In the case of Kerojärvi v. Finland (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B (2), as a Chamber composed of the following judges:

Mr R. Bernhardt, President,
Mr Thór Vilhjálmsson,
Mr I. Foighel,
Mr R. Pekkanen,
Sir John Freeland,
Mr A.B. Baka,
Mr L. Wildhaber,
Mr K. Jungwiert,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 24 February and 19 June 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

1. The case is numbered 20/1994/467/548. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

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PROCEDURE

1. The case was referred to the Court by the Government of the Republic of Finland ("the Government") on 10 June 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 17506/90) against Finland lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by a Finnish citizen, Mr Erkki Kerojärvi, on 25 August 1990.

The Government's application referred to Articles 44 and 48 (art. 44, art. 48). The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the

respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 31).

3. The Chamber to be constituted included ex officio Mr R. Pekkanen, the elected judge of Finnish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 June 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr I. Foighel, Mr F. Bigi, Sir John Freeland, Mr A.B. Baka, Mr L. Wildhaber and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr P. Kuris, substitute judge, replaced Mr Bigi, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence on 6 July 1994, the Registrar received both the applicant's and the Government's memorial on 2 November 1994. On 12 December 1994 the Delegate of the Commission submitted a memorial in reply. Subsequently, Mr R. Bernhardt, Vice-President of the Court, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 para. 5, second sub-paragraph).

On various dates between 25 January and 20 February 1995, the Government, the Commission and the applicant produced to the Court a number of documents and other particulars, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 February 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr H. Rotkirch, Director for Legal Affairs,
Ministry for Foreign Affairs, Agent,
Mr A. Kosonen, Legal Adviser, Ministry for
Foreign Affairs, Co-agent,
Mr J. Hirvonen, Legal Adviser, Ministry of Justice, Adviser;

(b) for the Commission

Mr M.P. Pellonpää, Delegate;

(c) for the applicant

Mr M. Fredman, asianajaja, advokat, Counsel.

The Court heard addresses by Mr Pellonpää, Mr Rotkirch, Mr Kosonen and Mr Fredman, and also replies to questions put by the Court and by two of its members.

AS TO THE FACTS

I. Particular circumstances of the case

6. Mr Erkki Kerojärvi, a Finnish citizen born in 1924, is retired and lives in Helsinki.

7. On 5 September 1985 the State Office for Accident Compensation (tapaturmavirasto, olycksfallsverket - "the Compensation Office") gave its decision on a request by the applicant for compensation under the 1948 Military Injuries Act (sotilasvammalaki, lag om skada, ådragen i militärtjänst, 28.5.1948/404 - "the 1948 Act") from the Finnish State in respect of certain conditions which he claimed resulted from his service in the wars between 1939 and 1945 between Finland and the Soviet Union. The Compensation Office accepted that a shrapnel wound to the applicant's back was a military injury but rejected his claims in respect of inguinal hernia, chronic prostatitis, acute tonsillitis and a number of other conditions. Considering that the degree of his disability was less than ten per cent, the minimum required to qualify for a life annuity (elinkorko, livränta) under section 8 of the 1948 Act (see paragraph 19 below), the Compensation Office refused to grant him such a benefit.

On appeal, the Insurance Court (vakuutusoikeus, försäkringsdomstolen) recognised that the applicant in addition suffered from tonsillitis entitling him in principle to compensation but found that the degree of his disability nevertheless remained less than ten per cent. On 4 September 1986 it therefore dismissed the applicant's request for compensation. This decision was upheld by the Supreme Court on 15 December 1987.

8. In January 1988 the applicant asked the Compensation Office to adjust the degree of his disability. He cited a medical report of 3 June 1987 to establish that he suffered from the above-mentioned conditions. In May 1988 he submitted a further report.

The Compensation Office rejected the request on 23 August 1988 on the ground that the applicant had failed to show a fundamental change in the circumstances on the basis of which his disability had initially been assessed.

9. The applicant appealed from that decision to the Insurance Court.

He adduced additional evidence, including the results of an X-ray examination and laboratory tests of 17 April 1989, and renewed his previous request for compensation in so far as it had been refused in the proceedings referred to in paragraph 7 above.

10. In the course of the proceedings the Insurance Court obtained an opinion from the Compensation Office, dated 24 October 1988, which, without giving reasons, recommended the rejection of the appeal. It also received copies of a master file concerning the applicant, and a medical file containing a record of his war-time medical examinations, from the Headquarters of the Military District of Western Uusimaa (Länsi-Uudenmaan sotilaspiirin esikunta, staben för Västra Nylands militärdistrikt). These documents showed, inter alia, that in 1940 the applicant had been treated in a military hospital for inguinal hernia and that in 1943 he had undergone an operation for this condition.

The Insurance Court did not communicate copies of the opinion or files to the applicant. They were, however, included in the Insurance Court's case file, which was available to the applicant throughout the proceedings in that court (section 19 of the 1951 Act on the Access to Public Documents - laki yleisten asiakirjain julkisuudesta, lagen om allmänna handlingars offentlighet, 9.2.1951/83).

11. In a decision of 19 October 1989 the Insurance Court rejected the applicant's appeal on the assessment of the degree of his disability, finding that his shrapnel injuries and acute tonsillitis still represented a disability of less than ten per cent. It also rejected his claim for compensation on the ground that it had been decided with legal force (see paragraph 21 below) by the Supreme Court's judgment of 15 December 1987 (see paragraph 7 above). The decision stated that the Insurance Court had obtained the above-mentioned opinion from the Compensation Office and files from the Headquarters of the Military District. It further indicated that the Insurance Court would return the master file and the file pertaining to the applicant's war-time medical examinations to the Headquarters and that an appeal could be lodged with the Supreme Court "if the matter [concerned] entitlement to compensation".

12. On 31 December 1989 the applicant appealed to the Supreme Court, challenging the Insurance Court's ruling that a final decision on his compensation claim had been given by the Supreme Court on 15 December 1987. He requested rehabilitation treatment on an annual basis and the reimbursement of certain subsistence expenses. He claimed that his war injuries were permanent. His appeal did not mention that the documents obtained by the Insurance Court had not been communicated to him.

13. The Insurance Court transmitted the case file to the Supreme Court; it included the Compensation Office's opinion but not the master and medical files, which had been returned to the Headquarters of the Military District (see paragraph 11 above). According to the

Government, copies of the master file had been included in the case file relating to the first set of proceedings in the Supreme Court. The Government further stated that, in the second set of proceedings, the Insurance Court and the Supreme Court had based their decisions at least in part on the master and medical files.

14. The Agent of the Government stated at the public hearing on 22 February 1995 that at the material time it was consistent practice of the Insurance Court and the Supreme Court not to communicate documents of the kind in question even if they had been obtained at the court's own request and irrespective of whether the issue at stake was one of admissibility or merits.

15. On 7 June 1990 the Supreme Court upheld the Insurance Court's decision of 19 October 1989. The Supreme Court's decision stated:

> "The appeal to the Supreme Court
> Kerojärvi has requested compensation for [certain alleged illnesses].
> The finding of the Supreme Court
> The decision of the Insurance Court is not varied.
> ..."

16. The applicant was not legally represented either in the Insurance Court or in the Supreme Court. At no stage of the proceedings did he consult the case file.

II. Relevant domestic law

17. A compensation scheme, entirely funded by the Finnish State, for injury and illness suffered as a result of military service was set up under the 1948 Act. Pursuant to section 1 of the 1956 Act on Extended Application of the Military Injuries Act (laki sotilasvammalain soveltamisalan laajentamisesta, lag angående utvidgad tillämpning av lagen om skada, ådragen i militärtjänst, 15.6.1956/390) the 1948 Act applies to, among others, Finnish soldiers wounded in the wars between Finland and the Soviet Union from 1939 to 1945.

18. The general rule in section 1 (1) of the 1948 Act provides that compensation under the Act "shall be granted" to persons for injury or illness suffered by them as a result of service, inter alia, as conscripts. Detailed rules on the kind of injury and illness which may be regarded as caused by military service for the purpose of compensation under the Act are contained in sections 2 and 3.

19. Section 8 (1) in "Chapter 2. On Compensation" (Korvaukset, Ersättingar) reads:

> "A wounded or ill person whose degree of disability is at least ten per cent shall be entitled to a life annuity. The figure representing the degree of disability corresponds to the extent to which the injury or illness suffered reduces the ability of

the person concerned to support himself or herself."

20. Section 29 (2), as applicable at the material time, provided that an appeal against a decision by the Insurance Court on entitlement to compensation under the 1948 Act lay to the Supreme Court. A decision by the Insurance Court was however to be final in certain matters.

The Supreme Court has interpreted the above provision to mean that the person concerned can appeal on entitlement to compensation but not on the degree of disability, so that an appeal on the latter is inadmissible.

21. According to a general principle of law in Finland, a decision by the Supreme Court rejecting, in full or in part, a claim by an individual to be granted a benefit from a public authority has legal force (lainvoima, laga kraft), in the sense that it may not be the subject of a further appeal. However, it is not res judicata (oikeusvoima, rättskraft). The claimant may at any time, by means of a fresh application, request the competent authority to reconsider the claim (see, inter alia, Jaakko Uotila, Seppo Laakso, Teuvo Pohjolainen, Jarmo Vuorinen, pp. 186-89 in Yleishallinto-oikeus pääpiirteittäin, Tampere 1989). This principle also applies to a request for compensation under the 1948 Act.

22. Pursuant to the new version of section 29 (2), as amended with effect from 1 January 1994 (by Act no. 1225/93), decisions taken by the Insurance Court under the Act are final. However, subject to certain strict conditions, section 25 (also amended) provides for reopening of proceedings in the Compensation Office or in the Insurance Court.

23. Where appropriate, the provisions governing the proceedings in the ordinary courts may be applied to those in the Insurance Court (section 9 (4) of the 1958 Insurance Court Act - laki vakuutusoikeudesta, lag om försäkringsdomstolen, 17.1.1958/14).

Under Article 6 of chapter 26 of the Code of Judicial Procedure (oikeudenkäymiskaari, rättegångsbalken), if the Court of Appeal (hovioikeus, hovrätten) has obtained of its own motion an opinion or other written statement which may have an impact on its determination of the case, the Court of Appeal must, unless it is clearly unnecessary, request the parties concerned to comment thereon in writing.

PROCEEDINGS BEFORE THE COMMISSION

24. In his application (no. 17506/90) of 25 August 1990 to the Commission the applicant made a number of complaints concerning the examination of his claim for recognition of a higher degree of disability. He alleged violations of Article 6 para. 1 and Article 14 (art. 6-1, art. 14) of the Convention.

25. On 7 April 1993 the Commission declared admissible the complaint

under Article 6 para. 1 (art. 6-1) relating to the non-communication of documents in the proceedings before the Supreme Court and declared the remainder of his application inadmissible. In its report of 11 January 1994 (Article 31) (art. 31), the Commission expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) (unanimously). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 322 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS MADE TO THE COURT

26. At the hearing on 22 February 1995 the Government invited the Court to hold, as requested in their memorial, that there had been no violation of the Convention in the present case.

27. On the same occasion the applicant maintained his requests to the Court set out in his memorial, namely (1) to find that the proceedings in the Supreme Court gave rise to a violation of his right to a fair trial as guaranteed by Article 6 (art. 6) of the Convention; and (2) to award him just satisfaction under Article 50 (art. 50).

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

28. The applicant complained that the Supreme Court had failed to cure of its own motion the defect in the proceedings before the Insurance Court caused by the latter's failure to communicate to him copies of certain documents in the case file. In his submission, this constituted a violation of his right to a fair trial, under Article 6 para. 1 (art. 6-1) of the Convention, which in so far as relevant reads:

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

29. The Government contested the applicability of Article 6 para. 1 (art. 6-1) to the proceedings in issue and maintained that, in any event, this provision had been complied with.

30. The Commission shared the applicant's view.

31. The proceedings in the Insurance Court took place prior to the ratification of the Convention by Finland on 10 May 1990 and thus fall outside the Court's jurisdiction ratione temporis. The Court will

accordingly confine its examination to the proceedings in the Supreme Court and indeed it was not argued that it should do otherwise.

A. Applicability of Article 6 para. 1 (art. 6-1)

1. Existence of a dispute ("contestation") over a "right"

32. According to the principles laid down in the Court's case-law (see, amongst other authorities, the Zander v. Sweden judgment of 25 November 1993, Series A no. 279-B, p. 38, para. 22), the Court has first to ascertain whether there was a dispute ("contestation") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question.

33. It was not contested that, with the exception of the last criterion, the above-mentioned conditions for applicability of Article 6 para. 1 (art. 6-1) were fulfilled and the Court sees no reason to hold otherwise.

On the other hand, the Government disputed applicability on the ground that the outcome of the proceedings in the Supreme Court could not have been directly decisive for the applicant's right to compensation under the 1948 Act. The Supreme Court lacked jurisdiction to examine appeals on the degree of disability (see paragraph 20 above) and also on compensation where, as in the instant case, the Supreme Court had already adjudicated upon the claim in a previous decision of 15 December 1987 such that the issue was, in the words of the Government, res judicata. In short, according to the Government, the Supreme Court did not and could not review the merits of the applicant's case.

34. The applicant and the Delegate of the Commission stressed that not only were the Government's foregoing arguments raised for the first time before the Court but they also contradicted what the Government had previously pleaded before the Commission, namely that the Supreme Court had competence to examine the case on its merits. The new arguments were thus based on an entirely different description of the very nature of the domestic proceedings. In the interest of "orderly proceedings" before the Convention institutions, the Government should be estopped from raising them before the Court. In this connection the Delegate invoked, mutatis mutandis, the Pine Valley Developments Ltd and Others v. Ireland judgment of 29 November 1991 (Series A no. 222, pp. 21-22, para. 47) and the applicant relied on the Stjerna v. Finland judgment of 25 November 1994 (Series A no. 299-B, p. 60, para. 36).

In any event, the applicant and the Delegate submitted, the Supreme Court's jurisdiction and review extended to the merits of the appeal and were not limited in the way suggested by the Government.

35. The Court does not consider it necessary in the circumstances to resolve the conflict concerning the Government's change of stance as regards the competence of the Supreme Court, since in any event it is not convinced by the Government's argument that the Supreme Court's decision of 15 December 1987 in the first set of proceedings (see paragraph 7 in fine above) had the effect of depriving that court of jurisdiction to rule on the claim brought by Mr Kerojärvi in the context of his fresh application to the Compensation Office. On the contrary, it would appear that the decision only had legal force and that it was open to the applicant at any time to ask the competent authorities to re-examine his claim for compensation (see paragraph 21 above), as he did in January 1988 (see paragraph 8 above). There is nothing to suggest that in the second set of proceedings in 1990 the Supreme Court could not have upheld the appeal had it disagreed with the Insurance Court's conclusion on the merits. The outcome of these proceedings in the Supreme Court was thus directly decisive, for the purposes of Article 6 para. 1 (art. 6-1), for the applicant's asserted right to compensation under the 1948 Act.

2. Whether the applicant's right was a civil right

36. The disagreement between the applicant and the Finnish authorities concerned the question whether he was entitled to compensation under the 1948 Act for conditions contracted as a result of military service. Admittedly, the entitlement in question had certain public-law features in that it related to a compensation-scheme established by law, administered by public authorities and funded entirely by the Finnish State. However, the private-law features were predominant. A life annuity granted under the 1948 Act was individual and pecuniary in nature and was aimed at compensating for loss of means of subsistence resulting from disability (see paragraph 18 above).

Having regard to the foregoing, the Court sees no reason to distinguish this case from previous cases in which it has found that disputes over benefits under a social-security scheme concern "civil rights" (see, in particular, the Feldbrugge v. the Netherlands judgment of 29 May 1986, Series A no. 99, pp. 12-16, paras. 26-40; Salesi v. Italy judgment of 26 February 1993, Series A no. 257-E, pp. 59-60, para. 19; and Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 17, para. 46). Accordingly, as the Government conceded before the Court, the entitlement in issue was a "civil right".

3. Conclusion

37. In sum, Article 6 para. 1 (art. 6-1) applies to the present case.

B. Compliance with Article 6 para. 1 (art. 6-1)

38. The Government contested the view of the applicant and the Commission that the Supreme Court's failure to transmit to the

applicant copies of the Compensation Office's opinion and the master and medical files of the Headquarters of the Military District gave rise to a violation of his right to a fair trial.

The Government argued that the files had been obtained by the Insurance Court at its own request and had been returned to the Headquarters of the Military District. They were thus not included in the case file transmitted by the Insurance Court to the Supreme Court. Admittedly, copies of the master file had been included in the case file in the first set of proceedings before the Supreme Court (see paragraph 13 above) but, in the Government's view, it was unlikely that they had any significance for the outcome of the second set of proceedings. The documents obtained by the Insurance Court from the military authority contained no information which was relevant to the outcome of the case or which was capable of influencing the Supreme Court in reaching its decision. The Supreme Court dismissed the appeal on procedural grounds and the communication to the applicant of the documents in question would not have provided him with any additional information capable of shedding light on the Supreme Court's decision.

The Compensation Office's opinion had been included in the file transmitted to the Supreme Court but consisted merely of a single sentence inviting the Insurance Court to dismiss the appeal as ill-founded; it neither elaborated on the position stated in its decision of 23 August 1988 nor put forward any argument to which the applicant needed to respond (see paragraphs 8 and 10 above).

The Government pointed out that at no stage in the proceedings did the applicant avail himself of the opportunity of having access to the files or the opinion in question, even though the documents had been referred to in the Insurance Court's decision of 19 October 1989 (see paragraph 11 above). Nor did he complain to the Supreme Court about the Insurance Court's failure to communicate the documents to him (see paragraph 12 above).

39. In the view of the applicant and the Commission, irrespective of whether the documents in question had any bearing on the Supreme Court's rejection of the appeal, it had a duty under Article 6 para. 1 (art. 6-1) to communicate them to him ex officio. The notion of "fair hearing" required that the applicant himself should have been given the opportunity to assess their relevance and weight and to formulate any such comments as he deemed appropriate. Since no such opportunity was afforded to him, the procedure had not enabled him to participate properly in the proceedings before the Supreme Court. The applicant could not be criticised for the fact that he did not complain to the Supreme Court about the non-communication. Where, like the applicant, an appellant does not have legal assistance, there is a greater onus on the Supreme Court to ensure of its own motion that justice is not only done but also seen to be done.

40. The Court reiterates that according to its case-law the manner

of application of Article 6 (art. 6) to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, for instance, the Monnell and Morris v. the United Kingdom judgment of 2 March 1987, Series A no. 115, p. 22, para. 56; the Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 15, para. 31; and the Maxwell v. the United Kingdom judgment of 28 October 1994, Series A no. 300-C, p. 96, para. 34).

41. In the instant case, the Court lacks jurisdiction ratione temporis to review the proceedings in the Insurance Court (see paragraph 31 above). They may however be taken into account as background to the issue whether those in the Supreme Court were fair (see, mutatis mutandis, the Hokkanen v. Finland judgment of 23 September 1994, Series A no. 299-A, p. 19, para. 53).

In this connection, the Court notes that the Insurance Court had rejected the applicant's claims, at least partly on their merits, without transmitting to him the opinion and files which it had obtained from the Compensation Office and the Headquarters of the Military District. Although it was open to the applicant to consult these documents on the case file in the Insurance Court, it was apparently only as a result of their being mentioned in its decision of 19 October 1989 that the applicant was made aware that they had been included in the case file. At the time of the notification of its decision the Insurance Court had already returned the master and medical files to the Headquarters (see paragraph 11 above). The Court is not therefore persuaded by the Government's argument on this point and does not consider that the possibility available to the applicant of consulting the documents in the Insurance Court is of significance for the assessment of the fairness of the proceedings in the Supreme Court.

42. At the public hearing on 22 February 1995 the Agent of the Government stated that it was consistent practice not only in the Supreme Court but also at first instance in the Insurance Court not to communicate documents of the kind in question (see paragraph 14 above).

The Court notes that, in the light of this practice, the Supreme Court could assume that the Insurance Court had not transmitted the Compensation Office's opinion and the military files to the applicant; and hence that in the proceedings before it the applicant's capability of challenging the contested decision was adversely affected. The Supreme Court could, moreover, assume that the applicant, who did not have the assistance of a lawyer, would not be aware of the said practice. Despite these circumstances the Supreme Court, which was competent to examine the merits of the case, did not take any measures to make the documents available to him. It is not material to the resultant duty of the Supreme Court under Article 6 para. 1 (art. 6-1) either that the applicant did not complain about the non-communication

of the documents mentioned in the Insurance Court's decision or that he had access to the case file such as it existed in the Supreme Court (see paragraphs 11 and 13 above). In short the procedure followed before the Supreme Court was not such as to allow proper participation of the appellant party, Mr Kerojärvi (see the above-mentioned Feldbrugge judgment, pp. 17-18, para. 44; the above-mentioned Schuler-Zgraggen judgment, p. 18, para. 52; and the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, pp. 53-54, para. 80).

43. In the light of the foregoing, the applicant cannot be said to have received a fair trial in the procedure before the Supreme Court.

There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

44. Article 50 (art. 50) of the Convention reads:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

45. The applicant claimed 160,000 Finnish marks in compensation for non-pecuniary damage sustained by reason of the fact that he was not afforded a fair trial.

46. It has not been shown that the non-communication of the documents to the applicant caused him any non-pecuniary prejudice. The Court, like the Government, is of the view that the finding of a violation of Article 6 para. 1 (art. 6-1) in itself constitutes adequate just satisfaction.

B. Costs and expenses

47. The applicant further sought reimbursement of costs and expenses, totalling 76,144 Finnish marks, in respect of the following items:

(a) 3,000 marks for costs incurred before the Finnish courts, including expenses for obtaining copies of documents "kept secret from him";

(b) 20,000 marks (not including value-added tax) for 30 hours' work by his lawyer in connection with the proceedings in the Commission;

(c) 50,000 marks (not including value-added tax) for 70 hours' work for the preparation of the case and appearance before the Court;

(d) 3,144 marks for translation of documents submitted to the Strasbourg institutions.

48. As to item (a) the Government argued that, since the applicant had not raised in the Supreme Court the breach of the Convention, no award should be made in respect of costs incurred in the domestic proceedings. Nor should he be refunded any expenses for photocopying since it was the Government that had provided him with copies of the documents.

As regards items (b) and (c), the Government considered the lawyer's fees to be excessive. They did not object to item (d).

49. The Delegate was of the view that the claims in respect of legal expenses were reasonable.

50. The Court does not consider that the costs in the domestic proceedings were incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention (see, inter alia, the above-mentioned Hokkanen judgment, p. 28, para. 80). The claim made in respect of item (a) must therefore be rejected.

As to items (b) and (c), the Court does not consider the applicant's claim under these heads excessive. It therefore awards 70,000 marks, plus value-added tax, from which sum the 7,350 French francs already paid by the Council of Europe by way of legal aid are to be deducted.

Item (d) should be awarded in its entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 para. 1 (art. 6-1) of the Convention applies to the present case;

2. Holds that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;

3. Holds that the above finding of a violation constitutes in itself sufficient just satisfaction of the applicant's claim in respect of non-pecuniary damage;

4. Holds that Finland is to pay, within three months, 73,144 (seventy-three thousand one hundred and forty-four) Finnish marks, together with value-added tax, for legal fees and expenses incurred in the Strasbourg proceedings, less 7,350 (seven thousand, three hundred and fifty) French francs to be converted into Finnish marks at the rate applicable on the date of delivery of the present judgment;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 July 1995.

Signed: Rudolf BERNHARDT
President

For the Registrar
Signed: Paul MAHONEY
Deputy Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 55 para. 2 of Rules of Court B, the concurring opinion of Mr Pekkanen is annexed to this judgment.

Initialled: R. B.

Initialled: P. M.

CONCURRING OPINION OF JUDGE PEKKANEN

I have joined my colleagues in finding a breach of Article 6 para. 1 (art. 6-1) of the Convention, on the understanding that the conclusion is based on the exceptional circumstances of the case.

In procedural matters, it is the practice of the Finnish Supreme Court to assist the parties in proceedings before it as far as possible. However, an appellate court cannot in my view be required under Article 6 (art. 6) of the Convention to verify of its own motion the conduct of proceedings in a lower court and to take remedial action whenever there is reason to assume that a shortcoming has occurred. Such a principle, however desirable it might seem, would be hard to implement in practice. In the first place, the jurisdiction of courts of appeal in the Contracting States is usually limited to the claims made in the appeal. Moreover, such courts normally have an enormous case-load and were they in addition to be obliged under Article 6 (art. 6) of the Convention to perform of their own motion the role described above, they would be faced with a task which they could not realistically be expected to carry out and which might seriously obstruct the effective administration of justice. Therefore, in principle, a court of appeal should not be required under Article 6 (art. 6) of the Convention to cure a defect in proceedings before a lower court unless it has power to do so and the matter has been drawn to its attention by way of an appeal.

In the present case, the applicant did not mention in his appeal to the Supreme Court the Insurance Court's failure to communicate the documents in question to him, although, as can be inferred from the material before the European Court, he had been made aware of the fact that the documents had been included in the case file of the Insurance Court when that court notified its decision to him (see paragraph 40

of the judgment). However, despite the fact that the applicant did not complain about the non-communication to the Supreme Court, I concurred with the Court's conclusion that there had been a breach of his rights under Article 6 para. 1 (art. 6-1) of the Convention.

A decisive reason for my doing so is that at the material time, as revealed by the Government at a late stage in the proceedings, it was the Insurance Court's consistent practice not to communicate documents of the kind in question even when they had been obtained at the court's own request. This practice could hardly be said to be compatible with the concept of a fair trial in Article 6 para. 1 (art. 6-1) of the Convention. However, as the proceedings in the Insurance Court fell outside its jurisdiction ratione temporis, the European Court could only rule on the proceedings in the Supreme Court. That court, being aware of the above-mentioned practice, could assume that the Insurance Court had not afforded the applicant a fair trial and should therefore have taken the necessary measures to cure the procedural defect in the lower court.