Caso de Raninen contra Finlandia, de 16/12/1997 [ENG]

Preliminary objection

EUROPEAN COURT OF HUMAN RIGHTS

JUDGMENT

STRASBOURG

16 December 1997

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SUMMARY[1]

Judgment delivered by a Chamber

Finland – arrest, detention and handcuffing of military conscript objecting to military and substitute service

I. GOVERNMENT'S PRELIMINARY OBJECTION (non-exhaustion of domestic remedies)

Government had not demonstrated that either a criminal prosecution or an action for damages would in specific circumstances have offered reasonable prospects of success.

Conclusion: objection (six votes to three).

II. ARTICLE 5 OF THE CONVENTION

A. Article 5 § 1

Having regard to Ombudsman's findings, applicant's arrest and detention during his transportation by military police from prison to the barracks were to be considered contrary to national law and, accordingly, were not "lawful" under Article 5 § 1 – not established that he was unlawfully deprived of his liberty following his arrival at the barracks in breach of that provision.

Conclusion: violation (unanimously).

B. Article 5 § 2

Having regard to above finding that applicant's arrest failed to comply with Finnish law and thus gave rise to a breach of paragraph 1 of Article 5, not necessary to consider complaint under paragraph 2.

Conclusion: not necessary to consider complaint (unanimously).

III. ARTICLE 3 OF THE CONVENTION

Principles in Court's case-law restated – as regards kind of treatment in question, handcuffing did not normally give rise to an issue under Article 3 where measure imposed in connection with lawful arrest or detention and did not entail use of force, or public exposure, exceeding what was reasonably considered necessary in circumstances – in this regard, it was of importance for instance whether reason to believe that person concerned would resist arrest or abscond, cause injury or damage or suppress evidence.

Handcuffing of the applicant had not been made necessary by his conduct – apart from fact that measure had itself been unjustified, it had been imposed in context of unlawful arrest and detention – in addition, he had, albeit only briefly, been visible to the public on entering military police vehicle outside prison gate and had felt humiliated by appearing handcuffed in front of members of his support group – these considerations were no doubt relevant for the purposes of determining whether the contested treatment was "degrading" within meaning of Article 3.

However, Court not convinced that incident had adversely affected applicant's mental state – nothing in the evidence suggested that causal link existed between impugned treatment and his "undefined psychosocial problem" – allegation that the handcuffing aimed at debasing or humiliating him not made out – finally, not contended that handcuffing had affected him physically – not established that treatment in issue attained minimum level of severity required by Article 3.

Conclusion: no violation (unanimously).

IV. ARTICLE 8 OF THE CONVENTION

According to Court's case-law, notion of "private life" was broad and not susceptible to exhaustive definition; it could, depending on the circumstances, cover the moral and physical integrity of the person – these aspects of the concept extended to situations of deprivation of liberty – not excluded that there might be circumstances in which Article 8 could be regarded as affording a protection in relation to conditions during detention which did not attain level of severity required by Article 3.

Applicant's complaint under Article 8 based on same facts as that under Article 3, which the Court had considered and found not established in essential aspects – insufficient elements to find that treatment complained of entailed such adverse effects on his physical or moral integrity as to constitute interference with respect for private life as guaranteed by Article 8.

Conclusion: no violation (seven votes to two).

V. ARTICLE 50 OF THE CONVENTION

A. Non-pecuniary damage

Compensation awarded on equitable basis (unanimously).

B. Costs and expenses

Awarded in part (unanimously).

COURT'S CASE-LAW REFERRED TO

18.1.1978, Ireland v. the United Kingdom; 25.4.1978, Tyrer v. the United Kingdom; 10.2.1983, Albert and Le Compte v. Belgium; 26.3.1985, X and Y v. the Netherlands; 16.12.1992, Niemietz v. Germany; 25.3.1993, Costello-Roberts v. the United Kingdom; 25.2.1997, Z v. Finland; 9.10.1997, Andronicou and Constantinou v. Cyprus

In the case of Raninen v. Finland[1],

The European Court of Human Rights, sitting, in accordance with Article 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,

Mr A.N. Loizou,

Mr J.M. Morenilla,

Mr M.A. Lopes Rocha,

Mr J. Makarczyk,

Mr K. Jungwiert,

and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*,

Having deliberated in private on 30 August and 26 November 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Republic of Finland ("the Government") on 4 December 1996 and 25 February 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 20972/92) against Finland lodged with the Commission under Article 25 by a Finnish citizen, Mr Kaj Raninen, on 11 November 1992.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Finland recognised the compulsory jurisdiction of the Court (Article 46). The Government's application referred to Articles 44 and 48. The object of the request and 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 Articles 3, 5 and 8 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyers 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), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr I. Foighel, Mr A.N. Loizou, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr J. Makarczyk and Mr K. Jungwiert (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 10 March 1997, the Registrar received the applicant's memorial on 9 June 1997 and the Government's memorial on 10 June 1997. In a letter of 15 July 1997, the Secretary to the Commission informed the Registrar that the Delegate did not wish to reply in writing.

5. On 25 June 1997 the Commission produced a document, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 August 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr H. Rotkirch, Ambassador, Director General for Legal

Affairs, Ministry for Foreign Affairs, *Agent*,

Mr A. Kosonen, Head of Unit, Legal Department,

Ministry for Foreign Affairs, *co-Agent*,

Mr S. Kipinoinen, Senior Governmental Secretary,

Ministry of Defence, *Adviser*;

(b) *for the Commission*

Mr M.A. Nowicki, *Delegate*;

(c) *for the applicant*

Mr J. Kortteinen, Assistant Professor of Constitutional Law,

University of Helsinki,

Mrs M. Laine, former lawyer of the Union of

Conscientious Objectors, *Counsel*.

The Court heard addresses by Mr Rotkirch, Mr Nowicki and Mr Kortteinen.

AS TO THE FACTS

I. Particular circumstances of the case

A. Background to the case

7. The applicant is a Finnish national who was born in 1967 and resides in Helsinki.

In 1986 he was called up for military service but his duty to report for service was suspended until 20 March 1992 because of his studies. Prior to this date he declared in writing to the army that he objected to performing any kind of military or substitute civilian service.

On 7 April 1992 he presented himself at the Army Headquarters (*pääesikunta, huvudstaben*) and submitted a petition against military service. After having reiterated his petition the following day he was arrested on suspicion of having avoided service. He was eventually brought to the barracks of the Pori Brigade (*Porin Prikaati* – "Pori barracks") at Säkylä, where he had been due to report on 20 March 1992. On his renewed objection to carrying out military duties his arrest was prolonged on 9 April.

8. On 11 April 1992 the District Court (*kihlakunnanoikeus, häradsrätten*) of Eura ordered the applicant's detention on remand in the County Prison of Turku. On 24 April the District Court convicted and sentenced him to imprisonment (suspended) for having avoided military service from 20 March to 8 April and for having committed an offence in service on 9 April (Chapter 45, Articles 4 and 15, of the 1889 Penal Code (*rikoslaki, strafflag* 39/1889 as amended by Act no. 792/89)).

The above offences applied to conscripts like the applicant who refused to perform either military or substitute civilian service. Punishment imposed for such refusal did not relieve the conscript from his duty to serve, which

applied until the end of the year of his thirtieth birthday (section 23, subsection 2 (3) and section 15 of the 1950 Military Service Act).

9. Immediately upon his release on 24 April 1992, military staff brought the applicant back to the Pori barracks. Subsequently, as he persisted in objecting to military service, he was re-arrested and placed in detention on remand.

On 12 May the District Court convicted him of a further offence in service and sentenced him to imprisonment. The sentence was to be served at a later date.

10. On his release the same day, military personnel brought the applicant back to the Pori barracks. As he continued to object to carrying out military service he was re-arrested and detained on remand.

On 29 May 1992 the District Court convicted the applicant of a further offence in service and sentenced him to imprisonment. The sentence was to be served at a later date.

11. After his release on the same date he was again brought back to the Pori barracks by the military police, where he was re-arrested as he persisted in objecting to military service.

12. On 2 June 1992 the applicant started to serve his sentences at the County Prison. When released on parole on 9 June he was again taken to the Pori barracks by the military police, but since he continued to refuse military service he was re-arrested and placed in detention on remand.

13. On 18 June the District Court convicted the applicant of two offences in service and sentenced him to further imprisonment. The sentence was to be served at a later date. The District Court in addition revoked the order to release the applicant on parole.

B. Transportation of the applicant to the Pori barracks on 18 June 1992

14. After the court hearing on 18 June 1992, the applicant was, as had occurred on previous occasions, taken back to the County Prison before being released.

In the prisoners' check-out room, a military police squad consisting of conscripts and headed by R., a corporal, waited for the applicant. In the prison courtyard he was handcuffed and informed of his arrest. He was subsequently taken to the military police vehicle outside the prison gate. Members of his support group, who had been waiting for him outside the gate, were photographing and videotaping the incident.

He was then taken back to the Pori barracks at Säkylä, situated 100–150 kilometres from Turku, a journey which normally takes approximately two hours by car.

Following his arrival at the Pori barracks, the applicant was taken to the military hospital at the compound. He was released from his handcuffs in the hospital's entry hall.

15. According to the applicant, the measures taken by the military police had all been against his will. In the Government's submission, he had consented to being transported to the military hospital.

16. The applicant did not undergo any medical examination at the military hospital but was subjected to further questioning by army personnel on 19 June 1992, during which he renewed his objection to military service. As a result he was re-arrested at 8.05 a.m. on the same date.

C. Further convictions and detention of the applicant and discharge

17. On 22 June 1992 the District Court again ordered his detention on remand in the County Prison. On 26 June he started serving the aggregated prison sentence imposed by the District Court on 18 June (see paragraph 13 above).

On 29 June the applicant was convicted of an offence committed in service on 19 June 1992 and sentenced to further imprisonment. In its judgment the District Court stated that he had been deprived of his liberty as from 19 June.

18. On 20 August 1992 the applicant was released from prison on parole. As he continued to object to military service he was twice detained on remand, in August and September, and was convicted of further offences in service and sentenced to further imprisonment.

On 5 October 1992 the applicant was discharged from his military service for one year.

D. The applicant's petition to the Parliamentary Ombudsman and the ensuing proceedings

19. On 16 February 1993 the applicant lodged a petition with the Parliamentary Ombudsman (*eduskunnan oikeusasiamies, riksdagens justitieombudsman*; "the Ombudsman"), complaining in particular about the deprivation of his liberty from 18 to 19 June 1992 and the related handcuffing. He emphasised that at no moment had he attempted to escape from the military police or otherwise shown any intention of doing so. He had also been handcuffed on 11 April and 2 June 1992 while being transported to the County Prison after the District Court's hearings.

In his petition the applicant also submitted that, on his arrival at the Brigade on 18 June 1992, R. had asked him whether he would agree to go to the military hospital. The applicant had then restated his objection to performing any kind of service but he had not consented to going to the

hospital, as was shown by the fact that he had been handcuffed until his arrival there. At any rate, he had not acted in a way which could lead anyone to believe that he had wished to receive hospital care.

20. Heard as a suspect at the Ombudsman's request, R. stated that he had been instructed by the Legal Officer of the Pori barracks to bring the applicant back to the compound. After the applicant had been released in the prison courtyard, R. had ordered the military police to apprehend him. According to the training provided to members of military police squads, a person who was to be arrested was to be informed thereof and was also to be handcuffed. On the applicant's return to the Pori barracks, R. had been instructed by the Duty Officer to ask the applicant whether he would agree to take up his military service. As he objected he had, with his own consent, been brought to the military hospital. As far as R. could remember, the applicant had been released from his manacles in the hospital yard.

21. The army authority in the Pori Brigade told the Ombudsman that the purpose of the applicant's apprehension had been to ensure that he would remain in the hands of the military authorities, given that he had been ordered to take up his service at that compound. The military police had not been given any instructions concerning his transportation in handcuffs. Nor did the situation as a whole seem to have required such a measure, considering that his arrest had not been ordered and, as on previous occasions, he was only to be returned to the Pori barracks. In view of his repeated convictions for military offences, R. had nevertheless considered that the applicant's handcuffing was necessary in order to ensure his return to the Pori barracks.

22. The Army Headquarters made the following observations to the Ombudsman. The applicant's arrest had taken place immediately on his release by the prison authorities. There was no evidence at that time that he continued to object to performing

military service or to returning to his military compound with the military police. The measures ordered by R. appeared to have been based on the applicant's earlier repeated objections to performing any kind of service and the likelihood that this would continue. Moreover, his support group had been disturbing R. during the incident.

The Army Headquarters nevertheless conceded that, on the basis of the evidence available, there had been no acceptable grounds for arresting the applicant, which measure had stemmed from the fact that R. had made an incorrect assessment of the situation in combination with the surrounding circumstances. Nor had there been any justification for handcuffing the applicant. According to the relevant permanent instructions, manacles could be used temporarily in order to calm down a person behaving violently who was to remain in the hands of the authorities or if there was a specific reason for suspecting that he would escape. Although the applicant had, on several

occasions, committed punishable acts and his support group had attended his release from the County Prison, it had not been likely that he would escape on that occasion.

23. In his decision of 20 May 1994 the Ombudsman noted that the military authorities had had no reason to fear that the applicant would attempt to escape. On previous occasions the latter had in fact presented himself voluntarily to them. The Ombudsman considered that the applicant's arrest on 18 June 1992 had lacked a legal basis since, prior to the measure, he had not been asked whether he would persist in his refusal to perform military or substitute service. The Ombudsman furthermore stated:

"There were no objectively justifiable grounds for putting Raninen in handcuffs. Apparently R. proceeded in this situation as he had been trained to do.

When evaluating the actions of R., one must take into consideration his inexperience and the rather general nature of the directions which he had received from his brigade. R. himself believed that he acted in accordance with orders. A more experienced military person should have been assigned to fetch Raninen from the County Prison. It is not even claimed that R.'s behaviour was inappropriate in any other respect. In my opinion, and taking into consideration the circumstances, this action does not call for measures to be taken against R. by the Ombudsman."

In addition, he urged the Army Headquarters and the Pori barracks' Commander to see to it that in both the training and activities of the military police a clear distinction was made between situations arising in times of peace and of war.

The Ombudsman did not order that criminal charges be brought.

E. Subsequent developments

24. On 20 February 1995 the District Court (*käräjäoikeus, tingsrätten*) of Kokemäki convicted the applicant of refusal to carry out military service under section 39 of the 1950 Military Service Act (*asevelvollisuuslaki, värnpliktslag* 452/50, as amended with effect from 1 June 1994). This provision authorised the punishment of a conscript who categorically objected to performing military service, who did not opt for substitute civilian service and whose behaviour would not change as a result of punishment imposed under Chapter 45 of the Penal Code. The District Court sentenced him to 194 days'

imprisonment. Since he had already served 212 days of his previous sentences, this was considered sufficient.

II. Relevant domestic law and practice

A. Provisions concerning arrest and transportation

25. According to the Military Discipline Act 1983 (*sotilaskurinpitolaki, militär disciplinlag* 331/83), a person caught committing a military offence or suspected on likely grounds of having committed such an offence may be arrested provided this is necessary in order to maintain or restore discipline, order or safety (section 16).

26. According to the 1889 Penal Code (*rikoslaki, strafflag* 39/1889), a soldier carrying out police duties is entitled, if he encounters resistance, to use the necessary force justified by the circumstances (Chapter 3, section 8a, as added by Act no. 321/83).

27. According to the 1990 Educational Guide intended for the members of the military police force, a person who is to be transported shall be handcuffed. Its preface states that it is principally intended for use in wartime or when there is a threat of war. It underlines that in peacetime the military police shall not use more violence than the situation calls for when, for instance, transporting an arrested person.

B. Legal remedies

28. Article 93 §§ 2 and 3 of the Constitution (*Suomen hallitusmuoto, Regeringsform för Finland* 94/19) provides:

"Anyone whose rights have been infringed or who has suffered damage as a result of an illegal act or negligence by a civil servant, is entitled to claim that the civil servant be punished and ordered to pay compensation for damages or to demand that he or she be prosecuted in accordance with the rules provided for by law.

Whether and to what extent the State is liable to pay damages caused by civil servants, is to be governed by specific provisions."

29. A civil servant who, by intent or neglect or carelessness, acts or omits to act in breach of his or her professional duties as provided for in statute or regulation is liable to punishment, if the act or omission is not insignificant, having regard to the damage caused and other circumstances (Chapter 40, Articles 10 and 11 of the Penal Code).

Article 12 of Chapter 40 provides that the failure to observe military duties may also be considered under the particular offences laid down in Chapter 45.

According to Article 15 of Chapter 45, a member of the armed forces who, by intent or neglect or negligence, fails to comply with the relevant military rules and regulations is liable to disciplinary sanctions or to imprisonment of up to one year. Specific provisions on disciplinary measures are contained in the Military Discipline Act 1983 (*sotilaskurinpitolaki*, *militär disciplinlag* 25.3.1983/331).

30. If the Parliamentary Ombudsman receives a petition against a public official or authority concerning a matter falling within his area of competence, he or she is to carry out an investigation. If the Ombudsman suspects that the person or authority concerned has committed an unlawful act or a fault calling for his intervention, he or she must inform and hear that person or authority. If the matter cannot rest by the Ombudsman expressing criticism, he or she must prosecute, or have prosecuted, the person who is suspected of

being guilty of the unlawful conduct or order that disciplinary proceedings be instituted against the latter (Rule 7 of the Parliament's Instruction to the Parliamentary Ombudsman, *Eduskunnan oikeusasiamiehen johtosääntö*, *Instruktion för riksdagens justitieombudsman* 10.1.1920/2*)*.

31. A person who has been deprived of his or her liberty for twenty-four hours or more may claim compensation from the State under section 1 (4) of the 1974 Act on Compensation by the State for the Deprivation of the Liberty of Detained or Convicted Innocent Persons (*laki* 422/74 *syyttömästi vangitulle tai tuomitulle valtion varoista vapauden menetyksen johdosta maksettavasta korvauksesta, lag* 422/74 *om ersättning av statens medel som till följd av frihetsberövande skall betalas till oskyldigt häktad eller dömd,* hereinafter referred to as "the Compensation for Deprivation of Liberty Act").

32. Under the Damage Compensation Act 1974 (*vahingonkorvauslaki, skadeståndslag* 412/74) proceedings may also be brought against the State in respect of damage resulting from fault or neglect by its employees in the performance of their duties (Chapters 3 and 4).

In a decision of 31 October 1985, Turku Court of Appeal ordered the State to pay compensation under the Damage Compensation Act 1974 to a person who, after causing disturbance at the emergency unit of a hospital, had been arrested and left by the police at a forest road nine kilometres from the town centre. Although it had been lawful to arrest him, the Court of Appeal considered that the measure had been carried out in a manner which constituted a breach of the police officers' professional duties and which had caused suffering deserving of compensation to the person concerned. In addition it ordered the police officers to pay fines.

PROCEEDINGS BEFORE THE COMMISSION

33. In his application of 11 November 1992 to the Commission (no. 20972/92), Mr Raninen alleged that he had been subjected to degrading treatment in violation of Article 3 of the Convention. In this connection he invoked a series of matters: the number of times he had been interrogated, detained on remand and convicted in relation to one single circumstance, namely his objection to military or substitute service; his handcuffing on 18 June 1992; his isolation during custody; and the fact that he had been classified as temporarily unfit for service on account of an "undefined psychosocial problem". The applicant further alleged that the deprivation of his liberty following his release on 18 June 1992 until his arrest on 19 June gave rise to a violation of Article 5 § 1. Moreover, there had been a breach of Article 5 § 2 as he had not been informed of the reasons for his arrest on 18 June or his placement in the military hospital. In addition, the applicant alleged that the criminal proceedings against him had given rise to various breaches of the fair hearing guarantees in Article 6 of the Convention and of the prohibition of double jeopardy in Article 4 of Protocol No. 7. Finally, when compared with the more lenient sentencing of conscientious objectors who carried out substitute service, the sentences imposed upon him as a total objector had constituted discrimination in violation of Article 14 of the Convention in conjunction with Article 4 of Protocol No. 7.

34. On 7 March 1996 the Commission declared admissible the applicant's complaints relating to his handcuffing on 18 June 1992 and the lawfulness of his deprivation of liberty from 18 to 19 June 1992. It had declared parts of the application

inadmissible on 30 November 1994 and declared the remainder inadmissible on 7 March 1996.

35. In its report of 24 October 1996 (Article 31), the Commission expressed the opinion that there had been a violation of Article 3 of the Convention (by twenty votes to ten); that no separate issue arose under Article 8 of the Convention (by twenty-three votes to seven); that there had been a violation of Article 5 § 1 of the Convention (unanimously) and that no separate issue arose under Article 5 § 2 of the Convention (unanimously). The full text of the Commission's opinion and of the three partly dissenting opinions contained in the report is reproduced as an annex to this judgment[1].

final submissions to the court

36. At the hearing on 27 August 1997 the Government, as they had done in their memorial, requested the Court to uphold their preliminary objection that the applicant had failed to exhaust domestic remedies (Article 26). In the alternative, they invited the Court to hold that there had been no violation of Articles 3 and 8 of the Convention in the present case but left to the Court's discretion whether there had been a violation of Article 5 of the Convention.

37. On the same occasion the applicant requested the Court to find that there had been violations of the above-mentioned provisions and to award him just satisfaction under Article 50 of the Convention.

as to the law

I. THE GOVERNMENT'S PReLIMINARY OBJECTION

38. The Government, as they had done at the admissibility stage before the Commission, maintained that the applicant had failed to fulfil the condition of exhaustion of domestic remedies under Article 26 of the Convention. Therefore the Court had no jurisdiction to entertain his Convention complaints.

They stressed that the applicant could have brought charges, or requested that charges be brought, against the responsible military personnel and could have claimed damages from the latter or from the State (see paragraphs 28–29 above). As an example to show the effectiveness of domestic remedies the Government referred to a case concerning irregular detention imposed in circumstances which in their view were comparable to those of the applicant's transportation from the prison to the Pori barracks. In that case the Turku Court of Appeal had imposed fines on the responsible police officers and had ordered the State to pay compensation under the Damage Compensation Act (see paragraph 32 above).

Furthermore, the Government maintained that, apart from the fact that the Ombudsman was not a remedy for the purposes of the exhaustion rule in Article 26, it could not be inferred from his findings of 20 May 1994 (see paragraph 23 above) that the applicant had no reasonable prospects of success were he to exercise any of the remedies available to him under national law. In fact, it was only in exceptional cases that the Ombudsman

would bring charges. In those two hundred or so cases per year where the Ombudsman had established fault, he would as a rule take less drastic measures, by imposing disciplinary sanctions or making a statement or a recommendation.

39. The applicant argued that, as was evident from Article 93, of the Finnish Constitution, in order to establish liability of a civil servant to pay damages it was necessary to show that he or she had committed an offence in office or had acted negligently. This was the situation for cases, like the present one, concerning compensation claims in respect of deprivation of liberty lasting less than twenty-four hours, falling outside the strict liability rule in the Compensation for Deprivation of Liberty Act (see paragraph 31 above). Among those cases, there was not a single example of compensation being awarded in the absence of a finding that the responsible public official had committed an offence while exercising official duties.

In the applicant's submission, he would have had no prospects of success were he to bring charges or institute civil proceedings for damages, bearing in mind the fact that the Ombudsman, as the applicant understood it, did not find any negligence on the part of the military officials involved in the measures at stake.

40. The Commission interpreted the Ombudsman's findings as entailing that the treatment to which the applicant had been subjected, although reprehensible, did not require that charges be brought against any public official (see paragraph 23 above). Moreover, whilst compensation could be sought under the Compensation for Deprivation of Liberty Act in respect of deprivation of liberty which had lasted at least twenty-four hours (see paragraph 31 above), the applicant's detention had been of shorter duration. Therefore, the remedies referred to by the Government (see paragraphs 28–32 above) did not provide reasonable prospects of success and could not be considered as effective and adequate for the purposes of Article 26 of the Convention in relation to the complaints at issue.

The Commission's Delegate in addition emphasised the special role of the Ombudsman in supervising the service conditions in the army and the fact that no criminal proceedings had been instigated by the Brigade Commander following the Ombudsman's findings of 20 May 1994 (see paragraph 23 above). Against this background, it was clear that the applicant stood little or no chance of success had he himself sought to bring charges against the relevant military personnel.

As regards the possibility of bringing an action for damages the Delegate noted the Ombudsman's finding that Corporal R. had acted in good faith. Already on this basis the present case was distinguishable from the one decided by the Turku Court of Appeal in 1985, the only case cited by the Government, where negligence was proved. In the circumstances the Commission found that a civil action would not have provided reasonable prospects of success either (see paragraphs 31–32 above).

41. The Court reiterates that the rule of exhaustion of domestic remedies in Article 26 of the Convention requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. There is no obligation to have recourse to remedies which are inadequate or ineffective (see, for instance, the Andronicou and

Constantinou v. Cyprus judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 2094–95, § 159).

42. Whilst it is true that the Ombudsman found on 20 May 1994 that the applicant's arrest on 18 June 1992 was unlawful and his handcuffing unjustified, it was a condition for both individual and State liability under the relevant Finnish law that the measures should have been caused by fault or neglect (see paragraphs 23, 29 and 32 above). On the basis of evidence taken from Corporal R. and from the military authorities, the Ombudsman found that R. had acted in good faith and implicitly that it was not appropriate to impose disciplinary sanctions on him or any other army official, or to bring charges (see paragraphs 20–23 above). Against this background the Government have not demonstrated that either a criminal prosecution or an action for damages would in the specific circumstances of the case have offered reasonable prospects of success.

Accordingly, the Court concludes that the Government's preliminary objection of non-exhaustion must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Article 5 § 1 of the Convention

43. The applicant alleged that the deprivation of his liberty following his release on 18 June 1992 until he was formally arrested in the morning on 19 June 1992 gave rise to a breach of Article 5 § 1 of the Convention, which reads:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

The applicant maintained that there had been a violation of this provision on account of his arrest and transportation from the County Prison to the Pori barracks on 18 June 1992. In addition he invited the Court to rule that there had been a violation of Article 5 § 1 with respect to his stay at the military hospital within the compound from that date until he was formally arrested in the morning of 19 June (see paragraphs 14–16 above). On

the latter point he submitted that the only possibility for him to leave the hospital was to return to his unit and continue military service.

44. The Government conceded that, although the applicant had been under an obligation to report to the Pori barracks upon his release from the County Prison on 18 June 1992, the military police had not been permitted under domestic law to re-arrest him on that occasion (see paragraphs 21–23 and 25 above). However, they pointed out, the deprivation of liberty in issue had been very brief and lenient in character. On arriving at the Pori barracks, the applicant had consented to being transported to the military hospital within the compound.

45. The Commission noted that whilst it was disputed whether the applicant had consented to being taken to the military hospital on 18 June 1992 (see paragraph 15 above), it was clear from the evidence before the Ombudsman that he had not consented to being transported from the County Prison to the Pori barracks on that date (see paragraphs 20–23 above). Such consent, the Commission found, had been given at the earliest upon his arrival at the Pori barracks. Moreover, when re-arrested on being released from the County Prison on 18 June 1992, the applicant had not, in the absence of any question put to him, renewed his objection to performing military service. As was undisputed the military police had not been permitted under domestic law to arrest and detain him on that occasion. In view of the foregoing the Commission concluded that the deprivation of his liberty during the transportation from the prison to the Pori barracks was unlawful under Finnish law and therefore a violation of Article 5 § 1 of the Convention.

In the light of this conclusion, the Commission did not consider it necessary to examine whether the applicant's detention had served any of the purposes set out in the sub-paragraphs of paragraph 1 of Article 5 or whether he had been detained within the military compound from 18 June until his re-arrest at 8 a.m. on 19 June 1992 in breach of that provision.

46. The Court notes that in the present case the Ombudsman had expressed the view that the applicant's arrest on 18 June 1992 had been unlawful (see paragraph 23 above). According to the Ombudsman, there had been no reason to fear that he would attempt to escape; nor had he been asked, prior to the measure, whether he would persist in his refusal to perform military service (see paragraphs 20–23 above). It thus follows, which was undisputed, that the applicant's arrest and detention during his transportation by the military police from the prison to the Pori barracks on 18 June 1992 was contrary to national law (see paragraphs 23 and 25 above).

Accordingly, in so far as concerns these measures, his deprivation of liberty was not "lawful" under the terms of Article 5 § 1 of the Convention, which provision has therefore been violated in the present case.

47. On the other hand, the Court observes that it is disputed whether the applicant was deprived of his liberty at the military hospital following his arrival at the Pori barracks and until his re-arrest the following morning. Whilst the Government submitted that he had consented on his arrival at the Pori barracks to being taken to the hospital, where he stayed until the next morning (see paragraphs 15–16 above), the applicant asserted that he had been detained against his will. According to him, the only possibility for him to leave the hospital was to return to his military unit and continue military service.

On the basis of the evidence before it the Court does not find it established that the applicant was unlawfully deprived of his liberty following his arrival at the barracks, in breach of Article 5 § 1 of the Convention.

B. Article 5 § 2 of the Convention

48. The applicant complained that, since he had not been informed of the reasons for his arrest on 18 June 1992 (see paragraph 14 above), there had been a violation of Article 5 § 2 of the Convention, which provides:

"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

49. The Government conceded that, in the absence of any fresh criminal act by the applicant at the time of his release from prison on 18 June 1992, there were no reasons for arrest or any charges that could have been communicated to him.

50. The Commission, having regard to its finding of a breach of Article 5 § 1, did not consider that a separate issue arose under Article 5 § 2.

51. The Court, bearing in mind its conclusion that the applicant's arrest failed to comply with Finnish law and thus gave rise to a breach of paragraph 1 of Article 5, does not find it necessary to examine his complaint under paragraph 2.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. On account of his having been handcuffed while taken from the County Prison to the military hospital at the barracks on 18 June 1992 (see paragraphs 14–15 above), the applicant complained that he had been the victim of "degrading treatment" in violation of Article 3 of the Convention, which reads:

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

The applicant stressed that the handcuffing occurred in the context of unlawful deprivation of liberty and thus had had an element of arbitrariness causing him to feel distressed (see paragraphs 23 and 25–27 above). There had been nothing in his conduct when arrested and detained on 18 June 1992 or in the past suggesting that he might resist the measures. Nor had any reasons been given for the handcuffing at the material time. In his submission, the sole purpose of the handcuffing had been to degrade, humiliate and frighten him, in order to discourage him from objecting to military service and substitute service. The two hours' duration of the treatment had been significant. Few months after the event, he had been diagnosed as suffering from an undefined psychosocial problem and had been declared unfit for military service. This clearly indicated that the unlawful detention and handcuffing had had adverse mental effects on him.

53. The Commission was of the view that the handcuffing of the applicant on 18 June 1992 was a clearly distinguishable issue from the one of the deprivation of his liberty on the same occasion. The recourse to physical force by handcuffing him for some two hours had not been made strictly necessary by his own conduct or by any other legitimate consideration and had been imposed while the applicant could be seen by the public, including his own supporters (see paragraphs 15 and 23 above). In sum, the measure

had diminished his human dignity and amounted to “degrading treatment” in violation of Article 3.

54. The Government disputed that the treatment complained of had attained the minimum level of severity required to fall within the scope of Article 3. Whether or not the applicant’s own conduct or any other

legitimate consideration had required the handcuffing, it had only been intended as a security measure in connection with his arrest (see paragraph 21 above). Accordingly, the purpose of the handcuffing in no way denoted contempt or lack of respect for the applicant as a person. Nor had the measure been designed to humiliate or debase him. The publicity connected with the treatment had been limited to his supporters getting a glimpse of him as he entered the military police vehicle and the duration of the handcuffing had been very short. There was no evidence that the measure had caused him injury or any physical or mental suffering.

55. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim’s conduct. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see, for instance, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

Furthermore, in considering whether a punishment or treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see the Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no. 58, p. 13, § 22). In this connection, the public nature of the punishment or treatment may be a relevant factor. At the same time, it should be recalled, the absence of publicity will not necessarily prevent a given treatment from falling into that category: it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see the Tyrer v. the United Kingdom judgment of 25 April 1978, Series A no. 26, p. 16, § 32).

56. As regards the kind of treatment in question in the present case, the Court is of the view that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence.

57. The handcuffing of Mr Raninen had, as conceded by the Government, not been made necessary by his own conduct. Apart from the fact that the measure was itself unjustified, it had been imposed in the context of unlawful arrest and detention. In addition, he had, albeit only

briefly, been visible to the public on his entering the military police vehicle outside the prison gate. He claimed that he had felt humiliated by appearing handcuffed in front of members of his support group (see paragraphs 14 and 23 above).

These considerations are no doubt relevant for the purposes of determining whether the contested treatment was "degrading" within the meaning of Article 3 of the Convention.

58. However, the Court is not convinced by the applicant's allegation that the event of 18 June 1992 had adversely affected his mental state. There is nothing in the evidence to suggest that a causal link existed between the impugned treatment and his "undefined psychosocial problem", which in any event was diagnosed only several months later and which the applicant contested before the Commission (see paragraph 33 above). Nor has the applicant made out his allegation that the handcuffing was aimed at debasing or humiliating him. According to the Ombudsman, whose findings the Court sees no reason to question, Corporal R. had acted in the belief that he complied with the relevant orders and the military education he had received (see paragraph 23 above). Finally, it has not been contended that the handcuffing had affected the applicant physically.

59. In the light of the foregoing, the Court does not find it established that the treatment in issue attained the minimum level of severity required by Article 3 of the Convention. There has accordingly been no violation of this provision.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

60. Referring essentially to the same facts as with regard to his complaint under Article 3 of the Convention (see paragraph 52 above), the applicant further alleged a violation of Article 8 of the Convention, which reads:

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

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

61. The Commission, having regard to its conclusion that there had been a violation of Article 3 (see paragraph 53 above), found that no separate issue arose under Article 8.

62. The Government again stressed that the handcuffing had had no adverse effects on the applicant's physical or moral integrity and that, in any

event, these had not been such as to amount to an interference with his right to respect for private life within the meaning of Article 8.

63. According to the Court's case-law, the notion of "private life" is a broad one and is not susceptible to exhaustive definition; it may, depending on the circumstances, cover the moral and physical integrity of the person (see the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 22; the Niemietz v. Germany judgment of 16 December 1992, Series A no. 215-B, p. 11, § 29; and the Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, pp. 60–61, §§ 34 and 36). The Court further recognises that these aspects of the concept extends to situations of deprivation of liberty. Moreover, it does not exclude the possibility that there might be circumstances in which Article 8 could be regarded as affording a

protection in relation to conditions during detention which do not attain the level of severity required by Article 3.

64. In the case under consideration, as noted above, the applicant based his complaint under Article 8 on the same facts as that under Article 3, which the Court has considered and found not to have been established in essential aspects. In particular, it had not been shown that the handcuffing had affected the applicant physically or mentally or had been aimed at humiliating him (see paragraph 58 above). In these circumstances, the Court does not consider that there are sufficient elements enabling it to find that the treatment complained of entailed such adverse effects on his physical or moral integrity as to constitute an interference with the applicant's right to respect for private life as guaranteed by Article 8 of the Convention.

Accordingly, the Court does not find any violation of this provision either.

V. APPLICATION OF ARTICLE 50 OF THE CONVENTION

65. Mr Raninen sought just satisfaction under Article 50 of the Convention, which 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

66. The applicant claimed 50,000 Finnish marks (FIM) in non-pecuniary damage. He maintained that the violations of the Convention in his case, which had entailed serious intrusion into his physical and mental integrity, had caused him to suffer a substantial degree of anxiety and distress.

67. The Government considered that the finding of a violation of the Convention would constitute adequate satisfaction of any non-pecuniary damage sustained by the applicant; in any event, the amount claimed was too high.

68. The Delegate of the Commission left the matter to the discretion of the Court.

69. The Court, bearing in mind its findings above with regard to the applicant's Convention complaints, considers that he suffered some moral damage as a result of his deprivation of liberty which cannot be compensated solely by the finding of a violation. Deciding on an equitable basis, the Court awards the applicant FIM 10,000 under this head.

B. **Costs and expenses**

70. The applicant further requested the reimbursement of costs and expenses, totalling FIM 127,220, in respect of the following items:

a. FIM 6,000 in respect of legal costs incurred in the proceedings before the Eura District Court on 29 June 1992 and 9 and 28 September 1992 (see paragraphs 17 and 18 above);

b. FIM 101,500 in fees for his lawyers' work (145 hours at FIM 700 per hour) in connection with the proceedings before the Commission and the Court;

c. FIM 19,720 in travel and subsistence expenses for his lawyers' appearance before the Court.

71. The Government contested item (a) as the domestic proceedings in question had not been related to the complaints declared admissible by the Commission and now before the Court. In any event, the applicant had not shown that he had a legal obligation to pay them. As regards item (b), the Government considered the hourly rate charged appropriate but the number of working hours claimed to be excessive. They did not comment on item (c).

72. The Delegate of the Commission also left the question of costs and expenses to the Court.

73. The Court, in accordance with its own case-law, will consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, the Z v. Finland judgment of 25 February 1997, Reports 1997-I, p. 355, § 126).

The only violation the Court has found concerns an undisputed point, namely the applicant's arrest and detention in connection with his transportation from the prison to the Pori barracks on 18 June 1992. There is not a sufficient link between this violation and the costs referred to in item (a); these cannot be viewed as necessarily incurred and must therefore

be rejected. Nor does the Court find that all the amounts claimed under item (b) were necessarily incurred for the purposes indicated above. Deciding on an equitable basis, it awards in respect of items (b) and (c) FIM 50,000, less the amount received by way of legal aid from the Council of Europe.

C. Default interest

74. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of the adoption of the present judgment is 11% per annum.

FOR THESE REASONS, THE COURT

1. *Dismisses* by six votes to three the preliminary objection concerning the exhaustion of domestic remedies;

2. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* unanimously that it is not necessary to examine the applicant's complaint under Article 5 § 2 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 3 of the Convention;

5. *Holds* by seven votes to two that there has been no violation of Article 8 of the Convention;

6. *Holds* unanimously:

(a) that the respondent State is to pay to the applicant, within three months, 10,000 (ten thousand) Finnish marks in compensation for non-pecuniary damage, and, for legal costs and expenses, 50,000 (fifty thousand) marks, plus any applicable value-added tax, less 23,699 (twenty three thousand six hundred and ninety-nine) French francs to be converted into Finnish marks at the rate applicable on the date of delivery of the present judgment;

(b) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;

7. *Dismisses* unanimously 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 16 December 1997.

Signed: Rudolf Bernhardt

President

Signed: Herbert Petzold

Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following opinions are annexed to this judgment:

(a) partly dissenting opinion of Mr Foighel, joined by Mr Morenilla;

(b) partly dissenting opinion of Mr Pekkanen, joined by Mr Makarczyk and Mr Jungwiert.

Initialled: R. B.

Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE FOIGHEL, JOINED BY JUDGE morenilla

Although I agree with my colleagues that the handcuffing of the applicant did not constitute a breach of Article 3 of the Convention, I consider, unlike them, that it entailed a violation of Article 8.

As pointed out in paragraph 63 of the judgment, there might be circumstances in which Article 8 could be regarded as affording a protection in relation to conditions during detention which do not attain the level of severity required under Article 3. Such circumstances did in my view obtain in the present case.

For me it is not decisive that the handcuffing was not aimed at humiliating the applicant. I find it more significant that the effect of the measure must have been one of humiliation and lowering of his self-esteem. In particular, as stated in paragraph 57 of the judgment:

“The handcuffing of Mr Raninen had, as conceded by the Government, not been made necessary by his own conduct. Apart from the fact that the measure was itself unjustified, it had been imposed in the context of unlawful arrest and detention. In

addition, he had, albeit only briefly, been visible to the public on his entering the military police vehicle outside the prison gate ..."

I therefore consider that the treatment complained of did affect the applicant's integrity to such a degree as to amount to an interference with his right to respect for private life as guaranteed by paragraph 1 of Article 8.

Furthermore, it has not been argued, nor is there anything to suggest, that the handcuffing was justified for the purposes of paragraph 2 of Article 8. Accordingly, I have voted for a violation of this Article.

Partly dissenting opinion of Judge Pekkanen, JOINED BY JUDGES MAKARCZYK AND JUNGWIERT

1. I regret that I cannot subscribe to the majority's conclusion that the Government's preliminary objection on exhaustion of domestic remedies should be rejected.

2. Under Finnish law it was open to the applicant to bring charges or have charges brought against the members of the armed forces who were responsible for the deprivation of his liberty and his handcuffing and to claim damages under the Damage Compensation Act from them or from the State. Although slightly different on the facts, the 1985 Court of Appeal judgment referred to by the Government does in my view show that criminal charges could successfully be brought against a public servant and that damages could be obtained from the State for unlawful deprivation of liberty of even short duration. However, the only step taken by the applicant at the domestic level was to file a petition with the Parliamentary Ombudsman.

3. In Finland the Ombudsman is an independent authority whose main task it is to supervise the application of the law by State authorities, in particular to ensure that they observe their duties and responsibilities as laid down in laws and regulations and that the fundamental rights and freedoms of citizens are not encroached upon in the process of public administration. The Ombudsman is empowered to either express a non-legally binding opinion or, where a public official is suspected of having committed an offence in the performance of his or her duties, to institute criminal or disciplinary proceedings. If he does not find it necessary to press charges it is, still, open to the public prosecutor to instigate criminal proceedings.

4. Whilst it is true that the Ombudsman enjoys high esteem in Finland, any assessment of the potential impact of his findings must have regard to their precise contents.

The Commission's main argument for considering that the above remedies offered no reasonable prospects of success was "the Ombudsman's finding that the applicant's treatment, although reprehensible, did not require that charges be brought *against any public official*" (emphasis added; see page 45 of the Commission's report). However, that argument is misleading, as the conclusion only concerned Corporal R., not any other official. It cannot be inferred from it that the applicant had no reasonable prospects of success were he to institute criminal proceedings against any other members of the armed forces.

The second argument relied on by the Commission was that compensation could not be sought under the Compensation for Deprivation of Liberty Act unless the detention had lasted for at least twenty-four hours, which condition had not been fulfilled in the present

instance. However, the Commission failed to consider the fact that the applicant could undeniably have instituted a civil action for damages, as demonstrated by the above-mentioned Court of Appeal ruling.

In my view, these arguments do not sustain the conclusion that the applicant would have had no reasonable prospects of success had he properly availed himself of the remedies which existed under Finnish law.

5. Even if it may be assumed that the Ombudsman's decision somewhat diminished the chances of success of a criminal charge brought against R. by the public prosecutor or by the applicant himself, the decision would seem to give considerable support for a claim against the State for damages. Not only did the Ombudsman find that the arrest had been unlawful and that the handcuffing had been unjustified, he also observed that the orders given to Corporal R. had been summary and that more experienced military personnel should have been used to fetch the applicant on his release from prison. In addition, the Ombudsman criticised the training and activities of the military police.

6. My main concern in this case is one of principle. The majority's conclusion that the applicant had fulfilled the requirement of exhaustion under Article 26 of the Convention has the unfortunate consequence of making the case-law less clear in this area and of weakening the principle of subsidiarity. According to this principle, it may be recalled, it is the national authorities which have the primary responsibility for the enforcement of the Convention guarantees; the European Court having only a supervisory role which comes into operation once the national means of redress have been exhausted. It is therefore of utmost importance from the point of view of the Convention system of protection of human rights that the national authorities, notably the courts, are given a proper opportunity to make good the matter complained of before the Strasbourg review enters into play. However, that has not in my view been the case in the proceedings under consideration.

7. In light of the above, I have voted against the dismissal of the preliminary objection.

1. This summary by the registry does not bind the Court.

Notes by the Registrar

1. The case is numbered 152/1996/771/972. 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 States bound by Protocol No. 9.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.