to search and seizure

27. Articles 139 to 149 of the Code of Criminal Procedure (*Strafprozeßordnung*) concern the search of premises and persons and the seizure of objects.

28. Article 139 § 1 provides in particular that a search may only be carried out if there is a reasonable suspicion that a person suspected of having committed an offence is hiding on the premises concerned, or that there are objects there the possession or examination of which is relevant to a particular criminal investigation.

29. Pursuant to Article 140 §§ 1 and 2 a search should in general only be carried out after the person concerned has been questioned, and only if the person sought has not come forward of his or her own volition or the object or objects sought have not been voluntarily produced and if the reasons leading to the search have not been eliminated. No such questioning is required where there is danger in delay.

30. Article 140 § 3 states that a search may, as a rule, only be carried out on the basis of a reasoned search warrant issued by a judge.

31. Pursuant to Article 142 §§ 2 and 3 the occupant of the premises subject to the search or, if he is unavailable, a relative of the occupant, shall be present during the search. A report is to be drawn up and to be signed by all those present.

32. Article 143 § 1 of the Code of Criminal Procedure provides that, if objects relevant to the investigation or subject to forfeiture or confiscation are found, they are to be listed and taken to the court for safe keeping or seized. It refers in this respect to Article 98, pursuant to which objects in safe keeping have to be put into an envelope to be sealed by the court, or be labelled so as to avoid any substitution or confusion.

33. Article 145 reads as follows:

> "1. When searching through documents steps must be taken to ensure that their content does not become known to unauthorised persons.
>
> 2. If the owner of the documents does not want to permit their being searched, they shall be sealed and deposited with the court; the Review Chamber must determine immediately whether they are to be examined or returned."

34. According to the courts' case-law, which is endorsed by the opinion of academic writers (see Bertl/Vernier, *Grundriss des österreichischen Strafprozessrechts*, 7th edition), the provisions relevant to the search and seizure of paper documents also apply *mutatis mutandis* to the search and seizure of electronic data. If the owner of disks or hard disks on which data is stored objects to their being searched, the data carriers are to be sealed and the Review Chamber must decide whether they may be examined.

### B. Provisions relating to the professional secrecy of lawyers

35. Section 9 of the Austrian Lawyers Act (*Rechtsanwaltsordnung*) regulates the professional duties of lawyers including, *inter alia*, the duty to maintain professional secrecy.

36. Article 152 § 1 of the Code of Criminal Procedure exempts lawyers, notaries and business trustees from the obligation to give evidence as witnesses in respect of information given to them in the exercise of their profession.

37. It is established case-law that documents which contain information subject to professional secrecy may not be seized and used in a criminal investigation.

38. According to an instruction (*Erlaß*) of the Federal Minister of Justice of 21 July 1972, a representative of the competent Bar Association shall be present during the search of a lawyer's office in order to ensure that the search does not encroach on professional secrecy.

### C. Review by the Independent Administrative Panel

39. By virtue of section 67a(1) of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*), Independent Administrative Panels have jurisdiction, *inter alia*, to examine complaints from persons alleging a violation of their rights resulting from the exercise of direct administrative authority and coercion (*Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt*).

40. Where police officers execute a court warrant their acts are imputable to the court unless they act in clear excess of the powers conferred on them. Only in the latter case are their acts qualified as exercise

of direct administrative authority and coercion and subject to review by an Independent Administrative Panel.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

41. The applicants complained of the search and seizure of electronic data. They relied on Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

### A. Applicability of Article 8

42. The Government based their comments on the assumption that the search and seizure at issue interfered with the applicants' "private life" and "home".

43. The Court reiterates that the search of a lawyer's office has been regarded as interfering with "private life" and "correspondence" and, potentially, home, in the wider sense implied by the French text which uses the term "*domicile*" (see *Niemietz v. Germany*, 16 December 1992, §§ 29-33, Series A no. 251-B, and *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII; see also *Sallinen and Others v. Finland*, no. 50882/99, § 71, 27 September 2005, which confirms that the search of a lawyer's business premises also interfered with his right to respect for his "home"). The search of a company's business premises was also found to interfere with its right to respect for its "home" (see *Société Colas Est and Others v. France*, no. 37971/97, §§ 40-42, ECHR 2002-III).

44. In the present case, the applicants do not complain of the search of their business premises, which are the first applicant's law office and the applicant company's seat, nor do they complain of the seizure of documents. They only complain in respect of the search and seizure of electronic data.

45. The Court considers that the search and seizure of electronic data constituted an interference with the applicants' right to respect for their

"correspondence" within the meaning of Article 8 (see *Niemietz*, cited above, § 32, as regards a lawyer's business correspondence, and *Sallinen and Others*, cited above, § 71, relating to the seizure of a lawyer's computer disks). Having regard to its above-cited case-law extending the notion of "home" to a company's business premises, the Court sees no reason to distinguish between the first applicant, a natural person, and the second applicant, a legal person, as regards the notion of "correspondence". It does not consider it necessary to examine whether there was also an interference with the applicants' "private life".

46. The Court must therefore determine whether the interference with the applicants' right to respect for their correspondence satisfied the requirements of paragraph 2 of Article 8.

## B. Compliance with Article 8

### *1. The parties' submissions*

47. The Court observes at the outset that in its admissibility decision of 16 May 2006 it joined the Government's objection as to non-exhaustion to the merits. The Government argued that the applicants had failed to make use of the possibility, provided for in the Code of Criminal Procedure, to request that documents or data be sealed and deposited with the court in order to obtain a court decision on whether or not they may be used for the investigation. The applicants contested this view, arguing that the manner in which the search was carried out had deprived them of the possibility to make effective use of their rights.

48. On the merits, the applicants asserted that the search and seizure of electronic data had been disproportionate. They claimed that the first applicant was not only the manager of the applicant company but also its counsel and the counsel of Novamed. Thus the search had necessarily led to the discovery of correspondence, for instance letters and file notes that the first applicant had made in his capacity as counsel. During the search of the paper documents all such documents had either been removed immediately or sealed and returned to the applicant by the investigating judge as being subject to professional secrecy. In contrast, the electronic data had been seized without observing the attendant procedural guarantees. In this connection the applicants relied on the same arguments as submitted in respect of the issue of exhaustion of domestic remedies.

49. The applicants maintained that the applicant company's rights had also been infringed, since it had had no control over the kind of data that were seized. The search for the word Bicos had necessarily led to data unrelated to the subject defined in the search warrant. The procedural guarantees laid down in the Code of Criminal Procedure had not been complied with, since the applicant company had not been given the

possibility to have the data sealed and to obtain a decision by the investigating judge as to which data might be used for the investigation.

50. The Government noted at the outset that the applicants only complained about the search of electronic data and that their submissions essentially related to the first applicant's position as a lawyer and to the alleged lack of safeguards to protect his duty of professional secrecy, while the complaint as regards the applicant company remained unsubstantiated.

51. Referring to the Court's case-law, the Government argued that the search and seizure of electronic data had a legal basis in the Code of Criminal Procedure and served legitimate aims, namely the prevention of crime and the protection of health.

52. As regards the necessity of the interference, the Government asserted that the search and seizure of the data had been proportionate to the legitimate aim pursued. The contested measures had been ordered by a judicial search warrant which had delimited their scope. Moreover, Austrian law contained specific procedural safeguards for the search of a lawyer's office. They had been complied with in that the search had taken place in the presence of the applicant and a representative of the Bar Association, whose role had been to ensure that the search did not encroach on the first applicant's duty of professional secrecy. In accordance with the search warrant, the first applicant's computer systems had been searched with the help of certain key words, that is, the names of the firms involved, Novamed and Bicos, and the names of the suspects in the proceedings in Italy. Since the first applicant was not the second applicant's counsel, their lawyer-client relationship had not been affected. Moreover, the representative of the Bar Association had been informed of the search of the first applicant's computer systems and the search procedure documented in the data-securing report. The fact that the said report had not been drawn up during the search but later the same day was not decisive, since the main aim of recording which data had been seized had been achieved.

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

#### **(a) In accordance with the law**

53. The Court reiterates that an interference cannot be regarded as "in accordance with the law" unless, first of all, it has some basis in domestic law. In relation to Article 8 § 2 of the Convention, the term "law" is to be understood in its "substantive" sense, not in its "formal" one. In a sphere covered by the written law, the "law" is the enactment in force as the competent courts have interpreted it (see *Société Colas Est and Others*, cited above, § 43, with further references, and *Sallinen and Others*, cited above, § 77).

54. The Austrian Code of Criminal Procedure does not contain specific provisions for the search and seizure of electronic data. However, it contains

detailed provisions for the seizure of objects and, in addition, specific rules for the seizure of documents. It is established in the domestic courts' case-law that these provisions also apply to the search and seizure of electronic data (see paragraph 34 above). In fact, the applicants do not contest that the measures complained of had a basis in domestic law.

**(b) Legitimate aim**

55. The Court observes that the search and seizure was ordered in the context of criminal proceedings against third persons suspected of illegal trade in medicaments. It therefore served a legitimate aim, namely, the prevention of crime.

**(c) Necessary in a democratic society**

56. The parties' submissions concentrated on the necessity of the interference and, in particular, on the question whether the measures were proportionate to the legitimate aim pursued and whether the procedural safeguards provided for by the Code of Criminal Procedure were adequately complied with.

57. In comparable cases, the Court has examined whether domestic law and practice afforded adequate and effective safeguards against any abuse and arbitrariness (see, for instance, *Société Colas Est and Others*, cited above, § 48). Elements taken into consideration are, in particular, whether the search was based on a warrant issued by a judge and based on reasonable suspicion, whether the scope of the warrant was reasonably limited and – where the search of a lawyer's office was concerned – whether the search was carried out in the presence of an independent observer in order to ensure that materials subject to professional secrecy were not removed (see *Niemietz*, cited above, § 37, and *Tamosius*, cited above).

58. In the present case, the search of the applicants' computer systems was based on a warrant issued by the investigating judge in the context of legal assistance for the Italian authorities who were conducting criminal proceedings for illegal trade in medicaments against a number of companies and individuals. It relied on the fact that invoices addressed to Novamed, 100% owned by the applicant company, had been found. In these circumstances, the Court is satisfied that the search warrant was based on reasonable suspicion.

59. The Court also finds that the search warrant limited the documents or data to be looked for in a reasonable manner, by describing them as any business documents revealing contacts with the suspects in the Italian proceedings. The search remained within these limits, since the officers searched for documents or data containing either the word Novamed or Bicos or the names of any of the suspects.

60. Moreover, the Code of Criminal Procedure provides further procedural safeguards as regards the seizure of documents and electronic data. The Court notes the following provisions of the Code:

(a) the occupant of the premises being searched shall be present;

(b) a report is to be drawn up at the end of the search and items seized are to be listed;

(c) if the owner objects to the seizure of documents or data carriers they are to be sealed and put before the judge for a decision as to whether or not they are to be used for the investigation; and

(d) in addition, as far as the search of a lawyer's office is concerned, the presence of a representative of the Bar Association is required.

61. The applicants do not claim that the guarantees provided by Austrian law are insufficient but that they were not complied with in the present case as regards the seizure of data. The Court notes that a number of officers carried out the search of the applicants' premises. While one group proceeded to the seizure of documents, the second group searched the computer system using certain search criteria and seized data by copying numerous files to disks.

62. The Court observes that the safeguards described above were fully complied with as regards the seizure of documents: whenever the representative of the Bar Association objected to the seizure of a particular document, it was sealed. A few days later the investigating judge decided in the presence of the applicant which files were subject to professional secrecy and returned a number of them to the applicant on this ground. In fact, the applicants do not complain in this respect.

63. What is striking in the present case is that the same safeguards were not observed as regards the electronic data. A number of factors show that the exercise of the applicants' rights in this respect was restricted. Firstly, the member of the Bar Association, though temporarily present during the search of the computer facilities, was mainly busy supervising the seizure of documents and could therefore not properly exercise his supervisory function as regards the electronic data. Secondly, the report setting out which search criteria had been applied and which files had been copied and seized was not drawn up at the end of the search but only later the same day. Moreover, the officers apparently left once they had finished their task without informing the first applicant or the representative of the Bar Association of the results of the search.

64. It is true that the first applicant could have requested, in a general manner at the beginning of the search, to have any disks with copied data sealed and submitted to the investigating judge. However, since the Code of Criminal Procedure provides for a report to be drawn up at the end of the search, and requires that the items seized be listed, he could expect that procedure to be followed. Since this was not the case he had no opportunity

to exercise his rights effectively. Consequently, the Government's objection of non-exhaustion has to be dismissed.

65. With regard to the first applicant this manner of carrying out the search incurred the risk of impinging on his right to professional secrecy. The Court has attached particular weight to that risk since it may have repercussions on the proper administration of justice (see *Niemietz*, cited above, § 37). The domestic authorities and the Government argued that the first applicant was not the applicant company's counsel and that the data seized did not concern their client-lawyer relationship. It is true that the first applicant, contrary to his submissions before the Court, did not claim before the domestic authorities that he was the applicant company's counsel, nor that he was the counsel of Novamed. However, he claimed throughout the proceedings that he acted as counsel for numerous companies whose shares were held by the second applicant. Moreover, the Government did not contest the applicants' assertion that the electronic data seized contained by and large the same information as the paper documents seized, some of which were returned to the first applicant by the investigating judge as being subject to professional secrecy. It can therefore be reasonably assumed that the electronic data seized also contained such information.

66. In conclusion, the Court finds that the police officers' failure to comply with some of the procedural safeguards designed to prevent any abuse or arbitrariness and to protect the lawyer's duty of professional secrecy rendered the search and seizure of the first applicant's electronic data disproportionate to the legitimate aim pursued.

67. Furthermore, the Court observes that a lawyer's duty of professional secrecy also serves to protect the client. Having regard to its above findings that the first applicant represented companies whose shares were held by the second applicant and that the data seized contained some information subject to professional secrecy, the Court sees no reason to come to a different conclusion as regards the second applicant.

68. Consequently, there has been a violation of Article 8 of the Convention in respect of both applicants.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. Under the head of pecuniary damage, the first applicant claimed 4,000 euros (EUR) per year from the year 2000 for loss of clients. He submitted that he was unable to adduce proof without breaching his duty of professional secrecy. Moreover, he claimed EUR 10,000 as compensation for non-pecuniary damage since his reputation as a lawyer had suffered as a result of the events.

71. The applicant company claimed EUR 20,211.56 in compensation for pecuniary damage. It asserted that, being a holding company, its name had been ruined by the seizure of the data. Consequently, it had had to be newly established under another name and had therefore had to raise EUR 17,500 for the nominal capital of the new company and to pay costs of EUR 2,711.56 for the legal acts involved. It did not submit a claim in respect of non-pecuniary damage.

72. The Government asserted that there was no causal link between the violation in issue and the pecuniary damage alleged by the applicants.

73. With regard to the applicants' claims in respect of pecuniary damage, the Court observes that it cannot speculate as to what the effects on the applicants' reputation would have been had the search and seizure of electronic data been carried out in compliance with the requirements of Article 8 (see, *mutatis mutandis*, *Société Colas Est and Others*, cited above, § 54). Consequently, it makes no award under this head.

74. However, the Court accepts that the first applicant has suffered non-pecuniary damage, such as distress and frustration resulting from the manner in which the search and seizure of data were carried out. Making an assessment on an equitable basis and having regard to the sum awarded in a comparable case (see *Sallinen and Others*, cited above, § 114) it grants the first applicant EUR 2,500 under the head of non-pecuniary damage.

### B. Costs and expenses

75. The first applicant claimed a total amount of EUR 15,967.15 for costs and expenses, composed of EUR 9,204.52 in respect of the domestic proceedings and EUR 6,762.63 in respect of the Convention proceedings. These sums include value-added tax (VAT).

76. The Government accepted that the costs listed in respect of the domestic proceedings were necessarily incurred. However, they submitted that the amounts claimed were excessive since they were not in accordance with the relevant domestic laws and regulations on the remuneration of lawyers. In particular, only an amount of EUR 1,486.80 – instead of the EUR 4,858 claimed – was due in respect of the proceedings before the Salzburg Independent Administrative Panel. Moreover, the Government argued that the costs claimed in respect of the Convention proceedings were excessive. Only an amount of EUR 2,289.96 was appropriate.

77. The Court reiterates that if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses of the domestic proceedings which were necessarily incurred in order to prevent or redress the violation and are reasonable as to quantum (see *Société Colas Est and Others*, cited above, § 56).

78. The Court notes that it is not contested that the costs claimed by the first applicant were necessarily incurred. However, it considers that the sums claimed are not reasonable as to quantum. Regard being had to the information in its possession and to the sums awarded in comparable cases, the Court considers it reasonable to award the sum of EUR 10,000 covering costs under all heads. This sum includes VAT.

### C. Default interest

79. 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

1. *Dismisses* unanimously the Government's preliminary objection as to non-exhaustion of domestic remedies;

2. *Holds* unanimously that there has been a violation of Article 8 of the Convention in respect of the first applicant;

2. *Holds* by four votes to three that there has been a violation of Article 8 of the Convention in respect of the second applicant;

3. *Holds* unanimously
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two

thousand five hundred euros) in respect of non-pecuniary damage and EUR 10,000 (ten thousand euros) 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;

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

Done in English, and notified in writing on 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Bratza, Casadevall and Mijović is annexed to this judgment.

N.B.
T.L.E.

# JOINT PARTLY DISSENTING OPINION OF JUDGES BRATZA, CASADEVALL AND MIJOVIĆ

While in full agreement that the first applicant's rights under Article 8 were violated in the present case, we take a different view as regards the second applicant.

Although the first applicant was the owner and general manager of the applicant company and although the company had its seat at the first applicant's law office, he was not the counsel or legal adviser of the company. It appears that the first applicant acted as legal adviser of certain of the companies owned by the second applicant. However, it has not been claimed that the search and seizure carried out in the first applicant's law office involved electronic data relating to any of the subsidiary companies of which he was the legal adviser. In these circumstances, we are not satisfied that the applicant company may be said to have been affected by the absence of procedural safeguards designed to protect the lawyer-client relationship which has been found by the Court to give rise to a finding of a violation of Article 8 of the Convention.