CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF V. v. FINLAND

(Application no. 40412/98)

JUDGMENT

STRASBOURG

24 April 2007

FINAL

24/07/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of V. v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 40412/98) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, ("the applicant"), on 16 March 1998. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr M. Fredman, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that he had been refused a fair trial in the proceedings against him and that the proceedings against the police officers had disclosed a breach of the presumption of innocence.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 4 April 2006, the Court declared the application admissible. Judge Pellonpää, who at the time of the decision sat in respect of Finland, continued to participate in the examination of the case (Article 23 § 7 of the Convention).

6. The applicant and the Government each filed further written observations (Rule 59 § 1). The parties replied in writing to each other's observations.

7. Having consulted the parties, the Chamber decided on the day of adoption of the judgment that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1976 and lives in Helsinki.

A. The telephone calls from H.

9. At 6.14 p.m. on Friday 6 September 1996 the applicant received a telephone call from H., who inquired whether he had any cannabis in his possession. The applicant replied in the negative but added that in a couple of days, after having made some inquiries, he might know better.

10. At 8.04 a.m. on Sunday 8 September 1996 R. and K. entered Finland in a car in which a quantity of drugs had been hidden. They drove through customs in Turku, south-west Finland, and left for Helsinki. At 8.37 a.m. M. called the applicant and requested him to go and get the drugs because he was unable to do so himself. The applicant accepted.

11. At 1.48 p.m. and 8.11 p.m. H. called the applicant again. In the first call H. asked the applicant whether he now had any cannabis. The applicant answered that he could provide it later that day. In the second call it was agreed that H. would call the applicant again in order to arrange a meeting later the same evening. At 10.25 p.m. H. called the applicant and they agreed to meet in front of a restaurant twenty minutes after the call.

12. At the material time, the applicant did not know that H. had been in detention on remand from 3 September 1996.

13. The parties disagree as to the time of the initial call and as to when the order for narcotics was made. According to the applicant, the first call from H. could have taken place either on Wednesday 4 or Thursday 5 September 1996. That call was the start of the applicant's involvement in the relevant events and the order was placed on 6 September 1996. According to the Government, the order was placed at 8.11 p.m. on 8 September 1996, but the applicant had become involved earlier, during the importation of the drugs into Finland. They did not specify the exact nature or the time of his involvement.

B. The applicant's arrest and the pre-trial investigation

14. At 11.10 p.m. on 8 September 1996 the applicant was arrested in front of the restaurant while in possession of 986 grams of cannabis. In a later search of his apartment, a further 13.2 grams of cannabis were found.

15. When questioned by the police, the applicant stated that he had earlier that day met two women at a petrol station, in accordance with the

instructions of M., a drug dealer. The women had given him the car. He and M. together had unloaded some ten kilograms of cannabis. The applicant had received about one kilogram and had gone to the restaurant, where he had been arrested.

16. On 9 September 1996 the Espoo District Court (*käräjäoikeus, tingsrätten*) authorised the police to obtain telephone metering information concerning the applicant's telephone. On 11 September 1996 the court ordered his detention pending trial.

17. During the criminal investigation the applicant told the police about his earlier drug deals, namely the sale of cannabis purchased from M. in 1996, two incidents of exporting cash to the Netherlands in early 1996, the purchase of three mobile telephone connections to be used by M., the introduction of a third party to M. to purchase another mobile telephone connection and for the export of cash to the Netherlands, and giving M. a key to his apartment.

C. The court proceedings against the applicant

1. The Helsinki District Court

18. On 8 October 1996 the applicant was charged with the following offences:

> "I) aiding and abetting on two occasions the importing of narcotic substances in January and February 1996 [delivering cash to Holland on the order of M.];
>
> II) promoting the importation of narcotic substances on three occasions in February-March and July 1996 [acquiring mobile phone connections for M.];
>
> III) an aggravated narcotics offence on 8 September 1996 [possession and handling of 10 kilograms of cannabis together with M. and taking about one kilogram for himself];
>
> IV) two narcotics offences in July 1996 [sale of 200-300 and 100 grams of cannabis on the order of M.]; and
>
> V) an aggravated narcotics offence in 1996 [sale of five kilograms of cannabis purchased from M.]."

He admitted all the events on which the charges were based.

19. At the hearing on 22 October 1996 the applicant gave evidence against one of his co-defendants. The applicant's counsel clarified that on 8 September 1996 his client had taken delivery of the car in order to obtain one kilogram of cannabis without knowing how much cannabis the car contained. The case was adjourned and the applicant was ordered to remain in custody as the police investigation concerning some of the events had not yet come to an end.

20. At the hearing on 5 November 1996 the prosecution presented alternative charges against the applicant in so far as he had been charged on count II with promoting the importation of narcotic substances. He was now charged in the alternative with aiding and abetting a narcotics offence on three occasions. The prosecution also made a change to count V to the following effect. As he had earlier been accused of possessing and selling some five kilograms of cannabis in 1996, the altered charge concerned twenty-one kilograms of cannabis of which he had allegedly sold about twenty kilograms to three different persons during the period from 1 April 1996 until 8 September 1996. Also two new charges were added, namely:

> "VI) aiding and abetting narcotics offences in the spring of 1996 [giving M. keys to his apartment knowing that it was going to be used for the sale of narcotics]; and
>
> VII) aiding and abetting an aggravated narcotics offence in May 1996 [introducing a person to M. in order to have him deliver cash to Holland]."

21. At the hearing on 19 November 1996 the applicant's counsel pointed out as newly acquired information that H. had been in police custody when he had placed the order and he had been released as a reward for his favours to the police. Therefore, counsel argued that no offence had been committed under count III as the events had taken place under police control. The police had set a trap by having the *agent provocateur* order cannabis from the applicant, who would not have committed the offence had he not been explicitly asked to do so. Counsel had requested the police to produce the telephone metering information about calls made from and to the applicant's mobile telephone, but this had not yet been disclosed.

The applicant gave oral evidence that H. had ordered a kilogram of cannabis on Wednesday or Thursday, whereupon the applicant had contacted M., who the same day had confirmed that there would be a shipment that weekend. When H. called again on Saturday, the applicant had told him that the deal might go through on Sunday or Monday.

22. On 25 November 1996 the police applied to the Espoo District Court for permission not to disclose to the applicant that his mobile telephone had been under surveillance. The same day the court granted permission, relying on Chapter 5a, section 11(2) of the Coercive Measures Act (*pakkokeinolaki, tvångsmedelslagen*). The next day the police informed the applicant of the decision, declining to divulge the requested information. The same day the applicant requested the police to issue a formal decision which could be appealed. On 29 November 1996 the police issued a decision in which it was maintained, *inter alia*, that the information was not to be disclosed even to a party to criminal proceedings. On the same day the applicant requested the Helsinki District Court to order the police officer in charge of the investigations, Superintendent J.M., to produce the telephone metering information at the next hearing. The applicant had received several

telephone calls from H. during the period 3 to 8 September 1996 and the observance of the equality of arms principle required the production of the telephone records.

23. On 3 December 1996 the District Court held its final hearing. As the criminal investigations had been continuing throughout, at this stage twelve people had already been accused of various narcotics offences.

24. The applicant's counsel submitted that on 2 December 1996 he had tried to summon Superintendent J.M. to appear before the court, without success. He renewed his request to the court to summon J.M. and to order the disclosure of the telephone metering information.

25. The prosecutor submitted that the allegation about the calls made by H. while in police custody appeared to be true. He produced a fax from Superintendent J.M. (a memorandum dated 26 November 1996) in which it was maintained that, given the date of H.'s arrest, it was impossible that the police could have incited the applicant and M. to smuggle narcotics, as plans to import the drugs had already been in place. There was no mention in the memorandum as to when H. had called the applicant. The prosecution also produced another fax from J.M. dated 2 December 1996 in which he reiterated that the detailed telephone metering information was classified. He nevertheless maintained that there had been one call on 6 September and three calls on 8 September 1996 from the police to the applicant. No further details were provided.

26. The applicant submitted that the former of the above faxes gave the court sufficient information to rule on the matter of incitement. It showed that the only reason for his actions under count III was the telephone call from H. The public prosecutor accepted that he did not rule out this possibility and submitted that the calls could be taken into account so as to reduce the applicant's sentence, but not to absolve him of all criminal liability. The applicant's counsel pointed out that the prosecution did not dispute the *agent provocateur* claim. He withdrew his request to examine Superintendent J.M., who was in any event likely to rely on his right not to testify. He also withdrew the request to the court to order the disclosure of the telephone metering information.

27. It cannot be concluded from the records of the hearings that any of the co-defendants testified as regards the charges brought against the applicant. According to the Government, both R. and K. were heard at the hearings on 22 October and 19 November 1996.

28. On 3 December 1996 the applicant was convicted on all counts and sentenced to three years and six months' imprisonment. On count III he was convicted on the basis that on 8 September 1996 he had been in possession of at least ten kilograms of cannabis, having taken delivery of a car in which R. and K. had illegally imported the drugs, and having later removed them from the car and weighed them together with M. The judgment did not mention any police involvement.

29. On 4 December 1996 the applicant lodged a criminal complaint against Superintendent J.M. and Senior Constable J.O., alleging, *inter alia*, incitement to commit an offence (see paragraph 39).

30. On 26 December 1996 the applicant complained to the Uusimaa County Administrative Board (*lääninhallitus, länsstyrelsen*), arguing that the District Court's decision of 25 November 1996 not to disclose to him that his telephone had been under surveillance did not mean that the information gathered should not now be accessible to him.

2. The Helsinki Court of Appeal

31. On 2 January 1997 the applicant appealed to the Helsinki Court of Appeal (*hovioikeus, hovrätten*), requesting an oral hearing on count III. He also requested, relying on *Edwards v. the United Kingdom* (judgment of 16 December 1992, Series A no. 247-B, § 36), that the police officer in charge of the criminal investigation, Superintendent J.M, be ordered under Chapter 17, Article 12, of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) to produce the telephone metering information. As to the request for an oral hearing, he stated that, following the District Court's judgment, he had received more exact information about the persons involved in the *agent provocateur* operation. The National Bureau of Investigation (*keskusrikospoliisi, centralkriminalpolisen*) had proceeded with the investigation into the suspected offences. The public prosecutor did not submit any written reply to the appeal.

32. On 20 February 1997 the applicant submitted a pre-trial investigation report of 3 February 1997 which concluded that J.M. and J.O. were suspected of abuse of public office, breach of official duty and incitement to commit an aggravated narcotics offence. He also produced a subsequent indictment by the County Prosecutor (*lääninsyyttäjä, länsåklagaren)*. Lastly, he renewed his request for disclosure of the telephone metering information.

33. On 26 February 1997 the County Administrative Board, finding that the applicant in his capacity as a party to the proceedings against him should have access to the telephone metering information, annulled the police decision regarding the non-disclosure and ordered the information to be given to the applicant's counsel. On 11 March 1997 the applicant renewed his request to the Court of Appeal for disclosure of the information. At that time, he had apparently still not received the requested information as the decision had not become final.

34. Meanwhile, on 10 March 1997, the Court of Appeal delivered its judgment, upholding the applicant's conviction. It rejected the requests for a hearing and disclosure of the telephone metering information as ill-founded. It stated that it had admitted to the file the applicant's written submission of 20 February 1997 with annexes, despite the fact that it had arrived after the time-limit for the appeal had expired. The court confirmed the substance of

the District Court's judgment but amended some of the reasoning. It found it established that there had been one telephone call to the applicant on 6 September and three calls on 8 September 1996 from a mobile telephone owned by the police. Relying on the pre-trial statements of two of the applicant's co-defendants, R. and K., the court found that "there [had been] an arrangement that the applicant receive the cannabis prior to the order made by H." and thus found him guilty as charged. It did not specify whether it was making reference to the call of 6 September or to one of the three calls of 8 September. Nor did it specify the date of the applicant's initial involvement with the narcotics. The case file does not disclose that R. and K.'s statements touched upon the chronology of the events as regards the applicant's involvement.

3. The Supreme Court

35. On 5 May 1997 the applicant sought leave to appeal from the Supreme Court (*korkein oikeus, högsta domstolen*), requesting an oral hearing. He emphasised that charges had been brought against the police officers. Further, the Court of Appeal had based his conviction in part on R. and K.'s pre-trial statements, although neither the prosecution nor the District Court had relied on them. Had the applicant known that those statements, which he had not seen, would be used as evidence against him, he would have cross-examined R. and K. in the District Court. The Court of Appeal had not held an oral hearing and had assumed the functions of the prosecution, thereby violating the applicant's right to examine the witnesses against him. The Court of Appeal had also breached Chapter 26, Article 11a, of the Code of Judicial Procedure as it had not identified the special reasons justifying an examination beyond the arguments and facts adduced in the writ of appeal. The Court of Appeal had reached its conclusion regarding the timing of H.'s call on the basis of the pre-trial investigation report in the proceedings against J.M. and J.O., and thus on material relating to another case.

36. On 18 June 1997 the applicant submitted the judgment of the District Court in which J.M. and J.O. had been convicted and fined. The incitement charge had however been dismissed (see paragraph 45 below).

37. On 20 August 1997 the applicant filed a written submission, maintaining that the only differences between his case and that of *Teixeira de Castro v. Portugal* (no. 25829/94, Commission's report of 25 February 1997, Decisions and Reports) were that he had been deprived of information about the *agent provocateur* operation and of an opportunity to examine J.M. and J.O. Further, the lower courts' judgments had not been properly reasoned.

38. On 14 October 1997 the Supreme Court refused him leave to appeal.

D. The criminal proceedings against the police officers

1. The pre-trial investigation

39. As mentioned above, on 4 December 1996 the applicant made a criminal complaint about Superintendent J.M. and Senior Constable J.O.

40. The applicant's request that the police interview the prosecutor in the criminal proceedings against him about, *inter alia*, whether the police report in his case had contained sufficient information, was rejected, as was his request that M. be interviewed about whether the applicant had participated in the smuggling of the narcotics prior to 8 September 1996.

41. During the pre-trial investigation J.M. maintained that H. had agreed to disclose the identity of his drugs supplier only if it was not written down in the report. The applicant's identity had been established from the telephone number produced by H. The purpose of the first call had been to establish whether he had any narcotics in his possession. He had been under surveillance from the afternoon of 8 September 1996 and he had become a suspect as he had been sighted in a rented car together with M. on that afternoon. The police had received information from independent sources that a drugs shipment was going to be smuggled into the country on that day in a rented car. The police had planned on stopping the vehicle but had failed. The only way to find the cannabis had been to call the applicant and place an order.

42. In the pre-trial investigation the applicant and H. testified that an order had been made in code language in the call of 6 September 1996.

2. The Espoo District Court

43. In February and March 1997 the then County Prosecutor brought charges against J.M. and J.O. for abuse of public office, incitement to commit an aggravated narcotics offence and breach of official duty. The indictment alleged:

> "From 6 to 8 September 1996 J.M. in his capacity as Superintendent and J.O. in his capacity as Senior Constable acted in the following manner when carrying out a pre-trial investigation into a suspected narcotics offence in which H. was a suspect:
>
> 1. [J.M. and J.O.] abused their office in relation to [H.], who was under their direct supervision as a detainee on remand, by ... persuading H., who hoped that it would bring him relief as regards his own situation, to make a deal over the telephone to the effect that [the applicant] sell to him one kilogram of cannabis to enable the police to arrest [the applicant] and confiscate the drugs as the deal was about to take place. They thereby restricted his right to liberty to a greater extent than the aim of his arrest required.
>
> 2. [J.M. and J.O.], in the manner explained above, through [H.] on 6 September 1996, deliberately incited [the applicant] to obtain cannabis unlawfully to deliver it to [H.] together with another person receiving at least ten kilograms of narcotics from

> the persons who imported the narcotics unlawfully. Of this amount [the applicant] took over 986 grams. When [the applicant] arrived at the location agreed on the telephone with [H.] the police arrested [the applicant] and confiscated the cannabis from his possession. [The applicant] was subsequently convicted of an aggravated narcotics offence. ... They have thereby also breached their official duty."

The applicant associated himself with the prosecution. He also brought an alternative private prosecution to the following effect:

> "3. [J.M.] breached his official duty in that he did not, by making an annotation in the pre-trial investigation records or by any other means, inform [the applicant], the District Prosecutor or the Helsinki District Court of the circumstances in which [the applicant's] offence had taken place. ... These circumstances had become clear at the end of the trial as the District Prosecutor upon [the applicant's] request had requested a clarification of the facts in issue."

44. The defence relied, *inter alia*, on the Court of Appeal's judgment of 10 March 1997 in the applicant's case, in which it was held that there had been an arrangement that the applicant receive the drugs prior to the order made by H. The defence argued that the order had not been made before 8.11 p.m. on 8 September 1996. The applicant gave oral evidence, maintaining that H. had placed the order in his first call, on Wednesday 4 or Thursday 5 September, whereupon the applicant had contacted M. At 8.37 a.m. on 8 September 1996 M. had called the applicant and requested him to take delivery of the narcotics from R. and K. The court also heard oral evidence from H., the defendant police officers and some other officers.

45. On 5 June 1997 the District Court convicted J.M. and J.O. of abuse of public office and sentenced them to a fine. It held that the facts regarding the telephone calls as described in the indictment were established and stated that it did not believe that H. would have called the applicant solely on his own initiative. It noted that the telephone metering information disclosed that H. had called the applicant at 6.14 p.m. on 6 September and at 1.48 p.m., 8.11 p.m. and 10.25 p.m. on 8 September 1996. It however rejected the incitement charge as the applicant had not been convicted of delivering the kilogram of cannabis to H. Further, J.M. and J.O. had lacked intent to incite the applicant to obtain the remaining drugs. Also the charge concerning breach of official duty was rejected.

3. The Helsinki Court of Appeal

46. The applicant submitted, *inter alia*, that the Court of Appeal had been wrong to find in its judgment of 10 March 1997 that there had been an arrangement that he receive the narcotics prior to H.'s order.

47. On 8 December 1998 the Helsinki Court of Appeal quashed the convictions of the two police officers for abuse of public office, holding:

> "On 10 March 1997 [the applicant] was convicted by the Helsinki Court of Appeal ... of several narcotics offences committed from the beginning of the year 1996 ... In

that judgment it was established that prior to the police officer's order made by telephone there had been an arrangement that he would receive a ten kilo drugs shipment. During the present proceedings, no such grounds have emerged for concluding otherwise. Accordingly, the order for the narcotics in issue did not affect [the applicant's] guilt as to the possession of the ten kilograms of narcotics of which he has been convicted as mentioned above. The guilt of [J.M. and J.O.] as regards a prohibited entrapment operation has not therefore been established. ...”

4. The Supreme Court

48. In his writ of appeal, the State Prosecutor (*valtiosyyttäjä, statsåklagaren*; who replaced the County Prosecutor) submitted that it could not be concluded from the Court of Appeal judgment of 10 March 1997 that prior to the police order there had been an arrangement for the applicant to receive the narcotics. Further, he pointed out that the applicant had been charged and convicted of an offence committed on 8 September 1996, and not before, and no evidence had even been produced to show that the applicant had been involved in the shipment prior to 8 September 1996. In any event, it had not even been alleged that the shipment had arrived in Finland on 6 September 1996, or earlier.

49. In its judgment of 22 November 2000 the Supreme Court found that H., who had been in detention on remand, had co-operated with the police. It considered that there was no reason to depart from the lower courts' establishment of the facts, although it remained unclear how the co-operation had been induced. The court found that on 6 and 8 September 1996 H. had discussed with the applicant in general terms whether it would be possible to buy cannabis from him. At 8.11 p.m. on 8 September 1996 H. had placed an order. According to J.M.'s confession, on the evening of 8 September 1996 he had encouraged H. through J.O. to place an order with the applicant for one kilogram of cannabis. H. had therefore called the applicant at 8.11 p.m. The court found it established that J.M. and J.O. at 8.11 p.m. had incited the applicant to commit a new offence by selling narcotics to H.

50. The Supreme Court noted that in their judgments of 3 December 1996 and 10 March 1997 the District Court and the Court of Appeal respectively had found the applicant guilty of an aggravated narcotics offence in that on 8 September 1996 he had been unlawfully in possession of at least ten kilograms of cannabis having unlawfully taken delivery of a car from persons who had unlawfully imported the narcotics in it and by participating in the unloading and the weighing of the cannabis. It had been established that the applicant had been involved in the importing of these ten kilograms of cannabis long before 6 September 1996. According to the Supreme Court, the telephone conversations between H. and the applicant had not therefore had any impact on the receipt by the applicant of the imported narcotics. Thus, the involvement by J.M. and J.O.

could not be regarded as having had any causal relation with the offence of which the applicant had been convicted. In order to convict someone of incitement to commit an offence it was a pre-condition that the offence had actually been committed. That had not been the case here, because the police intervention had prevented the applicant from selling the one kilogram to H. Accordingly, J.M. and J.O. were not guilty of incitement to commit an aggravated narcotics offence.

51. The Supreme Court found however that J.M. and J.O. had used prohibited methods and were thus guilty of a breach of official duty.

52. As to the sentence, the Supreme Court noted that the police officers had been tipped off by a third party that a rented car containing narcotics was going to enter the country during the weekend. On the evening of 8 September 1996 the police had sighted the applicant in a rented car, but had not been able to follow it. In order to prevent the narcotics from entering the market, J.M. had decided that it was necessary to encourage H. to place an order and agree on a meeting. This had resulted in the applicant's arrest and the confiscation of a large amount of narcotics. The court concluded that, considering the seriousness of the situation, resorting to the prohibited method was excusable. It therefore decided not to impose a sentence.

E. The applicant's request for a re-opening of the proceedings against him

53. On 29 September 1998 the applicant requested a re-opening of the case against him, based on the fact that the District Court had convicted J.M. and J.O. of a breach of official duty. He made reference to the case of *Teixeira de Castro v. Portugal* (judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV).

54. On 22 November 2000, thus on the same day judgment in the case against Superintendent J.M. and Senior Constable J.O. was delivered, the Supreme Court refused the request.

II. RELEVANT DOMESTIC LAW AND PRACTICE

55. Section 44, subsection 1, of the Police Act (*poliisilaki, polislagen*; Act no. 493/1995) provides that when being heard as a witness or otherwise, police personnel are not obliged to reveal the identity of any person who has provided them with confidential information in their official capacity or to reveal any confidential tactical or technical methods.

56. At the material time, national legislation did not contain any provisions on the use of undercover transactions or on the use of undercover agents.

On 29 November 2000 Parliament adopted an amendment to the Police Act whereby explicit provisions on certain unconventional preventive methods and investigative techniques, including undercover operations and induced deals, were added to the Act (21/2001).

57. Chapter 26, Article 11a, of the Code of Judicial Procedure (Act no. 4/1734, as in force at the relevant time), provided that the Court of Appeal should not without special reason examine the authenticity of the lower court's judgment beyond the arguments and facts adduced in the writ of appeal and the reply to the appeal. In the relevant Government Bill (no. 79/1993) the interests of justice were mentioned as a possible ground dispensing a Court of Appeal from the restriction as regards the scope of its examination. It was also proposed that should the Court of Appeal examine arguments other than those put forward by the parties, it should invite the other party's observations on the matter.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

58. As to the lack of an oral hearing before the Court of Appeal, the Government raised an objection in their observations of 12 February 2001 to the effect that the reservation made by Finland as to the right to an oral hearing was in force at the relevant time.

59. The applicant emphasised that it was not the lack of an oral hearing *per se* that was being criticised before the Court. What was being questioned was whether the proceedings considered as a whole, including the way in which evidence was taken and used, were fair. In the light of the Court of Appeal judgment the essence of the application as regards fairness was the lack of an oral hearing or any hearing at all of the parties before the Court of Appeal. Both the applicant and the prosecutor were equally surprised at the grounds and justifications given by the Court of Appeal in the first set of proceedings. In such circumstances, the reservation made by Finland was not the key element as the reservation could not be interpreted, as suggested by the Government, as a general reservation regarding the fairness of the Court of Appeal proceedings. Since it decided not to hold an oral hearing, the Court of Appeal was under an obligation to secure the fairness of the proceedings by other means. The applicant was convicted on the basis of evidence that had not been relied upon by the prosecutor in the District Court nor by the Court of Appeal. Fairness required the Court of Appeal at least to invite the parties' observations on R.'s and K.'s statements in the pre-trial investigation.

60. The Court notes that the reservation made by the Finnish Government in accordance with Article 64 (after the entry into force of Protocol No. 11 on 1 November 1998, Article 57) of the Convention, in respect of the right to a public hearing guaranteed by Article 6 § 1 of the Convention, read at the relevant time as follows:

> "For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:
>
> 1. proceedings before the Court of Appeal ... in accordance with Chapter 26, Section 7, ... of the Code of Judicial Procedure..."

61. Having regard to the terms of the then reservation, Finland was under no Convention obligation to ensure that an oral hearing was held before the Court of Appeal. Consequently, a complaint concerning exclusively the lack of such a hearing at that court level would be incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 § 3. This is not the case here, as the applicant complained about the overall fairness of the proceedings against him. It remains for the Court to consider the question whether the Court of Appeal proceedings as qualified by Finland's reservation were fair within the meaning of Article 6 § 1. The Court will examine that complaint below and therefore joins the Government's objection to the merits.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

A. Article 6 §§ 1 and 3(b) and (d)

62. The applicant complained that he had been deprived of a fair trial from the outset as he had been incited by the police to commit an offence which he would not have committed otherwise. He also made various complaints to the effect that the way in which the question of incitement had been examined and the trial had been conducted disclosed breaches of Article 6 §§ 1 and 3(b) and (d) of the Convention.

Article 6 of the Convention reads insofar as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

1. The parties' submissions

(a) The alleged entrapment

63. The applicant maintained that, at the material time, he had been a 19-year-old student with no criminal record. He had been singled out by H., who had received an irresistible offer from the police; if H. agreed to set up a bigger player, he would go free. As H. had been in police custody, he could not have consented of his free will. The actions of the police had been random in terms of target. He had not been in possession of cannabis at the time of H.'s call and therefore he had contacted M. and arranged with him to get the kilogram for H. from a larger shipment coming to Helsinki for M. that weekend. Although the applicant acknowledged having committed several other narcotics offences in 1996, none of them had come to the attention of the police prior to H.'s telephone calls from police custody. The other offences had been minor and his sentence would have clearly been more lenient had he not been convicted of the offence of 8 September 1996. The applicant emphasised that no court had examined whether the offence had taken place as a result of the police provocation.

64. The Government acknowledged that H. had used a mobile telephone given to him by the police to call the applicant, whose identity they had traced from the telephone number produced by H. In mutual understanding with the police, H. had discussed in general terms the possibility of buying cannabis from the applicant. Encouraged by them, H. had later ordered one kilogram of cannabis and agreed to meet the applicant the same night in order to make the purchase. H. had co-operated with the police of his own free will. He had called the applicant once on 6 September and three times on 8 September 1996. At the material time, there had been no provisions of law on the use of induced deals, nor on other unconventional investigation methods. Domestic law did not provide for the possibility of dropping charges in cases where an accused had been induced by the police to commit an offence. The offender was responsible for the offence irrespective of any incitement. In assessing the fairness of a trial, incitement by the police could only be relevant in a situation where "an otherwise law-abiding citizen" would not have committed the offence without being induced by the police. In the present case, the allegation about police incitement had been subject to thorough scrutiny by courts at three levels of

jurisdiction in two separate sets of proceedings, in both of which the essential question had been whether the applicant would have committed the offence had he not been induced into doing so. In addition, the Supreme Court had examined the issue in the re-opening case. The outcome of all these proceedings had been the same; the courts had found that the applicant had had, prior to the police involvement, an arrangement to receive the narcotics. The applicant had been convicted of several narcotics offences committed before the offence subject to dispute. The applicant essentially complained about the assessment of the evidence concerning the police involvement, which was a matter for the domestic courts.

(b) The other alleged unfairness

65. The applicant maintained that he had learned by chance that H. had been in detention on remand when he had made the calls. Initially, the police had tried to conceal the circumstances of H.'s order. Subsequently, they had refused to produce the telephone metering information, which would have helped to clarify the chronology of events, and had thus been directly relevant to the assessment as to whether the offence had taken place before or after the police involvement. The information as to the time of the first call had been essential. He had had no other way of obtaining this information than from the police. By the time the County Administrative Board had delivered its decision, the deadline for the appeal to the Court of Appeal had expired. Moreover, on 25 April 1997 he had learned that the material he had received was inadequate. In fact, the full telephone metering information had never been disclosed to him. From the defence point of view the decisive moments of criminal proceedings were during the pre-trial investigation and the District Court proceedings. If during that phase the defence had not been given all the relevant information, it was in general futile to discover such information after the expiration of the time-limit for appeal. The County Administrative Board had held that the police had acted wrongly in withholding the information. In fact, its reasoning transferred the burden of proof to the Government regarding the violation of Article 6 § 3(b). The granting of equality-of-arms only after an appeal to the Court of Appeal had been filed had not sufficed to compensate the violation that had already taken place. Article 6 § 3(d) required that the authorities did not deliberately hamper the defence, for example by concealing the existence of evidence or by not producing evidence before they were ordered to do so by a higher authority.

66. The applicant considered that Article 6 § 3(d) required, at the very least, that the defence be informed about the evidence on which the prosecution intended to rely. An appellate court should not surprise the defence by taking into account evidence which had not been relied on by the prosecution. R. and K. had been the applicant's co-defendants and they had not been summoned to testify against him. Their pre-trial statements, which

had been regarded by the Court of Appeal as decisive, had not been read out at the District Court hearing. During the hearing they had only acknowledged the charges against them and the prosecution had not put any questions to them. There had therefore been no reason for the applicant to cross-examine them. Neither the defence nor the prosecution had had the slightest inkling that their accounts could be interpreted and used to the applicant's detriment. Counsel had not even known the contents of the statements. It had also been unacceptable that the court had found him guilty of an offence, taking place on 6 September 1996 at the latest, which was essentially different from the one set out in the indictment.

67. The Government submitted that anyone could obtain information from the operator concerning calls made from one's own telephone. As to the information concerning the calls to the applicant's telephone, a suspect should in principle be informed of the use of coercive measures only after the case had been submitted to the prosecutor or a decision had been made on the termination of the pre-trial investigation. Accordingly, the County Administrative Board had annulled the police's decision not to disclose the telephone metering information and ordered it to be submitted to the applicant. It had found that the information was secret, but as a party to the proceedings he had a right to be informed of documents which might affect his case. It had considered that, from an objective point of view, the relevance of the requested information could not be excluded and that it was a matter for the defence to decide which facts to rely on. The applicant had finally obtained the information and although the relevant time-limit for appeal had expired, he had submitted further material to the Court of Appeal. The court had taken into account his submission of 20 February 1997, in which he had raised the very issue of the telephone metering information. The police had used the said information for the purposes of investigation but the prosecution had not relied on it as evidence, nor had it otherwise constituted evidence in the case. Moreover, having received the information, the applicant had not relied on it as evidence. Nor had he raised any complaint in the domestic proceedings about the rights of the defence not having been respected.

68. As to the other issues complained of, the Government considered that the Court of Appeal had been able to assess all the evidence presented to the lower court. There had been no obstacle to taking into account R. and K.'s pre-trial statements as they had been heard before the lower court and the applicant had had an opportunity to put questions to them. Both the District Court and the Court of Appeal had based the conviction on the statements of the applicant, R. and K. The pre-trial statements having been repeated before the District Court, they had become evidence in the proceedings and the Court of Appeal had been able to take into account also this part of the evidence before it. The applicant could have been afforded an opportunity to put questions to R. and K. at the pre-trial stage had he

wished to do so. The applicant admitted that he had received the investigation records as annexes to the minutes from the first District Court hearing. He could have obtained them before that hearing had he wished to do so. It had become evident in the District Court hearing at the latest that all the accused had given similar accounts of the events leading to the commission of the offence.

2. The Court's assessment

(a) The alleged entrapment

69. The applicant claims to have been a victim of entrapment. The Court reiterates that, although the admissibility of evidence is primarily a matter for regulation by national law, the requirements of a fair criminal trial under Article 6 entail that the public interest in the fight against crime cannot justify the use of evidence obtained as a result of police incitement (see *Teixeira de Castro*, cited above, pp. 1462-63, §§ 34-36). In *Teixeira de Castro* the Court found that the activities of the two police officers had gone beyond that of undercover agents, in that they had not "confined themselves to investigating the applicant's criminal activity in an essentially passive manner", but had "exercised an influence such as to incite the commission of the offence". Their actions had "gone beyond those of undercover agents because they had instigated the offence and there was nothing to suggest that without their intervention it would have been committed" (ibid., pp. 1463-64, § 38-39). In arriving at this conclusion the Court laid stress on a number of features of the case before it, particularly the facts that the intervention of the two officers had not been part of a judicially supervised operation and that the national authorities had had no good reason to suspect the applicant of prior involvement in drug trafficking: he had no criminal record and there was nothing to suggest that he had a predisposition to become involved in drug dealing until he was approached by the police (ibid., p.1463, §§ 37-38).

70. In the instant case it is necessary to determine whether or not the two police officers' activity went beyond that of undercover agents. The Court notes that the police officers' intervention did not take place as part of an operation ordered and supervised by a public prosecutor. Nor was there any legislation concerning induced deals. Further, the police did not suspect that the applicant was a drug trafficker; on the contrary, he had no criminal record and no preliminary investigation concerning him had been opened. Indeed, he was not even known to the police officers, who came into contact with him only through the intermediary H. Furthermore, the drugs were not at the applicant's home; he obtained them from a third party who had in turn obtained them from other persons. At the time of his arrest, the applicant did not have more drugs in his possession than the quantity H. had requested. The Court has doubts whether there was convincing evidence to support the

Government's argument that the applicant was, at the time of H.'s first call from police custody, predisposed to commit the offence in question. While it is true that the applicant subsequently admitted having committed narcotics offences earlier that year, what is relevant is that there was nothing to directly bind him to the offence now in question. The police had only H.'s word that the applicant had sold narcotics to him.

71. The inference drawn by the applicant from the above circumstances is that the two police officers did not confine themselves to investigating his criminal activity in an essentially passive manner, but, through H., exercised an influence such as to incite the commission of the offence. In the course of the proceedings against the applicant, this version of the events was not contested by the public prosecutor.

72. In a case like the present one it is however impossible for the Court to establish with a sufficient degree of certainty whether or not the applicant was the victim of entrapment contrary to Article 6. This is so because the relevant information was not disclosed by the investigating authorities. Here, it must also be emphasised that the Court exerts its supervisory role subject to the principle of subsidiarity (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 103, ECHR 2001-V). The conclusions drawn by the domestic courts that there was no causal link between the phone calls of H. and the offence of which the applicant was convicted are not arbitrary or so manifestly wrong that they could be set aside. It is, therefore, essential that the Court examine the procedure whereby the plea of entrapment was determined in this case, to ensure that the rights of the defence were adequately protected (see *Edwards and Lewis v. the United Kingdom* [GC], nos. 39647/98 and 40461/98, § 46, ECHR 2004-X).

(b) The other alleged unfairness

73. The Court reiterates that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set out in paragraph 1 (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, p. 34, § 33). In the circumstances of the case it finds it unnecessary to examine the applicant's allegations separately from the standpoint of paragraph 3 (b) and (d), since they amount to a complaint that he did not receive a fair trial. It will therefore confine its examination to the question whether the proceedings in their entirety were fair (ibid., pp. 34-35, § 34).

74. It is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations

filed and the evidence adduced by the other party (see *Brandstetter v. Austria*, judgment of 28 August 1991, Series A no. 211, pp. 27-28, §§ 66-67). In addition Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused (see *Jasper v. the United Kingdom* [GC], no. 27052/95, § 51, 16 February 2000).

75. However, the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused (see, for example, *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports* 1996-II, p. 470, § 70). In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1 (see *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 712, § 58). Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see *Doorson*, cited above, p. 471, § 72, and *Van Mechelen and Others*, cited above, p. 712, § 54).

76. In the present case, the police initially withheld from the applicant, the prosecutor and the courts the information that H. had been in police custody when he had placed the order. The applicant learnt about this by chance at a late stage of the District Court proceedings. Defence counsel informed the Helsinki District Court that he had requested the police to produce the telephone metering information as regards calls from and to the applicant's mobile telephone but that it had not yet been granted (see paragraph 21 above). The police clearly opposed the applicant's attempts to have the extent to which the police had been involved in the matter cleared up as they made an application to the Espoo District Court for an order authorising them not to disclose to the applicant that his telephone had been under surveillance. Permission not to inform the applicant that his mobile telephone had been under surveillance was granted. Given the reasons provided and the circumstances in which the police had operated, it transpires that the police were unwilling to reveal the true course of their actions which may have resulted in the applicant's committing a criminal offence. It appears that the police had given the Espoo District Court the false impression that the applicant was not even aware that his telephone had been under surveillance in the first place (see paragraph 22 above). The next day the police informed the applicant of the decision, declining to disclose the records of surveillance. The defence made a second request on

29 November and a third request on 2 December 1996 that the District Court order the police officer in charge of the investigations, Superintendent J.M., to produce the telephone metering information at the next hearing. The prosecutor, having submitted that the allegation about the calls made from police custody appeared to be true and that he did not rule out the possibility that the only reason the applicant took possession of the cannabis was the call from H., the defence rested their case (see paragraphs 25 and 26 above).

77. The Court considers that the defence were not kept informed and were not permitted to make submissions and participate in the above decision-making process as far as was possible. By concealing important facts, the police denied the applicant the opportunity to verify his assumptions and to prove their correctness. No public interest grounds have been advanced for not revealing to the applicant the metering information concerning his telephone. The Court notes, in particular, that the material which was not disclosed related to an issue of fact highly relevant to the alleged entrapment.

78. While it is true that the courts were fully versed in all the issues in the case, they did not, however, any more than the defence or the public prosecutor, have knowledge of the contents of the telephone metering information and they were not therefore in a position to monitor the relevance to the defence of the withheld information.

79. The proceedings before the Court of Appeal were inadequate to remedy this defect, since, as at first instance, there was no possibility of making informed submissions to the court on behalf of the accused as the applicant received the requested information only after the relevant time-limit for the appeal had elapsed. Moreover, the applicant argued that the information received had been inadequate, which had been confirmed by the telephone operator on 25 April 1997.

80. In conclusion, therefore, the Court finds that the decision-making procedure failed to comply with the requirements of fairness as it was not possible for the defence to argue in due time the case on entrapment in full. It follows that there has been a violation of Article 6 § 1 in the present case.

81. In view of this conclusion, the Court considers it unnecessary to make a separate examination of whether the proceedings disclosed any further unfairness including by reason of the lack of an oral hearing before the Court of Appeal. For that reason also, the Court finds that it is unnecessary to examine the Government's preliminary objection (see paragraphs 58-61 above).

B. Article 6 § 2 of the Convention

82. The applicant alleged a breach of the presumption of innocence in the second set of proceedings.

Article 6 § 2 reads:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. The parties' submissions

83. The applicant maintained that he had been charged with, defended himself against and been convicted of a possession offence committed on the evening of 8 September 1996. In finding that he had been involved in offences connected with the shipment of cannabis even before the narcotics had arrived in the country on the morning of 8 September 1996, the Supreme Court had violated the presumption of innocence. It had regarded his guilt as having included the shipment's import, *viz*. smuggling and the related arrangements which must have been involved given that he had been considered guilty of acts committed on and before 6 September 1996. Narcotics smuggling, in particular when it was linked to participation in an organisation formed for that purpose, was an offence essentially more serious than the possession of which he had been accused. In the proceedings against him the Court of Appeal had assumed the role of the prosecutor when it replied to his demands that the incitement be taken into account by stating that he had committed the offence on or before 6 September 1996. The applicant had not been afforded an opportunity to demonstrate that he had not been involved in the shipment before 8 September 1996. The Supreme Court's judgment of 22 November 2000 had been based on a prohibited presumption of guilt.

84. The Government submitted that the applicant had not been charged with or convicted of any criminal offence in the proceedings against the police officers. Nor had there been at the time of the above finding any pending or intended criminal investigation concerning which the finding about a prosecutable offence might be regarded as prejudging the outcome (see *Zollmann v. the United Kingdom* (dec.), no. 62902/00, 27 November 2003). The criminal proceedings against the police officers had not been linked to any criminal trial or investigation in such a way as to fall within the scope of Article 6 § 2. The Supreme Court's judgment of 22 November 2000 had neither stated nor could it be considered to have implied that the applicant had been criminally responsible for an offence which he had not even been charged with. Accordingly, Article 6 § 2 was not applicable and this part of the application should be rejected as incompatible *ratione materiae* with the provisions of the Convention. In any event, the impact of the provocative action by the police had been dealt with thoroughly in two sets of proceedings. The Supreme Court had noted in its judgment of 22 November 2000 that it had become apparent that the applicant had been involved in the importing of the cannabis long before 6 September 1996, and that the telephone conversation between the applicant and H. had had no impact on the receipt by the applicant of the narcotics. The crucial question had been whether the principal offender

would have been involved in the criminal act if the police had not taken the action they did. The impugned reasoning had been necessary in order to determine whether the police officers had been liable for incitement.

2. The Court's assessment

85. The Court observes that the impugned judgment was rendered after the close of the criminal proceedings against the applicant in which he had been convicted of, *inter alia*, a drug offence committed on 8 September 1996.

86. The questions for the Court regarding the applicability of Article 6 § 2 to the criminal proceedings conducted against the police officers are, firstly, whether they amounted to the bringing of a new "charge" against the applicant within the meaning of Article 6 § 2, and secondly, even if that question must be answered in the negative, whether Article 6 § 2 should nonetheless have some application to protect the applicant from assumptions made during those proceedings (see *Phillips v. the United Kingdom*, no. 41087/98, § 30, ECHR 2001-VII).

87. It is clear that the applicant cannot be said to have been "charged with a criminal offence" in those proceedings.

88. The Court has also considered whether, despite its above finding that the second set of the proceedings did not involve any "charge" within the meaning of Article 6 § 2, that provision should nonetheless have some application to protect the applicant from assumptions made during the impugned proceedings. Whilst it is clear that Article 6 § 2 governs criminal proceedings in their entirety, and not solely the examination of the merits of the charge (see, for example, *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, pp. 15-16, § 30; *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A; and *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308), the right to be presumed innocent under Article 6 § 2 arises only in connection with the particular offence "charged". Once an accused has properly been proved guilty of that offence, Article 6 § 2 can have no application in relation to allegations made about the accused's character and conduct as part of the sentencing process, unless such accusations are of such a nature and degree as to amount to the bringing of a new "charge" within the autonomous meaning of Article 6 § 2 (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, pp. 37-38, § 90).

89. In the second set of proceedings, the sole issue was the determination of the criminal charges brought against the police officers for alleged entrapment. In its impugned judgment the Supreme Court reiterated a finding of fact by the Court of Appeal in the first set of proceedings (see paragraph 34 above). That reiteration thus appeared in a judgment which was separate from the case against the applicant. Accordingly, the Court finds that no sufficient link has been established between the first and the

second set of proceedings which could justify extending the scope of the application of Article 6 § 2 to the latter. The fact that the Supreme Court altered the wording in question (see paragraph 50 above) does not detract from this position.

90. In conclusion, therefore, the Court holds that Article 6 § 2 of the Convention was not applicable to the applicant in the proceedings brought against the police officers.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

92. The applicant claimed 10,000 euros (EUR) as non-pecuniary damage for distress and anguish caused by the breach of his Convention rights. This amount did not include possible compensation for wrongful imprisonment.

93. The Government considered the claim excessive as to quantum. Any award should not exceed EUR 2,000.

94. The Court accepts that the lack of the guarantees of Article 6 has caused the applicant non-pecuniary damage, which cannot be made good by the mere finding of a violation. Making its assessment on an equitable basis, it awards him EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

95. The applicant did not put forward any claim.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's preliminary objection based on Finland's reservation as to the right to an oral hearing before the Court of Appeal;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention insofar as the applicant was unable to argue in due time the case on entrapment in full;

3. *Holds* that it is not necessary to examine whether there has been a violation of Article 6 §§ 1 and 3 of the Convention as regards the remaining aspects of the proceedings against the applicant and for that reason holds that it is not necessary to examine the Government's preliminary objection;

4. *Holds* that Article 6 § 2 of the Convention is not applicable;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount:
      (i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage; and
      (ii) any tax that may be chargeable on the above amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President