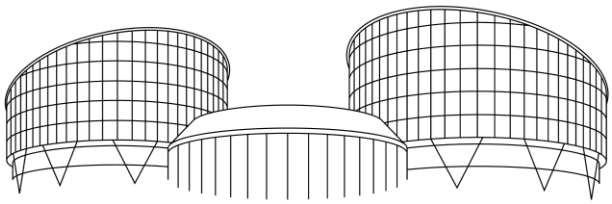

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 20690/06
by Rauno KOIVUSAARI and others
against Finland

The European Court of Human Rights (Fourth Section), sitting on 23 February 2010 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 23 May 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Rauno Koivusaari, and Mr Mikael Marttinen, are Finnish nationals who were born in 1964 and 1968 and live in Koria and Espoo respectively. They were represented before the Court by Mr Jan Aminoff, a lawyer practising in Helsinki. The Finnish Government

("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

A. The find

In an autumn storm in 1771, the *Vrouw Maria*, a Dutch merchant ship, was wrecked on the seabed in Finnish waters in the south-western archipelago in the vicinity of Borstö and Jurmo islands. The ship, which was on its way from Amsterdam to St Petersburg, is believed to have been carrying valuable works of art destined for Empress Catherine the Great of Russia.

On 28 June 1999, the first applicant, an experienced diver, located the vessel at a depth of 41 metres and subsequently informed the Finnish Maritime Museum (*merimuseo, sjöhistoriska museet*) of the find as required under the Antiquities Act (*muinaismuistolaki, lagen om fornminnen*; Act no. 295/1963). The first applicant had a total of 16 divers in his team.

On 9 July 1999 artefacts were brought up from the wreck by the applicants. According to the applicants, they were brought up at the request, alternatively with the permission, of Ms F., a representative of the National Board of Antiquities (*museovirasto, museiverket*; a subordinate body of the Ministry of Education; *opetusministeriö, undervisningsministeriet*).

Under the Antiquities Act, as in force at the time, a wreck more than 100 years old could not be removed or touched without permission from the Maritime Museum and/or the National Board of Antiquities. The same was true of items found in, or originating from, such a wreck. Subsequently the Museum and/or the Board consistently refused the applicants permission to deal with the wreck and the associated items.

In or around December 1999 the applicants informed the local police of the find and, when no owner appeared, a claim to title was lodged with the police in or around May 2000, in accordance with the procedure laid down in the Lost Property Act (*löytötavaralaki, hittegodslagen*; Act no. 778/1988).

On 1 December 2002 an amendment to section 20 of the Antiquities Act, vesting the ownership of a wreck in the State, entered into force (see below).

B. The court proceedings

1. The Turku Maritime Court

On 22 December 1999 the applicants instituted proceedings in the Maritime Court (*merioikeus, sjörätten*; a department of the District Court (*käräjäoikeus, tingsrätten*) composed of three professional judges and two sea captains), requesting the court to confirm that on 9 July 1999 by bringing up three chalk pipes, a clay bottle, a seal and a zinc ingot they had engaged in salvage operations for which they were entitled to remuneration under Chapter 16 of the Maritime Code (*merilaki, sjölagen*; Act no. 674/1994) and that they had a right, either under a contract or as first salvors, to bring up all objects for which they were entitled to salvage remuneration. The court was also asked to confirm that the applicants were to be considered owners of the wreck and that they had the right also on that ground to engage in salvage operations. Were the court to consider the State owner of the wreck, the applicants requested it to confirm that they, either under a contract or as first salvor, had the right to engage in salvage of the wreck and to receive remuneration therefor. Lastly, they claimed legal costs.

Under Chapter 16, article 1, of the Maritime Code anyone who salvages or assists in salvaging a foundered vessel, or goods in such a vessel, is entitled to salvage remuneration. As the applicants had been the first at the scene, they contended that they had been entitled to engage in salvage. Under the Maritime Code a right to salvage remuneration arose even if the wreck was no longer in danger. In any event, the presumably valuable cargo could be considered in danger as divers had access to it through the wreck's open cargo hold. This was shown by the fact that on 19 July 1999 the Maritime Museum had asked the Finnish Naval Forces and the Frontier Guard to monitor the wreck.

The applicants conceded that ownership as regards objects found in the wreck fell to the State under section 20 of the Antiquities Act as in force at the time when the case was heard before the courts. However, they considered themselves owners of the wreck under former section 20 as in force at the time of the find. The old provision did not state anything about the ownership of a vessel more than 100 years old but the decision was to be made in accordance with the general principles. The subsequent entry into force on 1 December 2002 of the amendment could not remove the applicants' right of ownership, although the Act was given retroactive effect if the wreck did not have an owner. As the applicants had become owners in July 1999 as a result of appropriation, the subsequent amendment could not be given retroactive effect in the present case.

The State contested the action, arguing that objects had been brought up under section 10 of the Antiquities Act with the permission of the Maritime Museum for research purposes. The *Vrouw Maria* was a relic of antiquity within the meaning of the Antiquities Act. The exclusive right to make

decisions concerning the wreck and objects therein, their examination and possible removal was vested in the State. Any decision to bring up objects did not mean engaging in salvage but rather the conduct of research under the Antiquities Act. The remuneration of such work was to be decided pursuant to a contract, or in the absence of such, pursuant to the Code of Commerce (*kauppakaari, handelsbalken*).

The State argued that there was no salvage contract. In any event, such a contract was not binding on the State since Ms F., a researcher, had not been competent to enter into such a contract, a fact of which the applicants had been aware. If the court were to find that a salvage contract had been established, it must be considered to have concerned only the bringing up of objects in the summer of 1999. The State also argued that, as there had been no dangerous situation requiring immediate salvage action, the applicants could not be considered first salvors. Accordingly, they had no right to salvage remuneration.

The State argued that the National Board of Antiquities had the right to forbid possible further action under Chapter 16, article 1, of the Maritime Code. It was likewise free to choose its own salvor for the remaining work.

In the State's view, the amendment of the Antiquities Act had only been of a clarifying nature. The intention of the Act from the outset had been that the State would receive ownership of a wreck based on protection. This was evidenced from the duty to inform the Maritime Museum of a find. Under the Antiquities Act a third party did not have the right to interfere, touch or otherwise repossess an immovable relic of antiquity. Therefore, the applicants could not have gained ownership of the wreck on the basis of appropriation. As the *Vrouw Maria* had been abandoned by its original owner, she had immediately become protected following her discovery in July 1999 without any separate decision or action.

By an interim judgment of 19 September 2002 the Maritime Court (composed of one single professional judge) held that the provisions of the Maritime Code on salvage were applicable to the operations aimed at salvaging the wreck and the property originating from it.

During the course of the present proceedings, and as noted above, Parliament amended section 20 of the Antiquities Act so as to vest ownership of vessels wrecked more than 100 years previously in the State. According to the applicants, this enabled the State to assert as owner that it objected to salvage, which it had not been able to do before, thus depriving the applicants of their position as first salvors.

In a final judgment of 16 June 2004 the Maritime Court (in its full composition), having held an oral hearing and heard 11 witnesses, decided that the Antiquities Act, as amended, was to be considered *lex specialis*. As the wreck and objects therein were protected, any interference required the permission of the National Board of Antiquities.

Under section 20(3) of the Antiquities Act the State was the owner of any object found in or obviously originating from the wreck. Under the amended section 20(2) also the wreck belonged to the State. As the *Vrouw Maria* had been shipwrecked in 1771, it was clear that she had been abandoned by her owner. Because she was over 230 years old she had become protected by law before 1 December 2002 when the amendment to the Antiquities Act took effect. Appropriation by the applicants, which presupposed, *inter alia*, the gain of control over an object, had not been possible due to the protection by law.

According to the court, the Maritime Code applied only to ships in navigation and in danger. In respect of a foundered ship which fell within the purview of the Antiquities Act (an historic vessel without an apparent owner), the Act worked to exclude the provisions on salvage; hence, the applicants were not in the position of first salvors. The court further held that, even if the applicants were considered as first salvors, the State had in any case the right to forbid any salvage operation and the salvage remuneration could be refused on that ground.

The judgment was not unanimous as one of the professional judges expressed the view that the applicants had the right of first salvors and a right to remuneration for the objects brought up by them. The claim for remuneration for further actions was premature as it was not known whether anything else would be brought up. The judge did not find the existence of a salvage contract established.

2. The Turku Court of Appeal

The applicants appealed, repeating their claims as presented before the District Court. In their counter appeal, the State requested the court to find that the Antiquities Act superseded the provisions on salvage in the Maritime Code as *lex specialis* and *lex posterior* and because of the hierarchical order of these laws and that the action should be dismissed on the ground that the Maritime Court had lacked jurisdiction to examine the case.

On 23 March 2005 the Court of Appeal (*hovioikeus, hovrätten*), having held an oral hearing in which it received testimony from twelve witnesses, rejected the appeals save that it discharged the applicants from their obligation to pay the State's legal costs.

The court found that both the Antiquities Act and the Maritime Code were *lex specialis*. There were no grounds for considering that the former superseded the latter. Neither did the court uphold the Government's contention that there were two different groups of flotsam, one to be examined under the Antiquities Act and another under the Maritime Code. Nor did it uphold the Government's argument that Chapter 16, article 1, of the Maritime Code applied only to wrecks in danger. Finding that an unendangered wreck could also be the object of salvage, it confirmed that

the *Vrouw Maria* was shipwrecked within the meaning of Chapter 16 of the Maritime Code. The court also noted that the Antiquities Act did not include a provision forbidding the application of the Maritime Code's provisions on salvage to flotsam within the meaning of the Antiquities Act. In sum, both Acts were applicable to the present case.

As to the applicants' claim for ownership based on appropriation, the court noted that the wreck was placed under protection under section 1 of the Antiquities Act, which meant that all types of interference were forbidden without the permission of the National Board of Antiquities. The provisions on protection worked to prevent the finder of a wreck from gaining *de facto* dominion over it. Therefore appropriation of an abandoned object such as the one in issue was not possible and the applicant's claim for ownership could not be upheld. Under section 20(2) the State was the owner of the wreck.

As to the applicants' contention that the parties had entered into a salvage contract, the court held that the existence of such an agreement had not been evidenced. It noted the following. On the basis of the witness statements of Ms M. and Ms P. the former had, in any event, not been competent to enter into such an agreement with binding effect on the State. On the basis of Ms P.'s testimony it was equally clear that the personnel of the Maritime Museum had not been competent to agree on remuneration. Ms M. also gave evidence to the effect that she had plainly given permission to bring up objects for research purposes in order to identify the wreck and without having the intention of engaging in a salvage contract. While noting that the Maritime Museum had paid compensation to one of the applicants for operations carried out during a diving expedition, the compensation paid could not be equated to salvage remuneration. The court found that the sums already paid did not support the conclusion that a salvage contract had been established between the parties. As to a document relied on in evidence and entitled "*the wreck of the Vrouw Maria*", its drafter, Ms P., explained that she had made an estimate of the costs for examining the wreck. When drawing up the document there had been no discussion about bringing up the wreck. The court also noted a written statement by Ms M. according to which there had been discussion within the National Board of Antiquities about the possible bringing up of objects. However, none of these documents showed that the representatives of the Maritime Museum had intended to engage in a salvage agreement with the applicants.

As to whether the State as owner had the right under Chapter 16, article 1(2), of the Maritime Code to forbid the applicants from engaging in salvage, the court noted that the first salvor may engage in salvage contrary to the owner's will when there is a concrete danger which necessarily requires engaging in salvage. In the present case, there was no such danger. The wreck and its cargo had lain at the bottom of the sea for over 230 years. The wreck and at least part of the cargo had been found in good condition

and it could be assumed that they would continue to remain so for decades. The wreck was situated at a depth of 42 metres and at a difficult location navigationally. It caused no danger to navigation. It was possible that divers might enter the wreck and remove items. On the other hand, the wreck was under radar and camera surveillance by the authorities and therefore it was not probable that any stay of a long duration at the location where the ship went down would be possible without the intervention of the authorities. The ship went down in territorial waters and therefore it was unlikely that the wreck could be damaged by anchoring. Neither did archaeological concern require the immediate salvage of the wreck or its cargo. On these grounds the Court of Appeal considered that the State had the right to prohibit salvage.

The court did not comment on the amendment of section 20 of the Antiquities Act.

3. The Supreme Court

The applicants appealed, repeating their claims as presented before the District Court and the Court of Appeal. However, in their request for leave to appeal, the applicants expressly abandoned their ownership claim. They did so because they considered that the intervening amendment to the Antiquities Act had made it impossible for them to succeed in that claim as the Supreme Court (*korkein oikeus, högsta domstolen*) was bound to give effect to the legislation and therefore to reject their ownership claim.

On 24 November 2005 the Supreme Court refused leave to appeal.

B. Relevant domestic law and practice

The Constitution

Article 15 of the Constitution (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) provides that the property of everyone is protected. Provisions on the expropriation of property, for public needs and in consideration of full compensation, are laid down by an Act.

According to Article 106:

> "[i]f, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution."

The Supreme Court found, *inter alia*, in the case KKO 2004:26 concerning property rights that a provision of the Act on the Protection of Buildings (*rakennussuojelulaki, byggnadsskyddslagen*) was in conflict with the Constitution and that primacy was to be given to the latter.

The Antiquities Act

Section 1 of the Antiquities Act (Act no. 295/1963) provides that immovable relics of antiquity are protected as traces of the previous settlement and history of Finland. Without permission given under this Act such relics are not to be the object of excavation, covering, modification, damage, removal or other unauthorised interference.

Section 10 provides that the National Board of Antiquities has the right, *inter alia*, to examine and restore an immovable relic of antiquity, or it can entrust this task to someone else.

Sections 16 and 17 provide that the find of certain specified movable objects, which can be presumed to be at least one hundred years old, must be reported to the National Board of Antiquities, which is entitled to redeem them. A movable antiquity found on an immovable one belongs to the State without redemption provided that it is connected with the immovable antiquity. The National Board of Antiquity may however decide to give a finder's reward if it considers this justified.

At the time when the *Vrouw Maria* was found, section 20 of the Antiquities Act (Act no.295/1963) provided:

> "A wreck of a ship or other craft, or part of such a wreck, discovered in the sea or inland waters, which can be presumed to be more than 100 years old, is protected. The provisions regarding immovable antiquities shall apply where relevant to such a wreck or part thereof.
>
> Items found in a wreck referred to in subsection 1 or which apparently originate from such a wreck belong to the State without redemption, and otherwise the provisions concerning movable antiquities shall apply where relevant.
>
> Anyone who finds a wreck or an item referred to in this section shall immediately inform the National Board of Antiquities."

On 15 November 2002, that is during the course of the proceedings in the present case, Parliament amended section 20 of the Antiquities Act so as expressly to vest ownership of vessels wrecked more than 100 years previously in the State. The amended section 20 (Act no. 941/2002) reads:

> "A wreck of a ship or other craft, or part of such a wreck, discovered in the sea or inland waters, which can be presumed to have gone down more than 100 years ago, is protected. The provisions regarding immovable antiquities shall apply where relevant to such a wreck or part thereof.
>
> If, on the basis of external conditions, it is obvious that the owner has abandoned a wreck referred to in subsection 1 or a part thereof, it shall belong to the State.
>
> Items found in a wreck referred to in subsection 1 or which apparently originate from such a wreck belong to the State without redemption, and otherwise the provisions concerning movable antiquities shall apply where relevant.
>
> Anyone who finds a wreck or an item referred to in this section must inform the National Board of Antiquities without undue delay.
>
> ... "

The amendment (Act no. 941/2002) took effect on 1 December 2002. It was, however, given retroactive effect. The amendment was applicable to wrecks and parts thereof which had already become protected as historical monuments before the entry into force of the amendment if, based on external conditions, it was obvious that they had been abandoned by their owner.

The preparatory works of the amendment of section 20 of the Antiquities Act (see the Government bill HE 80/2002) noted the need to clarify the question of ownership of a protected wreck or part thereof. It stated, *inter alia*, that:

> "Since the enactment of the Antiquities Act, technological developments have facilitated locating and exploring old shipwrecks under water. The number of wrecks located by means of side scan sonar in territorial waters of Finland will probably grow in the next few years. ....
>
> The *Vrouw Maria*, which foundered in 1771, was discovered in 1999 in the Nauvo archipelago. It has been stated that the title to the wreck itself is not unambiguous in the light of current law, because the Act does not stipulate directly that a wreck regarded as a relic of antiquity is owned by the State. No case-law exists on the application of the Antiquities Act to this question, and it is not covered in legal literature either.
>
> .... Swedish and Norwegian legislation contains an unambiguous provision stipulating that the title to a shipwreck regarded as a relic of antiquity is vested in the State. The preparatory works of the Finnish Antiquities Act in force state, however, that relics of antiquity, because of their old age, can no longer be regarded as the property of private individuals. Relics of antiquity are considered to have primarily antiquity value and/or historical value but no longer use value. Also the raising of a sunken historical wreck constitutes primarily archaeological research. For these reasons it can be considered that the legislator originally intended to stipulate that historical shipwrecks are owned by the State, although this intent was not expressed openly."

The Maritime Code

Chapter 16, article 1, of the Maritime Code (Act no. 674/1994), as in force at the material time, provided that anyone who salvaged or assisted in salvaging a foundered vessel or a vessel in danger, or goods in such a vessel, or anything having pertained to such a vessel or goods, was entitled to salvage remuneration. Anyone who had taken part in a salvage operation notwithstanding the express and justified prohibition of the master of the vessel had no right to salvage remuneration.

COMPLAINTS

1. The applicants complained under Article 1 of Protocol No. 1 to the Convention about deprivation of property or an interference with the

peaceful enjoyment of possessions, in particular by the retroactive enactment of legislation allegedly designed to deprive them of their rights, the misuse of the power vested in the owner of the wreck to refuse salvage in order to safeguard the archaeological heritage so as to deprive the applicants completely of their rights and the refusal to pay fair, or indeed any, compensation for the deprivation and/or interference. The State had not possessed this power until the law was amended.

2. They also complained under Article 13 about the lack of an effective remedy in respect of their Convention rights. In their letter of 19 August 2006 they specified that they were relying on Article 13 in relation to their Article 1 of Protocol No. 1 complaint.

3. The applicants also complained under Article 6 that the law amendment had been designed to deprive them, with retroactive effect, of rights that they had enjoyed at the time of the find, and thereby of access to the courts to vindicate them in the sense that the Government had used a weapon fatal to the applicants' claims as first salvors, which had been tantamount to banning them from bringing such a claim. The effect of statutorily and retroactively conferring title on the State had been a means of preventing the applicants from successfully vindicating their title in the courts.

4. Furthermore, they complained under Article 6 that the proceedings before the National Board of Antiquities and/or the Maritime Museum had failed to meet the requirements of a fair and unbiased hearing and treatment of the applicants' claims and representations, and that the outcome had been arbitrary and unsupported by reasons.

5. Moreover, they complained under Article 14 and/or Article 1 of Protocol No. 12 that the Finnish legislature and/or other Finnish authorities had discriminated against the applicants by favouring the interests of the Maritime Museum at the expense of the applicants, and especially without paying fair or indeed any compensation to the latter. Furthermore, or alternatively, by envisaging the possibility that the Maritime Museum could have recovered the wreck and/or associated items without the involvement of the applicants, and/or by being prepared to contemplate the salvaging of these with other parties, but not the applicants, the Finnish authorities had discriminated against the applicants. No weight had been given to the fact that the applicants had been, by law, the preferred would-be salvors.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

The applicants complained under Article 1 of the Protocol No. 1 to the Convention about deprivation of property or an interference with the peaceful enjoyment of possessions, in particular by the retroactive enactment of legislation allegedly designed to deprive them of their property rights. They complained about the misuse of the power vested in the owner of the wreck to refuse salvage in order to safeguard the archaeological heritage so as to deprive the applicants completely of their rights, and about the refusal to pay fair, or indeed any, compensation for the deprivation and/or interference. The State had not possessed this power until the law was amended.

Article 1 of Protocol No. 1 to the Convention reads as follows:

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

1. Complaint concerning the ownership of the wreck

A. The parties' submissions

The Government pointed out that the applicants had expressly waived, in their request for leave to appeal and the related appeal to the Supreme Court, the claim concerning the ownership of the wreck. According to the Court's established case-law, where doubts exist as to the effectiveness of a domestic remedy that remedy must be tried (see *D.S. and E.S. v. United Kingdom*, no. 13669/88, Commission decision of 7 March 1990, Decisions and Reports (DR) 65, p. 245). As the applicants had failed to exhaust domestic remedies in this respect, their application should be declared inadmissible under Article 35 §§ 1 and 4 of the Convention for the non-exhaustion of domestic remedies as far as it concerned the ownership of the wreck.

The applicants claimed that the domestic remedy in question would not have been an effective one as the retrospective legislation which had transferred ownership of the wreck itself to the State could not have been effectively challenged before the Supreme Court. As the Constitutional Law Committee had already held that the legislation was constitutional, there had been no point in pursuing an ownership claim in the Supreme Court.

Moreover, as the law had been amended recently, it had been very unlikely that the applicants would have been granted leave to appeal since a decision on the merits by the Supreme Court would no longer have had any precedential value, especially as another similar situation was very unlikely to arise.

B. The Court's assessment

The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. It is for the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX). The Court has recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (*D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 116, ECHR 2007-XII). The Court further reiterates that where a suggested remedy did not offer reasonable prospects of success, for example in the light of settled domestic case-law, the fact that the applicant did not use it is not a bar to admissibility (*Radio France and Others v. France*, no. 53984/00, decision of 23 September 2003, § 34).

In the present case, the Court notes that the applicants had expressly waived before the Supreme Court their claim concerning the ownership of the wreck as they did not consider the remedy effective. However, leave to appeal and an appeal to the Supreme Court are part of the regular remedies available to applicants which they should use in order to fulfil the requirement of exhaustion of domestic remedies (see *mutatis mutandis Nikula v. Finland* (dec.), no. 31611/96, 30 November 2000; and *Virolainen v. Finland* (dec.), no. 29172/02, 7 February 2006). In the instant case, the examination of the application does not disclose the existence of any special circumstance which might have absolved the applicants, according to the generally recognised rules of international law, from exhausting the remedy available to them. The fact that the Antiquities Act had been amended recently does not render the examination of the applicants' claim before the

Supreme Court ineffective. Even though the Supreme Court cannot challenge the validity of legislation, it can, in accordance with Article 106 of the Constitution, give primacy to the constitutional provisions, including the right to property, if an Act were found to be in obvious conflict with it.

The applicants have therefore failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention as far as the complaint concerning the ownership of the wreck is concerned. It follows that this complaint must be rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention.

2. Complaint concerning the right to salvage remuneration

A. The parties' submissions

In any event, the Government were of the opinion that the application was incompatible *ratione materiae* with the provisions of the Convention and should be declared inadmissible under Article 35 §§ 3 and 4 of the Convention as the applicants had not been in enjoyment of any possession as required by Article 1 of Protocol No. 1. to the Convention.

The Government pointed out that Article 1 of Protocol No. 1 to the Convention did not guarantee a right to acquire property. In the present case the question thus was whether the applicants had had a legitimate expectation of receiving an object or a benefit having a net asset value.

The Government noted that the possibility of receiving salvage remuneration was based on Chapter 16, article 1, of the Maritime Code, which provision had proved to be open to various interpretations in the domestic proceedings. The right to salvage remuneration was not an absolute one but it presupposed that a vessel had foundered or been in danger and that the master of the vessel had not prohibited the salvage operation. Both the Maritime Court and the Court of Appeal had held that the *Vrouw Maria* wreck had not been in any danger. The Maritime Court had considered that the State had had a justified right to prohibit the salvage. The Court of Appeal had for its part found that the first salvor could have conducted salvage notwithstanding the will of the property owner if a concrete danger had been at hand, which had not been the case in the impugned proceedings. The domestic proceedings had thus involved adjudication of a difficult question of interpretation of domestic law in a dispute in which the domestic courts had come to a certain conclusion instead of applying legislation with intended retroactive effect. Consequently, the right to salvage remuneration under the Maritime Code could not be regarded as a benefit having a net asset value and thus enjoying protection under Article 1 of Protocol No. 1 to the Convention.

The applicants claimed that they had had a possession within the meaning of Article 1 of Protocol No. 1.

The applicants maintained that the discovery of the wreck had not of itself vested full ownership in them, neither had it become their "possession". In normal circumstances the finder of an abandoned property would be able to take possession and become owner but, in the present case, the Antiquities Act had prevented this from happening. This did not, however, mean that the applicants would not have had any rights at all as they had, *inter alia*, the right of first salvors. It meant that, by being first on the scene and ready and willing to offer salvage, the applicants had been entitled to perform salvage and claim a reward. It meant also that nobody else had been entitled to salvage the wreck without the agreement of the first salvor, and if someone else had performed the salvage, the first salvor should have been compensated. These principles were applicable also *vis-à-vis* the State as no exceptions were provided either by the Maritime Code or the Antiquities Act.

The applicants claimed that the right of the first salvor had been a definite legal right, recognised by the Maritime Court and by the Court of Appeal in particular, and that it had come into being as soon as the wreck had been discovered. The right had had an actual value as the State would either have had to allow the applicants to lift the wreck and to pay them for that, or to compensate them if it had preferred to perform the operation itself or had it done by a third party. The applicants had thus had a legitimate expectation of a benefit having a net asset value.

The applicants pointed out that the right of first salvor had been recognised by the domestic courts but the reason why their claim had not been successful was the existence of the subsequent retrospective legislative amendment which had given the State as an owner the possibility to prohibit salvage. However, at the time of the find there had been no owner who could have interfered with the applicants' right of first salvor.

B. The Court's assessment

The concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece* [GC], no. 31107/96, ECHR 1999-II; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V).

Article 1 of Protocol No. 1 applies only to a person's existing possessions. Thus, future income cannot be considered to constitute "possessions" unless it has already been earned or is definitely payable.

Further, the hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

However, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX).

However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia*, cited above, § 50). Thus, in *Jantner v. Slovakia*, the applicant's restitution claim was dismissed as the national courts found that he had not established his permanent residence in Slovakia within the meaning of the relevant law and practice. That finding was contested by the applicant, who considered that he had met all the statutory requirements for his restitution claim to be granted. The Court held that under the relevant law, as interpreted and applied by the domestic authorities, the applicant had neither a right nor a claim amounting to a "legitimate expectation" within the meaning of the Court's case-law to obtain restitution of the property in question (see *Jantner v. Slovakia*, no. 39050/97, §§ 29-33, 4 March 2003).

Turning to the present case, the Court notes that the applicants had no existing "possession" within the meaning of the Court's case-law but a proprietary interest in the form of a claim. It therefore remains to be determined whether that claim constituted an "asset", that is whether it was sufficiently established to attract the guarantees of Article 1 of Protocol No. 1. In this context, it may also be of relevance whether a "legitimate expectation" of obtaining effective enjoyment of the salvage remuneration arose for the applicants in the context of the proceedings complained of.

The Court has found in the cases *Pine Valley Developments Ltd and Others v. Ireland* (29 November 1991, § 51, Series A no. 222) and *Stretch v. the United Kingdom* (no. 44277/98, § 35, 24 June 2003) that the persons concerned were entitled to rely on the fact that the legal act on the basis of which they had incurred financial obligations would not be retrospectively invalidated to their detriment. In this class of cases, the "legitimate expectation" is thus based on a reasonably justified reliance on a legal act which has a sound legal basis and which bears on property rights.

In the present case, no concrete proprietary interest of the applicants has suffered as a result of their reliance on a specific legal act. They cannot

therefore be said to have had a "legitimate expectation" as defined in *Pine Valley Developments Ltd and Others*, cited above.

The Court has still to consider whether there was nevertheless a sufficient legal basis in support of the applicants' claim to warrant it being regarded as an "asset" as another aspect of the notion of "legitimate expectation" was illustrated in *Pressos Compania Naviera S.A. and Others v. Belgium* (20 November 1995, § 31, Series A no. 332). The case concerned claims for damages arising out of accidents to shipping allegedly caused by the negligence of Belgian pilots. The Court classified the claims as "assets" attracting the protection of Article 1 of Protocol No. 1. The "legitimate expectation" was not in itself constitutive of a proprietary interest but it related to the way in which the claim qualifying as an "asset" would be treated under domestic law and in particular to reliance on the fact that the established case-law of the national courts would continue to be applied in respect of damage which had already occurred (see also *Maurice v. France* [GC], no. 11810/03, § 65, ECHR 2005-IX; and *Draon v. France* [GC], no. 1513/03, § 67, 6 October 2005).

Accordingly, the principal question for the Court is whether there was a sufficient basis in domestic law, as interpreted by the domestic courts, for the applicants' claim to qualify as an "asset" for the purposes of Article 1 of Protocol No. 1. In this respect, the point in dispute is whether the applicants could be said to have satisfied the requirements for the salvage remuneration, as laid down in Chapter 16, article 1, of the Maritime Code, namely that a vessel was foundering or was in danger and that the master of the vessel had not prohibited the salvage operation. For their part, the applicants considered that, contrary to the findings of the Maritime Court and of the Court of Appeal, they had fulfilled those requirements at the time of the find in 1999.

In their respective decisions, both the Maritime Court and the Court of Appeal held that the *Vrouw Maria* wreck had not been in any danger at the moment when it was discovered by the applicants. As to the other requirement, the Maritime Court considered that the State had had a justified right to prohibit the salvage. However, this conclusion was overturned by the Court of Appeal which for its part found that the first salvor could have conducted salvage notwithstanding the will of the property owner if a concrete danger was at hand. However, this condition was not fulfilled in the applicants' case.

Having regard to the information before it and considering that it has only limited power to deal with alleged errors of fact or law committed by the national courts, to which it falls in the first place to interpret and apply the domestic law (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports of Judgments and Decisions* 1998-II), the Court finds no appearance of arbitrariness in the way in which the Maritime Court and the Court of

Appeal determined the applicants' claim. There is therefore no basis on which the Court could reach a different conclusion on the applicants' compliance with the requirements in issue.

The Court notes that, in the light of the wording of the relevant provisions of the Maritime Code and in the particular circumstances of the case, the applicants may not have known for certain whether or not they fulfilled the above conditions for obtaining salvage remuneration. However, this is not decisive. The applicants' salvage remuneration claim was a conditional one from the outset and the question of whether or not they complied with the statutory requirements was to be determined in the ensuing judicial proceedings. The courts ultimately found that that was not the case. The Court is therefore satisfied that, when the applicants were filing their salvage remuneration claim, that claim could not be said to have been sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1.

In these circumstances, the Court finds that in the context of their salvage remuneration claim the applicants did not have a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1. The guarantees of that provision do not therefore apply to the present case.

It follows that the applicants' above complaint under Article 1 of Protocol No. 1 must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention as being incompatible *ratione materiae* with the provisions of the Convention.

B. Alleged violation of Article 6 of the Convention

The applicants complained under Article 6 of the Convention that the amendment to the Antiquities Act had been designed to deprive them, with retroactive effect, of rights that they enjoyed at the time of the find, and thereby of access to the courts. The effect of retroactively conferring title by statute on the State had been a means of preventing the applicants from successfully vindicating their title in the courts.

Article 6 § 1 of the Convention reads in the relevant parts as follows:

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

1. Applicability of Article 6

A. The parties' submissions

The Government were of the opinion that this complaint was also incompatible *ratione materiae* with the provisions of the Convention and should be declared inadmissible under Article 35 §§ 3 and 4 of the Convention as the applicants had not had any civil right within the meaning of Article 6 of the Convention.

The applicants did not comment on the applicability of Article 6 of the Convention.

B. The Court's assessment

The Court notes that, when considering whether the civil head of Article 6 is applicable to the present case, it must first examine whether there was a dispute (*contestation*) over an arguable right under domestic law, and secondly whether or not the said right was a "civil" one.

As to the first condition, the Court reiterates that, in accordance with its established case-law, Article 6 § 1 of the Convention is applicable only if there is a genuine and serious "dispute" (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 81, Series A no. 52) over "civil rights and obligations". The dispute may relate not only to the existence of a right but also to its scope and the manner of its exercise (see, *inter alia*, *Zander v. Sweden*, 25 November 1993, § 22, Series A no. 279-B). The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, *inter alia*, *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A; and *Fayed v. the United Kingdom*, 21 September 1994, § 56, Series A no. 294-B). Furthermore, "Article 6 § 1 extends to '*contestations*' (disputes) over (civil) 'rights' which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention" (see, *inter alia*, *Editions Périscope v. France*, 26 March 1992, § 35, Series A no. 234-B; and *Zander v. Sweden*, cited above).

On the question of whether or not a given right is "civil" for the purposes of Article 6 § 1, the Court has consistently held that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that this provision applies irrespective of the status of the parties, the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter (see *Georgiadis v. Greece*, 29 May 1997, § 34, *Reports of Judgments and Decisions* 1997-III; and *J.S. and A.S. v. Poland*, no. 40732/98, § 46, 24 May 2005).

The Court observes that it is not in dispute in the instant case that the proceedings initiated by the applicants were civil in nature or that the subject-matter of these proceedings concerned a property interest. The outcome of the proceedings had undeniably an impact upon the applicants' property interests. In these circumstances, it would be difficult to deny that the dispute was genuine and serious enough to bring the proceedings concerned within the ambit of Article 6 § 1 of the Convention.

In this context, the Court points out the Grand Chamber's admissibility decision in the case of *Malhous v. the Czech Republic* (dec.), no. 33071/96,

ECHR 2000-XII. In that case, the applicant complained that his rights as guaranteed by Article 1 of Protocol No. 1 and by Article 6 of the Convention had been violated in the restitution proceedings, conducted under the Czech Land Ownership Act of 1991, in that the national authorities had refused to grant the applicant's restitution claims and in that the restitution proceedings were unfair. When considering the complaint under Article 1 of Protocol No. 1 to the Convention, the Court found that the particular claim raised by the applicant could not be regarded as giving rise to a "legitimate expectation", because he had not complied with the relevant substantive requirements laid down by the restitution law. Nonetheless, the Court pursued its examination of the applicant's complaint under Article 6.

This approach demonstrates that there is no necessary interrelation between the existence of claims covered by the notion of "possessions" within the meaning of Article 1 of Protocol No. 1 and the applicability of Article 6 § 1. The Court considers that the fact that the applicants did not have a right or a claim amounting to a "legitimate expectation" under the provisions of domestic law is sufficient to exclude the application of Article 1 of Protocol No. 1 of the Convention to the circumstances of the case. At the same time, it does not suffice to exclude a conclusion that, once a genuine and serious dispute concerning the existence of property rights arises, the guarantees of Article 6 § 1 become applicable (see *Kopecký v. Slovakia* [GC], cited above, § 52; and *J.S. and A.S. v. Poland*, cited above, § 51, 24 May 2005).

In the light of the above, the Court concludes that Article 6 of the Convention is applicable to the proceedings concerned in the present case.

2. Compliance with Article 6

A. The parties' submissions

The applicants claimed that, by vesting ownership in the State retrospectively, Parliament had made it possible for the State to object to salvage. The domestic courts had been obliged to assess the significance of the amendment of the Antiquities Act to their case. If the applicants could not have established full ownership, they would not have had the legal standing to challenge the legality of the amendment under Article 15 of the Constitution. In the context of salvage remuneration, a constitutional challenge of this kind was not possible.

In the applicants' view their case was not comparable to the case *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom* (23 October 1997, *Reports of Judgments and Decisions* 1997-VII) but similar to cases in which the Court had found a violation of Article 6 in similar circumstances (for example *Scordino v. Italy (no. 1)* [GC], no. 36813/97, ECHR 2006-V; and

Zielinski and Pradal and Gonzalez and Others v. France [GC], nos. 24846/94 and 34165/96 to 34173/96, ECHR 1999-VII). As there had been no other similar case pending before the domestic courts, the only case to have been affected by the retrospective operation of the amendment had been that of the *Vrouw Maria*. By the time Parliament had passed the amendment, the applicants had already received a favourable interim judgment from the Maritime Court, which had represented a serious possibility that the State would lose in subsequent proceedings. Also the final judgment of the Court of Appeal had shown that, without the transfer of ownership, the State would indeed have lost the first salvor claim.

The Government pointed out that the amendment of the Antiquities Act had entered into force during the Maritime Court proceedings and that the parties had had an opportunity to state their positions *vis-à-vis* the amendment, which they had done. Thereafter the significance of the amendment had been further assessed by the Court of Appeal and the Supreme Court. The applicants' case had been relatively complicated and the domestic courts had come to slightly different conclusions about the effect of the amendment on the applicants' case. Although the amendment contained a reference to the *Vrouw Maria* wreck, its purpose and intent had not been to intervene in the pending proceedings but to fill a legislative gap concerning ownership of old and abandoned shipwrecks. According to the preparatory works (HE 80/2002 vp), the amendment had been possible as the *de facto* dominion over wrecks protected by virtue of the Antiquities Act had already been vested in the State and the number of such wrecks was considerable. The applicants' case was thus comparable to the case *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom* (cited above), in which the Court had found no violation of Article 6 due to the enactment of legislation, during pending proceedings, with retroactive effect in pursuit of the national public interest.

The Government maintained that the Court of Appeal had held in its final judgment that the amendment to the Antiquities Act had had no significance for the applicants' case as it had only regulated the title of the wreck and had not taken any stand on the applicability of the salvage remuneration provisions in the Maritime Code. As the amendment had had no effect on the outcome of the proceedings, it could not have affected the applicants' right to a fair hearing under Article 6 § 1 of the Convention.

B. The Court's assessment

The Court reiterates that although, in theory, the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing law, the principle of the rule of law and the notion of fair trial enshrined in Article 6 of the Convention preclude any interference by the legislature – other than on compelling grounds of the

general interest – with the administration of justice designed to influence the judicial determination of a dispute (see *Scordino v. Italy (no. 1)* [GC], cited above, § 126; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], cited above, § 57; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, Series A no. 301-B; and *Papageorgiou v. Greece*, 22 October 1997, *Reports of Judgments and Decisions* 1997-VI).

In order to assess whether the applicants had a fair trial, it is necessary to take account of the earlier proceedings, what was at stake in those proceedings and the attitude of the parties (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, cited above, § 44).

The Court points out that, prior to the entry into force of the amendment of section 20 of the Antiquities Act, the provision in question did not expressly provide for the ownership of vessels wrecked more than 100 years previously. As a result of the amendment of the provision, which entered into force on 1 December 2002, the ownership of such wrecks became expressly vested in the State.

Leaving aside the question of ownership of the *Vrouw Maria*, the Court notes that the only effect that the modified provision of the Antiquities Act had on the applicants' right to salvage remuneration under the Maritime Code was that the owner of the wreck, that is, the State, could prohibit salvage and thereby also the right to salvage remuneration. The Court must therefore next examine whether the amendment in fact had any effect, even indirectly, on the applicants' rights as well as on the proceedings pending at the time of the entry into force of the amendment.

The Court notes that the Court of Appeal found in its final judgment that the first salvor may engage in salvage contrary to the owner's will when there is a concrete danger which necessarily requires engaging in salvage. However, in the present case, no such danger existed. According to the reasoning of the Court of Appeal, the missing element which made the applicants' claim unsuccessful was the lack of the element of danger. It was thus irrelevant whether the State could have prohibited the salvage or not as the other element, the danger, was in any case missing. The Court thus considers that, according to the national law, as interpreted by the Court of Appeal, the entry into force of the amendment did not change the applicants' situation in respect of their right to receive salvage remuneration and that the amendment could thus not influence the outcome of the impugned proceedings. Therefore it becomes also irrelevant to examine what was the intention of the authorities when they legislated with retrospective effect that ownership of wrecks was to be expressly vested in the State.

The Court points out that Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, cited above, § 112). It is to be noted that in the

present case the interference caused by the amendment of section 20 of the Antiquities Act did not change the applicants' situation *vis-à-vis* their salvage remuneration claim. Moreover, the amendment became applicable at an early stage of the impugned proceedings: the applicants and the State had been engaged in litigation for a period of about three years at the time when the amendment became applicable. Prior to that, the Maritime Court had only held some preparatory hearings and an oral hearing as well as given an interim judgment on the applicable law (compare and contrast the cases *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, cited above, § 112; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, cited above, § 47). There is no indication that, had the amendment not entered into force, the applicants would have been more successful in their claims.

The Court would add that the applicants' situation is in sharp contrast to that of the Scordinos' in the case of *Scordino v. Italy* (cited above). In the latter case, the applicants had a clear and definite right under legislation to a substantial amount of compensation against the expropriation of their property. Their case was pending. The effect of the intervening legislation was to reduce considerably the amount of compensation to which they were entitled, and thus to influence decisively the result of the litigation.

For the above reasons, the Court concludes that the applicants cannot in the circumstances of the present case justifiably complain that they were denied the right to a fair hearing in the determination of their property interests. It follows that the applicants' complaint under Article 6 § 1 of the Convention must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

C. The remainder of the application

The applicants also complained under Article 6 of the Convention that the proceedings before the National Board of Antiquities and/or the Maritime Museum had failed to meet the requirements of a fair and unbiased hearing and treatment of the applicants' claims and representations, and that the outcome had been arbitrary and unsupported by reasons. They complained under Article 13 about the lack of an effective remedy in respect of their Convention rights. In their letter of 19 August 2006 they specified that they were relying on Article 13 in relation to their Article 1 of Protocol No. 1 complaint. Lastly, the applicants complained under Article 14 and/or Article 1 of Protocol No. 12 that the Finnish legislature and/or other Finnish authorities had discriminated against the applicants by favouring the interests of the Maritime Museum at the expense of the applicants, and especially without paying fair or indeed any compensation to the latter. Furthermore, or alternatively, by envisaging the possibility that the Maritime Museum could recover the wreck and/or

associated items without the involvement of the applicants, and/or by being prepared to contemplate the salvaging of these with other parties, but not the applicants, the Finnish authorities had discriminated against the applicants. No weight had been given to the fact that the applicants had been by law the preferred would-be salvors.

As to the complaint under Article 6 of the Convention, the Court notes that no civil right was being determined before the National Board of Antiquities and the Maritime Museum. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

As to the other complaints, the Court finds, having regard to the case file, that the matters complained of do not disclose any appearance of a violation of the applicants' rights under the Convention. Accordingly, these complaints are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Nicolas Bratza
President