AS TO THE ADMISSIBILITY OF

Application No. 18969/91
by Touko OLLILA
against Finland

The European Commission of Human Rights sitting in private on 30 November 1992, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 1 July 1991 by Touko OLLILA against Finland and registered on 21 October 1991 under file No. 18969/91;

Having regard the observations submitted by the respondent Government on 4 and 23 June 1992 and 18 August 1992 as well as the applicant's observations of 17 and 18 September 1992;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish citizen born in 1925 and resident at Juornaankylä. He is a doctor of radiology, an agronomist and a farmer by profession. He is divorced and has seven grown-up children.

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

Particular circumstances of the case

On 17 April 1985 the District Court (kihlakunnanoikeus, häradsrätten) of Orimattila in application of Sections 17 and 17a of the 1898 Guardianship Act (holhouslaki 34/1898, lag 34/1898 angående förmynderskap; hereinafter "the 1898 Act") placed the applicant under guardianship for a period of five years at the request of the applicant's then wife and six of his children. The District Court appointed Mr. S.P. as guardian (holhooja, förmyndare).

Before the District Court the applicant was represented by counsel.

It does not appear on the basis of what expert opinions, if any, the placement under guardianship was decided.

On the applicant's appeal the Court of Appeal (hovioikeus, hovrätten) of Kouvola on 28 August 1986 quashed the decision following a re-hearing. It had regard to written expert opinions of 7 June and 8 November 1985 submitted at the applicant's request by Mr. Aarne Harenko, doctor of neurology, psychiatry and geriatry, a written opinion of 12 February 1986 submitted at the Court's request by the National Medical Board (lääkintöhallitus, medicinalstyrelsen), and a written opinion of 13 June 1986 by the hospital of Kellokoski. Only the opinion by the National Medical Board supported a placement order.

On appeal the Supreme Court (korkein oikeus, högsta domstolen) on 27 October 1988 (by 3 votes to 2) quashed the Court of Appeal's decision and upheld that of the District Court. The Supreme Court had regard to a written opinion of 14 January 1988 submitted at the Court's request by the National Medical Board (and based on a written opinion of 16 July 1987 submitted by Mr. Erkki Väisänen, associate professor and a permanent expert to the Board), a written opinion of 25 May 1987 by Mr. Juhani Vartiainen, doctor of cancer diseases and radiology, and a written opinion of 5 March 1988 submitted by the afore-mentioned Dr. Harenko. Only the opinion submitted by the National Medical Board supported a placement order.

On 14 December 1988 the applicant lodged a petition with the Chancellor of Justice (oikeuskansleri, justitiekanslern), alleging that the grounds for placing him under guardianship had been insufficient. He further complained of S.P.'s administration of his possessions and requested that another person be appointed his guardian.

Following petitions by the applicant the Parliamentary Ombudsman (eduskunnan oikeusasiamies, riksdagens justitieombudsman) on 10 April 1989 found no grounds for a request for an annulment of the Supreme Court's decision, nor did he find the length of the proceedings before the Supreme Court to be condemnable or further investigation necessary as regards two decisions of the Public Prosecutor not to bring charges on the basis of reports lodged by the applicant.

On 13 February 1989 the Central Criminal Police decided to take no further measure in respect of a report lodged by the applicant.

By a petition lodged with the District Court on 13 April 1989 the applicant requested that his guardian be dismissed and replaced by Mr. B.V.

On 17 April and 30 May 1989 the District Court requested the applicant to supplement his petition. By an opinion of 7 July 1989 the Guardianship Board (holhouslautakunta, förmyndarenämnden) of Askola objected to the change of guardian.

On 21 September 1989 the Deputy Chancellor of Justice (apulais-oikeuskansleri, biträdande justitiekanslern) found no grounds for taking further measures in the case, inter alia as the request that another person be appointed as the applicant's guardian was currently being examined by the District Court.

In a further petition lodged with the District Court on 27 September 1989 the applicant, now represented by a lawyer, again requested that his guardianship be revoked. He submitted inter alia:

(translation from Finnish)

"...
Following the placement under guardianship I have been subjected to mental and even physical ill-treatment. In no way have I been informed of the administration of my large possessions and in spite of these I have been placed to live in a [room] with a surface of less than 10m2 without even the most primitive possibilities of taking care of my health and personal hygiene. Moreover, my guardian has also in other harsh ways interfered with my privacy and restricted my possibilities to write, which has always been an ... important interest of mine. My guardian ... has not visited me for five years, but nevertheless he is charging 6.000 FIM per month in guardianship fees and 2.000 FIM per month for costs. I, however, do not have recourse even to my monthly pension of 3.600 FIM. There is complete distrust between me and my guardian. ..."

On 4 December 1989 the applicant's children requested that the placement order be prolonged and S.P. re-appointed guardian.

By a letter of 21 December 1989 to the local post office the applicant complained that for five years he had not received any mail, although he used to receive up to 1,5 kg of mail per month. Copies were sent to the Minister of Justice, the Parliamentary Ombudsman and the Chancellor of Justice.

On 3 January 1990 the applicant withdrew his petitions of 13 April and 27 September 1989 to the District Court.

At the District Court's hearing on the same day in respect of the request for a prolongation of the guardianship both the applicant's children and the guardian were assisted by counsel. The applicant was not; he told the Court that this was unnecessary. At the request of counsel for the applicant's children the Court adjourned the hearing in order to receive further evidence to be presented by them.

On 28 March 1990 the District Court in application of Section 3 of the 1983 Guardianship Decree (holhousasetus 851/83, förmynderskaps-förordning 851/83; hereinafter "the 1983 Decree") and Section 65 of the 1898 Act appointed a guardian ad litem (a lawyer) to represent the applicant.

On 4 April 1990 the District Court prolonged the guardianship for a further five years and re-appointed S.P. as guardian. It had regard to a written opinion of 29 March 1990 submitted at the Court's request by Ms. Tarja Pohjasvara, assistant physician, and Mr. Matti Iivanainen, associate professor, both of the Neurological Clinic of the Central University Hospital of Helsinki, noting that for a period of three years there had been no improvement in the applicant's mental capacity or general state of health and concluding that he was suffering from an incurable brain damage probably caused by disturbances in his blood circulation and abuse of tranquillisers. The Court also had regard to a written opinion of 8 March 1990 submitted at the Court's request by Ms. Marjatta Rosenberg, a physician at the Public Health Centre of Porvoo considering, inter alia, that the applicant's general state of health and his psychosocial situation had improved. In a supplementary written opinion of 21 March 1990 submitted at the request of the applicant's relatives she stated, however, that she was not taking any position as regards the question whether the applicant needed to be placed under guardianship.

On 18 September 1990 the Court of Appeal rejected the applicant's appeal.

On 9 October 1990 the Central Criminal Police took note of a

further report lodged by the applicant.

According to the Government, the President of the District Court on 23 October 1990 visited the applicant in order to acquaint himself with his living conditions.

On 18 December 1990 Ms. Riitta Kauppinen, a physician and Member of Parliament, requested the Parliamentary Ombudsman to investigate alleged irregularities as regards the applicant's everyday living conditions, financial situation and his requests for a change of guardian. The request was based on a visit paid by her to the applicant's place of residence, where she had formed the impression that compared with his previous circumstances and standard of living his conditions had deteriorated and were inadequate.

Leave to appeal against the Court of Appeal's decision of 18 September 1990 was refused by the Supreme Court on 24 January 1991.

On 23 April 1991 the Guardianship Board approved the guardian's settlement of the applicant's accounts (holhoustili, förmyndareräkning) for 1990.

That settlement indicated inter alia the following:

- assets 3.447.343 FIM;
- debts 1.140.923 FIM;
- deposits 929.547 FIM;
- new credits 314.101 FIM;
- receivable from [the applicant's son] J.O. 100.000 FIM;
- salary and [employment] pension 38.763 FIM;
- national pension 6.948 FIM;
- withdrawals from deposits 26.638 FIM;
- costs of living and [use of] disposable funds 46.629 FIM;
- costs for treatment 1.059 FIM;
- the guardian's fees and expenses 34.753 FIM;
- lawyers' fees 49.478 FIM;
- costs for new farming machines 251.500 FIM.

On 30 April 1992 the Police District of Porvoo decided to take no measures in respect of the applicant's report of suspected murder attempts and breaches of the 1898 Act.

On 2 May 1991 Ms. Pirkko Turpeinen, doctor of psychiatry, submitted the following petition to the Deputy Ombudsman:

(translation from Finnish)

> "... I confirm having visited ... [the applicant] at his request and at the request of his friend S.J. and M.V., a lawyer. [The applicant] himself as well as his friends felt that his human rights are not respected. They also feel that not only has [the applicant] been wrongfully placed under guardianship, but that the guardianship is being used to suppress him.
>
> I meet [the applicant] on 19 March 1991 in his "home". At the front door I am being met by a young man who reacts [to me] in an aggressive and suspicious way ..., [the applicant's son] M.O. who wants to know why I have come. He allows me to pass after all and I enter a side room of the small farm building ...
>
> I have never seen a room like that in which [the applicant] is living. [The applicant] is lying on a bed, which is surrounded by papers in disorder, old remnants, dirt.

I discuss with [the applicant] in private for about an hour. I ask about his childhood, his early stages of life, his studies, his professional activities, his family and children. [The applicant] speaks to the point and answers all my questions. His relationship with his family is bitter due to the placing of him under guardianship (the reasons for which I am unaware of). He states his interest in rehabilitation, which would be needed in order to re-establish his mobility. He would also be interested in participating in the administration of his agricultural property.

During this meeting I do not detect any such mental abnormality as could form the basis for his guardianship. [The applicant] is self-centered and has a short patience, which may be due at least partly to his treatment, which he considers unfair, and to the regression caused by this.

[The applicant] feels that his treatment is due to the fact that the relatives want to take control over the large possessions acquired by him through his own work.

In my opinion measures should be taken to have [the applicant] undergo rehabilitation and to have his human rights and [his right to] a decent life restored.
..."

On 4 June 1991 the applicant addressed a letter to the President of the District Court requesting that his guardianship be revoked. It included a copy of Ms. Turpeinen's petition. In particular, he alleged that he was unjustifiably placed under guardianship; that the guardian was embezzling his possessions; and that he was being refused recourse to his pension.

The applicant received no reply to his request.

On 20 June 1991 the President of the District Court audited the guardian's settlement of the applicant's accounts for 1990 in accordance with Section 54 para. 3 of the 1898 Act, but referred it to a separate examination. He noted inter alia that already in the settlement of the accounts for 1989 the applicant's agricultural activity had shown a loss; that in 1990 the guardian had agreed to lease 85 hectares of farming land to three of the applicant's sons; that part of the land had been turned into fallow; that the guardian had lent 100.000 FIM to one of the sons; that it was unclear what security had been given for the loan and what interest had been charged for it; and that the applicant had submitted that he had been refused recourse to funds stated as disposable in the settlement. The President requested the Guardianship Board to supply clarification on a number of points pertaining to the administration of the applicant's possessions.

On 23 July 1991 the Guardianship Board submitted information according to which inter alia the farming on the applicant's property had been taken over by a consortium run by three of the sons by means of a lease of 100.000 FIM signed in the spring of 1990; that no loan had been given and that the outstanding account was due to the fact that the applicant had received no payment for the lease; and that "an agreement had been reached" to charge a penal interest of 16 per cent for this account.

On the same day the Guardianship Board further considered a proposal by the President of the District Court that the Board together with the applicant's guardian take measures in order to arrange for rehabilitation of the applicant. The Board noted that the guardian had informed the Secretary to the Board by telephone that the applicant was

awaiting rehabilitation at a rehabilitation centre at Punkaharju. The guardian had further promised to submit documentation showing when the request for rehabilitation had been made.

Having also regard to the fact that on 28 June 1991 the applicant had been recommended by the local Public Health Centre to receive rehabilitation the Board found no reason to take any measures.

In the summer of 1991 the applicant underwent rehabilitation as a result of which his mobility improved. His state of health has, however, again deteriorated and he now appears to be almost immobile.

It appears that the applicant's care in the private hospital of Eira in Helsinki in 1991 was interrupted by the guardian.

By a letter of August 1991 to the President of the District Court the applicant alleged that the guardian had been causing him great financial losses; that he was not receiving his pension; that he was being refused access to the settlements of his accounts; that his eye-sight was decreasing as the guardian was refusing him means enabling him to undergo an operation; that he was becoming immobile due to lack of rehabilitation; and that the guardian was refusing to pay for certain subscriptions.

The applicant received no reply to his letter.

On 30 September 1991 the President of the District Court found that the necessary information had been provided by the Guardianship Board. Having regard to this, as well as the information obtained by the Court itself and the fact that the Board had approved the settlement of accounts without remarks, and concluding that it could not carry out a detailed audit of the settlement, the Court, referring to Sections 45 and 55 of the 1898 Act, found that there was no need at this point to appoint a guardian ad litem to contest the settlement.

On 28 January 1992 the Central Criminal Police took note of a further report lodged by the applicant.

In 1992 the Guardianship Board approved the settlement of the applicant's accounts for 1991 with one remark as to the fees charged by the guardian S.P. The President of the District Court subsequently referred the settlement for separate audit.

On 10 April and 29 May 1992 the President of the District Court considered the applicant's requests of 1991. On the last-mentioned day the matter was referred for examination at a hearing on 2 June 1992.

On 1 June 1992 the Deputy Ombudsman rendered her decision in regard to the applicant's and Ms. Kauppinen's petitions (see the Appendix).

On 2 June 1992 the District Court held a hearing, where the applicant was represented by a guardian ad litem (a lawyer) appointed on that day in application of Sections 65 and 66 of the 1898 Act. The Court heard the applicant and the Chairman of the Guardianship Board. It further noted that it had not yet received any reply to the President's letter to the Board of 19 December 1991. The case was adjourned in order to enable the guardian ad litem to study the case-file. The applicant was ordered to summon Ms. Turpeinen as a witness, provided he wanted to invoke her report of 2 May 1991.

On 14 July 1992 the District Court dismissed S.P. as the applicant's guardian and provisionally appointed the Official Guardian of the municipality of Askola as guardian as from 1 September 1992. The District Court had regard to the statements by the applicant and S.P. according to which they had been unable to negotiate about matters relating to the guardianship, the separate audit of S.P.'s settlement

of the applicant's accounts for 1991, and the Deputy Ombudsman's finding that S.P. is a member of the Municipal Board of Askola.

The District Court adjourned its consideration of the applicant's request for revocation of the guardianship.

On 27 July 1992 Dr. Matti Tuovinen, a forensic psychiatrist and a permanent expert to the Ministry of Social and Health Affairs (sosiaali- ja terveyshallitus, social- och hälsostyrelsen) submitted an opinion to the National Board of Social Welfare for the purposes of the proceedings before the Commission. It reads, inter alia, as follows:

(translation from Finnish)

> "...
> By letter of 12 June 1992 the National Board of Social Welfare has requested me to study, in my capacity as expert, the application to [the Commission] lodged by [the applicant], doctor of radiology, as well as the documents pertaining to it, and to submit my opinion as to the questions put to [the Board] by the Ministry for Foreign Affairs. ...
>
> I have had at my disposal the files relating to [the applicant] at the National Medical Board / the National Board of Social Welfare spanning over a period of approximately ten years. He has now - by letter of 30 March 1992 - lodged an application against Finland in which he alleges defects in the administration of his guardianship. He has, inter alia, submitted that on six occasions his guardian has taken him for treatment in a mental hospital against his will and for no reason. It appears that he has been treated at least in the hospitals of Lapinlahti, Kellokoski and Tammiharju, for other reasons at the neurological department ... of the Central University Hospital of Helsinki as well as at the rehabilitation centre at Punkaharju.
>
> The Ministry for Foreign Affairs has put the following questions to the National Board of Social Welfare:
>
> - Has [the applicant] been taken for treatment in a mental hospital in the way alleged in his submissions; has he been discharged due to lack of reasons justifying treatment; or has he been detained for treatment against his will ?
>
> - How has [the applicant's] health care been organised and has it been possible to give him the treatment necessary in view of his condition ?
>
> [The applicant] ... received a university degree in agriculture ... in 1952, became a graduate in medicine ... in 1963 and a specialist doctor in radiology in 1973. He submits that he has been a farmer since 1979. He has been married and has seven children, born between 1953 and 1970. In the summer of 1985 Juhani Leistén, medical counsellor and a permanent expert to the National Medical Board, assessed [the applicant's] personality: '... [He] has been an intelligent, original person with a hidden inferiority complex, but [he has been] ambitious. [His] behaviour may be placed in the biological grey zone close to manic depression. [He] has had almost overactive stages in his life. Growing old and the family growing up [he] became depressive, dependent on alcohol and drugs, started producing paranoid tendencies, became projective and

sometimes goes into a serious state of regression and psychotic behaviour, with the result that his reality perception is seriously disturbed. ...'

[The applicant] had complained about his treatment between 3 June and 7 July 1981 at [the hospital of] Tammiharju and of his treatment at the psychiatric clinic from 11 November 1984 to 19 January 1985. [He] was found to have brain symptoms caused by polyneuropathy and possibly by a radiation injury or a degenerating process, as well as from rectum cancer. For the last-mentioned condition he has been operated on at least thrice since 1985. Being from time to time immobile he has, during the last years, been helplessly dependent on home medical treatment. [He] has, however, remained active enough to write criticising letters and try to fight legally against his placement under guardianship. [He has further] complained of having been detained in hospitals as well of alleged acts of negligence. On the other hand, his relatives have on several occasions requested investigations by the National Board as to why effective measures have not been taken in order to remedy his occasional helplessness, noting that several recommendations that he be taken to a mental hospital have not been followed. [Guardian S.P.] has kept contact both with the physician at the Public Health Centre and the National Board and has described [the applicant's] problematic behaviour. The physician at the Public Health Centre has stated in her opinion that even in behavioural crises [the applicant] has not shown any disturbance justifying detention against his will. For example, in 1988 he was sent to [the hospital of] Kellokoski, but he was ... returned, no grounds justifying detention against his will having been found. In 1986 he [also] underwent an examination at Kellokoski, that time for the purpose of the guardianship [proceedings]. In 1982 [he was examined] at the private mental hospital of Sanerva following a request by the National Medical Board. These two sets of hospital treatment were, accordingly, voluntary ... The previously mentioned stays at the psychiatric clinic of the Central University Hospital of Helsinki and Tammiharju took place against his will. Numerous previous investigations instituted at [the applicant's] request have found those stays to be justified. As soon as the conditions for compulsory treatment ceased to exist he was, at his request, immediately discharged. According to the material at my disposal [the applicant] has been detained in a mental hospital on six occasions since 1981. In his application he has not, however, specified which of those six stays he refers to. It appears, however, that although the ... responsibility for the medical care given to him in his home lies with the physician at the Public Health Centre, the guardian has normally, in accordance with his own responsibility, attempted to monitor the situation and at least institute an investigation in order to determine whether there were grounds justifying care [against the applicant's will]. At least on one occasion in 1988 the finding, after a period of observation of [the applicant] in a mental hospital, was that he had been sent there unnecessarily. This, however, does not contain any opinion as to whether there had been grounds for taking him in for observation. It should be emphasised that a vigilant and well-read paranoiac soon learns how to dissimulate, if need be. It appears from the statements made by the home medical service and the case records in the file that attempts have been made to invest care and efforts in the monitoring of [the applicant's] condition and in his care, despite the fact that he is, as a patient, apparently occasionally very

ungrateful and regressively full of whims. His criticising attitude and the effective compulsory means should [,however,] keep the risk of realistically perceivable acts of negligence small. Finally, it should be observed that the symptomatic core of the paranoia suffered by this kind of person does not consist only of suspicions arising out of individual situations or a momentary distortion of his reality perception - [symptoms which he manages to hide quickly] during a psychiatric examination - but in an extensive passion for complaints and attacks which may occasionally use as their instrument ... defects which are indeed real, although exaggerated. All in all, behind everything we see a paranoid outlook forming the meaning of [his] life.
..."

On 26 August 1992 the District Court replaced the Official Guardian by Mr. P.V., a lawyer.

In its opinion of 8 October 1992 the Guardianship Board objected to the revocation of the guardianship or the appointment of an administrator.

On 20 October 1992 the District Court revoked the applicant's placement under guardianship and appointed an administrator (a lawyer) to take care of his financial and legal affairs. It had regard to, inter alia, Ms. Turpeinen's statement of 2 May 1991, now confirmed as a medical opinion in accordance with Section 12 para. 1 of the Medical Practice Act.

The District Court stated inter alia the following:

(translation from Finnish)

"...
In her medical report of 13 October 1992 Pirkko Turpeinen has not detected any symptoms in [the applicant] justifying [his] placement under guardianship.

[The applicant] is in the District Court's view unable, because of a physical illness, to take care of his affairs. Nobody shall, however, be placed under guardianship due to a physical illness.
..."

The District Court's decision is subject to appeal both by the applicant's children, himself and his guardian ad litem.

In 1985 the market value of the applicant's possessions was estimated at 10.000.000 FIM. His agricultural property amounts to 115 hectares of farming land and 250 hectares of forest land.

According to the applicant his possessions include, inter alia, 2 km of undeveloped lakeside property and 51 buildings. He claims to be the former owner of large toy and shoe factories.

The applicant has submitted a copy of the results of an intelligence test carried out by a psychologist of Mensa of Finland on 28 August 1990 according to which his intelligence quotient is 142, which is higher than that of 96 per cent of the population.

Relevant domestic law

Under Section 17 of the 1898 Act, as amended by Act no. 368/83, a person who is incapable of taking care of himself or of matters concerning his possessions, and provided that his financial situation, income or other important interests are obviously jeopardised, may be

placed under guardianship (para. 1). A request may be submitted by the person himself, his or her spouse, a relative of his or the Guardianship Board (Section 17d paras. 1 and 2, as amended by Act no. 368/83).

If it is found that a person's interests may be sufficiently safeguarded by appointing an administrator he shall not be placed under guardianship (Section 17 para. 2).

The placement under guardianship shall be ordered for an indefinite period or for a period defined by the court (Section 17a, as amended by Act no. 368/83).

The guardianship shall be revoked, if the grounds for placing the person under guardianship no longer exist (Section 17c, as amended by Act no. 368/83). Such a request may be lodged by the persons mentioned in Section 17d paras. 1 and 2 as well as by the guardian.

Under Section 17d para. 3 the ward may request that his guardianship be revoked by submitting a petition to the District Court. Under Section 30, as amended by Act no. 368/83, he may also request that his guardian be dismissed provided the ward has attained the age of fifteen.

Section 6 of the Act on the Handling of Petitions at Courts of First Instance (laki 307/86 hakemusasioiden käsittelystä yleisessä alioikeudessa, lag 307/86 om behandling av ansökningsärenden vid allmän underrätt) prescribes certain formal requirements of a petition. If a petition is found to be incomplete the petitioner shall be requested to complete it, unless this is considered unnecessary. If the petition is not completed it shall in principle be dismissed.

Under Section 3 of the 1983 Decree the court shall ex officio appoint a guardian ad litem inter alia when examining a petition for the revocation of a guardianship, provided the ward's interests are, or may become, in conflict with those of his guardian.

Under Section 20 para. 2 of the 1898 Act, as amended by Act no. 368/83, the ward shall have control of any possessions acquired by his own work while being placed under guardianship, as well as of any yield of those possessions and of any substitute possessions. Under para. 3 the Guardianship Board may consent to the guardian taking control of such possessions, provided this is called for in the interests of the ward.

The guardian shall take care of the ward's possessions and represent him in matters concerning the possessions. The guardian shall further conscientiously safeguard the ward's rights and promote the ward's interests (Section 33, as amended by Act no. 368/83).

The guardian shall further provide the ward with such care as is regarded as necessary in view of the ward's needs as well as his other circumstances (Section 34, as amended by Act no. 368/83).

The guardian shall hear the ward in matters of importance from the ward's point of view. The hearing of the ward is not necessary if he is unable to comprehend the meaning of the matter (Section 37, as amended by Act no. 368/83).

Under Section 39 the guardian may not without the court's consent dispose of the ward's real property or let it on lease for more than five years, in the latter case provided the guardianship is based on a decision by a court. Any such transaction shall be considered void unless the court subsequently approves it (Section 41).

The ward's possessions shall be administered in such a way as to ensure that they as well as any proceeds are used for his benefit

(Section 42, as amended by Act no. 368/83).

The ward shall have recourse to any possessions needed for his personal use as well as to a reasonable amount of cash, having regard to his needs and other circumstances. The guardian shall see to it that the ward can keep any possessions necessary during the guardianship or subsequently for housing or business activities or which otherwise have a special value for him. Any further possessions not used for the ward's subsistence or otherwise for his needs shall be invested so as to ensure adequate preservation of their value as well as reasonable proceeds (Section 43, as amended by Act no. 368/83).

Where a person under guardianship has received, by way of either a donation or a will, written instructions on the administration of the possessions given to him, these are to be complied with unless, following changed circumstances, the court grants permission to deviate from them (Section 45).

Under Section 51 the guardian shall submit annual settlements of the ward's accounts to the Guardianship Board.

Under Section 54 para. 3 the Guardianship Board shall, having audited the settlement of the ward's accounts, refer it to the Court together with any remarks.

Where a guardian submits an incorrect or a defective settlement of the ward's accounts the Court shall, under penalty of a fine, order him to fulfil his obligation (Section 55 para. 1). If there is a reason to contest the guardian's administration or the settlement of the ward's accounts before the guardian has resigned, the Court shall appoint a guardian ad litem to institute proceedings on behalf of the ward (para. 2).

Under Section 61 a ward who has the necessary understanding of the matter may consult the settlement of his accounts as submitted to the Guardianship Board and request that the Board or the Court take measures necessary in view of the administration of his property.

Under Section 65 a guardian ad litem shall be appointed inter alia in matters where the ward's interests are or may become in conflict with those of the guardian.

The Court may, at a person's request, appoint an administrator to administer certain property or to take care of a certain matter, provided the person himself is unable to do so for medical or other similar reasons but it is unnecessary to place him under guardianship. If the person is unable to lodge such a request it may be lodged by his relatives or the Guardianship Board (Section 66).

Under Section 75 para. 3 a decision whereby a placement under guardianship has been revoked shall be enforced only when it has acquired legal force.

Section 12 of the 1978 Medical Practice Act (laki 562/78 lääkärin-toimen harjoittamisesta, lag 562/78 om utövning av läkaryrket) provides that an opinion submitted by a person practising medicine to a court or to other authorities shall be confirmed with the wording: "Which I affirm on my honour and conscience" (para. 1). Such an opinion is valid without a confirmation under oath unless the court or the authority for special reasons orders such a confirmation (para. 2).

Under Chapter 17, Section 11 of the 1948 Code of Judicial Procedure (oikeudenkäymiskaari 571/48, Rättegångs Balk 571/48) a private written statement submitted for the purpose of pending or future legal proceedings shall not be used as evidence before a court of first instance unless otherwise prescribed by law. For a special

reason, however, the evidence may be permitted by the court.

Under Chapter 31 the Supreme Court may upon request annul a legally final decision under certain conditions. According to the prevailing practice such a request may be lodged inter alia by the Parliamentary Ombudsman.

Under Section 12 of the 1919 Constitution Act (hallitusmuoto 94/19, regeringsformen 94/19) there shall be no interference with the secrecy of correspondence other than by means of an exception provided for by law. The 1898 Act contains no explicit provision for such an exception.

According to Section 2 of the 1987 Act on Pre-trial Investigation (esitutkintalaki 449/87, förundersökningslag 449/87) a pre-trial investigation shall be carried out where, having regard to the report of the offence or otherwise, there are reasons for suspecting that an offence has been committed.

Under Section 1 of the 1988 Decree on Pre-trial Investigation and Coercive Criminal Investigation Means (asetus 575/88 esitutkinnasta ja pakkokeinoista, förordning 575/88 om förundersökning och tvångsmedel; hereinafter "the 1988 Decree") such a report shall immediately be registered and, if necessary, completed by the person filing the report. A complainant who has requested that a pre-trial investigation be carried out shall be informed by the investigating authority of its reasons for not complying with such a request (Section 4).

COMPLAINTS

1. The applicant complains that he has been placed under guardianship for no justifying reason and that his placement under guardianship has been instigated by his relatives so as to enable them to have access to his large possessions.

2. He complains of lack of sufficient access to court and refers, in particular, to the District Court's refusal to examine his requests of June and August 1991.

3. He complains that his relatives, in cooperation with his guardian, have been embezzling his property; that he has been prevented by guardian S.P. from receiving his pension; and that he has been refused the means necessary for him to undergo an eye-operation. He also submits that he has been unable to comment properly in writing on the information submitted by the Government, as due to his radiation injury he is unable to write legibly and has been refused access to a typewriter as well as to means enabling him to hire a typist.

4. He complains that he has been subjected to ill-treatment by guardian S.P. and assaults by family members and that on eight occasions he has been sent to mental hospitals by S.P., but that no grounds for detaining him have been found.

5. He complains of continuous interference with his correspondence. He submits that he used to receive a substantial amount of mail, but that during his guardianship he has received only three post-cards and a few letters, the last-mentioned after they had been opened by guardian S.P. In his submissions of 17 September 1992 he further alleged that his telephone calls are being tapped and taped by one of his sons.

6. He finally complains that he has lodged six reports with the police alleging that his former wife has attempted to murder him by secretly giving him overdoses of drugs. Only once has the police taken any action, resulting in the Public Prosecutor deciding not to bring

charges.

The applicant does not invoke any particular provision of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 July 1991 and registered on 21 October 1991.

On 24 October 1991 the Rapporteur, pursuant to Rule 47 para. 2 (a) of the Commission's Rules of Procedure, decided to request further information from the respondent Government. The information was submitted by the Government on 25 November 1991. The applicant's comments were conveyed to the Secretariat by telephone on 11 February 1992.

On 30 March 1992 the Commission decided, pursuant to Rule 48 para. 2 (b), to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of the application, with the exception of the complaint regarding the initial guardianship proceedings and the decision to place the applicant under guardianship as upheld by the Supreme Court on 27 October 1988. The Commission further decided, pursuant to Rule 33, to give the application precedence.

The Government's observations were submitted on 4 and 23 June and 18 August 1992. The applicant submitted observations by telephone on 17 September and in writing on 18 September 1992.

THE LAW

1. The applicant complains that his placement under guardianship is unjustified and that it has been instigated by his relatives in order to enable them to obtain access to his large possessions.

The Commission has examined this complaint under Article 8 (Art. 8) of the Convention, which reads:

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

(a) The Commission first recalls that in accordance with the generally recognised rules of international law the Convention only governs, for each Contracting Party, facts subsequent to its entry into force in respect of that Party (e.g. No. 9453/81, Dec. 13.12.82, D.R. 31 p. 204, at p. 208). The Commission observes that the initial guardianship proceedings terminated with the Supreme Court's decision rendered on 27 October 1988, that is prior to 10 May 1990, which is the date of the entry into force of the Convention in respect of Finland.

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

(b) As regards the prolongation of the applicant's guardianship as upheld by the Supreme Court's decision of 24 January 1991 the Government argue that it was and continues to be a lawful and justified interference with the applicant's rights under Article 8 (Art. 8). Section 17 of the 1898 Act reflects a legitimate aim for the purposes of paragraph 2 of Article 8 (Art. 8-2), namely social control. The prolongation was based on an evaluation of evidence as well as an interpretation and application of domestic law, tasks which fall exclusively within the competence of domestic authorities. The Government finally refer to the expert opinion of 27 July 1992 concluding that the applicant is still suffering from paranoia.

The applicant contends that there are no sufficient reasons justifying his placement under guardianship. The expert opinion of July 1992 is exclusively based on previous opinions in his file at the National Medical Board. He has never been examined by Dr. Tuovinen.

The Commission considers that the applicant's placement under guardianship, which the District Court has decided to replace by the appointment of an administrator, constitutes an interference with his right to respect for his private life within the meaning of Article 8 (Art. 8) of the Convention (No. 8509/79, Dec. 5.5.81, D.R. 24 p. 131).

In order to be justified under the terms of paragraph 2 of Article 8 (Art. 8) such an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in paragraph 2 and it must be "necessary in a democratic society" for that aim or those aims (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, para. 68, to be published in Series A no. 234-A). The necessity requirement implies that the relevant decisions must be shown to be justified by a pressing social need and, in particular, be proportionate to the legitimate aim or aims pursued (Eur.Court H.R., Moustaquim judgement of 18 February 1991, Series A no. 193, p. 19, para. 43). Regard should further be had to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

In examining the justification under paragraph 2 of Article 8 (Art. 8-2) of a placement under guardianship the Commission finds it appropriate to seek guidance from the interpretation of Article 5 para. 1 (e) (Art. 5-1-e) of the Convention. The Court has held that the fact that a person is "of unsound mind" within the meaning of that provision must be established conclusively by means of objective medical reports. In this respect the national authorities have a certain discretion as it is for them in the first place to evaluate the evidence put before them. The Convention organs' task is to review the decisions of the national authorities from the point of view of the Convention (Eur. Court H.R., Herczegfalvy judgment of 24 September 1992, para. 63, to be published in Series A no. 242-B). In the Commission's view similar considerations must apply in respect of the placement of a person under guardianship.

In the case at issue the District Court's decision of 4 April 1990 was based, in particular, on an expert opinion concluding that the applicant was suffering from incurable brain damage and that for three years there had been no improvement in his mental capacity or general state of health. Although another opinion by the physician in charge of the applicant's care at the local Public Health Centre concluded that his psychosocial situation had clearly improved it did not indicate whether or not the placement under guardianship should have been prolonged. Moreover, a further expert opinion of 27 July 1992 confirms that the applicant is still suffering from paranoia.

In these circumstances the Commission finds no indication that the placement order was tainted by arbitrariness or that in any other way it was not made in accordance with the law, nor is there any

indication that it was not made in the interest of preventing disorder and for the protection of the rights and freedoms of others, these being legitimate aims under paragraph 2 of Article 8 (Art. 8-2).

The question could be raised whether the placement order may be considered necessary in a democratic society in view of the fact that the order was revoked in October 1992. However, the Commission concludes that the order did not exceed the margin of appreciation which the Contracting States have in this field. The same applies a fortiori to the recent decision whereby an administrator was appointed to take care of the applicant's interests.

Accordingly, the Commission cannot find that the placement order of 1990 was not necessary in a democratic society for the above-mentioned legitimate aims.

It follows that this part of the complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that he did not have sufficient access to court. He refers, in particular, to his requests of June and August 1991 to have the guardianship revoked or, in the alternative, guardian S.P. dismissed.

(a) The Commission has examined this complaint under Article 6 para. 1 (Art. 6-1) of the Convention, which reads, in its relevant parts:

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

The Government contend that the complaint is manifestly ill-founded. Over the years the President of the District Court has received numerous letters and telephone calls from the applicant, who has also been in contact with other members of the Court's legal staff. His request of September 1989 for a revocation of the guardianship was withdrawn in January 1990. His requests of 1991 were lodged only about half a year after the prolongation of his guardianship had become final. These facts may have been of significance when the President did not deem it expedient or well-founded immediately to examine the requests. The contents of the requests were, however, examined by the Court in July and October 1992, when the applicant was represented by a guardian ad litem. As a result guardian S.P. was dismissed. The Government conclude that, although there was a certain delay, the applicant did have access to court with regard to his requests.

The Commission recalls that Article 6 para. 1 (Art. 6-1) not only secures to everyone the right to a fair trial in already pending court proceedings, but also the right to have any claim relating to his civil rights or obligations brought before a "tribunal". Thus, Article 6 para. 1 (Art. 6-1) embodies, inter alia, the right to institute proceedings before courts in civil matters (Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

The right of access to court may, however, be subject to certain limitations; those are permitted by implication, since the right of access by its very nature calls for regulation by the State, and this regulation may vary in time and place according to the needs and resources of the community and of individuals. In laying down such regulation the Contracting States enjoy a certain margin of appreciation. The limitations applied must not, however, restrict or reduce the access so as to impair the very essence of the right of access. Furthermore, a limitation will not be compatible with Article 6 para. 1 (Art. 6-1) if it does not pursue a legitimate aim and if there is no reasonable relationship between the means employed and the

aim sought to be achieved (ibid., p. 19, para. 38; Ashingdane judgment of 28 May 1985, Series A no. 93, pp. 24-25, para. 57).

In his requests the applicant alleged in essence, on the one hand, that the guardianship was unjustified and, on the other, that he did not have sufficient access to the means necessary for his medical treatment. In the first-mentioned respect the Commission observes that the Supreme Court's decision upholding the prolongation of the applicant's placement under guardianship had been rendered less than five months prior to the applicant's first request of 4 June 1991. True, the applicant referred to a statement by a psychiatrist to the Deputy Ombudsman finding no reasons justifying the guardianship. The statement, however, formed part of a petition to the Deputy Ombudsman and was apparently not intended for use in a court of law. The remainder of the petition was to some extent a repetition of allegations previously submitted by the applicant to the District Court.

In so far as the applicant's requests pertained to guardian S.P.'s administration of his possessions the Commission observes that somewhat similar allegations had been made in his petition of 27 September 1989 requesting the District Court to revoke his placement under guardianship. It appears that, despite his withdrawal of that petition, the applicant had previously expressed, by means of numerous letters and telephone calls to the President of the District Court, his discontent with the guardian. However, in re-appointing S.P. as guardian the District Court apparently concluded that the applicant's allegations were not well-founded. The re-appointment of S.P. was upheld by the Supreme Court together with the prolongation of the placement under guardianship, that is, again only about half a year prior to the applicant's requests of June and August 1991.

The Commission notes that on 20 October 1992 the applicant's placement under guardianship was revoked and an administrator appointed for the administration of his financial and legal matters. In the absence of any evidence to the contrary the delay in processing the applicant's requests must, therefore, be considered to have been based on considerations of judicial economy, these constituting a legitimate aim.

Whilst the District Court's delay in processing the requests is open to certain criticism the Commission cannot, on balance, and in view of the circumstances as a whole, find that the tacit refusals to deal with the requests at an earlier stage impaired the very essence of the applicant's right of access to court or transgressed the principle of proportionality.

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

(b) The Commission has further examined whether the District Court's decision of 30 September 1991 not to appoint a guardian ad litem in the proceedings reviewing the settlement of the applicant's accounts for 1990 impaired his right of access to court.

In this respect the Government contend that the complaint is manifestly ill-founded. The District Court's decision was made only after the settlement had been referred to a separate examination and the Court had been provided with the further information requested from the Guardianship Board. In view of this information the Court deemed it unnecessary to appoint a guardian ad litem to contest the settlement. Furthermore, the Deputy Ombudsman has found nothing warranting a further examination of the District Court's conduct of the case in this respect.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the

Convention cannot be interpreted as including an unlimited right to have an ad hoc guardian appointed for the purpose of bringing a court action (cf. No. 10877/84, Dec. 16.5.85, D.R. 43 p. 184). It observes that under Section 55 para. 2 of the 1898 Act the court shall, when considering it necessary and provided the guardian has not resigned, appoint a guardian ad litem to contest the guardian's administration or the settlement of the ward's accounts. In the present case the District Court, in view of the outcome of its further investigations, including the clarification submitted by the Guardianship Board, found no reason to take such action.

In these circumstances the Commission concludes that the District Court's refusal to appoint a guardian ad litem did not impair the applicant's right of access to court.

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

3. The applicant further complains that his property has been embezzled by his relatives in cooperation with guardian S.P.; that he has been prevented by S.P. from receiving his pension; and that he has been refused access to the means necessary for him to undergo an eye operation. He finally submits that he has been unable to comment properly in writing on the Government's observations, as due to his radiation injury he is unable to write legibly and has been refused access to a typewriter as well as to means enabling him to hire a person to type his submissions intended for the Commission.

(a) The Commission has first examined the complaint regarding the applicant's possibility effectively to bring an application and to participate in the proceedings before the Commission. This complaint falls within the ambit of Article 25 (Art. 25) of the Convention, which reads, in its relevant part:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

The Government submit that the complaint is manifestly ill-founded. A violation of Article 25 (Art. 25) would only have occurred had the applicant been unable to submit his application in a sufficiently complete and detailed form. The documents do not show whether the applicant has asked guardian S.P. for additional funds for the purpose of hiring a typist. On one occasion, however, S.P. refused to pay a bill regarding typing costs, considering that it should have been paid out of the applicant's disposable funds, as the guardian has done in respect of most bills addressed to the applicant.

The Commission recalls that Article 25 para. 1 (Art. 25-1) of the Convention imposes an obligation on the Contracting States not to interfere with the right of the individual effectively to present and pursue his application before the Commission. Such an obligation confers upon the applicant a right of a procedural nature distinguishable from the substantive rights set out under Section I of the Convention or under its Protocols. It flows from the very essence of this right that it must be open to individuals to complain of alleged infringements of it in the proceedings before the Commission. In this respect the Convention must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and

illusory (Eur. Court H.R., Cruz Varas and Others judgment of 20 March 1991, Series A no. 201, pp. 35-36, para. 99).

In the case at issue the Commission observes that the applicant initially contacted the Secretariat by means of a handwritten letter. Subsequently he submitted several further letters as well as the application form, all transcribed from dictaphone recordings. He has also been in telephone contact with the Secretariat on numerous occasions. His last submission of September 1992 was again transcribed from a dictaphone recording. The Commission further notes that the applicant has been informed of the possibility to be legally represented in the proceedings before the Commission. He has not, however, availed himself of this possibility.

In these circumstances, the Commission cannot find any evidence showing that he has been hindered in the exercise of his right of petition to any significant degree (cf. ibid., p. 37, para. 104). No action is therefore called for.

(b) The Commission has next considered the complaint in so far as it pertains to guardian S.P.'s administration of the applicant's possessions. These complaints have been examined under Article 1 of Protocol No. 1 (P1-1) to the Convention, which reads:

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

The Government contend that this complaint is also manifestly ill-founded. A violation of Article 1 of Protocol No. 1 (P1-1) could in the Government's view be at hand, had guardian S.P. used the applicant's possessions in a way generally insufficient for the applicant's needs. However, the applicant's poor accommodation conditions are the result of the applicant's own choice. He has been provided with home service to an extent chosen by himself as well as health and rehabilitation services.

As regards the alleged refusal of access to the applicant's pension and disposable funds the Government admit that the settlements of his accounts do not distinguish the disposable funds used from the costs of living incurred and therefore do not specify the amounts factually at his disposal. However, the guardianship has been and is being supervised by the Guardianship Board and the District Court in accordance with domestic legislation governing guardianships. These organs have approved the administration of the applicant's possessions on the basis of the settlements of his accounts submitted by guardian S.P. The funds at his disposal have been considered adequate by both organs. At present the applicant receives about 2.000 FIM per month. Neither the domestic authorities' assessment of facts nor their application of domestic law has been arbitrary or otherwise inappropriate. Any review of their decisions thus falls outside the Commission's competence. Finally, the Deputy Ombudsman's criticism of the Guardianship Board's supervision of the guardianship does not contain any opinion as to whether the applicant's possessions were adequately used for his benefit.

The Commission first notes that the applicant's possessions were being administered by a guardian appointed by a court of law. In

performing his duties the guardian is under the supervision of the local court and the municipal Guardianship Board. The administration of the applicant's possessions, therefore, entails State responsibility under the Convention.

The Commission further considers that guardian S.P.'s administration of the applicant's possessions constitutes an interference with his right to the peaceful enjoyment of his possessions and amounts to a control of the use of his property to be examined under the second paragraph of Article 1 of Protocol No. 1 (P1-1) as to its lawfulness, purpose and proportionality (e.g. Eur. Court H.R., Tre Traktörer AB judgment of 7 July 1989, Series A no. 159, pp. 22-24, paras. 55-62).

The Convention organs' power to review compliance with domestic law is limited. It is in the first place for the national authorities to interpret and apply that law. The requirement of lawfulness includes the requirement that the impugned measures have some basis in domestic law. Furthermore, the law must have a certain quality, that is, it must be accessible, foreseeable and compatible with the rule of law. A law which confers a discretion on the authorities must indicate the scope of that discretion. The degree of precision required will depend on the particular subject-matter (e.g. Eur. Court H.R., Huvig judgment of 24 April 1990, Series A no. 176-B, pp. 52-55, paras. 26 and 28-29).

As to the lawfulness of the interference in the present case the Commission observes that, although the 1898 Act prescribes, in essence, that the measures taken on behalf of the ward shall be in his interest, it is inherent in a placement under guardianship that a certain discretion must be afforded to the guardian in choosing the means for the proper implementation of it. It is further inevitable that the guardian's and the ward's views will not always correspond. The fact that in performing his duty the guardian is under the supervision of both the local Guardianship Board and the District Court affords a safeguard as to the propriety of any measure taken by him or any negligence for which he is found to be responsible. In its review of such acts or of any negligence the Commission must to a large extent rely on the assessment of facts as well as the interpretation of domestic law by those supervisory bodies.

In the particular circumstances of the present case the Commission cannot find that the interference complained of was not, and is not at present, in accordance with the law.

As to the purpose of the interference the Commission considers that a control of the use of property may be "in accordance with the general interest", even if the community at large has no direct use or enjoyment of that property, provided that the interference is effected in pursuance of a legitimate aim such as the safeguarding of possessions belonging to persons found incapable of handling their own affairs (cf. Eur. Court H.R. James and Others judgment of 21 February 1986, Series A no. 98, pp. 30-32, paras. 39-45).

Finally, as regards the proportionality between the interference and the aim pursued the Commission notes, in particular, the guardian's refusal to accept the applicant's medical treatment in the private hospital of Eira. It cannot be excluded that this hospital had been chosen by the applicant on the basis of his experience as a practising physician. Moreover, it does not appear that the guardian consulted a physician before refusing to pay for the care. In these circumstances and judging from the accounts of the applicant's financial situation at the Commission's disposal this particular incident is therefore open to criticism.

In the Commission's view, however, regard must primarily be had to the administration of the guardianship in general, which in the case

at issue involved considerable efforts, due to the applicant's medical situation and his large amount of real property. On the basis of the evidence before it the Commission cannot conclude that the guardian did not carry out the administration in good faith, nor can the supervisory bodies be considered to have acted in a way disproportionate to the aim of the placement under guardianship. The Commission notes in this respect that requests lodged by the applicant as well as measures in relation to the guardianship have been subject to examination by the Guardianship Board. His requests of 1991 to the District Court apparently resulted in a recommendation by its President that the Guardianship Board take measures in order to have the applicant undergo rehabilitation. Furthermore, the settlement of his accounts have been audited and approved by both the Guardianship Board and the District Court.

The Commission finally notes the finding by the Deputy Ombudsman that the applicant's treatment is largely due to his own choices as regards medication, rehabilitation, home service and hygiene.

In these circumstances and having regard to the wide margin of appreciation afforded to the Contracting States under the second paragraph of Article 1 of Protocol No. 1 (P1-1), the Commission cannot find that the control of the use of the applicant's possessions was disproportionate to the aim pursued.

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

4. The applicant further complains of ill-treatment by guardian S.P. and assaults by members of his family. He alleges, in particular, that on several occasions he has been sent to mental hospitals by guardian S.P., but that no grounds for detaining him against his will have been found.

This complaint has been considered under Article 3 (Art. 3) of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submit that the complaint is manifestly ill-founded.

(a) In so far as the complaint is directed against members of the applicant's family the Commission recalls that under Article 25 para. 1 (Art. 25-1) of the Convention the Commission may only receive an application from a person, non-governmental organisation or group of individuals where the applicant alleges a violation by one of the Contracting Parties of the rights and freedoms set out in the Convention and where that Party has recognised this competence of the Commission. The Commission may not, therefore, receive applications directed against private individuals. In this respect the Commission refers to its established case-law (e.g. No. 172/56, Dec. 20.12.57, Yearbook 1 pp. 211, 215; No. 852/60, Dec. 19.9.61, Yearbook 4 pp. 346, 352; No. 3925/69, Collection 32 pp. 56, 58; No. 4072/69, Dec. 3.2.70, Yearbook 13 pp. 708, 716; No. 9022/80, Dec. 13.7.83, D.R. 33 pp. 21, 36).

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

(b) In so far as the complaint is directed against S.P. the Commission has examined above the complaint under Article 1 of Protocol No. 1 (P1-1) relating to the alleged mismanagement by S.P. of the applicant's possessions, wich allegedly deprived the applicant of

adequate medical treatment. In this respect no separate issue arises under Article 3 (Art. 3) of the Convention. Moreover, even assuming that at least some of the incidents involving the taking of the applicant to various mental hospitals occurred less than six months prior to the date of introduc-tion of his application the Commission cannot in this respect find any indication of treatment contrary to Article 3 (Art. 3) of the Convention.

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

5. The applicant further complains of continuous interference with his correspondence. During his guardianship he has received a very small number of postcards or letters, the last-mentioned opened by the guardian. In his submissions of 17 September 1992 he further alleged that his telephone calls are being tapped by one of his sons.

(a) The Commission considers that the complaint or interference with the applicant's correspondence falls to be examined under the above-cited Article 8 (Art. 8) of the Convention.

The Government first point to a contradiction in the applicant's submissions. In his request to the District Court of 27 September 1989 he stated that for five years he has received no mail. In his contacts with the Commission's Secretariat he initially stated that he had received only three postcards and a few letters which had been opened by the guardian. In February 1992, however, he stated that he had not received any mail for a period of six years.

The Government further submit that with the exception of magazines and postcards all incoming correspondence goes via the guardian. Official correspondence such as bills was addressed to "Touko Ollila/S.P." The applicant, however, is given all correspondence pertaining to his personal matters. In these circumstances the Government admit that there has been an interference with the applicant's right to respect for his correspondence, but leaves it to the Commission to determine whether this has been justified under Article 8 para. 2 (Art. 8-2).

As regards, in particular, the lawfulness of the interference the Government submit that, although the 1898 Act does not explicitly allow interference with a ward's correspondence, the guardian's right of access to correspondence necessary for the administration of the ward's possessions may be derived from that Act. The guardian may have to screen correspondence in order to determine whether the contents pertain to the administration of the ward's possessions. The Government admit that it is doubtful whether the provisions of the 1898 Guardianship Act fulfil the conditions as to foreseeability of the interference and the discretion afforded to the authorities. However, any interference with a ward's correspondence is being supervised by a court. If the interference exceeds what is allowed under the Constitution Act and the 1898 Act, criminal proceedings may be instituted. In any case, the interference with the applicant's correspondence is necessary for the prevention of disorder and the protection of the rights and freedoms of others.

As regards outgoing mail the Government accept that there is no need for an interference for the purpose of administering the ward's possessions, legal transactions concluded by him being null and void. The home service officials and friends help the applicant with sending mail.

The Commission has carried out a preliminary examination of this complaint in the light of the parties' submissions. It considers that it raises questions of fact and law which are of such a complex nature that their determination requires an examination of the merits. The

complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

(b) The alleged telephone tapping does not entail any responsibility of the respondent Government under the Convention.

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

6. The applicant finally complains that the police have not taken any action in respect of his reports regarding murder attempts allegedly carried out by his former wife.

The Commission has examined this complaint under Article 2 para. 1 (Art. 2-1) of the Convention, which reads, in its relevant part:

"Everyone's right to life shall be protected by law..."

The Government submit that the complaint is manifestly ill-founded. The police authority of Askola did investigate the first report made by the applicant. However, as no new evidence or other information was presented by him or received from other sources the police did not deem it necessary to investigate his later reports. This finding was subsequently confirmed by the Police Inspector of the County of Uusimaa. Thrice the local Prosecutor has decided not to press charges. Also the Deputy Ombudsman concluded in 1989 that the applicant's allegations contained no grounds for further investigations. Following a further report lodged by the applicant in 1990 additional investigations were carried out, terminating in a decision to close the investigations. The Central Criminal Police have registered the applicant's reports of 1989 and 1992 and these are still pending. The local police is currently reviewing measures previously taken in order to consider whether further investigations are needed.

The Commission recalls that, whilst the Convention does not safeguard a right as such to have a pre-trial investigation carried out, Article 2 (Art. 2) of the Convention imposes a broad obligation on the Contracting States to take appropriate steps to safeguard life (e.g. No. 11604/85, Dec. 10.10.86, D.R. 50 p. 259). However, even assuming that Article 2 (Art. 2) would apply in the particular circumstances of the present case, the Commission concludes that the investigations carried out in respect of the applicant's reports amount to a sufficient safeguarding of his right under Article 2 (Art. 2).

It follows that this complaint must 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 ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint under Article 8 of the Convention in so far as it pertains to interference with his correspondence;

DECIDES TO TAKE NO ACTION with respect to the complaint under Article 25 of the Convention; and

by a majority,
DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)