AS TO THE ADMISSIBILITY OF

Application No. 19341/92
by Eero, Jorma and Pertti KORPPOO
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 December 1991 by Eero, Jorma and Pertti KORPPOO against Finland and registered on 14 January 1992 under file No. 19341/92;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 28 January 1994 and the observations in reply submitted by the applicants on 21 April 1994, their additional observations submitted on 3 August and 9 September 1994 as well as the additional observations submitted by the Government on 25 August 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, all Finnish citizens, are born in 1937, 1945 and 1941, respectively. The first and the third applicants are sawmill technicians and the second one is a graduate from a commercial institute. The first and second applicants reside at Jäminkipohja and the third one at Ruovesi. Before the Commission the applicants are represented by Mr. Heikki Salo, a lawyer practising in Helsinki.

The facts of the case, as submitted by the parties, may be summarised as follows.

Particular circumstances of the case

1. The criminal proceedings against the applicants

On 23 November 1983 the applicants were arrested inter alia on suspicion of gross tax fraud and violation of currency regulations. On

the same day and on 24 November 1983 their homes at Ruovesi were searched and hundreds of documents seized. The searches and seizures were conducted by E.H. on the instructions of E.V., both officers of the Central Criminal Police (keskusrikospoliisi, centralkriminal-polisen). The documents comprised, inter alia, correspondence between the applicants and their lawyers, between the applicants and their family members and other close relatives as well as articles written by legal scholars.

The seizures expired on 4 January 1984. Most of the documents had been returned on 21 December 1983. Part of them, however, were returned only after the expiry of the seizure.

In 1983 and 1984 the Finnish Central Criminal Police requested assistance from authorities of the United Kingdom in order to obtain further documentation of relevance to the pre-trial investigation.

On 5 September 1985 the competent tax authority in the United Kingdom informed the Finnish Ministry of Finance that the investigations in the United Kingdom had disclosed no evidence in support of the suspicions against the applicants. The investigations had furthermore been closed, since United Kingdom law did not permit the further inquiries requested by the Finnish police.

On 29 November 1985 the District Court (kihlakunnanoikeus, häradsrätten) of Ruovesi convicted the applicants of, inter alia, continued tax fraud committed between 1977 and 1983 as well as continued violation of currency regulations committed between 1976 and 1982 and sentenced them to fines. The applicants were acquitted of certain further charges of continued gross tax fraud.

On 16 February 1987 the Court of Appeal (hovioikeus, hovrätten) of Turku acquitted the applicants of the continued tax fraud and continued violation of currency regulations. The second applicant, however, was convicted of continued gross tax fraud committed between 1971 and 1975.

On 8 June 1987 the Supreme Court (korkein oikeus, högsta domstolen) refused leave to appeal.

2. The criminal proceedings against the police officers

In 1986 the applicants brought criminal proceedings against the police officers E.V. and E.H., claiming that they had committed an offence in office by seizing material unlawfully and by photocopying this. Allegedly, it had been immediately evident from part of the seized material that it did not concern the business activities of the company Pohjan Saha Oy in which the applicants were shareholders and which the pre-trial investigation had involved. At any rate part of the seized material had not concerned offences under investigation by the police at the time of the seizures. Part of the material had furthermore not been included in the pre-trial record nor had the investigation in any other way related to information emanating from that material.

Before the District Court on 16 January 1987 E.V. stated that prior to the return of the documents seized from the first applicant photocopies had been made of all important or presumably important ones "for future use". Heard again on 9 September 1987 he stated that at the time of the seizure there was reason to suspect all of the applicants' close relatives of complicity in the suspected offences. The same applied to their advisers. E.V. further stated:

(translation from Finnish)

"... There must be something wrong with the judicial system, if [someone can commit] a tax fraud as in this case

[without being convicted of it]. ..."

Heard again by the District Court on 12 November 1987 E.V. stated, inter alia:

(translation from Finnish)

"... Articles and expert opinions by legal scholars were seized for two reasons: on the one hand so that it could later be shown that the applicants had been aware ... of the legal framework and the questions open to interpretation ...; on the other hand in order to find out who had assisted them with expert advice ..."

E.V. further stated that all correspondence between the third applicant and counsel T. had been seized in order to investigate the possible criminal responsibility of the lawyer. E.V. alleged that it had only subsequently become clear that the suspicions regarding this counsel were unfounded.

Heard again by the District Court on 17 March 1988 E.V. stated that no record of the photocopies had been drawn up and that no original documents had been marked as having been photocopied. One of the applicants' lawyers testified that the seized correspondence between him and the third applicant had pertained to civil proceedings independent from the taxation matter at issue in the pretrial investigation.

On 31 January 1989 the District Court convicted E.V. and E.H. of continuous offence in office due to negligence and sentenced them to fines. The applicants were awarded damages in the respective amounts of 38.000 FIM, 61.000 FIM and 38.000 FIM, respectively.

The District Court considered it established that documents protected from seizure under section 1, subsection 2 of the 1959 Act on Seizures and Investigation in Criminal Proceedings (laki 260/59 takavarikosta ja etsinnästä rikosasioissa, lag 260/59 om beslag och rannsakan i brottmål; hereinafter "the 1959 Act") had nevertheless been seized. Setting aside the prohibition against seizing privileged material required it to be reasonably suspected that the applicants' lawyers and relatives had participated in the offences of which the applicants had been suspected. No such suspicions had, however, been presented.

The District Court furthermore found that the record of the seized material had not been sufficiently detailed, as for the most part it had merely included the indications apparent on the files seized. Moreover, part of the documents had not been returned within the time-limit prescribed by law. The retention of photocopies subsequent to the return of the original documents was not as such contrary to the 1959 Act. However, the photocopying of documents the seizure of which was unlawful, was equally unlawful.

On 31 October 1990 the Court of Appeal of Turku acquitted E.V. and E.H. It considered, inter alia, that under section 1, subsection 1 of the 1959 Act a suspicion was enough to justify a seizure of material otherwise protected against such a measure. Thus, section 1, subsection 2 of the 1959 Act had not been violated. The seizure had furthermore been recorded in a sufficiently detailed way, having regard to the large amount of seized material. Thus, section 7, subsection 1 of the 1959 Act had not been violated either.

The Court of Appeal furthermore noted that there existed no provision in domestic law concerning the photocopying of seized documents. It concluded that the photocopies were comparable to written notes relating to seized material and therefore did not form part of that material. It was thus not necessary that photocopies should be returned in accordance with section 9 of the 1959 Act once a police

investigation had been closed.

On 20 June 1991 the Supreme Court refused the applicants leave to appeal.

On 21 July 1991 the third applicant together with the applicant's representative before the Commission were granted access to photocopies of seized material. The copies were kept by the Central Criminal Police and the third applicant was allowed to photocopy these in his turn.

3. The continuation of the police investigation subsequent to the applicants' acquittals on 16 February 1987

In a note of 25 June 1987 by M.T., Deputy Director of the Central Criminal Police, to the Minister of Justice reference was made to a draft request for investigatory assistance to be sent to the Attorney General of Jersey in order to obtain certain further documents for the investigation into the suspected offences of which the applicants had been acquitted on 16 February 1987. The note stated, inter alia:

(translation from Finnish)

"... This is the most efficient way to avoid a damage claim of 300 million [FIM] ..."

Eventually the Finnish authorities requested assistance from the authorities of Jersey in order to obtain information from Jersey banking records and other sources.

In a written submission of 6 March 1988 handed to the District Court at its hearing on 17 March 1988 in the criminal proceedings against him and E.H., E.V. stated, inter alia:

(translation from Finnish)

"The Central Criminal Police is still investigating possibilities of obtaining the evidence missing in the [applicants'] case. This is due to the fundamental importance of the case and to the fact that the little evidence needed for a conviction could not be obtained. ... [T]here is still some evidence rendering it likely that the [applicants] committed the ... offences, although not full evidence. [T]he applicants are innocent as long as nothing else is proven. The fact that the investigations are still continuing is, of course, embarrassing for them ..."

On 12 September 1988 the Deputy Chancellor of Justice (apulais-oikeuskansleri, justitiekanslersadjointen) rendered his decision in regard to the applicants' petition concerning, inter alia, the continued police investigation of the offences of which the first and third applicant had been wholly, and the second partly, acquitted on 16 February 1987. The Deputy Chancellor found no plausible grounds for concluding that the police investigation had been reopened without grounds or delayed for the purpose of barring the applicants' access to documents accumulated in the course of the investigation.

On 26 June 1990 the Deputy Chancellor of Justice rendered his decision in regard to the applicants' further petition concerning, inter alia, the continued police investigation. The Deputy Chancellor considered that he was not competent to order that the investigation should be closed, but stated, inter alia:

(translation from Finnish)

"...
According to ... Article 14 para. 7 of [the International Covenant on Civil and Political Rights; hereinafter "the Covenant"] no one shall be liable to be tried or punished

again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. ... Finland has made [a reservation] to [the Covenant] stating that it will pursue its current practice according to which an aggravated criminal case may be taken up for reconsideration, if within a year, until then unknown evidence is presented which would have led to a conviction or a substantially more severe penalty.

... [The Convention] has been incorporated into Finnish law on ... May 1990 ... . Article 4 para. 1 Protocol No. 7 corresponds to [Article 14 para. 7 of the Covenant]. Under para. 2 of [Article 4 of the Convention], however, an exception to the so-called ne bis in idem principle in para. 1 can be made precisely in such situations to which Finland has referred in its reservation to [the Covenant]. Thus, Finland did not have to make a reservation to [the Convention] or change her legislation in order to ratify Protocol No. 7.
..."

In reply to the Finnish authorities' request for investigatory assistance the Foreign and Commonwealth Office of the United Kingdom by letter of 29 May 1991 declined to provide any information, since the matter involving the applicants as suspects was no longer pending before any Finnish court following their acquittals in 1987. In such circumstances there was no basis in United Kingdom law for providing the information requested.

On 19 June 1991 the applicants were notified by K.R., Deputy Director of the Central Criminal Police, that the investigation of the offences of which they had been acquitted on 16 February 1987 had terminated on 19 June 1991. As from July 1987 an investigation had been carried out by United Kingdom authorities in response to the investigation request of 1987. The intention of the Central Criminal Police had been to assess whether to request a re-opening of the criminal proceedings on the basis of the material possibly obtained from the United Kingdom authorities.

Relevant domestic law

1. The protection of the right of an accused's relative and counsel to remain silent

In principle no one can refuse to make a witness statement before a court. Unless the prospective witness consents a testimony may, however, not be demanded from a previous or present spouse or fiancee of a party to the proceedings, from a direct ascending or descendant of a party, from a previous or present spouse of such a relative, from a sibling of a party, from the spouse of such a sibling, from an adoptive parent of a party nor from a child adopted by a party (chapter 17, section 20 of the Code of Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balk), as amended by Act no. 571/48).

Unless the relevant party consents a witness statement shall not be demanded from his representative or assistant in so far as it would concern information supplied by the party in order to enable the representative or assistant to deal with the case at issue (chapter 17, section 23, subsection 1 (4), as amended by Act no. 571/48). Except for the assistant of an accused others may nevertheless be heard as witnesses, if the public prosecutor has brought charges for an offence for which at least six years' imprisonment is prescribed or charges for complicity in such an offence (subsection 3, as amended by Act no. 622/74).

2. Seizures

There shall be no interference with the right of a Finnish citizen to respect for his home. The conditions for and the modalities of a search shall be prescribed by law (chapter 2, section 11 of the 1919 Constitution Act (Suomen Hallitusmuoto 94/19, Regeringsform för Finland 94/19)). There shall be no interference with the right of a Finnish citizen to respect for his correspondence, unless exceptions are made by law (chapter 2, section 12).

Under the 1959 Act, in force up to 1 January 1989, a search of premises could be carried out, if there was reason to suspect that an offence for which more than six months' imprisonment was prescribed had been committed and provided the search was necessary in order to seek objects for seizure or otherwise in order to clarify circumstances possibly of relevance to the investigation (section 12, subsection 1).

An object could be seized, if, among other reasons, there were grounds for suspecting that it could constitute evidence in a criminal case. However, a document could not be seized, if its contents could be presumed such that a person referred to in chapter 17, section 23 of the Code of Judicial Procedure could not be heard as a witness concerning the contents thereof, if the document was in the possession of such a person or in the possession of a person in favour of whom the obligation to observe silence was prescribed. Nor could, for instance, a written message between an accused and a person referred to in chapter 17, section 20 of the Code of the Judicial Procedure be seized, unless the prescribed sentence for the suspected offence was at least six years' imprisonment (section 1, as amended by Act No. 616/74).

In the course of a pretrial investigation the warrant for a search and seizure could be issued by a police officer competent to order someone's detention on remand. In urgent situations the search and seizure could be normally carried out without a warrant (sections 3, 4 and 15). A seizure could be judicially reviewed only if charges were brought for the suspected offence warranting it (section 10).

A record was to be kept of the seizure indicating the purpose of the seizure, the course of the seizure and listing the seized objects (section 7, subsection 1).

A seizure was to be lifted as soon as its purpose had been achieved. If no criminal charges were brought within six weeks from the seizure, it was to be considered expired unless the County Administrative Board (lääninhallitus, länsstyrelsen) granted an extension thereof (section 9, subsections 1 and 2).

According to the 1987 Coercive Criminal Investigation Means Act (pakkokeinolaki 450/87, tvångsmedelslag 450/87) which replaced the 1959 Act on 1 January 1989, a seizure shall be lifted as soon it is no longer necessary or if criminal charges in the case are not brought within four months from the seizure. This period may be extended by a court (chapter 4, section 11). The party concerned by the seizure may also request a court review thereof (section 13).

3. Access to material accumulated during a pretrial investigation

According to the 1987 Pretrial Investigation Act (esitutkintalaki 449/87, förundersökningslag 449/87), which entered into force on 1 January 1989, the material accumulated during a pretrial investigation shall be collected in a file, if this is considered necessary for the further consideration of the case. The file shall include the interrogation records as well as documents and recordings assumed to be of importance. It shall also indicate the measures taken during the investigation and any material not included in the file (section 40).

According to the 1951 Act on the Publicity of Official Documents (laki 83/51 yleisten asiakirjain julkisuudesta; lag 83/51 om allmänna handlingars offentlighet; "the 1951 Act") official documents are, in principle, public (section 1). Such documents include, inter alia, documents drawn up and issued by an authority as well as documents submitted to an authority, provided they are still in that authority's possession (section 2, subsection 1). Everyone shall have access to a public, official document (section 6, as amended by Act no. 739/88). Exceptionally, documents may be ordered to be kept secret (sections 9-16, as partly amended by Act no. 673/91). Moreover, certain documents of a personal character are accessible to the public only following the consent of the person they relate to (sections 17-18a, as amended or introduced by Acts no. 472/87 and 388/94). Regardless of such consent such documents may nevertheless be accessible to a party to, for instance, criminal proceedings, if such access could affect the outcome of the case (sections 19-19a, as amended or introduced by Act no. 601/82). Such access may, however, be refused as regards, for instance, a document forming part of a pretrial record which has not yet been completed, provided the access could, if granted, jeopardise the investigation (section 19, subsection 3).

According to section 41 of the Pretrial Investigation Act the publicity of pretrial documents shall be governed by the 1951 Act. A pretrial record shall not be public until the matter has been brought before a court or until the police investigation has been closed without charges having been brought (section 4 of the 1951 Act).

4. The reopening of criminal proceedings to the detriment of an accused

A request for a re-opening of criminal proceedings to the detriment of an accused shall be lodged within one year from the day when the person seeking a reopening obtained knowledge of the grounds invoked in the request or on another condition not relevant in the present case (chapter 31, section 10, subsection 1 of the Code of Judicial Procedure, as amended by Act no. 109/60). Such a request is time-barred only by the substantive penal provision prescribing the time-limit within which charges must be brought, if such a time-bar exists.

COMPLAINTS

1. The applicants complain of the following allegedly unjustified interferences with their right to respect for their privacy, home and correspondence as guaranteed by Article 8 of the Convention:

In so far as the seized material consisted of correspondence between the applicants and their lawyers the seizures were allegedly not carried out in accordance with the law. The applicants were not suspected of an offence for which at least six years' imprisonment was prescribed, nor were their lawyers suspected of any offences. Moreover, the documents comprised, inter alia, letters between the applicants and counsel T., although the offence of which the applicants were suspected had taken place before the applicants and T. even knew each other.

In so far as the seized material also comprised correspondence between the applicants and their family members and other close relatives the seizures were allegedly again carried out contrary to Finnish law, as the suspicions involving those relatives were not supported by any concrete evidence.

In so far as the seized material also comprised papers written by legal scholars the seizures were allegedly not proportionate to the aim pursued.

The photocopying of the seized material was allegedly not reasonably proportionate to the aim pursued. Among the documents

photocopied were several which had no, and could not have had any, relevance to the pretrial investigation. Although hundreds of photocopies were made, the photocopying was in no way noted on the documents or in the pretrial record, rendering it almost impossible to verify which documents were copied, how many copies were made and to whom copies were given.

Although the original seized material was returned to the applicants, copies thereof are allegedly still being retained "for future official use", this constituting a continuing de facto seizure or confiscation. In particular as the first and third applicants were wholly acquitted in 1987 the copies should either have been destroyed or returned.

Articles 17 and 18 of the Convention are also invoked.

2. The applicants furthermore allege that the police investigation pursued up to 19 June 1991, including the ongoing retention of photocopies of material seized in 1983, violated their rights under Article 4 of Protocol No. 7. The pursued investigation created the impression that the applicants continued to be suspected of an offence of which they had been acquitted. These suspicions affected their business activities and personal life negatively. The investigation pursued after their acquittal was not justified by evidence of new or newly discovered facts which could have affected the acquittal. Even assuming that the investigation could, with reference to Finland's reservation to the Covenant, be considered lawful as long as it did not continue for more than one year after the applicants' acquittals, the investigation nevertheless exceeded that period.

The applicants finally allege that the purpose of the ongoing police investigation despite their acquittals was to prevent them from lodging an action for damages against the State. Reference is made, in particular, to M.T.'s note to the Minister of Justice. Moreover, already in 1985 the Central Criminal Police had received information from the United Kingdom authorities making it very clear that no further evidence could be obtained.

Articles 17 and 18 of the Convention are also invoked.

3. The applicants finally complain that the criminal proceedings which they brought against the police officers E.V. and E.H. were unfair. They refer to their acquittals in 1987 and consider that E.V.'s statement at the District Court's hearing on 9 September 1987 amounted to slander. They invoke Article 6 para. 1 of the Convention as well as Articles 17 and 18.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 December 1991 and registered on 14 January 1992.

On 13 October 1993 the Commission decided to communicate the application to the respondent Government pursuant to Rule 48 para. 2 (b) of the Rules of Procedure, the communication being limited to the complaints under Article 8 of the Convention and Article 4 of Protocol No. 7, both in conjunction with Articles 17 and 18 of the Convention.

The Government's written observations were submitted on 28 January 1994. The applicants replied on 21 April 1994, after an extension of the time-limit fixed for that purpose. Additional observations were submitted by the applicants on 3 August and 9 September 1994 and by the Government on 25 August 1994.

THE LAW

1. The applicants complain of the seizures in 1983, of the photocopying of seized material as well as of the allegedly ongoing retention of photocopies. They invoke Articles 8, 17 and 18 (Art. 8, 17, 18) of the Convention.

Article 8 (Art. 8) reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Article 17 (Art. 17) reads as follows:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Article 18 (Art. 18) reads as follows:

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Government submit that the complaint is incompatible ratione temporis with the provisions of the Convention in so far as it concerns the seizures and the photocopying of seized documents. These measures took place prior to 10 May 1990, when the Convention entered into force with regard to Finland. The Government therefore consider the Commission competent to examine the complaint only in so far as it concerns the retention of photocopies of seized documents after 10 May 1990.

Should the Commission consider itself competent to examine also the seizures and the related photocopying, the Government admit that correspondence between the applicants and their lawyers was seized. The same is true for correspondence between the applicants and their family members and other close relatives as well as for writings by legal scholars. Generally speaking, however, it would be unreasonable to require the exclusion of privileged documents from a vast material at the time when a seizure is carried out. Nor can such a requirement be imposed when documents are photocopied. If the police discovers privileged documents among seized material these should not be presented as evidence. At any rate the courts shall refuse to take such documents into account, if it would be to the detriment of an accused protected by the prohibition against seizing privileged material. In the applicants' case the police officers studied the documents before seizing them and those seized were all relevant to the pretrial investigation.

In so far as correspondence between the applicants and their lawyers was seized the Government submit that the seizures were in accordance with the law, since at the relevant time there were grounds for believing that the lawyers had aided and abetted the applicants to commit the offences with which they were ultimately also charged. The Government concede that one of the lawyers had not been engaged by the

applicants at the time of those suspected offences. However, at the time of the seizures the applicants were also suspected of additional offences, although they were never charged with those. Nevertheless, in these circumstances the correspondence between the applicants and their lawyers was not covered by the prohibition against the seizure of privileged material prescribed in section 1 of the 1959 Act, read in conjunction with chapter 17, section 23 of the Code of Judicial Procedure.

In so far as correspondence between the applicants and their family members and other close relatives was seized, the Government submit that the prohibition against the seizure of privileged material did not apply in this respect either. At the relevant time all these relatives were also suspected of offences of such gravity that the protection of correspondence under section 1 of the 1959 Act, read in conjunction with chapter 17, section 20 of the Code of Judicial Procedure, was set aside.

In so far as writings by legal scholars were seized, the Government submit that, generally speaking, such material may be seized if it could serve as evidence. In the applicants' case the aim of the seizures in this respect was to show that they had been aware of the relevant regulations and their possible interpretations at the time of the suspected offences. Accordingly, also in this respect the seizures were in accordance with the law.

The Government consider that the right to photocopy a seized document is inherent in the seizure as such. The absence of an explicit provision in domestic law allowing such photocopying does not therefore render it unlawful. Given the time-limits governing the retention of original documents seized, the absence of a right to photocopy documents might render the investigation of economic crime impossible. In this specific case it appears to the Government that because of the applicants' obstructiveness certain documents would no longer have been available in the court proceedings if no photocopies had been made. As finally regards the retention of photocopies made from seized documents, the Government argue that the applicants' rights under Article 8 (Art. 8) have not been interfered with. Should the Commission conclude differently, the Government submit that the retention as from 10 May 1990 was in accordance with the law. Section 40 of the Pretrial Investigation Act authorises the police to retain material accumulated during an investigation even if no charges are brought. The photocopies made in the applicants' case were stored by the Central Criminal Police until all potential criminal charges of the offences of which the applicants had been suspected at the time of the seizures had become time-barred in 1992. Thereafter the photocopies were destroyed. The retention of copies served the aim primarily of preventing crime but was also in the interest of the economic well-being of the country and aimed at the protection of the rights and freedoms of others. The retention would have enabled the police and prosecution to make use of already seized material, should they have considered requesting a re-opening of the criminal proceedings against the applicants. The applicants have not shown that the retention affected their professional or other activities negatively. Bearing in mind the State's margin of appreciation, the Government therefore consider that the retention was proportionate to the aims sought to be achieved and that it was necessary in a democratic society.

The Government finally submit that there has been no violation of Article 17 of the Convention in conjunction with Article 8 (Art. 17+8). Nor does the complaint appear to disclose any violation of Article 18 in conjunction with Article 8 (Art. 18+8), since the applicants' allegation that the retention of photocopies was carried out in pursuance of an aim not recognised in para. 2 of Article 8 (Art. 8-2) has not been supported by evidence.

The applicants maintain that the measures complained of

constitute a continuing situation and that the Commission therefore has a wide competence ratione temporis to examine the complaint. The seizures were carried out in a very summary manner, as, for instance, the documents seized were not specified. Part of the material could never have been presented as evidence in the criminal proceedings nor did domestic law authorise a seizure for future yet undetermined purposes.

The applicants find the Government's arguments contradictory, since, on the one hand, it is suggested that the number of documents on the applicants' premises justified the non-compliance with the prohibitions against seizure of privileged material. At the same time the Government assert that the seized material had been thoroughly selected.

As regards notably the seizure of correspondence between the applicants and their lawyers, the applicants allege that, for instance, the correspondence between the third applicant and one of his lawyers was seized in its entirety without any investigation of its relevance. This counsel was unknown to the applicants at the time of the suspected offences and was never charged with any offence let alone interrogated as a suspect or otherwise. In the proceedings against the police officers it was admitted that certain material should not have been included in the seizure. One of the officers furthermore stated that the material had been seized in view of the suspicions of gross tax fraud and currency offences. Up to the proceedings before the Commission the applicants were thus never notified of the further suspicions which, according to the Government, also formed the basis for the seizures.

As regards the seizure of correspondence between the applicants and their family members and other close relatives, the applicants emphasise that with one exception none of these relatives were ever interrogated as suspects in the pretrial investigation.

As for the seizure of the writings by legal experts, the applicants submit that not the slightest evidence was adduced in support of the suspicions that those scholars had participated in the offences of which the applicants had been suspected. Nor could those writings have been used as evidence in order to show the applicants' awareness of the law.

The applicants furthermore submit that the prohibition against seizing privileged material equally prohibits against the making of photocopies thereof. The same is true in regard to the retention of photocopies of privileged material. In the proceedings against the police officers it was admitted that certain material which should not have been included in the seizure was nevertheless photocopied. No evidence has been adduced by the Government showing that the copies were destroyed at the latest in 1992.

The Commission observes that the seizures and the photocopying of seized material prior to its return occurred before the date of entry into force of the Convention with regard to Finland, i.e. 10 May 1990. However, in accordance with the generally recognised rules of international law, the Convention only applies in respect of each Contracting Party to facts subsequent to its coming into force for that Party (see, e.g., Nos. 8560/79 and 8613/79, Dec. 3.7.79, D.R. 16 p. 209).

The Commission recalls that a violation of Article 8 (Art. 8) might occur as a result of a seizure interfering with rights under that provision, if the relevant legislation and practice fails to afford adequate, effective and sufficient safeguards against abuse of the power to order and carry out such an interference (see, e.g., Eur. Court H.R., Funke, Crémieux and Miailhe v. France judgments of 25 February 1993, Series A nos. 256-A, 256-B and 256-C and, e.g., the

first-mentioned judgement, pp. 24-25, paras. 55-57 as well as the Vereniging Weekblad "Bluf!" v. the Netherlands judgment of 9 February 1995, para. 32, to be published in Series A no. 306-A). It may also be of relevance whether the seizure was based on well-founded suspicions (cf. the above-mentioned Funke judgment, p. 25, paras. 57-58) and whether it was reasonable as to the amount of documents seized and their pertinence (cf. the above-mentioned Miailhe judgment, p. 90, paras. 38-39).

Given, however, that the Convention entered into force with regard to Finland only on 10 May 1990, the Commission must limit its examination of the present complaint to whether the facts occurring after that date disclose a violation of Article 8 (Art. 8). It is true that events prior to that date, i.e. the seizures and the related photocopying of seized material, must be taken into account as a background to the issues before the Commission (e.g., the Hokkanen v. Finland judgment of 23 September 1994, para. 53, Series A no. 299-A). Nevertheless, the Commission cannot examine the compatibility with Articles 8, 17 and 18 (Art. 8, 17, 18) of the Convention of those particular measures.

The Commission will therefore limit its examination to the retention of photocopies of seized and returned material. It finds no reason for questioning the Government's assertion that the copies were destroyed at the latest in 1992 once possible charges had become time-barred. The retention of photocopies constituted a situation continuing up to that year. For the reasons below, the Commission does not find it necessary to determine when exactly the copies were destroyed.

Assuming that the above established retention of photocopies may be considered as an interference with the applicants' rights under Article 8 para. 1 (Art. 8-1), the Commission must first determine whether it was in accordance with domestic law, as required by para. 2 (Art. 8-2) of the same provision. It recalls that its power to review compliance with domestic law is limited, it being in the first place for the national authorities, notably the courts, to interpret and apply that law (e.g., Eur. Court H.R., Chappell judgment of 30 March 1989, Series A no. 152-A, p. 23, para. 54). The Commission observes that in its judgment of 31 October 1990 the Court of Appeal acquitted the police officers E.V. and E.H. of the charges brought by the applicants in regard to the allegedly unlawful seizure. The Court of Appeal found, inter alia, that the obligation prescribed by section 9 of the 1959 Act, in force up to 1989, to return seized material if the seizure is lifted or if it has expired did not imply that photocopies of seized material had to be returned, since these could not be considered as forming part thereof. The Commission furthermore notes that section 40 of the Pretrial Investigation Act, in force as from 1989, authorises the police to collect material accumulated during a pretrial investigation. In these circumstances the Commission is unable to conclude that the retention of photocopies was not in accordance with the law.

The Commission furthermore considers that the retention of photocopies until at the latest 1992 for the purposes of the further investigation into the offences of which the applicants had been acquitted pursued at least one of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) in that it served the interest of the economic well-being of the country (cf. e.g., the above-mentioned Funke judgment, p. 24, para. 52).

Finally, under Article 8 para. 2 (Art. 8-2) an interference with a right guaranteed in para. 1 (Art. 8-1) must also be necessary in a democratic society. The notion of necessity implies that the interference must correspond to a "pressing social need" and, in particular, be proportionate to the legitimate aim or aims pursued. The margin of appreciation left to the Contracting State goes hand in hand

with European supervision. The need for an interference in a given case must therefore be convincingly established and the reasons adduced to justify the interference must be "relevant and sufficient" (e.g., Eur. Court H.R., Olsson no. 2 judgment of 27 November 1992, Series A no. 250, p. 34 para. 87; the above-mentioned Funke judgment, p. 24, para. 55).

The Commission has previously found that the retention of records, including documents, relating to criminal cases in the past was necessary in a democratic society (No. 1307/61, Collection 9 p. 53) even if a sentence imposed on the person to whom the records pertained had been set aside. The Commission sees no reason to depart from this standpoint in the present case. It notes, in particular, that the documents were retained by the Central Criminal Police in a file pertaining to the police investigation pursued after the applicant's acquittals in 1987. The Commission cannot find that copies were retained for any significant period after possible charges had been time-barred. The applicants have, moreover, not substantiated in what respect the retention of copies affected themselves or their business activities negatively, if at all. Nor have they shown why and how the retention of photocopies prevented them from lodging a claim for damages against the State. In these circumstances and having regard to the margin of appreciation afforded to the Contracting State the Commission concludes that the retention was proportionate to the aim pursued. No further issue arises under Article 17 (Art. 17) in regard to the retention. Finally, the Commission finds no indication that the retention was in violation of Article 18 (Art. 18).

It follows that in so far as the complaint concerns the seizure and the related photocopying it is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2). In so far as the complaint concerns the retention of photocopies it must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicants further complain of a violation of Article 4 of Protocol No. 7 (P7-4) as well as of Articles 17 and 18 (Art. 17, 18) of the Convention.

Article 4 of Protocol No. 7 (P7-4) reads as follows:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
>
> "3. No derogation from this Article shall be made under Article 15 (Art. 15) of the Convention."

The Government fail to see any appearance of a violation of Article 4 of Protocol No. 7 (P7-4), since pursuing a police investigation with a view to obtaining new evidence is not in violation of the principle ne bis in idem expressed in this provision. If an accused is acquitted for lack of sufficient evidence, domestic law imposes an obligation on the police to attempt to collect additional evidence possibly in order to have the case reopened. Such an investigation may be pursued up to the moment when possible criminal charges become time-barred and provided specific circumstances so require.

The Government recall that in his decision of 12 September 1988 the Deputy Chancellor of Justice found no plausible grounds for concluding that the police investigation against the applicants had been reopened without grounds or delayed for the purpose of barring the applicants' access to documents accumulated in the course of the investigation. The Government emphasise that the investigation was speedily pursued after the applicants' acquittal on 8 June 1987 by virtue of the request for assistance from the United Kingdom authorities. The delay in the processing of that request was not imputable to the Finnish authorities. The Government finally submit that there has been no violation of Article 17 (Art. 17) of the Convention and that the complaint appears to disclose no violation of Article 18 (Art. 18). The police investigation was pursued for legitimate purposes recognised in the Convention. The written remark by the Deputy Head of the Central Criminal Police in his letter to the Minister of Justice cannot be taken out of its context nor is the complaint under Article 18 (Art. 18) supported by any other evidence.

The applicants maintain that the police investigation was unduly pursued after their acquittal in 1987, notably since the messages from the United Kingdom authorities must have made it clear to the Finnish police very early on that no further evidence could be obtained for the purpose of having the proceedings reopened.

The Commission observes that Protocol No. 7 (P7) to the Convention entered into force with regard to Finland on 1 August 1990. The police investigation at issue constituted a situation continuing up to its close on 19 June 1991. The Commission is therefore competent ratione temporis to examine the complaint.

The Commission recalls that under Article 4 para. 2 of Protocol No. 7 (P7-4-2) a case can be reopened, if there is evidence of new or newly discovered facts. The Commission considers that in order to enable the prosecution to assess whether a reopening should be requested the police cannot be prevented under Article 4 para. 1 (Art. 4-1) from pursuing its investigation following the acquittal of a suspect.

In the present case the Commission, moreover, observes that the police investigation pursued until 19 June 1991 did not lead to any further charges being brought against the applicants. Consequently, they were not "tried" or "punished" again in criminal proceedings under the jurisdiction of the respondent State for an offence for which they had already been finally acquitted. Accordingly, Article 4 of Protocol No. 7 (P7-4) does not apply. In this situation Articles 17 and 18 (Art. 17, 18) of the Convention are equally inapplicable.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicants further complain that the criminal proceedings instituted by them against the police officers E.V. and E.H. were unfair. They refer to E.V.'s statement at the District Court's hearing on 9 September 1987 which they consider amounted to slander. They invoke Article 6 para. 1 (Art. 6-1) of the Convention as well as Articles 17 and 18 (Art. 17, 18).

The Commission observes that the proceedings against the police officers commenced before and ended after the entry into force of the Convention with regard to Finland. It further notes that in the proceedings at issue the applicants also sought damages from the police officers. The Commission need not, however, determine whether and, if so, to what extent it is competent ratione temporis to examine the complaint. Nor does it need to determine whether the proceedings determined a "civil right" of the applicants within the meaning of

Article 6 para. 1 (Art. 6-1), in which case it would be competent ratione materiae to examine the complaint. Finally, it does not need to establish whether domestic remedies have been exhausted, as required by Article 26 (Art. 26).

Even assuming that the above conditions are fulfilled, the Commission finds no indication that the alleged slander of the applicants as committed by E.V. had the effect of denying the applicants their right to a fair hearing of their charges against E.V. and E.H.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)