
Z v. FINLAND - 22009/93 [1997] ECHR 10 (25 February 1997)

In the case of Z 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. Ryssdal, President,

Mr F. Gölcüklü,

Mr L.-E. Pettiti,

Mr C. Russo,

Mr J. De Meyer,

Mr R. Pekkanen,

Mr G. Mifsud Bonnici,

Mr J. Makarczyk,

Mr B. Repik,

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

Having deliberated in private on 31 August 1996 and 25 January 1997,

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

Notes by the Registrar

1. The case is numbered 9/1996/627/811. 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).

PROCEDURE

1. The case was referred to the Court by the European Commission

of Human Rights ("the Commission") on 25 January 1996, within the

three-month period laid down by Article 32 para. 1 and Article 47 of

the Convention (art. 32-1, art. 47). It originated in an application

(no. 22009/93) against the Republic of Finland lodged with the

Commission under Article 25 (art. 25) by a Finnish national, Mrs Z, on

21 May 1993.

The Commission's request referred to Articles 44 and 48

(art. 44, art. 48) and to the declaration whereby Finland recognised

the compulsory jurisdiction of the Court (Article 46) (art. 46). The

object of the request 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 8 and 13 of the Convention (art. 8,

art. 13).

2. In response to the enquiry made in accordance with Rule 35

para. 3 (d) of Rules of Court B, the applicant stated that she wished

to take part in the proceedings and designated the lawyers who would

represent her (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. 4 (b)). On 8 February 1996, in the presence of

the Registrar, the President drew by lot the names of the other

seven members, namely Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr B. Walsh,

Mr C. Russo, Mr J. De Meyer, Mr G. Mifsud Bonnici and Mr B. Repik

(Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

Subsequently Mr J. Makarczyk, substitute judge, replaced Mr Walsh, 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. 6), Mr Ryssdal,

acting through the Registrar, consulted the Agent of the

Finnish Government ("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 25 March 1996, the Registrar received the applicant's memorial on

29 May 1996 and the Government's memorial on 31 May 1996. On

5 July 1996 the Secretary to the Commission indicated that the

Delegate

would submit his observations at the hearing.

5. On various dates between 5 July and 9 August 1996 the

Commission produced a number of documents from the proceedings before

it, as requested by the Registrar on the President's instructions.

6. On 20 June 1996 the Registrar received from the Government a

request to hold the hearing set down for 29 August 1996 in camera. The

President invited the Delegate of the Commission and the applicant to

comment on the Government's request. On 24 June 1996, the Registrar

received the applicant's observations on the matter.

In the light of the observations submitted by the Government

and the applicant and the sensitive nature of the case, the Chamber

decided on 26 June 1996 that the hearing should be held in camera,

being satisfied that there were exceptional circumstances for the

purposes of Rule 18 warranting a derogation from the principle of

publicity applying to the Court's hearings.

7. In accordance with the President's and the Chamber's decisions,

the hearing took place in camera in the Human Rights Building,

Strasbourg, on 29 August 1996. The Court had held a preparatory

meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr H. Rotkirch, Director of Legal Affairs,

Ministry of Foreign Affairs, Agent,

Mr A. Kosonen, Legal Adviser,

Ministry of Foreign Affairs, co-Agent,

Mr I. Liukkonen, Legal Adviser, Ministry of Justice,

Mr J. Tenneberg, Legal Adviser, National Board of

Medical Affairs, Advisers;

(b) for the Commission

Mr P. Lorenzen, Delegate;

(c) for the applicant

Mr M. Fredman, asianaja, advokat,

Mr M. Scheinin, Associate Professor of Law,

University of Helsinki, Counsel.

The Court heard addresses by Mr Lorenzen, Mr Fredman,

Mr Scheinin, Mr Rotkirch and Mr Kosonen, and also replies to its

questions.

8. On 1 October 1996, the Government supplied the Court with

further particulars in reply to a question put at the hearing.

AS TO THE FACTS

I. Particular circumstances of the case

A. Introduction

9. The applicant is a Finnish national, resident in Finland, and was at the time of the events which gave rise to her complaints under the Convention married to X, who was not Finnish. They divorced on 22 September 1995. They are both infected with the human immunodeficiency virus (HIV).

10. On 10 March 1992 the Helsinki City Court (raastuvanoikeus, rådstuvurätten) convicted X and sentenced him to a suspended term of imprisonment for rape on O. on 12 December 1991. The City Court held the trial in camera and ordered that the documents submitted in the case remain confidential for a certain period.

11. On 19 March 1992 X was informed of the results of a blood test performed on 6 March 1992, indicating that he was HIV-positive.

B. Further complaints of sexual offences lodged against X

12. In early March 1992, following a complaint of a sexual offence lodged by M., the police opened an investigation into attempted manslaughter, suspecting X of having deliberately subjected M. to a risk of infection with HIV on 1 March.

According to the facts as established by the Commission, during

a police interview on 5 March 1992 M. identified X as the perpetrator

and the police informed her that X's spouse, the applicant, was

HIV-positive. On 10 April 1992, the police advised M. that X was also

infected.

At the hearing before the Court the Government disputed the

Commission's finding that the police had informed M. that the applicant

was an HIV carrier. The Delegate replied that the finding had been

based on corroborative evidence in the police investigation record and

the minutes of the ensuing proceedings before the City Court

(see paragraph 19 below).

13. M.'s boyfriend T. met the applicant in mid-March 1992 and asked

her whether her husband was an HIV carrier. On 6 April 1992

T. telephoned her and cited passages from confidential court documents

relating to the trial mentioned in paragraph 10 above. On 14 April

T. was interviewed by the police as to the content of this

conversation.

14. On 7 April 1992 the police attempted to interview the applicant

but, as she was married to X, she relied on her right under Finnish law

not to give evidence against her spouse (chapter 17, Article 20 para. 1, of the Code of Judicial Procedure (oikeudenkäymiskaari, rättegångsbalk)).

15. On 22 April 1992 the public prosecutor charged X with sexual assault on M. On 20 May 1992 M. brought a charge against X of attempted manslaughter.

16. On 10 September 1992, following complaints of rape lodged by P.-L. and P., X was arrested and detained on remand, on suspicion of attempted manslaughter by having raped the complainants earlier that month and thereby deliberately subjected them to a risk of HIV infection.

17. On 14 September 1992 the police interviewed the applicant but she again refused to give evidence against her spouse. She feared that the documents in the case, including any statement she made, would not remain confidential.

18. On 18 September 1992 R. lodged a complaint with the police against X for rape committed on 19 December 1991. The police officer who recorded the complaint added to the record a statement that the

applicant had already been found to be HIV-positive in 1990.

The Government submitted at the Court's hearing that it was R. who had told this to the police.

The police opened an investigation into attempted manslaughter in this case also.

On 7 October and 2 December 1992 and 24 March 1993, the public prosecutor read out in court charges against X of attempted manslaughter in respect of offences committed against M. on 1 March 1992, against P. on 10 September 1992 and against P.-L. on 5 and 6 September 1992. Such charges were also brought by P.-L. on 16 December 1992 and by R. on 19 May 1993 in relation to offences committed respectively on 31 August 1992 and 19 December 1991.

C. Orders obliging the applicant's doctors and psychiatrist to give evidence

19. On 22 April 1992, at the City Court's first hearing, held in public, X refused to reply to a question put by M.'s counsel as to whether the applicant was also an HIV carrier.

At a further hearing on 6 May 1992, the City Court decided at the parties' request that the case should be heard in camera.

M. confirmed that she had been informed by the police that the applicant was HIV-positive and T. gave evidence on the content of his

telephone conversation with the applicant on 6 April 1992

(see paragraph 13 above).

20. On 18 May 1992 and with X's consent, L., senior doctor at the

hospital where X and the applicant had been treated, transmitted copies

of X's medical records to the public prosecutor. These had been edited

so as to omit all references to the applicant.

21. The City Court summoned the applicant to appear before it as

a witness on 20 May 1992, but she again relied on her right not to give

evidence in a case concerning her husband.

22. On 27 May 1992 M.'s counsel informed the public prosecutor that

the copies of X's medical records appeared to be incomplete. That same

day the public prosecutor asked the police to obtain statements from

senior doctor L. and any other doctors who had been treating X, whether

as experts or ordinary witnesses, in order to obtain information from

them on when X had become aware of his HIV infection.

23. On 12 August 1992, despite his objections, the City Court

ordered senior doctor L. to give evidence. He disclosed to the court

medical data concerning the applicant which had been omitted from

the

copies of X's medical records referred to in paragraph 20 above.

The City Court, by way of an interim measure, ordered that the

court file, including the transcripts of senior doctor L.'s evidence,

be kept confidential.

24. At the hearings of the City Court on 23 September and

18 November 1992, X refused to answer a question put by counsel for the

complainants (M., P.-L., P. and R.) as to whether the applicant was

HIV-positive. On 30 December 1992, counsel asked him when he had

become aware that she was infected. However, X again refused to

answer.

25. On 23 September 1992 senior doctor L. complained to the

parliamentary ombudsman (eduskunnan oikeusasiamies, riksdagens

justitieombudsman) about the court decision ordering him to give

evidence. In an opinion of 5 February 1993 the parliamentary ombudsman

expressed the view that the domestic law had not been violated and that

the City Court had properly balanced the public interest in

investigating crime against the applicant's interests in protecting the

confidentiality of the information in question.

26. At a court hearing on 27 January 1993, Dr K., who had also

treated the applicant, was, despite his objections, required to give

evidence as a witness for the prosecution and to disclose information

about the applicant. He did so.

27. On 6 February 1993 the police interviewed Dr S.V. as an expert.

He provided them with general information on HIV infection and

contamination.

28. On 10 February 1993 the public prosecutor requested the police

to interview the applicant's doctors as witnesses in the investigation

into the charges against X of attempted manslaughter (see paragraph 18

above). However, since all the doctors concerned refused, the matter

had to be referred to the City Court.

29. Despite his renewed objections, senior doctor L. was again

heard as a prosecution witness at the City Court's hearing of

3 March 1993. He once again disclosed information about the applicant.

Before giving evidence he read out a letter dated 23 February 1993

which the applicant had sent him. It stated:

"... The case concerns criminal charges against my husband

which are considered to outweigh a doctor's obligation and

right to respect secrecy. It seems to me that you have been called to appear as a witness because I myself have invoked my right ... to refuse to give evidence. In your capacity as a doctor you are therefore likely to be asked questions which I, as X's spouse, have the right to refuse to reveal. The information which you have emanates from me and has been obtained by you because it has been my understanding that it would remain confidential ... [N]or could I have imagined that [such] information could be used for the purpose of criminal proceedings in which my husband is facing charges. As I see it, the hearing of you as a witness is merely aimed at circumventing my lawful right to refuse to give evidence against my husband ...

... I therefore request you to refer to these points, when you are being asked to give evidence in matters which concern only me. It is my opinion that you should not be obliged to give evidence in those matters and that the charges should be dealt with in such a way that I am not in any way forced to take part in the establishment of the [facts]. [I] am under no obligation to do so ..."

30. In the course of three hearings on 17 March, 7 April and

5 May 1993, the City Court heard evidence from the applicant's

psychiatrist, Dr K.R., and a number of medical doctors who had treated

her, namely Drs V., S.-H., S., K., T., R. and apparently also Dr J.S.

It also heard Dr S.V., who had interviewed Z for research purposes.

The prosecution had called them as witnesses and the court had ordered

them to give evidence, although they had objected to doing so.

At the hearing on 17 March, Dr D. confirmed that a blood test

performed in August 1990 had shown that the applicant was HIV-positive.

At the hearing on 5 May 1993 the applicant agreed to give

evidence since the matters which related to her had already been dealt

with by the City Court in other ways. In her evidence she stated

amongst other things that she had not been infected with HIV by X.

D. Seizure of medical records and their inclusion in the

investigation file

31. On 8 and 9 March 1993 the police carried out a search at the

hospital where the applicant and X had occasionally been treated. The

police seized all the records concerning the applicant and appended

copies of these to the record of the investigation concerning the

charges against X of attempted manslaughter. These measures had been

ordered by the prosecution. After photocopying the records the police

returned them to the hospital.

The seized records comprised some thirty documents including

the following statements:

"...

25 September 1990: [The applicant was] found to be

HIV-positive at the beginning of the autumn of 1990. [She]

guesses that she was contaminated at the end of 1989 ...

[She] is married to a [foreign] citizen, whom she thinks is

[HIV]-negative.

...

5 June 1991: ... [The applicant's husband] completely denies

that he might have an HIV infection ...

7 June 1991: ... According to [the applicant], [her] husband

probably has an HIV infection too but [he] has not gone to be

tested ...

23 December 1991: ... [The applicant's husband] has not gone

for HIV tests and is of the opinion that he is not a carrier

of the virus ..."

32. The police also seized results from a large number of

laboratory tests and examinations concerning matters other than the

existence of HIV in the applicant's blood, including information about

her previous illnesses, her mental state and a survey into her quality

of life based on a self-assessment.

On 10 March 1993 the City Court decided to include the copies

of the seized records in its case file. On the same day it heard

Dr S.V. as an expert called by the prosecution.

E. Conviction of X by the City Court and appeals to the

Helsinki Court of Appeal

33. On 19 May 1993 the City Court, amongst other things, convicted

X on three counts of attempted manslaughter committed on 1 March,

31 August and 10 September 1992 but dismissed the charge of attempted

manslaughter for the offence committed on 19 December 1991 and, as

regards the latter, convicted him of rape instead. The City Court

sentenced him to terms of imprisonment totalling seven years.

The City Court published the operative part of the judgment,

an abridged version of its reasoning and an indication of the law which

it had applied in the case. The City Court ordered that the full

reasoning and the documents in the case be kept confidential for

ten years. Both the complainants as well as X had requested a longer

period of confidentiality.

34. The complainants, X and the prosecution all appealed against

the City Court's judgment to the Helsinki Court of Appeal (hovioikeus,

hovrätten).

35. At a hearing in camera before the Court of Appeal on

14 October 1993, all the appellants requested that the duration of the

confidentiality order be extended; an extension to thirty years was

discussed. X's lawyer also informed the court about the applicant's

wish that the order be extended.

36. In a judgment of 10 December 1993, a copy of which was made

available to the press (see paragraph 43 below), the Court of Appeal,

inter alia, upheld the conviction of X on three counts of attempted

manslaughter and, in addition, convicted him on two further such counts

related to offences committed on 19 December 1991 and 6 September 1992.

It increased his total sentence to eleven years, six months and

twenty days' imprisonment.

As regards the two additional counts of attempted manslaughter,

the judgment stated:

"... According to [X - mentioned by his first names and family name] he found out that he was suffering from an HIV infection on 19 March 1992 ... He denied having undergone any HIV examination since being tested in Kenya in January 1990. According to [X], the result of the HIV test was negative ... [He] cannot therefore be considered to have known with certainty that he was infected with HIV prior to receiving the results of the test on 19 March 1992.

[X] and [the applicant - mentioned by her first names and family name] got married on 12 April 1990. On 31 August 1990 [the applicant] was found to be an HIV carrier. When she gave evidence before the City Court, [she] said that she had informed X of this finding at the end of 1990. In the Court of Appeal, X said that the applicant had already informed him about her disease before he came to Finland in January 1991. [He] also said that while they were both living in Africa [the applicant] had been suffering from some undefined disease. [She] had then also suspected that she might have become contaminated with HIV but her infection had only been discovered after [she] had returned to Finland.

On the basis of the above statements by the spouses ... it must be considered established that, given the status of [X's] wife as an HIV carrier, [X] had particular reason to suspect that the infection had been transmitted through their sexual intercourse.

According to [Dr J.S.], a witness before the City Court, [X] must, on the basis of the symptoms of his disease, be considered to have been infected with HIV at least a year before the blood test performed in March 1992 ... According to [Dr S.V.], the disease with symptoms of fever which, according to [the applicant's] medical records, she is reported to have suffered from in January 1990 and which was treated as malaria is quite likely to have been a primary HIV infection. Regard being had to the fact that, when she contracted [her] disease with symptoms of fever at the end of 1989 or the beginning of 1990, [the applicant] was staying in Mombasa, where she had also met [X], the Court of Appeal finds Dr S.V.'s opinion concerning the primary HIV infection credible. Taking into account the moment when [the applicant] was found to be an HIV carrier, the Court of Appeal finds it likely that she contracted the [disease] from [X].

On these grounds the Court of Appeal considers that [X] must

have been aware of his HIV infection at the latest by December 1991. The fact that [he] nevertheless chose not to undergo any HIV examinations other than those referred to above shows that his attitude towards the possibility that others might be contaminated [with HIV] was at best indifferent. Such an attitude must, as regards the question of intent, be considered in the same way as if the perpetrator had known with certainty that he had the disease. When assessing [X's] intent, his conduct must therefore be viewed in the same way on all the counts of attempted manslaughter with which he has been charged.

...

It has been shown in this case that, on the basis of current knowledge, an HIV infection is lethal. [X] has admitted that, before arriving in Finland, he had already become familiar with the nature of [this] disease and the ways in which it could spread. Having regard also to [his] statement that he had [previously] stayed in Uganda, Kenya and Rwanda, Uganda being a country where the disease is particularly widespread, and the general knowledge that [the disease] is lethal, and [noting] that [X's] wife has also fallen ill [with this disease], [the Court of Appeal] finds it likely that [X] was

familiar with the significant risk of contamination and the lethal effects of [the disease].

According to [senior doctor L.] and [Dr S.V.], who were called as witnesses, the disease may spread through a single act of sexual intercourse ... X must thus have realised that his acts entailed, as a probable consequence, subjecting [the complainants] to a risk that they would be contaminated with HIV. Given that he has nevertheless acted in the manner established, his acts must be considered intentional. In this respect the Court of Appeal has also taken into account that [X] did not inform the complainants of the possible risk of contamination.

...

... [X] must therefore be considered to have committed attempted manslaughter ... on 19 December 1991 and 6 September 1992 also ..."

The Court of Appeal in addition upheld the City Court's decision that the case documents should remain confidential for a period of ten years.

37. On 26 September 1994 the Supreme Court (korkein oikeus, högsta domstolen) refused to grant X leave to appeal.

F. Application to the Supreme Court for an order quashing or reversing the Court of Appeal's judgment

38. On 19 May 1995 the applicant applied to the Supreme Court for an order quashing (poistaa, undanröja) the Court of Appeal's judgment in so far as it permitted the information and material about her to become available to the public as from 2002. In her view, the Court of Appeal's failure to hear her submissions before deciding whether and for how long the relevant medical records should be kept confidential amounted to a procedural error. That part of its judgment had been prejudicial to her.

In the alternative, she applied for an order reversing (purkaa, återbryta) the Court of Appeal's judgment, on the grounds that it had manifestly been based on an incorrect application of the law and was incompatible with Article 8 of the Convention (art. 8) in that it was neither "in accordance with the law" nor "necessary in a democratic society".

In the event that the Court of Appeal's judgment be quashed or reversed, the applicant requested that the matter be referred back to

the Court of Appeal, so that she could make submissions.

39. On 22 May 1995 the applicant requested the

Helsinki Police Department to make enquiries as to who had informed the

police that she was HIV-positive (see paragraph 12 above). She

withdrew her request the following month.

40. On 1 September 1995 the Supreme Court dismissed the applicant's

application for an order quashing or reversing the Court of Appeal's

judgment. The first application had been lodged out of time and she

did not have locus standi to make the second.

G. Press coverage of the case

41. On 15 June 1992 the large-circulation evening newspaper

Ilta-Sanomat reported X's trial, stating that he was infected with HIV

and that it was not yet certain whether the applicant was also

infected, as she had refused to give evidence.

42. On 9 April 1993 the leading daily Helsingin Sanomat reported

the seizure of the applicant's medical records under the headline

"Prosecutor obtains medical records of wife of man accused of

HIV rapes". The article stated that the wife of X, whose first name

and family name were mentioned in full, was a patient in a

hospital unit treating patients suffering from HIV infection.

43. The Court of Appeal's judgment of 10 December 1993 was reported

by various newspapers, including Helsingin Sanomat which, after

receiving it by fax from the Court of Appeal, published an article on

16 December 1993. The article stated that the conviction had been

based on the statement of "[X]'s Finnish wife", while mentioning his

name in full; in addition, it referred to the Court of Appeal's finding

that the applicant was HIV-positive.

II. Relevant domestic law

A. Obligation to report contagious diseases and confidentiality

of medical records

44. Under the Contagious Diseases Act 1986 and implementing decree

(tartuntatautilaki 583/86 ja -asetus 786/86, lag 583/86 och förordning

786/86 om smittsamma sjukdomar), a person who is suffering from a

disease such as infection with HIV or who it is found might have

contracted such a disease must, on request, inform his or her doctor

of the likely source of contamination (section 22 (2) of the Act and

section 2 of the decree).

45. Under the Patients' Status and Rights Act 1992 (laki potilaan

asemasta ja oikeuksista, lag om patientens ställning och rättigheter

785/92) which entered into force on 1 May 1993, medical records must

be kept confidential. Information may only be disclosed to a

third party with the patient's written consent. It may nevertheless

be disclosed to, among others, a court of law, another authority or an

association which has been granted access thereto by law (section 13).

B. A medical doctor's rights and obligations with respect to

confidentiality when giving evidence

46. Under chapter 17, Article 23 para. 1 (3), of the

Code of Judicial Procedure, a doctor of medicine may not, without his

or her patient's consent, give information as a witness which he or she

has obtained in his or her professional capacity and which, because of

its nature, should be kept confidential.

However, paragraph 3 provides that a doctor may be ordered to

give evidence as a witness in connection with a charge relating to an

offence for which a sentence of at least six years' imprisonment is

prescribed (as is the case with regard to manslaughter and attempted

manslaughter).

In such cases, section 27 (2) of the

Pre-trial Investigation Act 1987 (esitutkintalaki, förundersökningslag

449/87) entitles doctors to give evidence even during the

pre-trial investigation.

47. Section 28 (1) of that Act provides:

"If a witness manifestly has knowledge about a matter of

importance to the clarification of [a suspect's] guilt and if

he [or she] refuses to reveal this even though obliged to do

so or, under section 27 (2), entitled to do so, the court may,

at the request of the chief investigating officer, require

[the witness] to disclose his knowledge about the matter. In

such cases all or part of the questioning of the witness may

take place in court."

A party to the pre-trial investigation and his counsel may

attend the proceedings in which such a request by the

chief investigating officer is considered and the actual hearing where

the witness gives evidence (section 28 (2)).

C. Seizure of confidential documents

48. Chapter 4, section 2 (2), of the Coercive Means of Criminal Investigation Act 1987 (pakkokinolaki, tvångsmedelslagen 450/87) provides:

"A document shall not be seized for evidential purposes if it may be presumed to contain information in regard to which a person referred to in chapter 17, Article 23, of the Code of Judicial Procedure is not allowed to give evidence at a trial ..., and [provided that] the document is in the possession of that person or the person for whose benefit the secrecy obligation has been prescribed. A document may nevertheless be seized if, under section 27 (2) of the Pre-trial Investigation Act, a person [referred to in chapter 17, Article 23, of the Code of Judicial Procedure] would have been entitled or obliged to give evidence in the pre-trial investigation about the matter contained in the document."

49. Chapter 4, section 13, of the Act reads:

"At the request of a person whom the case concerned, the court shall decide whether the seizure shall remain in force. A request which has been submitted to the court before its examination of the charges shall be considered within a week from its reception by the court. The examination of such a

request is, in as far as appropriate, governed by the provisions in chapter 1, sections 9 and 12, on the examination of requests for detention on remand. The court shall reserve those with an interest in the matter an opportunity to be heard, but the absence of anyone shall not preclude a decision on the issue."

D. Access by the public to official documents

50. Under the Publicity of Official Documents Act 1951 (laki yleisten asiakirjain julkisuudesta, lag om allmänna handlingars offentlighet 83/51), official documents are in principle public (section 1). They include not only documents drawn up and issued by an authority but also documents submitted to an authority and which are in its possession (section 2 (1)). A pre-trial investigation record, however, shall not be public until the matter has been brought before a court or the police investigation has been closed without charges being brought (section 4).

Everyone has access to official public documents (section 6, as amended by Act no. 739/88). However, medical reports are accessible to the public only with the consent of the person to whom they

relate

(section 17). In the absence of such consent, a party to

criminal proceedings shall nevertheless have access to such documents

if they are capable of affecting the outcome of the case

(section 19 (1), as amended by Act no. 601/82).

51. Documentary evidence obtained during a pre-trial investigation

shall be kept in a record of investigation, if this is considered

necessary for the further consideration of the case. The record shall

include all documents assumed to be of importance and indicate,

inter alia, whether other documentary evidence has been obtained but

omitted from the record (section 40 of the

Pre-trial Investigation Act).

52. If all or part of an oral hearing has been held in camera or

if, during such a hearing, any confidential document or information has

been submitted, the court may decide that all or part of the case

material be kept confidential for up to forty years. The operative

part of the judgment and the legal provisions relied on shall always

be made public (section 9 of the

Publicity of Court Proceedings Act 1984 (laki oikeudenkäynnin

julkisuudesta, lag om offentlighet vid rättegång 945/84)).

No separate appeal against a decision concerning the publicity of proceedings is allowed (section 11). The decision must thus be challenged in an ordinary appeal lodged by a party to the proceedings.

E. Disclosure of confidential information

53. Under the 1889 Penal Code (rikoslaki, strafflag 39/1889), the disclosure of confidential information by a civil servant or a public employee is a criminal offence (chapter 40, which has been amended subsequently).

54. Under the Constitution (Suomen hallitusmuoto, Regeringsform för Finland 94/19), anyone whose rights have been infringed and who has suffered damage as a result of an illegal act, or by the negligence, of a civil servant, is entitled to prosecute the civil servant, or to demand that he or she be prosecuted, and to claim damages (Article 93 para. 2). Under the Damage Compensation Act 1974 (vahingonkorvauslaki, skadeståndslag 412/74) proceedings may also be brought against the State for actions taken by civil servants (chapters 3 and 4).

55. A person involved in a pre-trial investigation may be prohibited, on pain of a fine or a maximum of six months' imprisonment,

from revealing information concerning third parties which was not

previously known to him or her and which relates to the investigation.

Such a prohibition may be imposed if the disclosure of such information

in the course of the investigation is liable to jeopardise the

investigation or to cause harm or be prejudicial to a party to the

investigation or to any third party. Heavier sentences may be imposed

if the disclosure constitutes a separate offence (section 48 of the

Pre-trial Investigation Act).

56. Under the Publicity of Official Documents Act 1951, neither

parties nor their representatives are allowed to disclose confidential

material which has been made available to them in their capacity as

parties to persons not involved in the proceedings (section 19a).

Disclosure in breach of this rule is punishable by a fine (section 27).

PROCEEDINGS BEFORE THE COMMISSION

57. In her application to the Commission of 21 May 1993

(no. 22009/93), Mrs Z complained that there had been violations of her

right to respect for private and family life as guaranteed by Article 8

of the Convention (art. 8) on account, in particular, of (1) the orders

imposed on her doctors and psychiatrist to give evidence and disclose

information about her in the criminal proceedings against her husband;

(2) the seizure of her medical records at the hospital where she had

been treated and their inclusion in their entirety in the investigation

file; (3) the decisions of the competent courts to limit the

confidentiality of the trial record to a period of ten years; and

(4) the disclosure of her identity and medical data in the

Court of Appeal's judgment. She also alleged that, contrary to

Article 13 of the Convention (art. 13), she had not been afforded an

effective remedy with respect to her complaints under Article 8

(art. 8).

On 28 February 1995 the Commission declared the application

admissible. In its report of 2 December 1995 (Article 31) (art. 31),

it expressed the unanimous opinion that there had been a violation of

Article 8 (art. 8) and that it was not necessary to examine whether

there had also been a violation of Article 13 (art. 13). The full text

of the Commission's opinion is reproduced as an annex to this

judgment (1).

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Note by the Registrar

1. For practical reasons this annex will appear only with the printed

version of the judgment (in Reports of Judgments and Decisions 1997-I),

but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

58. At the hearing on 29 August 1996 the Government, as they had

done in their memorial, invited the Court to hold that there had been

no violation of the Convention.

59. On the same occasion the applicant reiterated her request to

the Court, stated in her memorial, to find that there had been

violations of both Article 8 and Article 13 (art. 8, art. 13) and to

award her just satisfaction under Article 50 of the Convention

(art. 50).

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (art. 8)

60. The applicant alleged that she had been a victim of violations

of Article 8 of the Convention (art. 8), which provides:

"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 Government contested this allegation, whereas the Commission concluded that there had been a violation of this provision (art. 8).

A. Scope of the issues before the Court

1. Allegation of leak of medical data

62. In her application to the Commission the applicant complained, amongst other things, about the failure of the Finnish authorities to prevent the disclosure by the press of her identity and her medical condition as an HIV carrier and the termination of her employment contract. After the Commissions's decision declaring the

application admissible and in the light of new information obtained in

the course of the proceedings before it, she elaborated on those

allegations, maintaining that the information in question had been

leaked by the police or other public authority.

In her memorial to the Court, the applicant sought to clarify

these allegations. She had not intended to complain about the

newspaper coverage or her dismissal, but only about the alleged leak,

for which the respondent State was responsible. This fact on its own

gave rise, in her view, to a violation of Article 8 (art. 8).

63. The Government, referring to the above clarification,

considered the claim to be devoid of any real content.

64. The Commission did not find it necessary to examine the matter

on the merits and the Delegate added at the Court's hearing that the

evidence adduced was incomplete on this point.

65. Nor does the Court find it established that there had been a

leak of confidential medical data concerning the applicant for which

the respondent State could be held responsible under Article 8

(art. 8).

2. Allegation of discrimination

66. The applicant also complained before the Court that the reasoning in the Court of Appeal's judgment was biased, not only against her former husband on the grounds of race, but also against her on the grounds of sex. The interference with her right to respect for her private and family life had been motivated by the fact that she had been a woman married to a black person from Africa.

67. The Government disputed the above contentions. The applicant had not referred to Article 14 of the Convention (art. 14) in the proceedings before the Commission, which had not examined any such allegations. She should be considered barred from pursuing any such claim before the Court.

68. The Delegate of the Commission did not express any views on the matter.

69. In the Court's view, the applicant's allegation that she was subjected to discriminatory treatment does not appear to be an elaboration of her complaints declared admissible by the Commission; it seems rather to be a separate and new complaint which is not covered by the Commission's decision on admissibility. The Court has therefore

no jurisdiction to entertain it (see, for instance, the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 30-31, para. 75; and the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 20, para. 60).

3. Conclusion

70. The Court will therefore confine its examination to the other matters complained of by the applicant, namely (1) the orders requiring her doctors to give evidence in the criminal proceedings against her husband, (2) the seizure of her medical records and their inclusion in the investigation file, (3) the decision to make the material in question accessible to the public as from the year 2002 and (4) the disclosure of her identity and medical condition in the Court of Appeal's judgment.

B. Whether there was an interference with the applicant's right to respect for her private and family life

71. It was undisputed that the various measures complained of constituted interferences with the applicant's right to respect for her private and family life as guaranteed by paragraph 1 of Article 8 of the Convention (art. 8-1). The Court sees no reason to hold otherwise.

It must therefore examine whether they fulfilled the conditions in paragraph 2 of that Article (art. 8-2).

C. Whether the interferences were justified

1. "In accordance with the law"

72. The applicant complained that the four contested measures all stemmed from the fact that her medical data had been communicated in the proceedings against X in application of chapter 17, Article 23 para. 3, of the Code of Judicial Procedure (see paragraph 46 above), which provision was in her view couched in "dangerously" broad terms.

She submitted that that provision failed to specify the group of persons whose medical information could be used in criminal proceedings. Nor did the relevant law afford a right for the persons concerned to be heard prior to the taking of such measures or a remedy to challenge these. The seizure of medical records and their inclusion in an investigation file did not even require a court order.

Thus the legislation could not be said to fulfil the requirements of precision and foreseeability flowing from the expression "in accordance

with the law".

73. The Court, however, sharing the views of the Commission and the

Government, finds nothing to suggest that the measures did not comply

with domestic law or that the effects of the relevant law were not

sufficiently foreseeable for the purposes of the quality requirement

which is implied by the expression "in accordance with the law" in

paragraph 2 of Article 8 (art. 8-2).

2. Legitimate aim

74. The applicant maintained that the medical data in question had

not been of such importance in the trial against X as to suggest that

the impugned measures had pursued a legitimate aim for the purposes of

paragraph 2 of Article 8 (art. 8-2).

75. However, the Court is not persuaded by this argument which is

essentially based on an ex post facto assessment by the applicant of

the importance of the evidence concerned for the outcome of the

proceedings against X. What matters is whether, at the time when the

contested measures were taken, the relevant authorities sought to

achieve a legitimate aim.

76. In this respect the Court agrees with the Government and the

Commission that, at the material time, the investigative measures in

issue (see paragraphs 23, 26 and 29-32 above) were aimed at the

"prevention of ... crime" and the "protection of the rights and

freedoms of others".

77. As regards the ten-year limitation on the confidentiality

order, the Court recognises that there is a public interest in ensuring

the transparence of court proceedings and thereby the maintenance of

the public's confidence in the courts (see paragraphs 33, 35 and 36

above). The limitation in question would, under Finnish law, enable

any member of the public to exercise his or her right to have access

to the case material after the expiry of the confidentiality order.

It could therefore, as suggested by the Government and the Commission,

be said to have been aimed at protecting the "rights and freedoms of

others".

On the other hand, unlike the Government and the Commission,

the Court does not consider that it could be regarded as being aimed

at the prevention of crime.

78. As to the publication of the applicant's full name as well as her medical condition following their disclosure in the Court of Appeal's judgment (see paragraph 36 above), the Court, unlike the Government and the Commission, has doubts as to whether this could be said to have pursued any of the legitimate aims enumerated in paragraph 2 of Article 8 (art. 8-2). However, in view of its findings in paragraph 113 below, the Court does not deem it necessary to decide this issue.

3. "Necessary in a democratic society"

(a) Arguments of those appearing before the Court

(i) The applicant and the Commission

79. The applicant and the Commission were of the view that her right to respect for her private and family life under Article 8 (art. 8) had been interfered with in a manner which could not be said to have been "necessary in a democratic society".

However, their conclusions on this point differed. Whereas the applicant alleged that each measure on its own constituted a violation of Article 8 (art. 8), the Commission found a violation by considering

them globally. The Delegate explained that, because of the strong links between the various measures and their consequences for the applicant, an overall assessment provided a better basis for the balancing of interests to be exercised under the necessity test. There were also certain differences between their respective arguments. They could be summarised in the following way.

80. In the applicant's submission, there was no reasonable relationship of proportionality between any legitimate aim pursued by the measures in question and her interest in maintaining the confidentiality of her identity and her medical condition.

As regards the orders requiring her doctors and psychiatrist to give evidence, she observed that the conviction of X on five, as opposed to three, counts of attempted manslaughter had hardly affected the severity of the sentence and the possibility for the victims of obtaining damages from him. He would in any event have been sentenced for sexual offences in relation to the two remaining counts. In view of the obligation of an HIV carrier under Finnish law to inform his or her doctor of the likely source of the disease (see paragraph 44 above), the contested orders were likely to have deterred

potential and

actual HIV carriers in Finland from undergoing blood tests and from

seeking medical assistance.

As to the seizure of the medical records and their inclusion

in the investigation file (see paragraphs 31-32 above), a substantial

part of this material had clearly been irrelevant to the case against

X and none of it had contained any information which could have been

decisive for determining when X had become aware of his HIV infection.

There were certain isolated annotations in the records of statements

by Z concerning X, but their importance was only theoretical. The

City Court was under no obligation to admit the filing of all of the

evidence derived from the seizure.

Against this background, there could be no justification for

the decision to make the trial record accessible to the public as early

as ten years later, in the year 2002.

Nor had it been "necessary" for the Court of Appeal to disclose

her identity and details of her medical condition in its judgment and

to fax this to Finland's largest newspaper (see paragraph 43

above),

which measure had been particularly damaging to her private and

professional life. At the Court of Appeal's hearing, X's lawyer had

made it entirely clear that Z did not wish any information about her

to be published.

81. Unlike the applicant, the Commission was satisfied that the

measures in issue were justified on their merits in so far as the

competent national authorities had merely sought to obtain evidence on

when X had become aware of his HIV infection. It had regard to the

weighty public and private interests in pursuing the investigation of

the offences of attempted manslaughter.

On the other hand, the Commission, like the applicant, was of

the opinion that the measures in question had not been accompanied by

sufficient safeguards for the purposes of paragraph 2 of Article 8

(art. 8-2).

82. In the first place, the Commission observed that the applicant

had been given no prior warning of the first order to senior doctor L.

to give evidence (see paragraph 23 above), nor of the fact that her

medical records were to be seized and that copies thereof were to

be

included in the investigation file (see paragraphs 31-32 above). As

she had not been properly informed of the various investigatory

measures in advance, she had not been able to object to them

effectively. Also, in this connection, the applicant pointed out that,

not being a party to the proceedings and the court hearings being held

in camera (see paragraph 23 above), she had had no means of appearing

before the court to state her views.

It was not clear why it had been necessary to hear all the

doctors (see paragraphs 23, 26, 29 and 30 above) and what, if any,

efforts had been made to limit the questioning in such a way as to

minimise the interference complained of.

83. Moreover, there was no indication that the police had exercised

their discretion to protect at least some of the information emanating

from the applicant's medical records, notably by excluding certain

material from the investigation file.

On this point, the applicant also contended that she had not

been afforded a remedy to challenge the seizure of the records or their

inclusion in the file.

84. Furthermore, whilst it was possible under Finnish law to keep court records confidential for up to forty years (see paragraph 52 above) and all the parties to the proceedings had requested thirty years, the City Court had decided to limit the order to ten years (see paragraph 33 above), which decision had been upheld by the Court of Appeal (see paragraph 36 above).

Any possibility which the applicant might have had to ask the Supreme Court to quash the confidentiality order would not have provided her with an adequate safeguard. There was no provision entitling her to be heard by the Court of Appeal and all the parties who had been heard on the matter had unsuccessfully asked for an extension of the order (see paragraph 35 above).

85. In addition, the Court of Appeal, by having the reasoning of its judgment published in full, had disclosed the applicant's identity and her HIV infection (see paragraph 36 above). She had had no effective means of opposing or challenging this measure.

(ii) The Government

86. The Government contested the conclusions reached by the applicant and the Commission. In the Government's opinion, the various measures complained of were all supported by relevant and

sufficient

reasons and, having regard to the safeguards which existed, were

proportionate to the legitimate aims pursued. They invited the Court

to examine each of the measures separately.

87. In the Government's submission, both the taking of evidence

from the applicant's doctors and psychiatrist and the production of her

medical records at the trial had been vital in securing X's conviction

and sentence on two of the five counts of attempted manslaughter

(see paragraphs 33 and 36 above). The purpose of these measures had

been confined to seeking information on when X had become aware of his

HIV infection or had reason to suspect that he was carrying the

disease.

88. They further maintained that it had been necessary to hear all

the doctors because of the nature of the information sought, the

seriousness of the offences in question and what was at stake for the

accused.

The orders requiring the doctors and the psychiatrist to give

evidence had been taken by the City Court and the applicant's

objections thereto had been drawn to its attention on 3 March 1993,

when senior doctor L. had read out her letter to the court

(see paragraph 29 above).

89. Moreover, the Government argued that, since all the records had

had a potential relevance to the question as to when X had become aware

of or had reason to suspect his HIV infection, it had been reasonable

that the material in its entirety be seized and included in the

investigation file. Having regard to the variety of symptoms of an

HIV infection and the difficulty of judging whether an illness had been

HIV-related, it had been essential that the competent courts be able

to examine all the material. To exclude any of it would have given

rise to doubts as to its reliability.

In addition, the Government pointed out that the applicant

could have challenged the seizure under section 13 of chapter 4 of the

Coercive Means of Criminal Investigation Act 1987 (see paragraph 49

above).

90. Bearing in mind the public interest in publicity of

court proceedings, the Government considered it reasonable in the

circumstances of the case to limit the confidentiality order to

ten years. When heard as a witness, Mrs Z had not expressly requested

that her medical data remain confidential and that she should not be

identified in the Court of Appeal's judgment.

91. The reference to the applicant as X's wife in the

Court of Appeal's judgment had been an indispensable element of its

reasoning and conclusion (see paragraph 36 above). The fact that the

judgment had disclosed her name had been of no significance to her

interests. As with the victims of the offences committed by X, it

would have been possible to omit mentioning her name, had she expressed

any wish to this effect.

92. Finally, in addition to the above safeguards, the Government

pointed to the civil and criminal remedies for breach of

confidentiality by civil servants which had been available to the

applicant under Finnish law and to the possibility of lodging a

petition with the parliamentary ombudsman or with the

Chancellor of Justice (see paragraphs 53-56 above).

93. In the light of the foregoing, the Government were of the view

that the Finnish authorities had acted within the margin of

appreciation left to them in the matters in issue and that,

accordingly, none of the contested measures had given rise to a violation of Article 8 of the Convention (art. 8).

(b) The Court's assessment

94. In determining whether the impugned measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued.

95. In this connection, the Court will take into account that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention (art. 8). Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and

intimate nature as may be necessary in order to receive appropriate

treatment and, even, from seeking such assistance, thereby endangering

their own health and, in the case of transmissible diseases, that of

the community (see Recommendation no. R (89) 14 on "The ethical issues

of HIV infection in the health care and social settings", adopted by

the Committee of Ministers of the Council of Europe on 24 October 1989,

in particular the general observations on confidentiality of

medical data in paragraph 165 of the explanatory memorandum).

The domestic law must therefore afford appropriate safeguards

to prevent any such communication or disclosure of personal health data

as may be inconsistent with the guarantees in Article 8 of the

Convention (art. 8) (see, mutatis mutandis, Articles 3 para. 2 (c), 5,

6 and 9 of the Convention for the Protection of Individuals with Regard

to Automatic Processing of Personal Data,

European Treaty Series no. 108, Strasbourg, 1981).

96. The above considerations are especially valid as regards

protection of the confidentiality of information about a person's

HIV infection. The disclosure of such data may dramatically affect his

or her private and family life, as well as social and employment

situation, by exposing him or her to opprobrium and the risk of

ostracism. For this reason it may also discourage persons from seeking

diagnosis or treatment and thus undermine any preventive efforts by the

community to contain the pandemic (see the above-mentioned explanatory

memorandum to Recommendation no. R (89) 14, paragraphs 166-68). The

interests in protecting the confidentiality of such information will

therefore weigh heavily in the balance in determining whether the

interference was proportionate to the legitimate aim pursued. Such

interference cannot be compatible with Article 8 of the Convention

(art. 8) unless it is justified by an overriding requirement in the

public interest.

In view of the highly intimate and sensitive nature of

information concerning a person's HIV status, any State measures

compelling communication or disclosure of such information without the

consent of the patient call for the most careful scrutiny on the part

of the Court, as do the safeguards designed to secure an effective

protection (see, mutatis mutandis, the Dudgeon v. the United Kingdom

judgment of 22 October 1981, Series A no. 45, p. 21, para. 52; and the

Johansen v. Norway judgment of 7 August 1996, Reports of Judgments and

Decisions 1996-III, pp. 1003-04, para. 64).

97. At the same time, the Court accepts that the interests of a

patient and the community as a whole in protecting the confidentiality

of medical data may be outweighed by the interest in investigation and

prosecution of crime and in the publicity of court proceedings

(see, mutatis mutandis, Article 9 of the above-mentioned

1981 Data Protection Convention), where such interests are shown to be

of even greater importance.

98. It must be borne in mind in the context of the investigative

measures in issue that it is not for the Court to substitute its views

for those of the national authorities as to the relevance of evidence

used in the judicial proceedings (see, for instance, the

above-mentioned Johansen judgment, pp. 1006-07, para. 73).

99. As to the issues regarding access by the public to personal

data, the Court recognises that a margin of appreciation should

be left

to the competent national authorities in striking a fair balance

between the interest of publicity of court proceedings, on the one

hand, and the interests of a party or a third person in maintaining the

confidentiality of such data, on the other hand. The scope of this

margin will depend on such factors as the nature and seriousness of the

interests at stake and the gravity of the interference (see, for

instance, the Leander v. Sweden judgment of 26 March 1987, Series A

no. 116, p. 25, para. 58; and, mutatis mutandis, the

Manoussakis and Others v. Greece judgment of 26 September 1996,

Reports 1996-IV, p. 1364, para. 44).

100. It is in the light of the above considerations that the Court

will examine the contested interferences with the applicant's right to

respect for her private and family life.

Since the various measures were different in character, pursued

distinct aims and infringed upon her private and family life to a

different extent, the Court will examine the necessity of each measure

in turn.

101. Before broaching these issues, the Court observes at the outset

that, although the applicant may not have had an opportunity to be heard directly by the competent authorities before they took the measures, they had been made aware of her views and interests in these matters.

All her medical advisers had objected to the various orders to testify and had thus actively sought to protect her interests in maintaining the confidentiality of her medical data. At an early stage, her letter to senior doctor L., urging him not to testify and stating her reasons, had been read out to the City Court (see paragraphs 23, 26, 29 and 30 above).

In the above-mentioned letter, it was implicit, to say the least, that she would for the same reasons object also to the communication of her medical data by means of seizure of her medical records and their inclusion in the investigation file, which occurred a few days later (see paragraphs 31 and 32 above). According to the applicant, her lawyer had done all he could to draw the public prosecutor's attention to her objections to her medical data being used in the proceedings.

Moreover, before upholding the ten-year limitation on the confidentiality order, the Court of Appeal had been informed by

X's

lawyer of the applicant's wish that the period of confidentiality be

extended (see paragraph 35 above).

In these circumstances, the Court is satisfied that the

decision-making process leading to the measures in question was such

as to take her views sufficiently into account for the purposes of

Article 8 of the Convention (art. 8) (see, mutatis mutandis, the

W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121,

pp. 28-29, paras. 62-64; and the above-mentioned Johansen judgment,

pp. 1004-05, para. 66). Thus, the procedure followed did not as such

give rise to any breach of that Article (art. 8).

In this connection, the Court takes note of the fact that,

according to the Government's submissions to the Court, it would have

been possible for the applicant to challenge the seizure before the

City Court (see paragraph 49 above). Also, as is apparent from the

Supreme Court's decision of 1 September 1995, she was able under

Finnish law to apply - by way of an extraordinary procedure - for an

order quashing the Court of Appeal's judgment in so far as it permitted

the information and material about her to be made accessible to the

public as from 2002 (see paragraph 40 above).

(i) The orders requiring the applicant's doctors and

psychiatrist to give evidence

102. As regards the orders requiring the applicant's doctors and

psychiatrist to give evidence, the Court notes that the measures were

taken in the context of Z availing herself of her right under

Finnish law not to give evidence against her husband

(see paragraphs 14, 17 and 21 above). The object was exclusively to

ascertain from her medical advisers when X had become aware of or had

reason to suspect his HIV infection. Their evidence had the

possibility of being at the material time decisive for the question

whether X was guilty of sexual offences only or in addition of the more

serious offence of attempted manslaughter in relation to two offences

committed prior to 19 March 1992, when the positive results of the

HIV test had become available. There can be no doubt that the

competent national authorities were entitled to think that very weighty

public interests militated in favour of the investigation and

prosecution of X for attempted manslaughter in respect of all of the

five offences concerned and not just three of them.

103. The Court further notes that, under the relevant Finnish law,

the applicant's medical advisers could be ordered to give evidence

concerning her without her informed consent only in very limited

circumstances, namely in connection with the investigation and the

bringing of charges for serious criminal offences for which a sentence

of at least six years' imprisonment was prescribed (see paragraph 46

above). Since they had refused to give evidence to the police, the

latter had to obtain authorisation from a judicial body - the

City Court - to hear them as witnesses (see paragraph 28 above). The

questioning took place in camera before the City Court, which had

ordered in advance that its file, including transcripts of witness

statements, be kept confidential (see paragraphs 19 and 23 above). All

those involved in the proceedings were under a duty to treat the

information as confidential. Breach of their duty in this respect

could lead to civil and/or criminal liability under Finnish law

(see paragraphs 53-56 above).

The interference with the applicant's private and family life

which the contested orders entailed was thus subjected to important

limitations and was accompanied by effective and adequate safeguards

against abuse (see, for instance, the Klass and Others v. Germany

judgment of 6 September 1978, Series A no. 28, pp. 23-24, paras. 49-50;

and the Leander judgment cited above, p. 25, para. 60).

In this connection, the Court sees no reason to question the

extent to which the applicant's doctors were ordered to give evidence

(see paragraphs 23, 26 and 30 above). As indicated above, the

assessment of the expediency of obtaining evidence is primarily a

matter for the national authorities and it is not for the Court to

substitute its views for theirs in this regard (see paragraph 98

above).

104. In view of the above factors, in particular the confidential

nature of the proceedings against X, as well as their highly

exceptional character, the Court is not persuaded by the applicant's

argument that the various orders to give evidence were likely to have

deterred potential and actual HIV carriers in Finland from undergoing

blood tests and from seeking medical treatment.

105. In the light of the foregoing, the Court finds that the

various

orders requiring the applicant's medical advisers to give evidence were

supported by relevant and sufficient reasons which corresponded to an

overriding requirement in the interest of the legitimate aims pursued.

It is also satisfied that there was a reasonable relationship of

proportionality between those measures and aims. Accordingly, there

has been no violation of Article 8 (art. 8) on this point.

(ii) Seizure of the applicant's medical records and

their inclusion in the investigation file

106. The seizure of the applicant's medical records and their

inclusion in the investigation file were complementary to the orders

compelling the medical advisers to give evidence. Like the latter

measures, the former were taken in the context of the applicant

refusing to give evidence against her husband and their object was to

ascertain when X had become aware of his HIV infection or had reason

to suspect that he was carrying the disease. They were based on the

same weighty public interests (see paragraph 102 above).

107. Furthermore, they were subject to similar limitations and

safeguards against abuse (see paragraph 103 above). The substantive

conditions on which the material in question could be seized were

equally restrictive (see paragraphs 46 and 48 above). More

importantly, the material had been submitted in the context of

proceedings held in camera, and the City Court had decided that the

case documents should be treated as confidential, which measure was

protected largely by the same rules and remedies as the witness

statements (see paragraphs 23 and 53-56 above).

108. It is true, however, that the seizure, unlike the taking of

evidence from the doctors and psychiatrist, had not been authorised by

a court but had been ordered by the prosecution (see paragraph 31

above).

Nevertheless, under the terms of the relevant provision in

chapter 4, section 2 (2), of the Coercive Means of

Criminal Investigation Act, a condition for the seizure of the

medical records concerned was that the applicant's doctors would be

"entitled or obliged to give evidence in the pre-trial investigation

about the matter contained in the document[s]" (see paragraph 48

above). The legal conditions for the seizure were thus essentially the

same as those for the orders on the doctors to give evidence.

Furthermore, prior to the seizure of the documents, the

City Court had already decided that at least two of the doctors should

be heard, whilst it required all the other doctors to give evidence

shortly afterwards (see paragraphs 23, 26 and 30 above). The day

following the seizure, the City Court, which had power to exclude

evidence, decided to include all the material in question in its case

file (see paragraph 32 above). In addition, as already noted, the

applicant had the possibility of challenging the seizure before the

City Court (see paragraphs 49 and 101 above).

Therefore, the Court considers that the fact that the seizure

was ordered by the prosecution and not by a court cannot of itself give

rise to any misgivings under Article 8 (art. 8).

109. As to the applicant's submission that parts of the material had

been irrelevant and that none of it had been decisive in the trial

against X, the Court reiterates that the expediency of the adducing and

admission of evidence by national authorities in domestic proceedings

is primarily a matter to be assessed by them and that it is

normally

not within its province to substitute its views for theirs in this

respect (see paragraph 98 above). Bearing in mind the arguments

advanced by the Government as to the variety of data which could have

been relevant for the determination of when X was first aware of or had

reason to suspect his HIV infection (see paragraph 89 above), the Court

sees no reason to doubt the assessment by the national authorities on

this point.

110. Therefore, the Court considers that the seizure of the

applicant's medical records and their inclusion in the investigation

file were supported by relevant and sufficient reasons, the weight of

which was such as to override the applicant's interest in the

information in question not being communicated. It is satisfied that

the measures were proportionate to the legitimate aims pursued and,

accordingly, finds no violation of Article 8 (art. 8) on this point

either.

(iii) Duration of the order to maintain the

medical data confidential

111. As regards the complaint that the medical data in issue would become accessible to the public as from 2002, the Court notes that the ten-year limitation on the confidentiality order did not correspond to the wishes or interests of the litigants in the proceedings, all of whom had requested a longer period of confidentiality (see paragraph 35 above).

112. The Court is not persuaded that, by prescribing a period of ten years, the domestic courts attached sufficient weight to the applicant's interests. It must be remembered that, as a result of the information in issue having been produced in the proceedings without her consent, she had already been subjected to a serious interference with her right to respect for her private and family life. The further interference which she would suffer if the medical information were to be made accessible to the public after ten years is not supported by reasons which could be considered sufficient to override her interest in the data remaining confidential for a longer period. The order to

make the material so accessible as early as 2002 would, if implemented,

amount to a disproportionate interference with her right to respect for

her private and family life, in violation of Article 8 (art. 8).

However, the Court will confine itself to the above conclusion,

as it is for the State to choose the means to be used in its

domestic legal system for discharging its obligations under Article 53

of the Convention (art. 53) (see the Marckx v. Belgium judgment of

13 June 1979, Series A no. 31, pp. 25-26, para. 58).

(iv) Publication of the applicant's identity and

health condition in the Court of Appeal's

judgment

113. Finally, the Court must examine whether there were sufficient

reasons to justify the disclosure of the applicant's identity and

HIV infection in the text of the Court of Appeal's judgment made

available to the press (see paragraphs 36 and 43 above).

Under the relevant Finnish law, the Court of Appeal had the

discretion, firstly, to omit mentioning any names in the judgment

permitting the identification of the applicant and, secondly, to keep

the full reasoning confidential for a certain period and instead

publish an abridged version of the reasoning, the operative part

and

an indication of the law which it had applied (see paragraph 52 above).

In fact, it was along these lines that the City Court had published its

judgment, without it giving rise to any adverse comment

(see paragraph 33 above).

Irrespective of whether the applicant had expressly requested

the Court of Appeal to omit disclosing her identity and

medical condition, that court was informed by X's lawyer about her

wishes that the confidentiality order be extended beyond ten years

(see paragraph 35 above). It evidently followed from this that she

would be opposed to the disclosure of the information in question to

the public.

In these circumstances, and having regard to the considerations

mentioned in paragraph 112 above, the Court does not find that the

impugned publication was supported by any cogent reasons. Accordingly,

the publication of the information concerned gave rise to a violation

of the applicant's right to respect for her private and family life as

guaranteed by Article 8 (art. 8).

(v) Recapitulation

114. The Court thus reaches the conclusions that there has been no violation of Article 8 of the Convention (art. 8) (1) with respect to the orders requiring the applicant's medical advisers to give evidence or (2) with regard to the seizure of her medical records and their inclusion in the investigation file.

On the other hand, it finds (3) that making the medical data concerned accessible to the public as early as 2002 would, if implemented, give rise to a violation of that Article (art. 8) and (4) that there has been a violation thereof (art. 8) with regard to the publication of the applicant's identity and medical condition in the Court of Appeal's judgment.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION (art. 13)

115. The applicant also alleged that the lack of remedies to challenge each of the measures complained of under Article 8 (art. 8) gave rise to violations of Article 13 of the Convention (art. 13), which reads:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

116. The Government contested this view, whereas the Commission, having regard to its finding with regard to the complaints under Article 8 (art. 8), did not consider it necessary to examine whether there had also been a violation of Article 13 (art. 13).

117. The Court, having taken these matters into account in relation to Article 8 (art. 8) (see paragraphs 101, 103, 107 and 109 above), does not find it necessary to examine them under Article 13 (art. 13).

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

118. The applicant sought just satisfaction under Article 50 of the Convention (art. 50), 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

119. The applicant did not make any claim for pecuniary damage but requested the Court to award her 2 million Finnish marks (FIM) in compensation for non-pecuniary damage sustained as a result of the disclosure of her medical data, which had been widely disseminated by the press.

120. In the view of the Government the finding of a violation would in itself constitute adequate just satisfaction. In any event, an award to the applicant should not reach the level of the awards made in respect of the four victims of the offences committed by X, the highest of which had been FIM 70,000.

121. The Delegate of the Commission did not offer any comments on the matter.

122. The Court finds it established that the applicant must have suffered non-pecuniary damage as a result of the disclosure of her identity and medical condition in the Court of Appeal's judgment. It considers that sufficient just satisfaction would not be provided solely by the finding of a violation and that compensation has thus to be awarded. In assessing the amount, the Court does not consider itself bound by domestic practices, although it may derive some

assistance from them. Deciding on an equitable basis, it awards the

applicant FIM 100,000 under this head.

B. Costs and expenses

123. The applicant further requested the reimbursement of costs and

expenses, totalling FIM 239,838, in respect of the following items:

(a) FIM 4,800 in fees for work by Mr Fredman in the

domestic proceedings;

(b) by way of legal fees incurred before the Commission,

FIM 126,000 for Mr Fredman and FIM 24,000 for Mr Scheinin;

(c) for legal fees incurred before the Court up to and

including the memorial, FIM 16,800 for Mr Fredman and FIM 9,600 for

Mr Scheinin;

(d) FIM 49,800 for her lawyers' appearance before the Court;

(e) FIM 8,838 in translation expenses.

The above legal fees, which concerned 385 hours work at

FIM 600 per hour, should be increased by the relevant value-added tax

(VAT), whereas the amounts received in legal aid from the

Council of Europe should be deducted.

124. Whilst accepting item (a) and expressing no objection to

item (e), the Government regarded the number of hours in

connection

with items (b) to (d) as excessive.

125. The Delegate of the Commission did not state any views on the

matter.

126. The Court will consider the above claims in the light of the

criteria laid down in its case-law, namely 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

Tolstoy Miloslavsky v. the United Kingdom judgment of 13 July 1995,

Series A no. 316-B, p. 83, para. 77).

Applying these criteria, the Court considers that items (a)

and (e) should be reimbursed in their entirety.

As to items (b) to (d), the Court is not satisfied that all the

costs were necessarily incurred.

Deciding on an equitable basis, it awards the total sum of

FIM 160,000, to be increased by any applicable VAT, less the

10,835 French francs which the applicant has received in respect of

legal fees by way of legal aid from the Council of Europe.

C. Default interest

127. 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. Holds by eight votes to one that the orders requiring the applicant's medical advisers to give evidence did not constitute a violation of Article 8 of the Convention (art. 8);

2. Holds by eight votes to one that the seizure of the applicant's medical records and their inclusion in the investigation file did not give rise to a violation of Article 8 (art. 8);

3. Holds unanimously that the order to make the transcripts of the evidence given by her medical advisers and her medical records accessible to the public in 2002 would, if implemented, constitute a violation of Article 8 (art. 8);

4. Holds unanimously that the disclosure of the applicant's identity and medical condition by the Helsinki Court of Appeal constituted a breach of Article 8 (art. 8);

5. Holds unanimously that it is not necessary to examine the applicant's complaints under Article 13 of the Convention

(art. 13);

6. Holds unanimously:

(a) that the respondent State is to pay to the applicant, within three months,

100,000 (one hundred thousand) Finnish marks in compensation for non-pecuniary damage, and, for legal costs and expenses,

160,000 (one hundred and sixty thousand) Finnish marks, plus any applicable VAT, less 10,835 (ten thousand, eight hundred and thirty-five) 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 25 February 1997.

Signed: Rolv RYSSDAL

President

Signed: Herbert PETZOLD

Registrar

In accordance with Article 51 para. 2 of the Convention

(art. 51-2) and Rule 55 para. 2 of Rules of Court B, the partly

dissenting opinion of Mr De Meyer is annexed to this judgment.

Initialled: R. R.

Initialled: H. P.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

I. The Court accepted that the applicant's right to respect for

her private and family life was not infringed by either the orders

requiring her doctors and her psychiatrist to give evidence or the

seizure of her medical records and their inclusion in the investigation

file.

It held that these measures were justified in order to

determine when X, her husband, had learnt or had had reason to believe

that he was HIV-positive for the purpose of establishing whether the

offences he was accused of having committed before 19 March 1992 should

be classified as attempted manslaughter, like those he had committed

after that date, or only as sexual assault.

In my opinion, whatever the requirements of criminal

proceedings may be, considerations of that order do not justify disclosing confidential information arising out of the doctor/patient relationship or the documents relating to it.

II. By indicating that the ten-year "limitation on confidentiality" decided on by the Finnish courts in this case was too short, the Court appears to imply that public access to medical data might be permissible after a sufficient length of time has elapsed. Without prejudice to what might be acceptable with regard to other information in criminal case files, I consider that medical data in such files must remain confidential indefinitely.

The interest in ensuring that court proceedings are public is not sufficient to justify disclosure of confidential data, even after many years have elapsed.

III. In the present judgment the Court once again relies on the national authorities' "margin of appreciation".

I believe that it is high time for the Court to banish that concept from its reasoning. It has already delayed too long in abandoning this hackneyed phrase and recanting the relativism it implies.

It is possible to envisage a margin of appreciation in certain

domains. It is, for example, entirely natural for a criminal court to

determine sentence - within the range of penalties laid down by the

legislature - according to its assessment of the seriousness of the

case.

But where human rights are concerned, there is no room for a

margin of appreciation which would enable the States to decide what is

acceptable and what is not.

On that subject the boundary not to be overstepped must be as

clear and precise as possible. It is for the Court, not each State

individually, to decide that issue, and the Court's views must apply

to everyone within the jurisdiction of each State.

The empty phrases concerning the State's margin of

appreciation - repeated in the Court's judgments for too long already -

are unnecessary circumlocutions, serving only to indicate abstrusely

that the States may do anything the Court does not consider

incompatible with human rights.

Such terminology, as wrong in principle as it is pointless in

practice, should be abandoned without delay.