CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57389/00
by Kauko HUOHVANAINEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 14 March 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 8 May 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Kauko Huohvanainen, is a Finnish national who was born in 1964 and lives in Liperi. He was represented before the Court by Mr Heikki Salo, a lawyer practising in Helsinki. The Government were represented by their Agent, Mr Arto Kosonen, a director in the Ministry for Foreign Affairs.

A. The circumstances of the case

The facts of the case set out below are drawn mainly from the transcripts of evidence given during the proceedings in the domestic courts and the documents relating thereto. As to the investigation, the facts are drawn from the Government's observations insofar as they have not been contested by the applicant. The facts may be summarised as follows.

Background

On 2 December 1994 the applicant's 27-year-old brother J. was shot dead at six metres' range by the police following a two-day siege. The following events led up to the shooting:

On the evening of 30 November 1994 J. threatened a taxi driver with a gun, forcing him to abandon his car. Later that night, J. shut himself in his rented house on the island of Ängeslandet in the municipality of Kirkkonummi. He did not take any hostages. The island was subsequently evacuated.

The scene of the events

According to the Government, the island comprises several hundred hectares of woods with several inhabited houses. It was sealed off from the mainland by the police. The area of the siege was not illuminated by lights other than those coming from J.'s house. There was daylight between 8 a.m. and 4 p.m. At night, there was no moonlight due to cloud. There was not enough snow, either, to provide enhanced visibility. In fact, the greater part of the operation was conducted in darkness. The temperature was around zero.

There were two bridges to the mainland. The island could also be left by boat or by walking in the shallow water or on the ice which covered some of the water. The house stood near the water and had doors and windows on all sides. The ground was uneven and covered with rocks, tree trunks and densely growing bushes. The surrounding area did not provide the police officers with cover. Some of them had visual cover only.

According to the applicant, the Government deliberately described the scene of the events as more difficult than it actually was. The location of the

house was secluded. The trees surrounding it had been cut down by two armoured vehicles at the scene. There was no direct access to the woods from the bedroom door in the north-eastern part of the house.

The events leading up to and including the shooting of J.

The first day

The house was surrounded by 50 to 60 police officers. During the night and in the early hours of 1 December 1994 the police gathered information from various sources. Having learnt that J. had been convicted of criminal activities, they contacted the police in his former home town. The police at the scene were informed that he had previously been involved in an armed siege, that he had been admitted to a psychiatric institution and that he was considered to be especially hostile towards the police. The police also contacted doctors in the psychiatric institution where J. had received treatment. The doctors considered that it would be very difficult to conduct negotiations with J., who was extremely impulsive, paranoid, aggressive and incapable of co-operating. In order to draw up a profile of J., further information was received from several psychiatrists and psychologists, from police officers that had been involved in J.'s previous siege and from his family and acquaintances.

At the beginning of the operation the instructions regarding the use of force were first to apprehend J. by issuing instructions to him, to refrain from using weapons and to act within the limits of self-defence:

> 1. In a self-defence situation each police officer decides for him or herself on the use of force.
>
> 2. If the suspect comes out without a gun, he shall be issued with instructions and be apprehended using a police dog if necessary.
>
> 3. If the suspect comes out with a gun, he shall first be given instructions and if possible the police dog shall be used. If he approaches carrying a gun, shots may be aimed at his legs as a last resort. The suspect must not be allowed to exit the cordoned area.

The negotiators tried several times to contact J. by telephone, without success. A psychologist from the Police Academy was present to assist in the negotiations.

The border guard provided assistance in the form of a patrol boat and a helicopter. Units from the fire department were at the scene and an air ambulance was initially on stand-by and was moved closer at a later stage.

The police acquired the construction plan of the house but as a search at night would have been too risky it was postponed until the morning. At first light, the police started to approach the house in a line. A police dog and handler were on duty but when J. was spotted in the woods, armed, they

were too far away to act and they lost sight of him. After J. had been sighted around and in the house and the situation had escalated, the search plan was abandoned altogether.

Due to the lack of appropriate maps, the difficult surroundings and the safety hazards facing the police officers, the search was continued using a helicopter, which later spotted J. near the house. Following the sighting, the police moved closer to the house. The proper siege began at around noon.

At about 2 p.m. the officer in charge at the scene, Superintendent T., requested the Ministry of the Interior to authorise the use of the Special Police Task Force. The request was granted and 23 specially trained police officers joined the police at the scene under the instruction of their commander, Superintendent H. Upon arrival, H. was informed by Superintendent T. of the instructions on the use of force.

The police moved closer to the building to establish direct contact with J., whereupon he fired shots in the air. Additional shots were fired by J. during the day and night. According to the Government, J. shot towards the police officers at the scene. In addition to attempts to make direct contact, the negotiators tried repeatedly to reach J. by telephone, by leaving messages on his answering machine and by sending faxes. During the afternoon and early evening three short phone calls were successfully put through. However, J. refused to negotiate.

In the afternoon J.'s brother was brought to the scene in order to negotiate with J. He informed the police that J. owned a 22 calibre small-bore rifle and a very heavy 45-70 calibre sporting gun. J. was also said to be an excellent shot, having practised shooting as a hobby. At the scene, the police spotted J. carrying two long-barrelled weapons. In addition, J. shouted something at the police about a blasting operation, which made them suspect that he might also have explosives in his possession. As a result of this information, the operation was scaled up, with enhanced security measures put in place to protect the police officers and any other persons in the area.

During the evening and night J. was heard moving around outside in the darkness. The police had several lights trained on the house, but J. shot them all. The helicopter, which was training a searchlight on the house, was hit by J.'s small-bore rifle and had to perform an emergency landing in a nearby field.

The closest Special Task Force hideout was located about 15 metres from the house at the edge of the woods. The police considered it impossible to surround the house from farther away without losing sight of it. Moving the operation further away from the house would have enabled J. to move around and possibly to enter other houses.

The second day

In the early hours of 2 December 1994 the police used audible flares to locate J. and keep him indoors, from where he fired repeatedly through the windows and the skylight. During the morning the negotiators managed to make contact with J., who demanded a written assurance that he would not be committed to a psychiatric institution. The police refused the request.

The senior police officers assessed the situation in the light of the following incidents which had taken place during the previous night. J. had shot at the police several hundred times, having an excellent shooting position from the roof, which was accessible to him from the skylight. After the operation 14 bullet holes were found in a 15 x 20 cm-sized searchlight situated next to a police hideout. The rock providing cover to the command centre also had dozens of bullet marks on it. The police officers' gear did not give them adequate protection. The police officers' attempts to remain as invisible to J. as possible, the attempts at negotiation and the cutting-off of the telephone lines by the police to allow a night's rest, did not have any effect on J.'s behaviour. The police considered it too dangerous to allow the situation to continue another night, as J. was able to leave the house undetected when it was dark.

The senior police officers had lengthy discussions on whether to abandon the siege. However, they decided that public order and safety could not be guaranteed if the operation was abandoned. The use of a police dog was rejected as too risky, since the dog could not operate without the handler and there was no cover for the dog handler near the house. After weighing up the different possibilities, the officer in overall charge obtained executive assistance from the defence forces in the form of two armoured personnel carriers (nos. 31 and 51) with drivers. It had also been suggested by a doctor at the aforementioned psychiatric institution that "a show of strength in the form of military force and vehicles might allow J. to retreat honourably". The armoured vehicles also allowed closer monitoring of the house and made possible the use of tear gas and, if necessary, the evacuation of injured persons.

Around noon, when repeated negotiation attempts had failed, the officer in charge at the scene, Superintendent T., ordered the use of tear gas to break J.'s resistance. The order was carried out from armoured vehicle no. 51. The gas had no visible effect on J. As his whereabouts in the house were unknown, Superintendent T. ordered the window panes and curtains to be removed some two hours later in order to prevent surprise attacks. Armoured vehicle no. 51 remained at the corner of the green and yellow sides, 5.8 metres from the bedroom door, with a view to observing and effecting an arrest. Shortly after the removal of the window panes J. was spotted on the roof, from where he had a clear line of fire towards the police. The police fired warning shots into the air, whereupon J. went back inside.

At about 6 p.m. J. fired shots towards the armoured vehicles and the border guard boat. In addition, he threw a gas canister and at least two "Molotov cocktails". At the same time it appears that J. set the house on fire. J. was seen walking around inside carrying a rucksack and breaking glass and furniture in an uncontrolled manner. The police estimated that the situation had become more dangerous and more difficult as it seemed that J. was planning an escape. His conduct was becoming increasingly hostile and self-destructive. His life was deemed to be in danger from the fire.

At that point, abandoning the operation was not an option owing to the serious threat posed by J. The use of a dog was impossible under the circumstances, as was the sending of an action team into the burning house. It was decided that the only possible way to stop and apprehend J. in the dark and smoke-filled conditions before he could escape was to order a police officer to shoot with a shotgun aimed at J.'s leg, although shooting was considered extreme and a last resort.

At 6.26 p.m. the Special Task Force commander, Superintendent H., and the officer in charge at the scene, Superintendent T., decided that J. should be shot at, on the firm understanding that he be hit only in the leg. The goal of the shooting operation was to rescue J. from the burning building without endangering the other persons at the scene. Senior Constable T.L. was assigned the task of firing the shot. The manner in which he carried out the order was left to his discretion. He chose a shotgun in order to cause as little injury as possible. According to the Government, the shotgun was chosen also in order to minimise the danger to the police officers and rescue personnel on the opposite side of the house. The officer in overall charge, Provincial Chief Inspector K.A., authorised the change of instructions on the use of force at 6.31 p.m., whereupon T.L. fired one 9 x 9 millimetre lead shot through the porthole of armoured vehicle no. 31 at 18 metres' range. J. was hit in the right hand and the upper part of the right thigh.

The shot had no visible effect on J., who continued to throw objects into the fire and to move around inside the house. No further shooting was authorised since it had proved ineffective. According to the subsequent indictment, J. did not fire his gun after he had been hit.

By 6.56 p.m. the house was ablaze. Thirty seconds later the Special Task Force commander, Superintendent H., estimated that J. would exit the house within two minutes if he intended to come out at all before its expected collapse. Due to the noise of the fire no further contact with J. was possible. The police expected him to leave the house either through the bedroom window from which the glass had been removed or through the bedroom door. According to the subsequent indictment, the only way out had been the lower part of the door on the so-called green side of the house.

At about 7 p.m. J. broke the glass on the lower part of the bedroom door and cleared the frame of shattered glass with his weapon. He started to crawl out through the opening, which was about 80 centimetres high. He

was carrying two weapons. At that point he was hit by two shots fired simultaneously by Senior Constables A. and L., from armoured vehicle no. 51 at six metres' range. Both shots were aimed at J.'s shoulder and arm, but owing to his position, the firing angle through the porthole of the armoured vehicle and the short time available, he was hit in the head. A. and L. had acted on the orders of their superior officer, Sergeant R.

The prompt resuscitation efforts at the scene were unsuccessful and J. died at 7.35 p.m. The site was sealed off and an investigation was started immediately.

The investigation

During the siege a log was kept of the decisions made and actions taken. Due to the geographical conditions not all the radio conversations were recorded on tape, but the later part of the siege was recorded on audio tape and the use of tear gas was also recorded on video tape. Although the area was sealed off for the crime-scene investigation, some evidence may have been destroyed when the fire was extinguished. Despite this, it was possible to collect details of the bullet holes in and around the building. The investigation was carried out by the National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*), which is one of the national units of the Finnish Police. The National Bureau of Investigation specialises in investigating and preventing serious, organised and international crime. At the national level, it is responsible for criminal intelligence and identification of new types of crime. The National Bureau of Investigation also develops criminal-investigation techniques and provides training in the aforementioned subjects.

At the particular request of J.'s family, certain additional lines of inquiry were followed during the pre-trial investigation. The autopsy report and the results of all the forensic and other investigations, as well as the reports on the siege, were included in the pre-trial documentation, together with a large number of witness statements.

Not until 8 February 1995 did the National Bureau of Investigation begin to investigate whether anyone involved in the siege had acted in an unlawful manner.

In 1995 the decisions made and the actions taken during the operation were studied by a permanent investigation team set up by the Ministry of the Interior. The tasks of the team include investigation of the tactics, plans and actions of particularly dangerous police operations. Occupational safety requirements are considered and improvements suggested where necessary. In addition, the team has an educational role, creating educational material for police forces and giving advice on future operations where appropriate.

The investigation team studied the operation in question hour by hour, drew conclusions and made recommendations on the basis of the investigation. The team drew attention in particular to the inadequacies of

the police officers' protective equipment and stressed the importance of improving their occupational safety in future operations. The report was finalised within one year of the operation in question.

Press releases

Meanwhile, on the evening of 2 December 1994 the local police issued a press release stating that the situation at the scene had become extremely serious as the suspect had been firing at the police with the apparent intention of breaking through the cordon in order to escape. The police had made tactical use of gas, but the suspect had continued to direct heavy fire at the police and had thrown fire bombs both outside and inside the house, causing the house to catch fire. Finally, the armed suspect had run out of the building. The situation had become so serious that the police had been forced to act. There had been an exchange of fire as a result of which the suspect had been hit and had died.

On 2 February 1995 the National Bureau of Investigation issued a press release stating that there were now grounds for investigating whether the suspect had committed suicide in an unusual manner.

The consideration of the charges

The District Prosecutor's decision to prosecute

At the District Prosecutor's request, the National Bureau of Investigation conducted an additional investigation during consideration of the charges.

On 26 September 1995 the District Prosecutor decided to charge the commander of the Special Task Force, Superintendent H., with negligent homicide and negligent breach of official duty. The indictment was to the following effect.

Upon his arrival at the scene, H. had received the following instructions on the use of force:

> 1. In a self-defence situation each police officer decides for him or herself on the use of force.
>
> 2. If the suspect comes out without a gun, he shall be issued with instructions and be apprehended, using a police dog if necessary.
>
> 3. If the suspect comes out with a gun, he shall first be issued with instructions and if possible the police dog shall be used. If he approaches carrying a gun, shots may be aimed at his legs as a last resort. The suspect must not be allowed to exit the cordoned area.

It was H.'s responsibility to inform his subordinates of the instructions on the use of force. H. duly informed his men, but added the following:

> "If, despite everything, [the suspect] tries to break through the cordon of police officers, he must be stopped. In the last resort, this may be done by shooting at him in the upper body."

The District Prosecutor considered that H.'s own adaptation of the instructions on the use of force, according to which his men had the right under certain conditions to shoot J. in the upper body, was a fundamental change in orders which H. did not have the right to give without the explicit approval of the officer in charge at the scene or the officer in overall charge. H. must therefore be considered to have breached his official duties on account of his negligence in relaying the instructions to his men. Having regard to the fact that H. was to be considered as having sought to clarify the instructions for his men rather than to deliberately alter them, the District Prosecutor took the view that his conduct, although reprehensible, should be considered only as negligence in the performance of duty.

Towards the end of the chain of events of 2 December 1994, just before 7 p.m., J. broke the glass on the lower part of the bedroom door and was about to exit the building with no apparent intention of surrendering to the police, apparently intent on escaping, armed, through the police cordon. At that moment he was hit by two shots fired simultaneously from armoured vehicle no. 51 at six metres' range by two police officers, Senior Constables A. and L. They considered, as did their superior officer, that there was no other way of stopping J., who received a fatal shot to the head. A. and L. were acting on the orders of their superior officer, Sergeant R. Accordingly, the District Prosecutor considered that H. had negligently caused J.'s death, having provided his men with an arbitrary interpretation of the instructions on the use of force, which A. and L. had tried to act upon.

The District Prosecutor's decisions not to prosecute

On 15 November 1995 the District Prosecutor decided not to bring charges against the officer in overall charge, Provincial Chief Inspector K.A., and the officer in charge at the scene, Superintendent T., for negligent breach of official duty, finding that the shooting of J. in the legs had been justifiable under Chapter 3, Article 8 of the Criminal Code. He also decided not to prefer charges for negligent breach of official duty against A. and L., who had both fired shots at six metres' range. He found that the decision to stop J. by using a gun had been in line with the instructions on the use of force, and justified in the circumstances. While it could be argued that the shots had been fired too early, it was unreasonable in the circumstances to direct criticism at A. and L.

Lastly, he decided against bringing charges for manslaughter against Sergeant R., finding that he had given an order to take lawful action against J. There was no evidence that he had ordered A. and L. to shoot to kill.

The District Prosecutor therefore concluded that the evidence did not warrant the prosecution of any of the persons involved in the siege, with the

exception of the commander of the Special Task Force, Superintendent H., whom he had decided to prosecute by his decision of 26 September 1995.

On 22 February 1997 the District Prosecutor also decided against bringing charges of endangering others and committing an offence in the performance of duty against Sergeant R. in his capacity as the superior of the police officer who had fired tear gas into the house.

The private prosecution

Following the District Prosecutor's decision not to bring charges, J.'s family brought a private prosecution. It appears that some of them were granted free legal assistance. In April 1996 they brought charges against Senior Constable T.L. for aggravated assault and abuse of office, on the ground that he had shot at J. at 18 metres' range, inflicting bodily harm. They also preferred charges against Senior Constables A. and L. for manslaughter and aggravated abuse of office, on the ground that they had shot J. in the head at six metres' range with a 9 x 9 millimetre lead shot, in a situation where he had manoeuvred only his upper body through the door opening. Lastly, Sergeant R. was charged with manslaughter in his capacity as A. and L.'s superior officer, who had ordered them to shoot. The complainants also claimed damages from the State.

The court proceedings against Superintendent H.

In the proceedings against the commander of the Special Task Force, Superintendent H., J.'s family did not submit any claims.

The District Court held two hearings in November 1995 and took forensic and oral evidence. The members of the Special Task Force involved in the siege appeared before the court and gave evidence to the effect that they had understood their commander, Superintendent H.'s, orders as relating to a self-defence situation in the strict sense. The officer in charge at the scene, Superintendent T., testified that at 6.37 p.m. he had heard Superintendent H. say on the police radio that J. could be shot in the legs when he appeared and that if his gun was pointed towards the police he should be shot dead. T. had been about to correct the order but he had then heard Superintendent H. correct it himself by saying that J. should not be shot dead but shot in the upper body. T. had accepted the change of order and perceived it as an operational tactic in a genuine self-defence situation. He had therefore not intervened. T. considered that H.'s order was in line with the instructions on the use of force.

A. gave evidence to the effect that, had J. managed to get up on his feet, he would have posed an immediate threat to the life or health of the police officers in the cordon. A. had perceived the situation as requiring self-defence and had therefore fired his gun. He had done so independently and irrespective of H.'s amendment to the instructions on the use of force.

L. gave evidence to the effect that the sector of fire had been too narrow to await a possibility to shoot at J.'s legs. When exiting the house J. had posed a threat to the police officers in the cordon. Due to J.'s position it had not been possible to aim at his legs. L. had perceived the situation as requiring self-defence. H's amendment to the instructions on the use of force had not influenced his judgment.

On 18 December 1995 the District Court (*käräjäoikeus, tingsrätten*) of Raasepori dismissed the charges. It observed that the forensic reports revealed that J.'s death had been caused by a shot at six metres' range. It was not known which of the shots fired by Senior Constables A. and L. had brought about his death. The court observed that the instruction had been given to a trained team of specialist used to working closely together. A. and L. had shot at J. independently of their commander Superintendent H.'s amendment to the instructions on the use of force, because they had perceived the situation as requiring self-defence.

The District Prosecutor appealed. On 21 August 1997 the Helsinki Court of Appeal (*hovioikeus, hovrätten*) upheld the lower court's judgment. The acquittal appears to have become final.

The court proceedings against Senior Constables T.L., A. and L. and Sergeant R.

The District Court of Raasepori conducted an inspection in an armoured vehicle and heard evidence from about thirty witnesses, including four doctors on the subject of the autopsy, J.'s mental health prior to and during the siege and his treatment in a psychiatric institution; six persons responsible for the forensic investigation; the senior police officers; 11 police officers and other police personnel who had been at the scene or working with the remote units; the drivers of and police officers in the armoured vehicles; a negotiator and a firefighter; three experts on ammunition, weapons and tear gas; and two other persons on the nature of the information provided by the police after the operation. The court also had before it the pre-trial investigation records, the medical reports on J. and the reports and opinions concerning the forensic investigation. It also had audio and video tapes of the siege.

The doctors testified that J. had been suffering from a serious personality disorder and paranoia, had had a grandiose perception of himself and had been aggressive and violent. They considered that he had been in need of compulsory care at the time of the events. All these factors had made the situation dangerous and urgent.

In his testimony, a forensic medical expert, T., expressed the view that firing a shotgun with lead shots, with a scatter of over 30 centimetres, at six metres' range could be considered tantamount to executing the target. The weapon in question was not a precision weapon.

Sergeant R. gave evidence to the effect that J.'s behaviour and the way he had exited the house had made clear his intention not to surrender but to break through the cordon while armed. J. had had to be stopped by having shots fired at him from the armoured vehicle, as the lives of the police officers outside would have been endangered by any cross-fire. Several police officers gave evidence to the effect that J. had come out crouching. He had also been carrying the guns, which were pointing outwards. Senior Constables L. and A had aimed at J.'s shoulder, but had hit him in the head.

In its judgment of 22 August 1997 the District Court observed that the scope of the case was not to assess whether the actions of the police taken as a whole had been appropriate to the purpose of the siege. The scope was confined to the examination of the charges.

The court dismissed the charges against Senior Constable T.L., finding that he had not exceeded his powers.

As to the charges against Senior Constables A. and L., the court noted the following. Several witnesses had given evidence to the effect that the shotguns had been pointing outwards when J. had made his way out of the building, whereas the forensic report had stated that the guns had been found pointing inwards after the fire had been extinguished. A firefighter had testified that the power of the fire brigade's hoses might possibly have altered the shotguns' position. In any event, the court found that the position of the shotguns was not decisive. What was decisive was the fact that J. had brought the guns when making his way out and that A. and L. had been convinced that the guns were pointing towards them. The court also attributed importance to the fact that J. had crawled out through the door although he could have opened it and walked out. The manner of exit strongly suggested that he had not planned on surrendering. On the contrary, the court drew the conclusion that J. had tried to exit the building undetected with a view to breaking through the cordon and escaping into the dark woods. As to whether any blame could be attributed to A. and L. for not waiting one or two seconds before shooting in order to be able to target the lower part of his body, the court observed that the forensic examination and a reconstruction of the events had disclosed that A.'s sector of fire had ended one metre to the left of the doorway and the sector available to L. had ended 0.2 metres to the left of the doorway. Having regard to the narrowness of the sectors of fire and the inside of the armoured vehicle and the fact that J. could have disappeared from their sectors of fire at any moment, the court concluded that A. and L. had fired their guns in self-defence.

As to their superior officer, Sergeant R., the court found that A. and L. had acted independently and in self-defence, and that his order to shoot had therefore not caused J.'s death.

Accordingly, the District Court dismissed the charges and the other claims.

The applicant and his co-complainants appealed, requesting a hearing. On 16 and 17 September 1998 the Helsinki Court of Appeal held an oral hearing during which the defendants and five witnesses were re-examined. In addition, it heard evidence from one new witness proposed by the complainants, making a total of ten witnesses. The court refused the complainants' request to re-examine ten other witnesses as being manifestly unnecessary, since their statements either concerned circumstances that had already been clarified during the proceedings in the lower court or were irrelevant. It appears that the defendants did not adduce any oral evidence and that the Court of Appeal, of its own motion, called three of the witnesses who had been examined before the District Court.

By a judgment of 23 March 1999 the Helsinki Court of Appeal upheld the lower court's judgment. With regard to the charges against Senior Constable T.L., it found that he had acted in order to effect J.'s arrest under Chapter 3, Article 8(2) of the Criminal Code, which justified the use of force. As to Senior Constables A. and L. and Sergeant R., it found that, following J.'s appearance, armed, in the doorway the arrest situation had turned into a situation requiring self-defence under Chapter 3, Article 6 of the Criminal Code. Making an assessment based on the circumstances at the scene, the court considered that the shooting had been justified and necessary in order to repel an imminent attack and had fulfilled the requirements of the principle of proportionality.

On 8 November 1999 the Supreme Court (*korkein oikeus, högsta domstolen*) refused the complainants leave to appeal by a majority (two votes to one).

B. Relevant domestic law and practice

Homicide and bodily harm

The right to life is guaranteed under the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999, section 7). At the material time, it was guaranteed under the then Constitution Act (*Suomen hallitusmuoto, Regeringsform för Finland*; Act no. 94/191, section 6).

Manslaughter carried a minimum sentence of eight years' imprisonment or, under mitigating circumstances, four years (Chapter 21, Article 1 (as amended by Act no. 491/1969) of the Criminal Code (*rikoslaki, strafflagen*) as in force at the relevant time).

A person who caused the death of another through negligence could be sentenced to a fine or to imprisonment for a maximum period of two years for negligent homicide (Chapter 21, Article 8 (as amended by Act no. 578/1995) as in force at the time of the criminal proceedings).

Aggravated assault carried a maximum penalty of ten years' imprisonment (Chapter 21, Article 6 (as amended by Act no. 491/69) as in force at the relevant time).

In matters other than breaches of official secrecy, public servants acting in an official capacity who, as a result of carelessness or inattention, were in breach of or neglected to fulfil their official duties as set out in the relevant provisions or regulations, were liable to a reprimand or a fine for negligent breach of official duty, unless the act viewed overall, in the light of any harmful effects and of other circumstances, was of minor importance (Chapter 40, Article 11 (as amended by Act no. 792/1989) as in force at the relevant time).

Persons committing an act which, though otherwise punishable, was necessary in order to repel a present or imminent unlawful attack against themselves or others, or against their property or that of others, were deemed to have acted in self-defence and were therefore not liable to punishment (Chapter 3, Article 6 (as amended by Act no. 621/1967) as in force at the relevant time).

A person committing an act not necessary to repel an attack, protect the sanctity of the home or retrieve his or her property, was liable to either a full or a reduced sentence, at the discretion of the court, for overstepping the bounds of self-defence. If the circumstances were such that the person could not reasonably have been expected to retain his or her self-control, no punishment was imposed (Chapter 3, Article 9, paragraphs 1 (as amended by Act no. 621/1967) and 2 (as amended by Act no. 321/1983). That provision was amended with effect from 1 January 2004. It now provides that an act which is necessary in order repel a present or imminent unlawful attack constitutes legitimate self-defence, unless it manifestly exceeds what, on the basis of an overall assessment, may be deemed justifiable, taking into account the nature and force of the attack, the identity of the defender and the attacker and the other circumstances. However, if the act oversteps the bounds of self-defence (excessive self-defence), the offender is exempt from criminal liability if the circumstances were such that he or she could not reasonably have been expected to act otherwise, taking into account the danger and the sudden nature of the attack and the situation in general (Chapter 4, Article 4 (as amended by Act no. 515/2003).

Duties of the police

The Police Act in force at the material time (Act no. 84/1966) provided that the duty of the police was to maintain public order and security (section 1). A police officer had the right to remove or apprehend a person and temporarily keep the person in custody if he or she was causing a disturbance or was posing an immediate danger to public order or security. A police officer had the right to apprehend and temporarily keep in custody a person who, on the basis of his or her threats or other behaviour, was

likely to commit an offence. A person could also be taken into custody to protect him or her from imminent danger to his or her life or health (section 19).

Where a police officer met resistance in the performance of his or her duty, he or she was entitled to use such force as could be deemed justified in view of the nature of the duty, the seriousness of the resistance and the other circumstances prevailing in the situation (Chapter 3, Article 8, paragraph 1 (as amended by Act no. 621/1967) of the Criminal Code as in force at the relevant time). When a person being apprehended, arrested or detained attempts to avoid capture by resisting or escaping, the use of force is allowed in order to capture him or her, to prevent his or her escaping, or keep order, when such measures can be justified in view of the circumstances (Chapter 3, Article 8, paragraph 2 (as amended by Act no. 621/1967). In a situation where greater force has been used than can be deemed justified, the sentence may be reduced on grounds of mitigating circumstances or, if there are very persuasive reasons for so doing, a decision may be taken not to impose any punishment (Chapter 3, Article 9, paragraph 2, as amended by Act no. 321/1983).

The Supreme Court has established precedents concerning the right of self-defence in cases relating to police actions in siege situations (nos. KKO 1993:50 and 2004:75).

The right to compensation

A public corporation is vicariously liable in damages for injury or damage caused through error or negligence in the exercise of public authority. The same liability also applies to other corporations that perform public duties on the basis of an Act, a Decree or an authorisation given in an Act. However, liability is incurred in the exercise of public authority only if the performance of the activity or task, in view of its nature and purpose, has not met the reasonable requirements laid down for it (Chapter 3, section 2 of the Tort Liability Act (Act no. 412/1974).

Damages shall constitute compensation for personal injury and damage to property. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases where there are especially compelling reasons, damages shall also constitute compensation for economic loss that is not connected to personal injury or damage to property (Chapter 5, section 1).

A person who has suffered a bodily harm or other personal injury shall be entitled to damages to cover medical costs and the other costs arising from the injury and to compensate for loss of income and maintenance, pain and suffering, invalidity and other permanent disability (Chapter 5, section 2).

The provisions on personal injury apply also to damages for the distress caused by an offence against individual liberty, honour or domestic peace or by another comparable offence (Chapter 5, section 6).

Evaluation of evidence

The court shall decide what is to be regarded as the truth in the case after having carefully evaluated all the facts submitted to it (Chapter 17, Article 2, paragraph 1 (as amended by Act no. 571/1948) of the Code of Judicial Procedure).

Organisation of the police

The police force operates under the supervision of the Ministry of the Interior. It is a three-tier organisation. At the top is the Police Department of the Ministry of the Interior or the Supreme Police Command. Below are the Provincial Police Commands, the national police units, the police training establishments, the Police Technical Centre and, for operational purposes, the Helsinki Police Department. The third level is the local police, who operate under the relevant Provincial Police Command.

The Police Department of the Ministry of the Interior also comprises the Police Advisory Board set up by the Government. Each district police force has its own police advisory committee, appointed by the local council.

Provisions on the organisation of the police and the duties of the different police units and advisory committees are laid down by the Police Administration Act (*laki poliisin hallinnosta, polisförvaltningslagen*; Act no. 110/1992).

The national police units also come under the supervision of the Ministry of the Interior. However, the National Bureau of Investigation is separate from the provincial and local police forces.

A Special Task Force is maintained by Helsinki Police Department, answerable to the Ministry of the Interior. It has no special privileges and must comply with the legal, operational and ethical standards laid down for the police. It is a part of the police structure and always operates under the command of the unit whose operation it is participating in. The lines of action are decided by the officer in overall charge and, on the ground, the Special Task Force is subordinated to the officer in charge at the scene.

The duty of the Special Task Force is to be prepared and equipped for situations where normal police operations fail to produce the desired outcome. Its members are trained to act as a specialist team, and have more elaborate protective equipment than the local police. They receive regular training in special operations such as siege and hostage situations. They are members of the police patrol force. In 1994 special operations and training accounted for approximately twenty per cent of their work time.

At the material time, the Special Task Force's equipment did not include protective gear against rifle-calibre weapons. The amount of night-vision equipment which they had was not adequate and their clothing was unsuitable for prolonged operations in winter conditions.

C. Relevant international law and practice

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Force and Firearms Principles) were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Paragraph 9 of the UN Force and Firearms Principles provides, *inter alia*, that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life".

Other relevant provisions read as follows:

Paragraph 10

"... law enforcement officials shall identify themselves as such and shall give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

Paragraph 22

"... Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

Paragraph 23

"Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly."

Paragraph 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by Economic and Social Council Resolution 1989/65, (UN Principles on Extra-Legal Executions) provides, *inter alia*:

"There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances ..."

Paragraphs 10 to 17 of the UN Principles on Extra-Legal Executions contain a series of detailed requirements that should be met by investigative procedures into such deaths. Paragraph 10 states, *inter alia*:

> "The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation ... shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify ..."

Paragraph 11 specifies:

> "In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles."

Paragraph 16 provides, *inter alia*:

> "Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence ..."

Paragraph 17 provides, *inter alia*:

> "A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law ..."

The "Minnesota Protocol" (Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions, contained in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions) provides, *inter alia*, in section B on the "Purposes of an inquiry":

> "As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil this purpose, those conducting the inquiry shall, at a minimum, seek:
>
> (a) to identify the victim;
>
> (b) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
>
> (c) to identify possible witnesses and obtain statements from them concerning the death;

(d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;

(e) to distinguish between natural death, accidental death, suicide and homicide;

(f) to identify and apprehend the person(s) involved in the death;

(g) to bring the suspected perpetrator(s) before a competent court established by law."

In section D, it is stated that "in cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established ...".

COMPLAINTS

1. The applicant complained under Article 2 of the Convention that the facts of the case disclosed a violation of J.'s right to life, as the use of lethal force had not been absolutely necessary.

2. He also complained under Article 6 § 1 that he had been denied a fair trial, for the following reasons:

The District Court in its judgment had not adequately set out the oral evidence given on the applicant's behalf, nor had it analysed the evidence properly and impartially.

The Court of Appeal, without giving proper reasons, had refused to re-examine some of the applicant's witnesses from the District Court, relying on the transcript from the lower court, in violation of the principles of immediacy and holding of an oral hearing. It had also re-examined three police officers as witnesses of its own motion in violation of the equality-of-arms principle.

THE LAW

A. Article 2 of the Convention

The applicant complained under Article 2 of the Convention that the facts of the case disclosed a violation of J.'s right to life, as the use of lethal force had not been absolutely necessary.

Article 2 reads:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

The Government contested the allegation, arguing that it was undisputed that J. had been suspected of a criminal offence and, after a siege lasting more than two days, had been shot and fatally wounded in an operation to effect his lawful arrest.

1. Whether the use of force was absolutely necessary

The Government pointed out that J. had been proven to pose a serious threat to those present at the scene. He had previously been involved in a siege situation and in other violent crimes. He was known to have acted violently towards the police and even towards members of his own family, having shot at his own brother previously, and was also known to have had mental health problems. In addition, the circumstances at the scene were extremely difficult due to the weather and other conditions. The applicable law was in conformity with Article 2 of the Convention. The police could interfere with a person's constitutional rights only if it was permitted by law. In the present case, as noted by the domestic courts, the police officers in question had had justifiable reasons for believing that J. had made an illegal threat and committed an assault and possibly a robbery. In addition, J. had been proven to be dangerous to the public at large and especially to those present at the scene. This entitled the police to apprehend him and take him into custody. The Government made reference to *Andronicou and Constantinou v. Cyprus* (judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2107, § 192) and *McCann and Others v. the United Kingdom* (judgment of 27 September 1995, Series A no. 324, p. 58, § 200), in which the Court had stated that the use of force may be justified where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. In the present case the situation during the operation fulfilled the requirements of Article 2 § 2 (a) and (b). The police officers had been trying to effect a lawful arrest while protecting themselves, the other persons at the scene and the residents of the island. As concluded during the pre-trial investigation and the consideration of the charges and also during the proceedings before the domestic courts, had J. been allowed to escape armed, the lives of even more people would have been in danger. Therefore, the perception of the

situation and the actions taken in the present case had not been proved to be mistaken.

The applicant maintained that the use of force had not been absolutely necessary. The operation had been aimed at arresting J. and taking him to hospital but he had been shot dead intentionally, or executed as Dr T. had put it when examined as a witness during the criminal proceedings. Shooting someone at six metres' range with nine millimetre lead shots could not be justified on any grounds, as there had been no indication that J. posed a threat to anyone. Senior Constables A. and L. had been in safety inside the armoured vehicle. Neither had any evidence been produced during the court proceedings to the effect that anyone else at the scene had been in danger. J., already injured, had been in the process of crawling out of the house when he had been shot in the head. At that time he had not posed a danger to anyone and had not been about to exit the cordoned area. The barrels of his shotguns had been pointing inwards, as revealed by the forensic investigation. The guns had not even been cocked. J. had been making his way out of a burning house, blinded by the sudden change from intense light to darkness. His mobility had been reduced as a result of the injuries to his leg and hand. The shooting had been in violation of the principle of proportionality.

The applicant emphasised that the police had failed to draw proper conclusions from the information they had received on J.'s mental illness. They had treated an ill person like a dangerous professional criminal although he had done no harm to anyone.

2. Supervision and organisation of the operation

The Government emphasised that the entire operation had been initiated and prolonged as a result of J.'s own actions and his violent resistance to the police officers performing their duty to protect and maintain public order and security. The operation had begun following an emergency call and when more details about the situation had emerged, it had been scaled up into a major operation. It had been planned and directed by high-ranking and experienced police officers who had been at the scene from an early stage. Those in charge at the scene had kept the line of action under constant review in the light of the changes in the situation and circumstances. All the action had been based on official action plans and guidelines prepared for special operations such as the one in question. Practical training based on those action plans had been carried out on several occasions, the most recent night-time practice operation having taken place only two months prior to the operation in question. At the scene there had been several highly experienced specialists in different fields, including specially trained police personnel and negotiators. The Supreme and Provincial Police Commands had been kept constantly informed of the details of the situation and its seriousness. After the second night of the siege the Provincial Police

Command had been present and monitored the operation at the scene. Further assistance had been requested and received from the coast guard, the border guard and the defence forces, in the form of vehicles and other equipment. The Government made reference to *Andronicou and Constantinou v. Cyprus* (cited above, § 183), in which the Court had found no violation although the operation had displayed some shortcomings, such as lack of crowd control and lack of a dedicated telephone line between the negotiator and the perpetrator.

The Government also referred to *McCann and Others v. the United Kingdom* (cited above), in which the Court had found a violation based, *inter alia*, on the fact that the authorities had not taken into account that the information gathered might have been erroneous; nor had they had an alternative plan of action if the intelligence had proved to be false. In the present case, there existed pre-approved plans of action for the operation, regulations on the use of firearms, an established chain of command and a clear operational structure. All the actions had been authorised by senior officers. No rank-and-file police officers had acted on their own, nor had any unnecessary force been used despite J.'s continuous actions and threats aimed at those present at the scene. Over a period of two nights and two days, the use of force by the police had been limited to three shots aimed at J., all of which had been fired during the last hour of the siege. One shot had been aimed at J.'s foot and the other two shots had been fired in the final moments of the siege when he had been leaving the building with two long-barrelled guns in his hands. In addition, the police had thrown several canisters of tear gas into the house before J. had set it on fire.

The Government emphasised that the measures taken during the operation had been the result of a careful weighing-up of the situation and the various options for ending the siege as peacefully as possible without causing unnecessary harm to anyone. Several alternative actions, such as a house search and the use of a dog for the arrest, had been abandoned for appropriate and thoroughly considered reasons. The use of force had been proportionate and absolutely necessary taking into account J.'s actions, the fact that he had tried to leave the house with loaded guns pointing towards those present at the scene, giving no grounds for believing that he would surrender, and the other relevant facts.

The applicant submitted that the killing had not been based on any plan and had been in flagrant violation of the instructions on the use of force. In fact, the decision to shoot had been taken by the individual police officers of the Special Task Force without weighing up the alternatives. They had subsequently explained that the shooting had been some sort of self-defence. It was clear from the audio tape that seven seconds had passed from the moment that J. appeared in the doorway until the firing of the shots. Further, the recording also revealed that when the commander of the Special Task Force, Superintendent H., had ordered that J. be shot

immediately in the legs, Senior Constables A. and L. had just fired their shotguns, hitting J. in the head with 9 x 9 millimetre lead shots. The order to shoot him in the legs had been valid only in the event of his trying to break through the cordon situated fifteen metres from the house. The visibility from the armoured vehicle had been completely clear.

The applicant submitted that the police's subsequent diverging explanations showed that there had been a lack of proper planning and direction of the police forces.

According to the applicant, the orders and the permission to shoot had been violated on both occasions when J. had been shot. Initially, the police had had permission to shoot J. in the foot, but had hit him in his upper body. Subsequently, J. had been shot twice in the head from an armoured vehicle, although no permission had been given to shoot him.

The applicant challenged the Government's contention that J. had crawled out holding two weapons aimed towards the police officers. In fact, the forensic investigation and the photographic evidence had shown that the barrels of the shotguns had been pointing inwards. In addition, the police officers who had shot J. at six metres' range had been inside the armoured vehicle and had thus not been visible to the applicant. J.'s guns had not been in working order. J., already injured, had been crawling out of the burning house in order to save himself at the last minute.

The applicant submitted further that the blood stains demonstrated that J. had been shot dead right in the doorway, in other words, that his head had not been far outside the doorway.

3. Whether there was an effective investigation

The Government submitted that, in the present case, unlike the case of *Kelly v. the United Kingdom*, the National Bureau of Investigation had conducted a thorough pre-trial investigation of its own motion immediately after the siege and two additional pre-trial investigations at the request of J.'s family and the District Prosecutor. The National Bureau of Investigation had no hierarchical, institutional or practical connection with the Provincial Police Command or the local police. Various records regarding the autopsy, J.'s mental health, the weapons used, the plans made and the actions taken during the operation had been included in the pre-trial documents. All the police officers responsible for firing the shots had been questioned, along with other eyewitnesses and persons involved in the operation, whose identities had been made public. No unnecessary delays had occurred during the investigation. There had been ample public scrutiny and information, since J.'s family had participated in the pre-trial investigation, had been informed of the state of the investigation and had also successfully requested an additional investigation. Furthermore, the trial had been open to the public and the case had been widely publicised in the media.

The Government submitted that, in addition to the investigation by the National Bureau of Investigation, the District Prosecutor had also considered the documentation and the entire operation. He had made decisions not to prosecute the three police officers who had fired shots during the operation, the officer in charge at the scene and the officer in overall charge. The commander of the Special Task Force had been prosecuted, but the charges had been dismissed by the court. The decisions not to prosecute together with reasons and the pre-trial investigation material gathered had been made available to J.'s family. They had therefore been able to acquaint themselves with all the details of the case. They had proceeded with a private prosecution with free legal assistance, had invited witnesses and had provided the court with all the material they deemed necessary. In the Government's view, there had been an effective official investigation.

The applicant pointed out that in their press releases the police had given out wholly inaccurate information about the killing of J. in the doorway.

The applicant considered that the investigation had been faulty, which in turn had resulted in an erroneous consideration of the charges by the District Prosecutor. The investigation had taken as its starting-point the idea that J. had committed suicide and the police had sought to obtain information from J.'s family suggesting that he had committed suicide by having the police shoot him. Both the investigation and the consideration of the charges had displayed an aspiration to look into the possibility that J. had committed suicide. The charges brought against the commander of the Special Task Force had nothing to do with the facts of the case and it was no surprise that they had been dismissed. The corollary to that was that all the others involved had been discharged from liability, to the extent that Senior Constables A. and L. and their superior officer, Sergeant R., had never been suspects in the killing of J. This was emblematic of the official investigation and the consideration of the charges. At the same time, the bringing of charges against the commander had resulted in the police officers who had fired the shots and their superior officer being absolved of responsibility.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Article 6 of the Convention

The applicant complained that he had been denied a fair trial in respect of the admissibility and assessment of evidence.

Article 6 § 1 of the Convention, in its relevant parts reads:

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

The Court reiterates that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the engagements undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, judgment of 12 J.uly 1988, Series A no. 140, p. 25, § 45).

Further, the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, p. 10, § 26.

In the present case, the examination of the application does not disclose any indication that the proceedings in the applicant's case were unfair.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning Article 2 of the Convention;

Declares inadmissible the remainder of the application.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President