

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

FIRST SECTION

CASE OF RUMMI v. ESTONIA

(Application no. 63362/09)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

15/04/2015

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



In the case of Rummi v. Estonia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 63362/09) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Ms Karol Rummi ("the applicant"), on 22 November 2009.

2. The applicant was represented by Mr M. Susi. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged that the confiscation of her late husband's property had breached her right to a fair trial and peaceful enjoyment of the property, and that the length of the proceedings had been excessive; there had been no effective remedy in this respect.

4. On 19 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Harju County. She is the widow of R.

6. On 20 February 2001 M. attempted to smuggle 105 kilograms of waste containing precious metals into Estonia. The waste was hidden in the fuel tank of his car. However, it was found at the border and seized by the

Estonian authorities. M. was arrested. J., a suspected organiser of the smuggling, fled to Russia.

7. Investigating authorities asked R., an expert in geology, to give an expert opinion in respect of the content of precious metals in the waste. According to the expert opinion, dated 1 March 2001, the value of the metals was 19,620.90 kroons (EEK) (approximately corresponding to 1,254 euros (EUR)). This value was above the limit of a "significant amount" as defined in criminal law. P. who apparently had certain interests in the matter, approached R. and asked him to prepare another expert opinion, which would state that the value of the metals was lower. R. drew up another report, dated 6 March 2001, which stated that the value of the seized metals was EEK 13,356 (EUR 854), which was below what was designated as a "significant amount". Smuggling of less than a "significant amount" of goods would not have been a criminal offence but a misdemeanour. P. sought to pass, through an intermediary, the new expert opinion, along with a sum as a bribe, to an officer dealing with the matter. However, the intermediary was apprehended when handing over the money and the second expert opinion.

8. On 11 March 2001 R. was arrested. His home and later his workplace were searched. A large amount of various substances containing precious metals as well as pure precious metals was seized, including 150 kilograms of silver, one kilogram of gold, thirty-one silver bars, five diamonds and eighteen silver-coloured spoons.

9. On 12 March 2001 R. committed suicide in the detention facility. He was taken to hospital in a state of clinical death, and died there on 17 March 2001.

10. In the case file there are two decisions of the police concerning the discontinuance of criminal proceedings in respect of R.

11. In a decision of 27 March 2001 the above situation was described, including the fact that two expert opinions had been drawn up by R. It was concluded that he had knowingly given a false expert opinion and had thereby committed an offence under Article 175 § 1 of the Criminal Code (*Kriminaalkoodeks*). The criminal proceedings against him were terminated because of his death.

12. In a decision of 9 April 2001, firstly, it was stated that the applicant had committed the offence under Article 175 § 1 of the Criminal Code.

13. Secondly, the decision stated that it had been established that since 1995 R. had been giving unofficial expert opinions concerning substances containing precious metals. Knowing that such substances were not found in Estonia and that they were being smuggled from Russia, he had committed an offence of smuggling as an accomplice (Article 17 § 6 and Article 76 § 3 (2) of the Criminal Code).

14. Thirdly, in respect of the silver, gold and diamonds the decision stated as follows:

> "During the search of [R.'s] home and workplace a large amount of pure precious metals ([about] 150 kg of silver granules, 31 silver bars, [about] 1 kg of gold, five diamonds) [and] other items made of precious metals were found, which refer to purchasing items made of precious metals from the population, and substances containing precious metals [were also found], which were similar to the substance found in a hiding place in [M.'s] car. Therefore it can be concluded that [R.] was involved in the smuggling of substances containing precious metals as an accomplice who analysed the substances; he was probably also engaged in purchasing, purifying and marketing substances containing precious metals. Under Regulation No. 142 of 29 July 1994 of the Minister of Finance, items made of precious metals, precious scrap metal and precious stones may only be purchased and remelted by legal persons whose purchasing point is registered by the Estonian Assay Office (*Eesti Proovikoda*) and who have an operating licence for the purchasing of precious metals and precious stones and items containing them. Thus, [R.], who did not have the required licences, committed a large-scale violation of the rules for purchasing metals, and thereby committed an offence under Article 152-3 § 3 of the Criminal Code.
>
> [R.'s] official income according to his tax return for 2000 was [EEK] 18,564 [EUR 1,186] after the deduction of income tax, which indicates that he could not have legally acquired such a quantity of precious metals. [R.'s] wife, [the applicant], is also unaware of the origin of these items.
>
> Nor is it possible to obtain additional evidence in relation to the crimes committed by [R.], because after his arrest ... [he] committed suicide..."

15. The investigator decided to discontinue the criminal proceedings under Article 175 § 1, Article 17 § 6 and Article 76 § 3 (2), and Article 152-3 § 3 of the Criminal Code because of R.'s death. The precious metals and substances containing precious metals found at R.'s home and workplace were ordered to be deposited in a police storage facility since the identity of their legal owner had hot been established and it was unclear to whom they belonged.

16. By an order dated 9 April 2001 the police declared the substances and items seized from the car (see paragraph 6 above) and from the applicant's home and place of work (see paragraph 8 above) to be evidence and it was decided that they should be deposited in a police storage facility. The evidence was inspected on the same day.

17. On 10 May 2001 the applicant enquired of the police about the death of her husband, R., in the police custody, about the charges against him and about the return of the items which were not rare earth, such as the silver granules, diamonds, gold and silver bars that had been seized during the search.

18. On 28 May 2001 the police responded that a decision on the return of the seized items would be made by the officer in charge of the investigation after clarification of their origin.

19. In the meantime, on 14 May 2001 the police ordered an expert examination of the seized substances. According to an expert opinion delivered on 22 May 2001 the packages analysed contained galvanic mud

from which metals could be separated by the use of special technology and equipment. Some of the samples contained precious metals.

20. According to an intestate succession certificate issued by a notary on 16 August 2001 the applicant and her two sons were R.'s heirs, each inheriting one-third of his property.

21. An expert opinion in respect of further items and substances seized from R.'s home and workplace was commissioned on 21 September 2001. According to an expert opinion given on 5 November 2001 some of the analysed substances were galvanic waste not known to be generated in Estonia, and certain further samples contained precious metals probably bought from the population.

22. In the meantime, on 27 September 2001 K., R.'s colleague, was interviewed as a witness. He submitted that they carried out about 500 expert analyses per year; the number of official analyses had been about ten per year. He described the powder and "mud" the content of which they had analysed. The "mud" was a by-product of nickel production; it was brought from Russia. They did not have equipment in their laboratory for separating precious metals from the "mud", they could only analyse its content. K. gave details about persons to whom he had communicated the results of the expert examinations. According to K., R. had also purchased equipment for the laboratory with his own money, the cost of which was about EEK 500,000 (EUR 32,000). K. had suspected that by doing the analyses R. had been involved in something illegal and that he also got paid for this. He referred to R.'s new cars and construction of a house as something that he could not have afforded on his salary. According to K., the substances and items taken from a table in their workplace were samples they had examined. K. could not tell anything about the origin of the items found in R.'s cupboard and locked drawer.

23. On 10 October 2001 the applicant was interviewed as a witness. According to the report on the interview drawn up by the police, the applicant stated that she did not know anything about the items seized from their garage and their home. These items had been acquired by R., who put his money into precious metals since he apparently had no trust in bank accounts. In respect of the diamonds she could not say anything; these had been, like the other substances and items, acquired by R. The money matters of the family had been handled by R.; the applicant even did not know how much he earned in salary.

24. On 25 July 2002 the police applied to the Narva City Court to authorise the confiscation of the items and substances that had been declared as physical evidence in the criminal case. In respect of the items and substances taken from R.'s home and workplace during the search, it was stated as follows:

> "On 9 April 2001 the items and substances found during the search carried out at [R.'s] home and workplace were declared to be evidence (vol. 2, pp. 154-172), as this

> property had been obtained through crime. Information gathered in the criminal proceedings about [R.'s] income (vol. 2, pp. 179-80 and pp. 182-83) and statements by [R.'s] colleague [K.] also refer to this fact, that is [to the fact that] the property [had been] obtained through crime. [R.'s] wife, [the applicant], was unable to give explanations about the items and substances seized during the search (vol. 2, p. 185).
>
> Having regard to the above, it is expedient to request from a court confiscation of the evidence mentioned above, that is of property obtained through crime and prohibited for natural persons in accordance with the "Rules for the import and export of precious metals and precious stones and products made of them" (vol. 1, pp. 49-51)."

25. On 19 August 2002 the Narva Prosecutor's Office approved the statement of charges. It was noted that the evidence taken from R. was in the police storage facility. On 22 August 2002 M. and J. were prosecuted.

26. On 20 January 2004 the Narva City Court convicted M. of attempted smuggling of prohibited goods. J. was convicted as an accomplice. In the judgment, reference was made to statements by anonymous witnesses to the effect that J. had for years been smuggling substances containing precious metals into Estonia; samples of the substances had been analysed in R.'s laboratory. No decision was made in respect of the items seized from R. On appeal, J.'s counsel L. did not make reference to these items.

27. On 14 April 2004 the Viru Court of Appeal quashed the City Court's judgment for insufficient reasoning. It noted, *inter alia*, that the anonymous witnesses had not been heard at the court hearing and that their statements had been of a general nature. It was also noted that the County Court should have indicated what to do with the physical evidence and other seized items. The case was remitted to the first-instance court for a new examination.

28. In the meantime, on 11 March 2004, the applicant again enquired about the return of the items in question. On 15 April 2004 the police responded that these items were part of the physical evidence in the criminal case and that it was for the judge examining the matter to rule on the measures to be taken in respect of the evidence.

29. At the Viru County Court hearing of 10 March 2009 the prosecutor requested discontinuance of the criminal proceedings in respect of M. and J. under Article 168-1 of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*) because of the lack of public interest. The defendants agreed. The prosecutor asked the court to confiscate the substances and metals seized from R.'s home and workplace. J.'s counsel L. thought that it would be better to leave the latter question open since the applicant could have claims in this respect.

30. On 17 March 2009 the Viru County Court discontinued the proceedings as requested, finding that there was no public interest in continuing the proceedings. It ordered M. and J. to pay the court costs and certain additional lump sums to the State. A separate decision was to be made in respect of the physical evidence found at R.'s home and workplace.

31. On 24 March 2009 the Viru County Court ordered the confiscation of the substances containing precious metals and the pure precious metals in question. It relied on Article 63 (3) of the Code of Criminal Procedure, under which property received as a result of a criminal offence and whose legal owner could not be established was to be transferred to the State. It gave the following reasons for the confiscation:

> "The court, having examined the evidence in the criminal case, finds that the materials containing precious metals and the pure precious metals which were found at [R.'s] home and workplace and which are held in the police depository must be confiscated and transferred to the State."

A copy of the decision was sent to the applicant.

32. On 31 March 2009 the Viru County Court amended its order of 24 March 2009 by providing an exact list of the substances and items to be confiscated.

33. The applicant, represented by counsel L., lodged an appeal against the County Court decision of 24 March 2009. She argued that the decision contained no reasoning. It had not been established that the substances found at R.'s home and workplace had been obtained through crime. Nor had it been established that the identity of their legal owner had not been ascertained. It had only been clear that R. had been in possession of the property in question. She also complained that the court had made a decision about her rights in written proceedings without inviting her to take part in the proceedings or hearing her, and that she had only received the County Court's decision by post. She asserted that she was R.'s widow and heir, together with their two sons. The applicant requested that the County Court's decision be annulled and the case remitted for re-examination to the County Court.

34. The Viru Circuit Prosecutor's Office in its reply to the applicant's appeal submitted that the applicant was not a party to the proceedings and therefore her appeal had to be dismissed. If she considered herself to be the legal owner of the property, Article 62 § 8-1 of the Code of Criminal Procedure applied, under which in cases of seized property whose legal owner could not be identified, the legal owner whose identity was established later had the right to reclaim the amounts received from the sale of the seized property from the State.

35. On 25 May 2009 the Tartu Court of Appeal, in written proceedings, dismissed the appeal. It noted that the applicant was not a party to the proceedings. She had been questioned on 10 October 2001 as a witness (see paragraph 23 above). The County Court had had no obligation to involve her in the determination of what should happen to physical evidence. However, since the applicant's rights had allegedly been violated by the confiscation of the property in question, the Court of Appeal decided to examine her appeal.

36. The Court of Appeal stated as follows:

"The Court of Appeal finds, on the basis of the evidence in the criminal case, that the items found at [R.'s] home and workplace that were declared physical evidence constitute property obtained through crime, and that the identity of the lawful owner thereof has not been established.

On the basis of the material of the criminal case there were sufficient grounds to believe that [R.] had been involved in smuggling; for that reason his home was searched on 11 March 2001 and eighteen items were seized (vol. 2 pp. 147-49). On 12 March 2001 his workplace was searched and thirty-four items were seized (vol. 2 pp. 151-53). Some of the seized items were declared to be evidence and were inspected (vol. 2 pp. 154-73). A chemical expert examination was carried out in respect of the physical evidence (vol. 2 pp. 174-78). The Court of Appeal notes that the list provided in the County Court's ... decision of 31 March 2009 corresponds to the list provided in the decision of 9 April 2001 concerning the evidence (vol. 2 p. 154).

The criminal proceedings under Article 175 § 1, Article 17 § 6 and Article 76 § 3 (2), and Article 152-3 § 3 of the Criminal Code in respect of [R.] were discontinued on 9 April 2001 because of his death (he died on 17 March 2001). No appeal was lodged against that decision.

According to the decision concerning the discontinuance of the criminal proceedings (vol. 2 pp. 191-92) the precious metals and substances containing precious metals that had been declared evidence had been obtained through crime (Article 152-3 § 3 of the Criminal Code) and the identity of their legal owner had not been established. Proceeding on the basis of the above, an investigator requested confiscation of these items of physical evidence on 25 July 2002, because it was property obtained through crime. In the [investigator's] request (vol. 3 pp. 41-42) evidence was set out demonstrating that the property had been obtained through crime. The evidence included, *inter alia*, statements by witness [K.] (vol. 2 pp. 188-90) and [the applicant] (vol. 2 p. 185).

The Court of Appeal notes that [the applicant], in whose interests the present appeal was lodged, was interviewed as a witness on 10 October 2001. It follows from that interview that she knew nothing about the items that had been seized during the search of 11 March 2001. She did not know the origin of the items. She knew that they had been obtained by [R.], who had placed his money in precious metals. In respect of the diamonds she could say nothing; these had also been obtained by [R.]. As can be seen from the above, [the applicant] has not declared that also she had title to some of the items declared as evidence or that they had belonged to [her and R.] as common property.

Since it had been established that the property had been obtained through crime, it had to be confiscated, which was ordered by the County Court decision of 24 March 2009."

37. On 14 April 2010 the police submitted to the assay office of the company Metrosert Estonia the substances containing precious metals, as well as the pure precious metals, confiscated by the court rulings in the criminal proceedings at hand. The list also includes substances and precious metals confiscated from R.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

38. The relevant provisions of the Criminal Code (*Kriminaalkoodeks*), as in force until 31 August 2002, provided as follows:

Article 33 – Confiscation (*erikonfiskeerimine*)

"(1) The court may apply confiscation (*erikonfiskeerimine*) of the means or objects used for the commission of a criminal offence, as well as of property obtained through crime."

Article 76 – Smuggling

"(1) Smuggling, that is illegal transfer across the customs frontier of goods or other value in a significant amount which are subject to customs control, by hiding them from customs control or avoiding customs control or by any other fraudulent means, shall be punished by a fine or detention or up to three years' imprisonment.

(2) Smuggling of prohibited goods or other value, or goods or value requiring special permit – radioactive or explosive materials, narcotic or psychotropic substances or their precursors, non-narcotic medicines or poisonous substances, strategic goods, firearms or ammunition – shall be punished by one to six years' imprisonment.

(3) The activity mentioned in paragraphs 1 and 2 of this Article if carried out:

1. by an official misusing their position, or

2. by a group of people – shall be punished by three to eight years' imprisonment."

Article 152-3 – Violation of the rules for purchase, export, re-export or trading of metals

"(3) Violation of the rules for purchase, export, re-export or trading of ferrous or non-ferrous metal or scrap metal on a large scale shall be punished by one to five years' imprisonment."

Article 175 – False statement, false opinion or false translation

"(1) Making a knowingly false statement by a witness or victim, or giving a knowingly false expert opinion by an expert, as well as a false translation or interpretation by a translator or interpreter either in court or during pre-trial investigation, if those concerned have been informed of the penalties for such activity, shall be punished by a fine or detention or up to one year's imprisonment."

39. The relevant part of the Penal Code (*Karistusseadustik*), which entered into force on 1 September 2002, in the wording in force since 1 February 2007, provided as follows:

Article 83-1 Confiscation (*konfiskeerimine*) of assets acquired through offence

"(1) A court shall confiscate (*konfiskeerib*) assets acquired through an intentional offence if these belong to the offender at the time of the making of the judgment or decision.

(2) As an exception, a court shall confiscate the assets specified in paragraph 1 of this Article if these belong to a third person at the time of the making of the judgment or decision, and if:

1. these were acquired, completely or in substance, on account of the actions of the offender, as a gift or in any other manner for a price which is considerably lower than the normal market price, or

2. the third person knew that that the assets were transferred to him or her in order to avoid confiscation.

(3) The court may decide not to confiscate, in part or in full, property acquired through crime if, taking account of the circumstances of the offence or the situation of the person, confiscation would be unreasonably burdensome or if the value of the assets is disproportionably small in comparison to the costs of storage, transfer or destruction of the property. The court may, for the purpose of satisfaction of a civil action, decrease the amount of the property or assets to be confiscated by the amount of the object of the action."

Article 85 – Effect of confiscation

"(1) Confiscated objects shall be transferred into State ownership or, in cases which fall under an international agreement, shall be returned.

(2) In the case of confiscation, the rights of third persons remain in force. The State shall pay compensation to third persons, except in the cases provided for in Article 83 §§ 3 and 4, Article 83-1 § 2 and Article 83-2 § 2 of this Code."

40. The relevant provisions of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*), as in force until 30 June 2004, provided as follows:

Article 5 – Issues preventing conduct of proceedings in criminal matters

"(1) Criminal proceedings shall not be commenced, and criminal proceedings shall be terminated ...

8. upon the death of the person, except if it is necessary to conduct proceedings in a criminal matter for the rehabilitation of the deceased person, or upon detection of new facts, for the resumption of criminal proceedings with regard to another person;"

Article 62 – Inspection and storage of physical evidence and application of other measures with regard to physical evidence

"(8) Confiscation (*erikonfiskeerimine*) by a decision of a judge during criminal proceedings may be applied with regard to property subject to confiscation which was declared as physical evidence, or with regard to property which was received as a result of a criminal offence (*kuriteo läbi saadud vara*) and the legal owner of which cannot be identified.

(8-1) In the case of property confiscated by a court judgment or by a decision of a judge and of which the legal owner cannot be identified, the legal owner of that

property who is identified later has the right to reclaim the amounts received from the sale of the confiscated property from the State, after the costs of storage, forwarding, investigation and sale of the property have been deducted. The amounts shall be returned by the Ministry of Finance following a written request from the entitled person with a certified transcript of the court ruling annexed thereto."

Article 63 – Measures applied with regard to physical evidence and confiscated (*erikonfiskeeritud*) property

"Measures to be applied with regard to physical evidence and confiscated (*erikonfiskeeritud*) property shall be indicated in an order by an investigator or by a decision of a judge or in a court judgment, and ...

3. property received as a result of a criminal offence (*kuriteo läbi saadud vara*), the legal owner of which cannot be identified, shall be transferred to the State ..

7. the remaining objects or substances the ownership of which is not disputable shall be transferred to its legal owners."

41. The relevant provisions of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*), as in force from 1 July 2004, provided as follows:

Article 384 – Right to appeal against decisions

"(1) Parties to court proceedings and persons not participating in court proceedings have the right to appeal against a decision of a county court if the ruling restricts their rights or lawful interests."

42. Section 90 (1) of the Property Act (*Asjaõigusseadus*) stipulates that a possessor of movable property is deemed the owner of the thing during the possessor's possession until the contrary is proved. Section 34 (2) of the Property Act provides that possession is deemed lawful until the contrary is proved.

43. "Rules on the purchase of precious metals and precious stones and products made from them", approved by Regulation No. 142 of 29 July 1994 of the Minister of Finance (valid until 20 September 2008) provided as follows:

1. Definitions

"The purchase from natural or legal persons of items made from precious metals that have been in use, scrap precious metals and individual precious stones which are destined for remelting, restoration or museums shall be deemed to be purchase of precious metals and precious stones.

Precious metals are gold, platinum and the platinum group metals (palladium, rhodium, iridium, ruthenium, osmium).

Precious stones are diamond, ruby, emerald, sapphire.

Buying up of precious metals and precious stones is permitted only for legal persons who have a reception point registered with the Estonian Assay Office and who have an operating licence for the purchase of precious metals and precious stones and products containing them."

44. The "Procedure for the import and export of precious metals and precious stones and products made from them", approved by Regulation No. 56 of 15 July 1999 of the Minister of Finance, as amended by Regulation No. 19 of 4 February 2000 of the Minister of Finance (valid until 30 June 2002), provided as follows:

> "4. Legal persons or self-employed persons registered under the procedure applicable in Estonia may engage in the import and export of those goods... This point does not extend to:
>
> (1) a single product carried or sent across the border for non-commercial purposes;
>
> (2) inherited estate ...
>
> 5. The person must hold an operating licence issued by the Ministry of Finance for the making, purchase and sale of items made of precious metals and precious stones or items containing them ... .
>
> 7. Imported goods must be accompanied by documents proving their origin and quality as well as an entry declaration. The documents for proof of quality include a delivery note, certificate of materials, a certificate issued by the Estonian Assay Office or by a laboratory approved by it. The quality of the goods may also be attested to by a purity mark. Where there is a purity mark the accompanying documents of the goods need not contain information on the quality of the goods."

B. Case-law of the Supreme Court

45. In a decision of 30 April 2013 (case no. 3-1-2-3-12), the Supreme Court, sitting in plenary session, dealt with a case where confiscation in criminal proceedings of property allegedly belonging to a person not involved in criminal proceedings was at issue. The Supreme Court referred to Article 85 § 2 of the Penal Code, and stated that if property was confiscated from a person who had not been involved in the proceedings and who was allegedly the owner of the property but not the object of the decision to confiscate, the person did not lose ownership when the decision to confiscate entered into force, as in such a case ownership does not transfer to the State. Confiscation meant that property or other rights were transferred from one person (the object of the decision to confiscate) to another person (the State); it did not mean that the property was transferred to the State regardless of who had been its owner. The Supreme Court also noted that the object of a decision to confiscate had to be unequivocally clear in the operative part of the court ruling.

46. A person claiming to be the actual owner of the confiscated property who was not the object of the decision to confiscate could assert his ownership under the Property Act in civil proceedings, or claim compensation for the loss of the property in administrative court proceedings. If the person had been involved as a third party in criminal proceedings as a potential owner but his claim of ownership proved unfounded in the criminal proceedings, the decision made in the criminal

proceedings was binding on him and the above-mentioned civil and administrative law remedies could not be called upon by him.

III. RELEVANT INTERNATIONAL INSTRUMENTS

47. Pursuant to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141), the parties undertake to adopt such legislative and other measures as may be necessary to enable them to confiscate instrumentalities and proceeds, that is any economic advantage from criminal offences, or property the value of which corresponds to such proceeds. This Convention entered into force in respect of Estonia on 1 September 2000.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE COMPLAINTS CONCERNING ACCESS TO COURT AND FAIRNESS OF THE PROCEEDINGS

48. The applicant complained that her right of access to court had been violated. In substance she also complained that the confiscation proceedings had not been fair. The Court will examine this complaint under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

49. The Government contested that argument.

A. Admissibility

1. The parties' submissions

(a) The Government

50. The Government argued that Article 6 § 1 of the Convention under its civil head was not applicable to the impugned criminal proceedings as far as the applicant was concerned. The applicant was not a party to these criminal proceedings. The Government noted that for the first time a court decided the issue of the property in question in the decision of 24 March 2009, which was sent to the applicant and could be contested by her as a person not party to the proceedings. Until that time the issue of the items seized from R. had not been discussed in the criminal case. The Government considered that the fact that the applicant had sent letters to the investigator

had not made her a party to the proceedings or brought about the applicability of Article 6 § 1 of the Convention in respect of the applicant in criminal proceedings where her civil rights were not factually determined.

51. The Government considered that the applicability of Article 6 § 1 under its civil head to the proceedings from the date of the County Court's decision of 24 March 2009 until that of the Court of Appeal's decision of 25 May 2009 was disputable. The applicant had appealed against the County Court's decision but had failed to do so in an appropriate and effective manner; she had not presented any explanations or evidence concerning the acquisition and ownership of the items. Therefore, it could be claimed that Article 6 did not apply to the appeal proceedings, as this appeal did not indicate a "dispute of a genuine and serious nature".

52. The Government further argued that the applicant had not exhausted domestic remedies.

53. Firstly, the applicant had not contested the decision of 9 April 2001 on the discontinuance of the criminal proceedings in respect of R. The Government pointed out that the criminal proceedings had been discontinued because of R.'s death, not because of the absence of elements of a criminal offence. Considering the reference in the decision to the acts committed by R., it would have been possible to contest the decision and seek rehabilitation for him. Instead of doing so, the applicant had affirmed during a subsequent interview that she did not know anything about the seized items. The Government concluded that the seized substances and items had not been in the applicant's possession or ownership at the time they were seized; since in the decision of 9 April 2001 it had been found that the items constituted property obtained through crime – in respect of which the question of ownership does not arise – the applicant could not later have acquired any rights to it unless she could prove its legal origin.

54. Secondly, the applicant had failed to make effective use of her rights by appealing against the decision of 24 March 2009 within the criminal proceedings. In this connection, the Government argued that the applicant had not been the object of the decision to confiscate, and there had never been any grounds for her to be involved in the proceedings. At the same time, the applicant had made use of her right to appeal under Article 384 § 1 of the Code of Criminal Procedure, but had failed to do so effectively. L., who had acted as J.'s counsel from the beginning of the proceedings, had been aware that the applicant's rights needed to be proved when deciding the issue of the items seized from R. However, he had not submitted any evidence for the protection of the applicant's rights, neither before nor after the decision of 17 March 2009, nor after the decision of 24 March 2009. Considering that by appealing against the decision of 24 March 2009 the applicant for the first time had intervened in a criminal case to which she was not a party, she should have submitted documents in support of her

claims together with the appeal. As this had not been done, the Government argued that the applicant had failed to exhaust legal remedies.

55. Thirdly, under Article 85 § 2 of the Penal Code (previously Article 62 § 8-1 of the Code of Criminal Procedure) the applicant had had (and still had) the opportunity to submit a claim for the return of the confiscated property or a claim for damages against the state in a civil or administrative court. The prosecutor's office, in its reply to the appeal against the decision of 24 March 2009, had also referred to that possibility, and this was confirmed by pertinent case-law under which the rights of third parties remained in force even after wrongful confiscation of property, and in such a case a person could reclaim the property from the State or obtain compensation. The Government added that the alleged owner should prove his or her right to the property. However, the applicant had not brought an action with a civil court or a complaint under Article 85 § 2 of the Penal Code. The Government considered that the possibility of bringing an action or an administrative complaint could not be considered an alternative right of appeal which need not to be exhausted – it constituted an additional guarantee to persons not parties to proceedings in situations where property legally belonging to them had been erroneously confiscated. Thus, it could not be claimed that in this case the applicant was not required to use any alternative remedies suggested by the Government.

56. Fourthly, the Government submitted that when lodging an appeal against the Viru County Court's decision of 24 March 2009 the applicant could have also submitted a claim of unconstitutionality if she had found that the right of complaint under Article 384 § 1 of the Code of Criminal Procedure, and the procedure for the handling of appeals against decisions, did not sufficiently ensure her rights. Such a claim could also have been made in administrative court proceedings had she believed that Article 85 § 2 of the Penal Code was not sufficient for the protection of her rights which she alleged had been violated.

57. The Government concluded that the applicant had not exhausted domestic remedies and asked the Court to declare the application inadmissible on that ground.

(b) The applicant

58. The applicant considered that Article 6 § 1 of the Convention was applicable to the confiscation proceedings since those proceedings determined property rights.

59. In reply to the Government's arguments on non-exhaustion, the applicant submitted the following.

60. Firstly, as regards the Government's argument that the decision of 9 April 2001 on the discontinuance of criminal proceedings in respect of R. had not been contested, the applicant noted that R. could not make such a request and the Government had not referred to any norms of procedure or

case-law on the basis of which the next of kin of a deceased person would have been able to request the continuation of criminal proceedings for rehabilitation purposes. The applicant also noted that while in the decision in question it had been stated that R. could not have acquired the property, the decision had been made by the police and not by a competent court. Nor was the order sufficiently reasoned; it was only concluded on the basis of R.'s just one year's income that he did not have the means to acquire the property. The applicant also contended that when interviewed by the police on 10 October 2001 she had affirmed that the items in question had belonged to her husband R. The applicant argued that the Government wished to reverse the burden of proof: in the applicant's argument it was for the authorities to prove that the property seized from her husband had been acquired illegally; the applicant was not required to prove that it had been acquired legally.

61. Secondly, the applicant disagreed with the Government's argument that she had not made effective use of her right to appeal against the decision of 24 March 2009. According to the applicant, the Government again wished to reverse the burden of proof and ask the applicant to prove that the property in question had been obtained legally. She contended that as long as it had not been proved that the property had been acquired through crime, she had had no obligation to prove its legal origin. This position had been advanced in the applicant's appeal against the decision: her counsel had argued that the decision lacked reasoning as to why the seized property had been acquired through crime, and why in the opinion of the court the identity of its owner remained unknown. Presentation of proof concerning the legal ownership might have been relevant in compensation proceedings; however, in confiscation proceedings it had been for the authorities to prove that the property had not been acquired legally or that it had not been owned by the applicant's late husband. It was reasonable for the applicant to expect that the question of the return of the property would be decided in the course of the criminal proceedings and in accordance with Convention principles, without the applicant being required to initiate any separate proceedings.

62. Thirdly, in respect of the Government's argument that the applicant should have brought a claim for the return of the property to a civil or administrative court, the applicant referred to the Supreme Court's decision of 30 April 2013, which held that Article 85 of the Penal Code protected the rights of owners of property who were not involved in criminal proceedings. In the present case the applicant had been able to file a request and subsequently an appeal in the criminal proceedings in which the property had been confiscated. She did not need to prove her ownership of the property, since it had been taken from her home and garage and had evidently belonged to her husband, and later to her through inheritance. The

applicant insisted that she did not need to try more than one avenue of redress.

63. Fourthly, in respect of the Government's argument that she could have raised the issue of unconstitutionality, the applicant claimed that there was no individual right of constitutional appeal in Estonia, and that the Supreme Court had consistently refused to decide upon individual constitutional complaints.

2. The Court's assessment

64. As regards the question of applicability of Article 6 § 1 of the Convention, the Court considers that the seizure and confiscation of the property of the applicant's late husband had adversely affected the property rights of the applicant, who was one of his heirs along with their children. Property rights being civil rights within the meaning of Article 6 § 1 of the Convention, that provision was applicable under its civil head and the applicant was consequently entitled to have the dispute over her civil right determined by a tribunal. Therefore, the Government's objection must be dismissed (see, for example, *Silickienė v. Lithuania*, no. 20496/02, §§ 45-46, 10 April 2012, and *Yildirim v. Italy* (dec.), no. 38602/02, ECHR 2003-IV).

65. In relation to the Government's plea of non-exhaustion, the Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, *inter alia*, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally also requires that complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200; *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, §§ 604 and 605, 13 November 2003; *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010; and, more recently, *Vučković and Others v. Serbia* [GC], no. 17153/11, § 72, 25 March 2014).

66. The Court notes that in the present case the Government raised four arguments related to the alleged non-exhaustion of domestic remedies by the applicant. The Court will address these in turn.

67. Firstly, as regards the argument that the decision of 9 April 2001 was not challenged, the Court observes that the decision in question mainly concerned the discontinuance of criminal proceedings against R. because of his death. R. cannot be said to have been proved guilty according to law by

this decision taken by the police. Thus, it is questionable what purpose it would have served for the applicant, R.'s widow, to challenge this decision. As concerns the property at issue, it was ruled in the decision that the property was to be placed in a police storage facility (see paragraph 15 above); in another decision taken by the police on the same day the property in question was declared as evidence in the criminal case and it was repeated that it was to be stored in a police storage facility (see paragraph 16 above). It is true that it was also mentioned in the first of the decisions referred to that the identity of its lawful owner had not been established and it was unclear to whom it belonged. Nevertheless, the Court is not persuaded that it was incumbent upon the applicant in this phase of the criminal proceedings to challenge the decision of the police whereby the destiny of the property in question was not determined. The Court has taken note, in this connection, of the Government's reference to the *Silickienė* judgment, in which the Court considered the possibility of judicial review of a seizure order as a procedural safeguard for the applicant (see *Silickienė*, cited above, § 48). However, the Court notes that in *Silickienė* this question was dealt with in the context of examination of the merits of the case, the Lithuanian Government's similar plea of non-exhaustion having been dismissed, because the seizure ordered by the investigator was provisional (see *Silickis and Silickienė v. Lithuania* (dec.), no. 20496/02, 10 November 2009). The Court also notes in this connection that the applicant made two enquiries to the police about the seized property and she received the reply from the police on 28 May 2001 that the return of the seized items would be decided by the officer in charge after clarification of their origin, and on 15 April 2004 that it was for the judge examining the matter to rule on the measures to be taken in respect of the evidence. The Court also notes that the decision to confiscate the property in question was taken several years later, on 24 March 2009, by the Viru County Court. Thus, the Court is not convinced that the decision of the police of 9 April 2001 had any decisive meaning for the determination of the destiny of the property, and it considers that the applicant cannot be reproached for not challenging it.

68. Secondly, in respect of whether the applicant made proper use of her right to appeal against the County Court's decision of 24 March 2009, the Court notes that the applicant argued in her appeal that the County Court's decision had contained no reasoning, that it had not been established that the items and substances had been obtained through crime, and that the identity of their legal owner had not been established. She also complained that she had not been heard in court, and asked that the case be remitted to the first-instance court. The Court considers that it was sufficient for the applicant to raise these issues and she did not need to prove that the property was obtained legally. Indeed, the Court of Appeal in its decision of 25 May 2009 did not dismiss the applicant's appeal because of lack of evidence supporting her claims, but rather considered it as having been established

that the property had been obtained through crime. Thus, the Court of Appeal decision appears to support the applicant's argument about the distribution of the burden of proof – which rested on the authorities – and this part of the Government's objection has to be dismissed.

69. Thirdly, as regards the Government's argument that the applicant could have claimed return of the property or compensation for it in administrative or civil court proceedings, the Court reiterates that an applicant who has made use of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, for example, *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III, and *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009). The Government has not demonstrated that the remedy pursued by the applicant in the present case was ineffective or insufficient, or that the remedies advanced by the Government were clearly more appropriate for the applicant's grievance. The Court has taken note, in this connection, of the Government's reference to the Supreme Court's decision of 30 April 2013 (see paragraphs 45 and 46 above) and their argument that the applicant, not being a party to the proceedings, should have sought compensation under Article 85 § 2 of the Penal Code in administrative court proceedings. However, it would firstly appear that the Supreme Court's decision drew a distinction between situations on the one hand, where a person was involved in criminal proceedings and could defend his rights in these proceedings, and on the other, where he was not involved in the criminal proceedings and could not defend his rights in these proceedings. As the applicant in the present case did appeal against the County Court's decision concerning the confiscation of the property in question and the Court of Appeal examined her appeal on the merits, the applicant's position substantially appears to resemble that of a third person involved in the proceedings, even if she was not officially granted that status. Secondly, the Court notes that the Supreme Court's decision in question dealt with the pertinent regulation in the Penal Code and the new Code of Criminal Procedure that entered into force on 1 July 2004, whereas the courts in the present case relied mainly on the provisions of the old Code of Criminal Procedure that was in force until 30 June 2004. The Court therefore considers that the Supreme Court's subsequent interpretation of a later legal regulation could not be of decisive importance for the interpretation of the legislation that was applied by the courts in the applicant's case. Therefore, this objection must be dismissed.

70. Fourthly, as regards the question whether the applicant was required to explicitly raise the issue of unconstitutionality within the criminal proceedings or within separate administrative court proceedings, the Court reiterates that it is not its task to resolve matters concerning the interpretation of the domestic law (see, among many others, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011,

and *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 100, ECHR 2010), including, in the present case, the question whether the applicant's Convention rights could have been secured within the existing framework of rules of procedure or whether any rule should have been declared unconstitutional. The Court has found in a recent case concerning Estonia that it was sufficient for an applicant to raise a Convention issue in substance before the domestic courts, who were empowered to set aside unconstitutional legal provisions of their own motion if they found that the Code of Criminal Procedure could not be interpreted as permitting the granting of the applicant's request (see *Ovsjannikov v. Estonia*, no. 1346/12, §§ 60-62, 20 February 2014). The Court considers that this finding is also pertinent to the present case. Having regard to the fact that the applicant in her appeal to the Court of Appeal raised the issues of an allegedly unjustified confiscation of the property she was entitled to, lack of reasoning in the County Court's decision as well as the County Court's dealing with the matter in written proceedings without inviting her to take part in the proceedings or hearing her, the Court considers that the Government's plea of non-exhaustion must be dismissed.

71. 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. The parties' submissions

(a) The applicant

72. The applicant argued that she had not had effective access to court in the domestic proceedings. She noted that as she had made several inquiries about the possibilities of getting back the seized items, the authorities had been obliged to involve her in the decision-making process. However, the Tartu Court of Appeal in its decision of 25 June 2009 had stated that the County Court had had no obligation to involve the applicant in the proceedings. She considered that by not having had the possibility to participate in the proceedings at the first instance, she had been deprived of effective access to court. Furthermore, there had been no oral hearing and no exceptional circumstances justifying dispensing with an oral hearing had been put forward. By only receiving the first-instance court's decision by mail, the applicant had been placed at a considerable disadvantage compared to the other parties in the case.

73. The applicant also considered that the County Court's decision of 24 March 2009 had not been sufficiently reasoned. In fact, it had only contained one sentence addressing the confiscation of the objects. The

applicant had stated to the authorities that she was the widow of R. and the legal successor of his property. The County Court should at the very least have addressed the question why it considered that the applicant had had no right to claim back the property. However, there had been no discussion in the court's decision about the need to take into account the legitimate interests of R.'s legal successors.

(b) The Government

74. The Government stressed that proving of ownership could not be based on a mere declaration. Moreover, the property in question included items and substances for the acquisition of which in such quantities a special permit was needed, and some of them were clearly substances which had been smuggled from Russia. Also with regard to the other seized items the applicant's appeal against the County Court's ruling had only contained a declarative request for their return; based on such a claim the outcome of the proceedings would not have been decisive for the rights in question.

75. In the event that the Court found that Article 6 was applicable to the proceedings starting from 24 March 2009, the requirements of this Article had been, in the Government's submission, complied with. Although the applicant had not been a party to the criminal proceedings, the system was not without safeguards, as the applicant could appeal against the decision of 24 March 2009 on confiscation. She had been represented by counsel, who had participated in the same criminal proceedings from the very beginning as counsel for one of the accused, and he had requested that the issue of R.'s property be decided separately from the case of M. and J. However, before the court's decision of 24 March 2009 counsel had not submitted any evidence or requests, and neither had he done so when lodging an appeal against the ruling. The Government concluded that the Estonian authorities had afforded the applicant a reasonable and sufficient opportunity to adequately protect her interests and the applicant had not been prevented in any practical way from bringing her claims before the domestic courts.

76. The Government did not agree that the applicant had not been able to effectively protect her rights in written proceedings. She had been able to appeal against the County Court's decision, but her claims had been unreasoned and without any supporting evidence. The Government were of the opinion that as the legality of acquiring the property and the right of ownership or succession should in any case have been proved by written evidence, holding a hearing in this case would not have made the proceedings "fairer".

77. As regards the sufficiency of the reasoning of the County Court's decision of 24 March 2009, the Government considered that this question was of no relevance in the light of the decision of the upper court – the Court of Appeal's decision of 25 May 2009 – which had provided sufficiently thorough reasoning concerning the items seized from R.,

enumerating the pieces of evidence based on which the confiscation was decided.

78. The Government also noted that after the decisions on confiscation made in the criminal proceedings the applicant had had the opportunity to have recourse to the civil or administrative court.

2. The Court's assessment

(a) Access to court

79. As regards the question whether the applicant's right of access to court was breached, the Court notes that the property in question was confiscated by the Viru County Court's decision of 24 March 2009. An appeal by the applicant against this decision was dismissed by the Tartu Court of Appeal on 25 May 2009. The Court has taken note, in this context, of the emphasis placed by the applicant on the Court of Appeal's position, namely that the applicant was not a party to the proceedings and that the County Court had not been required to involve her in the proceedings. However, the Court notes that the Court of Appeal nevertheless decided to examine the applicant's appeal in view of her allegation that her rights had been violated by the confiscation of the property. The Court considers that in these circumstances it cannot be said that the applicant had no access to court. The Court reiterates in this context that it is not its task to rule on national law and practice *in abstracto*. Instead, it must confine itself to an examination of the specific facts of the cases before it (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 67, *Reports of Judgments and Decisions* 1997-I; *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 35, ECHR 2001-III; and *Olujić v. Croatia*, no. 22330/05, § 69, 5 February 2009). Furthermore, the Court has also taken note of the Government's argument according to which the applicant could have had recourse to a civil or administrative court which would have constituted further avenues for the applicant to exercise her right of access to court. For this reason too the Court is unable to conclude that the applicant had no access to court.

(b) Fair trial

(i) Recapitulation of the applicant's complaint

80. The Court notes that the applicant in substance also complained that the confiscation proceedings had not been fair. She mainly argued in this connection that there had been no oral hearing and that the domestic courts' decisions had lacked sufficient reasoning.

(ii) General principles

81. The Court reiterates that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1 of the Convention. That said, the obligation to hold a hearing is not absolute. 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' submissions and other written materials. The Court has clarified that the nature 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. The overarching principle of fairness embodied in Article 6 is the key consideration (see *Jussila v. Finland* [GC], no. 73053/01, §§ 40-42, ECHR 2006-XIV, with further references).

82. Furthermore, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should give an adequate statement of the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision, and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references). A lower court or authority in turn must give such reasons as to enable the parties to make effective use of any existing right of appeal (see *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

(iii) Application of the principles to the present case

83. In the present case, the Court observes that the Viru County Court in its decision of 24 March 2009 (see paragraph 31 above) referred to the legal provision according to which property received as a result of a criminal offence and whose legal owner could not be identified, was to become State property. It then, "having examined the materials of the criminal case", concluded that the property in question in the present case was to be confiscated and transferred to the State. The County Court did not specify on which materials of the criminal case it had based its decision, or what led it to the conclusion that the property had been received as a result of a criminal offence or that its legal owner could not be identified. The Court considers that such brief reasoning, which amounts to a lack of reasoning, in addition to raising in itself an issue of lack of a fair trial, made it virtually impossible for the applicant to meaningfully challenge the County Court's position. The Court observes that in her appeal against the County Court's

decision the applicant argued that the decision lacked reasoning and stated that in her view the material of the criminal case did not allow a conclusion to be drawn that the property had been obtained through crime, but merely that it had been in R.'s possession. She also complained that she had not been heard, and asked for the case to be remitted to the first-instance court for a fresh examination.

84. The Court observes that the Tartu Court of Appeal's decision of 25 May 2009 (see paragraph 36 above) contains more detailed reasoning compared to that of the first-instance court. In particular, the Court of Appeal referred to the suspicions against R., including under Article 152-3 § 3 of the Criminal Code (Violation of the rules for purchase, export, re-export or trading of metals). It was noted that according to the police decision of 9 April 2001 concerning the discontinuance of the criminal proceedings in respect of R., the precious metals and substances containing precious metals had been obtained through crime, and their legal owner had not been identified. The Court of Appeal also referred to the confiscation request of 25 July 2002 by the police to the court, in which evidence had been set out demonstrating that the property had been obtained through crime; according to the Court of Appeal this evidence had included witness statements by K. and the applicant. The Court of Appeal noted that the applicant had been interviewed as a witness in the criminal proceedings and she had stated that she did not know the origin of the items and that they had been obtained by R. The Court of Appeal further noted that the applicant had not claimed title to the property or claimed that it had been her and her husband's joint property. On that basis, the Court of Appeal concluded that the property had been obtained through crime and had been lawfully confiscated.

85. Thus, the Court observes that Court of Appeal, in upholding the first-instance court's confiscation decision, mainly referred to two documents drawn up by the police, the first of which set out suspicions against R., and the second of which requested confiscation of the property, and to the statements of two witnesses, including the applicant. The Court notes that the Court of Appeal merely referred to the documents drawn up by the police, without making any attempt to assess the suspicions raised or conclusions drawn in these documents. As concerns the witness statements, K.'s statements were merely referred to, with no mention of their content. The applicant's statements were summarised briefly, and from this concluded that the property had been obtained through crime or that its legal owner could not be identified. The Court observes, however, that according to the applicant's statements this property was obtained by her husband, who had placed his money in precious metals (see paragraph 23 above). In these circumstances, the Court is unable to conclude that the lack of reasoning in the first-instance court's decision was remedied by the Court of Appeal.

86. The foregoing considerations are sufficient to enable the Court to conclude that the requirements of a fair trial were not complied with in the present case. Having reached this conclusion, the Court considers it unnecessary to further examine the question whether Article 6 § 1 was also breached on account of the lack of oral hearing.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

87. The applicant complained that she had been deprived of the possessions which had belonged to her husband and which had become her possessions through succession. She relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

88. The Government contested that argument.

A. Admissibility and scope of the complaint

89. The Court notes that this complaint is linked to the one examined above, and must therefore likewise be declared admissible.

90. As regards the scope of the complaint, the Court notes that the applicant's just satisfaction claim and, in substance, her complaint under Article 1 of Protocol No. 1, concerned gold, silver and diamonds seized from her husband. Therefore, the Court confines its examination of this complaint to these items and substances, and considers that there is no call to deal with the remaining items and substances that were also seized from R., such as waste containing precious metals, samples of rare earth and so on.

B. Merits

1. The parties' submissions

(a) The applicant

91. The applicant submitted that the courts had not based the decision to confiscate the property in question on the notion of public interest. Indeed, this matter had not been addressed at all by the Estonian courts. Likewise, the question of whether the interference was necessary had not been addressed.

92. The applicant considered that there was no evidence to establish that the property had been obtained through crime. The courts' conclusion that R. had given a false expert opinion and thereby committed a crime could logically not be connected to obtaining property. She also argued that there was no licence needed to own gold, silver and diamonds.

93. The applicant further noted that the courts had also relied on R.'s tax return for the year 2000, whereas there was no explanation why they had considered that the precious metals must have been obtained during just one year. There had never been any scrutiny of the total income and property situation of R. The value of the confiscated property was not such that it would be unlikely to be possible to obtain it in the course of one's professional life.

94. The applicant submitted that no reasonable steps had been taken by the authorities to identify the lawful owner of the property. It would have been reasonable to question R.'s immediate family members, including the applicant. However, the applicant had never been heard in substance on this matter.

(b) The Government

95. The Government argued that the relevant items had never been in the possession or ownership of the applicant: at the time when the property was seized from the garage neither R. nor the applicant had claimed that it was the applicant's property or that she had had any rights to it. When giving a witness statement in pre-trial proceedings six months after R.'s death, the applicant herself had affirmed that she knew nothing about these items; neither had she subsequently submitted any documents to prove the legal origin of the items or her right of ownership of them. The Government contended that these were substances and items the possession of which in such a large quantity required a special permit, and that some of them had undoubtedly been smuggled from Russia. In the decision to discontinue the criminal proceedings in respect of R. on 9 April 2001 it was also concluded that R.'s official income had not been sufficient to legally acquire such a large quantity of precious metals.

96. The Government contended that in the case of proceeds of crime – property obtained by committing an offence – and assets created as a result of crime, there was no doubt that the fundamental right of ownership did not extend to such property. Thus, as no proof of legal acquisition of the relevant substances and items by R. had been submitted, the applicant could not have acquired any rights to the property seized from R. before his death. Nor could the applicant have had any "legitimate expectation" of obtaining effective enjoyment of a property right over a property obtained through crime. It was improbable that over 100 kilograms of silver and almost one kilogram of gold had been obtained legally without any documentation. All the disputed items – gold and silver objects as well as five diamonds – were specific objects the value of which depended very much on their precise content, which could only be confirmed in written form. Accordingly, the Government concluded that there had been no interference with the applicant's rights under Article 1 of Protocol No 1.

97. However, even assuming that an interference with the applicant's rights had occurred, such interference had been in conformity with the public interest and subject to the conditions provided for by law and by the general principles of international law.

98. The Government submitted that the confiscation of the items taken from R. had had a legal basis in Article 63 (3) of the Code of Criminal Procedure, under which the property received as a result of a criminal offence, the legal owner of which could not be identified, was to be confiscated. It had also had a legitimate purpose – confiscation of criminally acquired property operated in the general interest in combating criminal activities and as a deterrent to those considering engaging in criminal activities.

99. The Government also pointed out that under the Court's case-law conviction of a person was not a precondition for confiscation; confiscation could also occur in the event of acquittal or discontinuance of criminal proceedings, as long as it could be established that a wrongful act had indeed been committed. In the interests of crime prevention, States had a wide margin of appreciation in dealing with property obtained by unlawful means or used for unlawful purposes. Therefore, although R. had not been convicted and the criminal proceedings had been discontinued because of his death, the confiscation of property obtained through crime had been justified, because no proof of its legal acquisition had been presented. The Government emphasised that the fundamental right of ownership did not extend to property obtained as a result of the commission of an offence, and therefore lawful acquisition of such property had to be proved. As the applicant in her appeal against the ruling of 24 March 2009 had not submitted any documents to refute the conclusion that the property had been obtained through crime and to prove its legal acquisition, the court could not identify the legal owner of the property.

100. The Government considered that in the present case a fair balance between the public and individual interests had been achieved, particularly as the applicant had never tried to establish the legal source of the items under question, or that R. had had sufficient legal income to obtain such items, or to establish her right of ownership of these items.

2. The Court's assessment

(a) General principles

101. The Court reiterates that Article 1 of Protocol No. 1 to the Convention, which guarantees in substance the right to property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among many authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V, and *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

102. The Court's constant approach has been that confiscation, even though it does involve deprivation of possessions, nevertheless constitutes control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Sun v. Russia*, no. 31004/02, § 25, 5 February 2009; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Arcuri and Others v. Italy* (dec.), no. 52024/99, 5 July 2001; *C.M. v. France* (dec.), no. 28078/95, 26 June 2001; *Air Canada v. the United Kingdom*, 5 May 1995, § 34, Series A no. 316-A; and *AGOSI v. the United Kingdom*, 24 October 1986, § 51, Series A no. 108). Accordingly, it considers that the same approach must be followed in the present case.

103. The Court considers that confiscation in criminal proceedings is in line with the general interest of the community, because the forfeiture of money or assets obtained through illegal activities or paid for with the proceeds of crime is a necessary and effective means of combating criminal activities (see *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A). Confiscation in this context is therefore in keeping with the goals of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which requires State Parties to introduce confiscation of instrumentalities and the proceeds of crime in respect of serious offences. Thus, a confiscation order in respect of

criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal activities, and also guarantees that crime does not pay (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 58, 1 April 2010, with further references to *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001-VII, and *Dassa Foundation and Others v. Liechtenstein* (dec.), no. 696/05, 10 July 2007).

104. The Court further reiterates that, although the second paragraph of Article 1 of Protocol No. 1 contains no explicit procedural requirements, it has been its constant requirement that domestic proceedings afford the aggrieved individual a reasonable opportunity of putting his or her case to the responsible authorities for the purpose of effectively challenging measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (see *Denisova and Moiseyeva*, cited above, § 59; *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV; and *AGOSI*, cited above, § 55).

(b) Application of the principles to the present case

105. Turning to the present case, the Court notes at the outset that pursuant to the Property Act the possessor of movable property is deemed its owner until the contrary is proved. Possession, in turn, is deemed lawful until the contrary is proved (see paragraph 42 above). The Court further notes that the disputed property was in R.'s possession when it was seized and that the applicant has presented the Court with an intestate succession certificate according to which she inherited one third of R.'s property (see paragraph 20 above). Thus, pursuant to the domestic law, the applicant is to be considered as having inherited the seized property unless the presumptions mentioned above were rebutted.

106. The Court further notes that the Viru County Court, when ordering the confiscation of the property, relied on Article 63 (3) of the Code of Criminal Procedure. Thus, the confiscation in question had, in principle, a legal basis. Furthermore, the Court is satisfied that confiscation of property obtained through crime is in line with the general interest of the community (see paragraph 103 above). The Court therefore proceeds to examine whether a fair balance was struck between the legitimate aim and the applicant's fundamental rights, and whether sufficient procedural guarantees were in place.

107. The Court observes that under Article 63 (3) of the Code of Criminal Procedure, relied on by the County Court, property obtained through crime could be confiscated. Having regard also to the presumption of innocence enshrined in Article 6 § 2 of the Convention, the Court notes that in the present case neither R. nor any other accused in the criminal proceedings were convicted of any offence. While in respect of the attempted smuggling of prohibited goods M. and J. were prosecuted,

although the criminal proceedings were later discontinued due to lack of public interest, the Court notes that this episode concerned waste containing precious metals, and had no direct link to other items and substances also seized from R., such as gold, silver and diamonds. Although it can be understood that R. was also suspected of a crime related to these items and substances under Article 152-3 § 3 of the Criminal Code (see paragraph 14 above), there is no information in the case file allowing the Court to conclude that any substantial investigation or judicial determination in this respect – that is, in respect of the suspected offence of purchase of items made of precious metals from the population – was carried out. Indeed, the suspicion in question appears to have been based merely on the fact that the items and substances in question were found at R.'s home and workplace. Thus, as the commission of any crimes was not established by the domestic authorities, the Court is unable to see how the property could be confiscated as obtained through crime under Article 63 (3) of the Code of Criminal Procedure. The Court also notes in this connection that it has not been shown that possession of such items and substances was unlawful in itself.

108. As regards the question whether the confiscation of this part of the property might have been based on the consideration that the property had been obtained as proceeds of crime, the Court is not convinced by the investigating authorities' reliance on R.'s tax return for 2000, according to which he admittedly could not have obtained such an amount of precious metals by lawful means (see paragraph 14 above), subsequently complemented by K.'s statements that R. had been living beyond his means (see paragraph 22 above). In this connection, the Court firstly notes that Article 63 (3) of the Code of Criminal Procedure, on which the confiscation decision was based, concerned property received as a result of a criminal offence and not property acquired as proceeds of crime. Moreover, it has not been demonstrated, as regards either of these grounds, that domestic law provided for confiscation of the property of a suspect who died during the criminal proceedings and in whose respect the proceedings were discontinued for that reason without him having been convicted. Secondly, and in any event, the domestic authorities appear to have carried out no assessment as to the sums R. might have obtained through crime and invested in precious metals. In these circumstances, the Court is bound to conclude that the confiscation of the gold and silver items and diamonds was an arbitrary measure, its scope being determined by the somewhat incidental seizure of evidence at the outset of the proceedings. The Court notes that no individual assessment of which pieces of property to confiscate appears to have been carried out (see, by contrast, *Silickienė*, cited above, § 68; see also *Phillips*, cited above, § 53, where the Court was satisfied that the procedure followed in the making of the confiscation order had been fair and respected the rights of the defence). The Court reiterates in this connection that the original County Court confiscation order did not

contain a list of the items to be confiscated. Although this deficiency was remedied by the same court, the fact remains that the first-instance court gave no reasons for the confiscation. The Court of Appeal referred to the material in the case file, but provided no analysis of evidence for its own part. These deficiencies, coupled with the procedural shortcomings already dealt with under Article 6 § 1 (see paragraphs 80 to 86 above) are sufficient to enable the Court to conclude that the fair balance which should be struck between the protection of the right of property and the requirements of general interest was upset in the present case.

109. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE COMPLAINT CONCERNING LENGTH OF THE PROCEEDINGS

110. The applicant further complained that the length of the proceedings in which her civil rights were determined had been excessive. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

111. The Government contested that argument.

A. The parties' submissions

1. The applicant

112. The applicant considered that the proceedings had started on 11 March 2001, the date on which the property was seized, and lasted until the Court of Appeal's decision of 25 May 2009, that is for eight years, two months and fourteen days. The applicant considered that the case was not complex, and therefore the length of the proceedings could not be justified by the complexity of the case.

2. The Government

113. The Government submitted that the proceedings for the determination of the applicant's civil rights took place at most in the period from 24 March to 25 May 2009. This period of two months was clearly in line with the reasonable time requirement. The length of the criminal proceedings – about eight years – did not affect the alleged rights of the applicant, as she was not a party to those proceedings.

114. The Government also submitted that the applicant could have lodged a claim for damages with an administrative court in respect of the alleged excessive length of the proceedings.

B. The Court's assessment

1. Admissibility

115. The Court considers that the proceedings related to the determination of the applicant's civil rights started on 11 March 2001, the date on which the property in question was seized. They lasted until 25 May 2009, the date when the Court of Appeal took its final decision. Thus, the proceedings lasted for eight years, two months and fourteen days.

116. The Court notes that the Government's arguments concerning the possibility of lodging a claim for damages with an administrative court related to excessive length of civil proceedings have been rejected in several cases (see *Raudsepp v. Estonia*, no. 54191/07, §§ 62-66, 8 November 2011, and the other cases referred to therein). Although the Court has subsequently found that following the Supreme Court's judgment of 22 March 2011 in the *Osmjorkin* case, an applicant had to have recourse to administrative courts in order to comply with the requirement of exhaustion of domestic remedies in respect of his length-of-civil-proceedings complaint (see *Treial* (dec.), no. 32897/12, §§ 41-44, 28 January 2014), it observes that in the present case the applicant lodged her application with it on 22 November 2009, that is before the development of the pertinent domestic case-law. Therefore, the Court considers, similarly to its finding in the above-cited case of *Raudsepp*, that the applicant had no effective remedy for her length-of-proceedings complaint at the time of the lodging of the present application (see also *Kiisa v. Estonia*, no. 72999/10, § 61, 13 March 2014, and *Kiisa v. Estonia*, nos. 16587/10 and 34304/11, § 52, 13 March 2014).

117. 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.

2. Merits

118. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case; the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

119. The Court considers that the proceedings at issue in the present case were not complicated. As regards the conduct of the applicant, it does

not appear that any delays could be attributed to her. At the same time, there were remarkable delays in the conduct of the proceedings by the authorities, notably there was a period of almost five years between the quashing of the first judgment by an appeal court and the re-hearing of the case at the first level of jurisdiction. As regards the question of what was at stake for the applicant, the Court notes that the pecuniary claim in question was not in itself such as to require special diligence in the conduct of the proceedings.

120. Having examined all the materials submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

121. There has accordingly been a breach of Article 6 § 1 of the Convention on account of the length of the proceedings.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

122. Lastly, the applicant complained that she had had no effective remedy in respect of her complaint of excessive length of civil proceedings. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

123. The Government contested that argument.

A. The parties' submissions

124. The applicant argued that she had not had at her disposal an effective remedy for her complaint of excessive length of proceedings.

125. The Government submitted that since the length of the proceedings in the determination of the applicant's civil rights in the period from 24 March 2009 to 25 May 2009 was reasonable, the question concerning the remedy had no relevance. In any event, the applicant could have lodged a claim for damages with an administrative court.

B. The Court's assessment

1. Admissibility

126. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

2. Merits

127. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

128. In the present case, the Court has already found that there was no effective remedy available to the applicant that she would have been required to use (see paragraph 116 above). This conclusion also applies in respect of Article 13 of the Convention.

129. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby, at the time when she lodged her application, the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. 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

1. The parties' submissions

131. The applicant claimed compensation for pecuniary and non-pecuniary damage related to the violations of the Convention complained of.

132. As regards the pecuniary damage, the applicant claimed compensation for the silver, gold and diamonds that had been seized from R.'s home, garage and workplace and that had subsequently been confiscated. Relying on the documents provided by the Government (search and inspection reports as well as an instrument of delivery and receipt indicating the items and substances given by the police to experts), the applicant submitted that the property in question comprised 315.6474 kilograms of silver, 0.962 kilograms of gold, and five faceted diamonds. Basing her assessment on the London Stock Exchange prices, apparently in 2009, the applicant submitted that the value of the seized silver was EUR 98,324.16 and the value of the gold was EUR 21,038.94. The applicant assessed the total value of the diamonds at EUR 15,000. Thus, the overall value of all the confiscated property was EUR 134,363.10.

133. According to the applicant, who relied on section 94 (1) of the Obligations Act (*Võlaõigusseadus*), an annual interest rate of 7.75% had to be applied to the above sum, as well as compensation for inflation, which had been 16.3% between May 2009 (end of the domestic proceedings) and April 2013 (the last month for which information was available at the time of the submission of the just satisfaction claim). The applicant asked the Court to adjust the sum awarded by the official interest rate and inflation index at the time of the payment, and submitted that application of the interest for four years and adjustment to compensate for inflation made the total amount EUR 210,634.17 at the time of the submission of the just satisfaction claim.

134. As regards the non-pecuniary damage, the applicant submitted that she had suffered stress and anxiety in connection with the violations, and claimed EUR 10,000 as compensation.

135. The Government reiterated that there had been no violation of the applicant's rights. If the Court nevertheless were to find a breach of Article 1 of Protocol No. 1, the Government called on the Court to reserve the just satisfaction issue to allow the parties reach an agreement or make further observations.

136. At the same time, the Government submitted four expert opinions drawn up between April and June 2010 in respect of the weight, content and price of the seized precious metals and diamonds. The Government noted that these expert opinions proved the weight and content of the substances in issue but argued that the values given in these opinions were irrelevant and should be reassessed on the basis of the current situation. In the expert opinions the value of the substances in question was assessed at the equivalent of EUR 141,480.93.

137. Furthermore, the Government argued that the interest rate used by the applicant was irrelevant and not applicable to the case at hand, and submitted that the inflation adjustment was not to be applied either.

138. As regards non-pecuniary damage, the Government considered that as the Convention had not been violated in respect of the applicant there was no basis for awarding any compensation. In the event that a violation was found, the Government left it to the Court to determine a reasonable sum in non-pecuniary damages.

2. The Court's assessment

139. Having regard to the material in its possession, including the lists of the seized substances and the expert opinions concerning their content and value, as well as the applicant's claims, the Court considers that it has enough information at its disposal to determine the amount of compensation to be awarded to the applicant for the pecuniary damage. It observes that in the applicant's argument the value of the property in question amounted to EUR 134,363.10, and according to the expert assessments provided by the

Government it was EUR 141,480.93. Taking into account the principle *ne ultra petita*, the Court considers it appropriate to proceed from EUR 134,363.10 as the value of the seized property. The Court further notes that according to an intestate succession certificate the applicant inherited one third of R.'s property (see paragraph 20 above). Although the seized substances were not mentioned in the succession certificate, the Court considers, in the absence of any evidence to the contrary, that the applicant is also entitled to claim compensation in respect of one third of the value of the confiscated property, that is EUR 44,787.70.

140. As regards the interest rate and adjustment for inflation, the Court observes that although the Government challenged the applicant's calculations, they did not provide an alternative method of calculation. The Court notes that it is not its task to determine in detail the compatibility of the method proposed by the applicant with the rules applicable under domestic law. It does not find the interest rate relied on by the applicant unreasonable, and accepts it. In contrast, having regard to the fact that this interest rate is considerably higher than the inflation rate for the period concerned, the Court does not consider it appropriate to apply any adjustment for inflation in addition to the interest. On the basis of these considerations, and rounding the period from the last domestic decision until the delivery of the Court's judgment up to the nearest full month, the Court awards the applicant EUR 64,456.96 in respect of pecuniary damage, plus any tax that may be chargeable.

141. Furthermore, having regard to all the circumstances of the present case, the Court considers that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

142. The applicant also claimed EUR 5,300 for legal costs incurred before the Court.

143. The Government considered the hours charged unreasonable and the rate applied excessive. If a violation of the Convention was found, the Government left it to the Court to determine a reasonable sum for legal aid.

144. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

145. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of reasoning in the confiscation proceedings;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,, the following amounts:
      (i) EUR 64,456.96 (sixty-four thousand four hundred and fifty-six euros ninety-six cents), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, 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;

7. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President