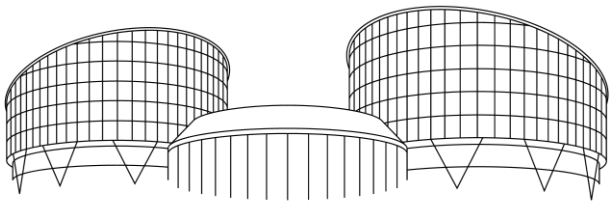

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ROMET v. THE NETHERLANDS

(Application no. 7094/06)

JUDGMENT

STRASBOURG

14 February 2012

FINAL

14/05/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Romet v. the Netherlands**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 7094/06) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Netherlands national, Mr Steven Benito Romet ("the applicant"), on 10 February 2006.

2. The applicant was represented by Mr H.F.M. Struycken, a lawyer practising in Amsterdam. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and Deputy Agent, Ms L. Egmond, both of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that there had been a violation of Article 8 of the Convention in that a person or persons unknown had been able to abuse his driving license after he had reported it lost or stolen.

4. On 30 June 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3, as in force at the time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Maastricht.

6. On 3 November 1995 the applicant reported to the police that his driving licence had been stolen in September of that year. On

14 March 1997 the applicant was issued with a new driving licence. He had applied for it only shortly before, *i.e.* in 1997.

7. During the intervening period, between 3 November 1995 and 14 March 1997, the Government Road Transport Agency (*Rijksdienst voor het Wegverkeer* – "the Agency") registered a total of 1,737 motor vehicles in the applicant's name in the vehicle registration system (*kentekenregister*), but without his consent. It would appear that these registrations were effected upon presentation of the applicant's stolen driving licence.

8. As a consequence of these vehicles being registered in his name, the applicant received large numbers of motor vehicle tax assessments (*aanslagen motorrijtuigenbelasting/houderschapsbelasting*), he was on many occasions prosecuted on the basis of the Motor Liability Insurance Act (*Wet aansprakelijkheidsverzekering motorrijtuigen*) and fined by the public prosecutor (*officier van justitie*) on the basis of the Traffic Regulations Administrative Enforcement Act (*Wet administratiefrechtelijk handhaving verkeersvoorschriften*) in respect of offences committed with the cars. Having been ordered by the competent court to pay these fines, he was detained for failure to comply with these orders (*gijzeling*) pursuant to Article 28 of the latter Act. The applicant ended up paying fines imposed on him on the basis of these motor vehicle registrations in respect of offences not committed by him. On several occasions the applicant was held liable by the Motor Traffic Guarantee Fund (*Waarborgfonds Motorverkeer*) for damage caused by uninsured vehicles registered in his name. The applicant's welfare benefits were stopped, as his financial means were considered to be quite adequate in view of the sheer number of vehicles registered in his name.

9. The applicant alleges that on 1 July 1996 he requested the Agency to annul all the vehicle registrations, bar the one relating to his own car and was met with a refusal. Likewise, he alleges that he made several unsuccessful attempts in 1996 to rectify the situation by, *inter alia*, writing complaints to the Public Prosecutor who had imposed fines on him. The Government state that no official record exists to support these allegations.

10. The applicant furthermore appealed, on 12 February 2004, to the Amsterdam Court of Appeal (*gerechtshof*) against the refusal of the Public Prosecution Service (*Openbaar Ministerie*) to prosecute those responsible for the malicious vehicle registrations in his name. In its decision of 22 June 2005, the Court of Appeal considered, as relevant to the case before the Court, that although the police could admittedly have proceeded more effectively with the investigation, too much time had passed (the events in issue, *i.e.* the malicious registration of motor vehicles, had taken place between November 1995 and March 1997) to expect any viable investigation to be conducted by the authorities concerned. The Court of Appeal therefore dismissed the appeal, but it nevertheless noted that it was in favour of the course of action as advised by the Advocate-General,

namely a complete remission in a single administrative act (*eenmalige sanering*) of all (administrative) sanctions imposed on the applicant which were an effect of the malicious registrations. According to the applicant's representative, no such remission took place. Moreover, the Tax and Customs Administration (*Belastingdienst*) initially prevented the applicant from being eligible for debt rescheduling under the Debt Rescheduling (Natural Persons) Act (*Wet Schuldsanering Natuurlijke Personen*).

11. On 16 January 2004 the applicant again requested the Agency to annul, with retroactive effect, the motor vehicle registrations in question.

12. On 3 April 2004 the Agency partially granted the request, cancelling 240 registrations as of that date. The remaining registrations were no longer in the applicant's name at that time. The Agency expressly stated that it was unable to cancel the registrations retroactively, as had been requested by the applicant, as that would be detrimental to the reliability of the motor vehicle registration system.

13. The applicant lodged an objection on 28 April 2004, arguing, in particular, that the motor vehicle registration system was already flawed owing to the existence of the impugned registrations; that not granting the desired retroactive effect would have substantial financial consequences for him; and that the Agency, in 1996, had offered to annul the stolen driving licence for purposes of motor vehicle registrations on condition that the applicant apply for a new licence, which condition the applicant had been unable to meet at that time for financial reasons.

14. The applicant's objection was dismissed on 2 September 2004. The Agency decided that cancellation of registrations with retroactive effect would lead to legal uncertainty and would entail the Agency's interference with competencies of other authorities, *e.g.* the Public Prosecution Service or the Tax and Customs Administration, in that it could affect the legality of decisions which those authorities had made or might make on the basis of the contents of the motor vehicle registration system.

15. The applicant appealed against the Agency's decision to the Rotterdam Regional Court (*rechtbank*), arguing in particular that he had, already in 1996, made a similar request to the Agency and had reported the fraudulent use of his driving licence to the police, yet to no avail. The applicant also submitted that the motor vehicle registration system, as it was at the relevant time, had been sensitive to fraud, a risk which, in the applicant's view, should not be for the general population to bear. He argued furthermore that the requirement which existed in 1996 to have to apply for a new driving licence in order to disallow motor vehicle registrations with a stolen one was unjust and discriminatory.

16. The Regional Court concurred with the Agency's decision and considered that no exceptional circumstances existed warranting a deviation from the standard practice not to grant retroactive effect. It noted in that respect that, although he had lodged complaints in 1996, the applicant had

allowed more than seven years to pass before starting the proceedings at issue.

17. On 5 April 2005 the applicant appealed against the Regional Court's judgment to the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State* – "the Administrative Jurisdiction Division"). The applicant argued, in relevant part, that his rights under Article 8 of the Convention were being violated due to the unlawful registrations of motor vehicles in his name and that the vehicle registration system was flawed in that it allowed such large-scale fraud to occur so easily.

18. The Administrative Jurisdiction Division gave its decision on 7 December 2005. Its reasoning included the following:

> "As the Administrative Jurisdiction Division has held [in an earlier case], it cannot be found that the Agency's policy of denying in principle retroactive effect to decisions ... to cancel the registration of a vehicle is not reasonable. The purity of the vehicle register and legal certainty of the registration of vehicles justify such a policy, as the Regional Court has rightly held. The Regional Court has rightly held that the Agency was not obliged to consider the applicant's submissions in this matter a ground to deviate from this policy and retroactively cancel the registration of the said motor cars with effect from the date requested by the applicant. That being so, the applicant's complaint that the Regional Court's decision is incomprehensible and improperly reasoned must fail.
>
> As regards the [applicant's] argument that the Vehicle Registration Regulations (*Kentekenreglement*) violate, *inter alia*, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Official Journal L 281, 23/11/1995; hereafter: the Directive), the Administrative Jurisdiction Division finds as follows. Contrary to what the [applicant] suggests, it cannot be deduced from the fact that the guideline includes a right of correction that the processor of those personal data is obliged to do so *sua sponte* and unasked and might not make the desired correction dependent on a request to that effect. In addition, contrary to what the [applicant] suggests, the processing of personal data pursuant to the Directive is also permitted without the permission of the person concerned if such processing is necessary for the performance of a task carried out in the exercise of official authority. In the opinion of the Administrative Jurisdiction Division, the use of a driving license involves recording the data of that driving license in a data filing system and processing them in the performance of the duty to secure compliance with legal obligations such as those here in issue. The [applicant's] complaint fails.
>
> Nor does the Administrative Jurisdiction Division agree with the [applicant] that the Vehicle Registration Regulations violate the right to liberty and security of person, laid down in Article 5 of the Convention and Article 9 of the International Covenant on Civil and Political Rights. Regardless of whether these provisions can be relevant to the decision-making process based on the Vehicle Registration Regulations – these regulations do not, after all, provide for the deprivation of liberty referred to by the [applicant] – these provisions contain an exception to the right to liberty and security of person in order to secure the fulfilment of an obligation prescribed by law. In this connection, the Administrative Jurisdiction Division notes in addition that this exception is also covered by the circumstance, referred to by the [applicant], that he

was deprived of his liberty because he had not taken the measures needed to correct the [registration of vehicles wrongly registered in his name]."

19. No further appeal lay against this decision.

II. RELEVANT DOMESTIC LAW

A. The 1994 Road Traffic Act

20. The 1994 Road Traffic Act (*Wegenverkeerswet 1994*) entered into force on 1 January 1995. At the relevant time, as pertinent to the case before the Court, it provided as follows:

"Section 1

...

3. A person to whom a registration number (*kenteken*) for a vehicle or trailer is issued will be treated, subject to evidence to the contrary, as the owner or registered user (*houder*) of that vehicle or trailer for the purposes of the provisions laid down by or pursuant to this Act. ...

Section 42

1. The Government Road Transport Agency shall keep a vehicle registration system listing the registration numbers issued.

2. The vehicle registration system shall contain data concerning vehicles and trailers for which a registration number has been issued and the name of the person to whom such registration numbers have been issued, as well as data concerning other vehicles and trailers in so far as such data:

(a) are necessary for the proper implementation of this Act and for the enforcement of the regulations laid down by or pursuant to this Act, or

(b) are necessary for the proper implementation of the Motor Vehicle Tax Act 1994, the Car and Motorcycle Tax Act 1992, the Motor Liability Insurance Act or other statutory provisions concerning vehicles and trailers, and for the enforcement of the regulations laid down by or pursuant to these statutory provisions. ...

Section 123

1. Without prejudice to section 122 and section 131, subsection 3, a driving licence will cease to be valid:

(a) when a new or replacement driving licence is issued;

(b) when it is exchanged for a driving licence issued to the holder by a competent authority outside the Netherlands for the category or categories of motor vehicle to which the exchange relates;

(c) during a period in which the holder is disqualified from driving vehicles;

(d) if unauthorised changes are made to it;

(e) upon the death of the holder; and

(f) when it is declared invalid for the category or categories to which the declaration of invalidity relates. ...”

B. The Vehicle Registration Regulations

21. At the relevant time, the Vehicle Registration Regulations, in their relevant part, provided as follows:

“**Section 40**

1. The registration in the register will lapse as soon as:

...

(h) Our Minister has declared the registration certificate to be invalid ...;

...

(k) Our Minister has declared the registration to have lapsed on the grounds of a request as referred to in paragraph 2.

2. A person who is, in his view, wrongly listed in the register as the holder of a registration certificate may request Our Minister to arrange for the registration to be cancelled. Our Minister will arrange for the registration to be cancelled if he considers that sufficient grounds exist for this. ”

C. The Vehicle Registration Certificates and Registration Plates (Proof of Identity) Order

22. At the relevant time, the Vehicle Registration Certificates and Registration Plates (Proof of Identity) Order (*Regeling legitimatievoorschriften kentekenbewijzen en kentekenplaten*), in its relevant part, provided as follows:

“**Section 2**

1. The following identity documents shall be presented with an application for part II of a registration certificate if the application is submitted by a natural person:

(a) a valid driving licence ...”

D. The Traffic Regulations Administrative Enforcement Act

23. At the relevant time, the Traffic Regulations Administrative Enforcement Act (*Wet Administratiefrechtelijke Handhaving Verkeersvoorschriften*), in its relevant part, provided as follows:

“**Section 5**

If it has been established that a vehicle for which a registration number has been issued was involved or instrumental in the action [i.e., for present purposes, the offence] and the identity of the driver of the vehicle cannot immediately be established, the administrative fine will be imposed on the person listed in the vehicle

registration system as the holder of the registration certificate at the time of the action. The provisions of section 8 will be drawn to his attention.

Section 6

1. The person to whom a decision is addressed may challenge the imposition of the administrative sanction by applying to the public prosecutor in the district court area in which the action took place. If it cannot be determined in which district court area the action took place, the application may be made to the public prosecutor in the district court area in which the person concerned has his place of residence. ...

Section 8

If, in the case of section 5, the holder of the registration certificate as listed in the vehicle registration system plausibly shows that the vehicle was used by another person against his will and that he could not reasonably have been expected to prevent this use, if he produces a written contract of hire entered into for a term not exceeding three months showing who was the hirer of the vehicle at the time of the action or if he produces a notice of indemnity issued pursuant to the Road Traffic Act 1994 showing that at the time of the action he was no longer the owner or keeper of the vehicle concerned, the public prosecutor will quash the decision. In such a case the public prosecutor may impose an administrative sanction on the person who performed the action, the person who was the hirer of the vehicle or the person to whom the vehicle was transferred. [Section 6] will then apply by analogy.

Section 9

1. A person who has challenged the imposition of the administrative sanction may apply to the District Court (*kantonrechter*) within whose area the action took place or, in the case referred to in section 6, subsection 1, second sentence, to the District Court within whose area the person concerned has his place of residence, for judicial review of the decision of the public prosecutor.

2. The application for review may be lodged on the grounds that:

(a) the action did not occur or, other than in the case of section 5, the person to whom the decision is addressed did not perform the alleged action;

(b) the public prosecutor should have decided that the circumstances in which the action occurred did not warrant the imposition of an administrative sanction or that, in view of the circumstances of the person concerned, the administrative sanction should have been set at a lower amount;

(c) the public prosecutor wrongly failed to quash the decision by virtue of section 8.
...

Section 28

1. If the amount [of the administrative fine] has not been recovered – or not recovered in full – in accordance with sections 26 and 27, the public prosecutor may, no later than three years after a final and unappealable decision has been given in respect of the imposed administrative fine, apply to the District Court in the area in which the person subject to the fine has his address for an order authorising him to apply one or more of the following coercive measures for each action in respect of which an administrative sanction has been imposed:

(a) taking the vehicle which was involved in the action out of commission (or, if it cannot be found, a similar vehicle in the possession of the person on whom the administrative sanction has been imposed) for a maximum of one month;

(b) confiscating the driving license of the person on whom the administrative sanction has been imposed for a maximum of one month;

(c) committing the person on whom the administrative sanction has been imposed to a remand centre for a maximum of one week.

...

2. No decision will be made on the application until after the person on whom the sanction has been imposed has been heard by the District Court or has in any event been properly summonsed to appear. No appeal or other remedy lies against the decision. ...”

E. Subsequent legislative developments

24. Section 123(1)(h) of the 1994 Road Traffic Act, enacted by the Act of 28 June 2006, *Staatsblad* (Official Gazette) 2006, no. 321, provides that a driving license will cease to be valid when it is reported missing. It entered into force on 1 October 2006.

25. Also on 1 October 2006 a new model driving licence was introduced. It includes a number of security features aimed at countering misuse which the previous models lacked.

III. RELEVANT EUROPEAN UNION LAW

26. As relevant to the case before the Court, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Official Journal L 281, 23/11/1995) provides as follows:

“**Article 2**

Definitions

For the purposes of this Directive:

(a) ’personal data’ shall mean any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

(b) ’processing of personal data’ (‘processing’) shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(c) 'personal data filing system' ('filing system') shall mean any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(d) 'controller' shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law;

(e) 'processor' shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(f) 'third party' shall mean any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(g) 'recipient' shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;

(h) 'the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.

Article 6

1. Member States shall provide that personal data must be:

(a) processed fairly and lawfully;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of data for historical, statistical or scientific purposes shall not be considered as incompatible provided that Member States provide appropriate safeguards;

(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

Article 7

Member States shall provide that personal data may be processed only if:

(a) the data subject has unambiguously given his consent; or

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or

(c) processing is necessary for compliance with a legal obligation to which the controller is subject; or

(d) processing is necessary in order to protect the vital interests of the data subject; or

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1).

Article 12

Right of access

Member States shall guarantee every data subject the right to obtain from the controller:

(a) without constraint at reasonable intervals and without excessive delay or expense:

- confirmation as to whether or not data relating to him are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed,

- communication to him in an intelligible form of the data undergoing processing and of any available information as to their source,

- knowledge of the logic involved in any automatic processing of data concerning him at least in the case of the automated decisions referred to in Article 15 (1);

(b) as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;

(c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant alleged a violation of his right to respect for his private life in that persons unknown had been allowed to have entries in his name made in the vehicle registration system without his consent by fraudulently

using his driving license. He relied on Article 8 of the Convention, which reads as follows:

> "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."

28. The Government denied that there had been any such violation.

A. Admissibility

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Government

30. The Government explained that in Netherlands domestic law the principle applied that the person in whose name a motor vehicle was registered was considered to be the owner or registered user of such vehicle. That person was therefore liable to ensure compliance with road traffic legislation, and thus to ensure payment of road tax, insure the vehicle against liability for damage to third parties and meet any obligations arising from the Traffic Regulations Administrative Enforcement Act. It was only thus that road traffic legislation could be enforced. The system existing previously had relied on the police stopping motor vehicles to establish the identity of the driver, which was not always possible. Entries in the vehicle registration system were not changed retrospectively in order not to contaminate the register.

31. It had, however, emerged already in 1995 and 1996 that the system was being abused. It appeared that certain individuals, known as "straw men", had been persuaded to accept payment to allow vehicles to be registered in their name even though the real owners and users were other persons; this allowed the latter to escape his or her statutory obligations with respect to the vehicle. It was in practice virtually impossible to enforce any financial obligations against the "straw men", since they generally went into hiding or had no assets.

32. At the relevant time, domestic law provided that a driving licence could not be declared invalid until a replacement was requested. The

interference complained of had therefore been "in accordance with the law"; it was the applicant who had delayed matters.

33. The Government argued that it was the responsibility of the holder of an official identity document to guard against abuse. The applicant had remained passive for several months after losing his driving license for whatever reason. He had reported only on 3 November 1995 that it had been mislaid or stolen in September of that year. So short a delay could be accepted, since the applicant might reasonably hope that his driving license might be found during that time. However, the applicant could reasonably have been expected to ask for a replacement driving license to be issued before so many cars were registered in his name; this would have automatically invalidated the one lost (section 123(1)(a) of the 1994 Road Traffic Act, see paragraph 20 above). In fact, he had only applied for a replacement driving license in 1997 and he had waited until 2004 before taking any demonstrable effective action on the vehicle registrations. The applicant's argument that the cost of a new driving license was prohibitive was unconvincing, since he had a car registered in his name, for which he had to pay insurance – and which, incidentally, he was not allowed to drive without a valid driving license.

34. More generally, the Government stated that the misuse of identity documents was a widespread and growing problem that had their full attention; it was precisely for this reason that a new driving licence, with additional safety features, had been introduced. However, there were many individuals and companies with large numbers of vehicles registered in their name; the number of vehicles already registered in someone's name was therefore not an acceptable criterion for refusing further registrations.

2. Applicant

35. The applicant argued that the interference with his rights under Article 8 had not been "in accordance with the law": it did not follow logically from section 123(1)(a) of the 1994 Road Traffic Act that the only way to prevent such fraud was to apply for a new driving license. In addition, the registration of the vehicles in his name was incompatible with Article 7 § 1 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (see paragraph 26 above) in that it had been done without his unambiguous consent.

36. At the relevant time identity fraud using stolen driving licenses had clearly been very easy; this had been the result of negligence on the part of the respondent Party. The fault had not been his. In fact, he had brought the matter of the false registrations to the attention of the domestic authorities on several occasions between 1997 and 2004 but to no avail.

3. The Court's assessment

a. Interference

37. The Court takes the view that the failure to invalidate the applicant's driving license as soon as the applicant reported it missing, which made abuse of the applicant's identity by other persons possible, constitutes an "interference" with the applicant's right to respect for his "private life".

b. In accordance with the law

38. The applicant's submissions notwithstanding, the Court accepts that the interference had a basis in domestic law, namely section 123 of the Road Traffic Act and section 40 of the Vehicle Registration Regulations as construed by the Administrative Jurisdiction Division.

39. As regards Directive 95/46/EC, on which the applicant relies, the Court notes that for purposes of the Convention it binds domestic authorities only in the form in which it has been transposed into domestic law (see *mutatis mutandis K.R.S. v. the United Kingdom* (dec.), no. 32733/08, 2 December 2008, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 250, 21 January 2011).

c. Legitimate aim

40. The Court accepts that the interference pursued a "legitimate aim", namely the "protection of the rights and freedoms of others".

d. Necessary in a democratic society

41. The sole remaining question is whether the interference was "necessary in a democratic society".

42. The Court does not consider it necessary to delve into the question, debated between the parties, whether the applicant took sufficient action in respect of the false registrations of vehicles in his name. It observes that on 3 November 1995 the applicant reported his driving license stolen. It considers that from that day onward the domestic authorities were no longer entitled to be unaware that whoever might have the applicant's driving license in his or her possession was someone other than the applicant.

43. Yet the applicant's driving license was invalidated only on 14 March 1997, when the applicant obtained a replacement. After that date, apparently, no further vehicles were unlawfully registered in the applicant's name. Plainly, therefore, swift administrative action to deprive a driving license of its usefulness as an identity document was possible and practicable. The Government have not satisfied the Court that such action could not have been taken immediately after the applicant reported that he had lost possession and control of the document.

44. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

45. The applicant complained that the various fines and periods of detention imposed on him constituted penalties for his failure to obtain a replacement driving license immediately, although this was not a crime defined by law. He relied on Article 7 of the Convention, which provides as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

46. The Government submitted that the applicant had not raised this matter in the domestic proceedings.

47. Leaving aside the question whether the domestic remedies have been exhausted in respect of this complaint, the Court finds nothing in the decision of the Administrative Jurisdiction Division that admits of an interpretation as suggested by the applicant.

48. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

49. The applicant complained that he had been detained for offences committed by others based solely on presumptions flowing from the registration of vehicles in his name. He relied on under 6 § 2 of the Convention, which provides as follows:

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

50. The Government submitted that the administrative-law proceedings pursued by the applicant had been appropriate to his attempts to secure the annulment of the fraudulent registrations in his name of the vehicles but not to this complaint. Where the applicant had made use of the procedure offered by the Traffic Regulations Administrative Enforcement Act, he had failed to raise this matter before the domestic authorities.

51. Again leaving aside the question whether the requirements of Article 35 § 1 of the Convention have been met, the Court points out that in

Falk v. the Netherlands (dec.), no. 66273/01, ECHR 2004-XI, it found, *inter alia*, that a person fined under Article 5 of the Traffic Regulations Administrative Enforcement Act could challenge the fine before a trial court with full competence in the matter. In such proceedings, the person concerned was not left without means of defence given that he or she could raise arguments based on section 8 of that Act.

52. The Court notes that, in light of the latter provision, the argument that the traffic offences had been committed by a person or persons other than himself was available to the applicant; the fact that the fines related to cars falsely registered in the applicant's name therefore did not deprive the applicant of the rights of the defence.

53. It follows that this complaint too is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

54. The applicant complained that his detention under section 28 of the Traffic Regulations Administrative Enforcement Act constituted deprivation of liberty not ordered by a competent court. When he had been committed for detention after failing to pay the fine, there had been no re-examination of the original decision imposing the fine even though the original decision had been flawed through not having reached him and because the offence had been committed by someone else. He relied on Article 5 of the Convention, which, in its relevant part, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; ..."

55. The Government submitted that the applicant had failed to exhaust the available domestic remedies.

56. The Court takes the view that the issue before it is whether the available procedural guarantees were appropriate and sufficient; a question identical to whether the available remedies were effective. It will therefore address the substance of the complaint without ruling separately on the Government's preliminary objection of non-exhaustion.

57. On the applicant's own admission, correspondence from public authority did not reach him because he had gone into hiding. It further notes that the applicant had the right to object to the public prosecutor against the imposition of the administrative fines (section 6 of the Traffic Regulations Administrative Enforcement Act); to apply to the District Court on the

ground that he had not committed the offences (section 8); and to be heard by the District Court before the order to commit him to detention was given (section 28(2)) (see paragraph 23 above). These procedural guarantees are, in principle, adequate.

58. The Court notes in addition that the applicant might reasonably have been expected to ensure that correspondence from the authorities reached him; the authorities cannot be held responsible for his failure to exercise his procedural rights because he failed to make the necessary arrangements (*mutatis mutandis*, *Hennings v. Germany*, 16 December 1992, § 26, Series A no. 251-A).

59. It follows that this complaint also is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. In a supplementary document submitted to the Court by letter of 22 August 2008, the applicant complained that the Council of State was not an independent and impartial tribunal. He relied on Article 6 § 1, which, in its relevant part, provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

61. The Court observes that the final domestic decision in the case was that given by the Administrative Jurisdiction Division on 7 December 2005, that is more than six months earlier. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

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

The applicant claimed compensation of pecuniary and non-pecuniary damage and costs and expenses.

A. Pecuniary and non-pecuniary damage

63. The applicant claimed the following sums in respect of pecuniary and non-pecuniary damage:

a) 83,701.86 euros (EUR), the estimated sum which he had lost in respect of lost social-security benefits;

b) EUR 11,000 towards the interest on debts which he was unable to service as a result of having lost his income;
c) EUR 500, the estimated total of the fines which he had had to pay, which had been advanced by members of his family;
d) EUR 4,530 for the time that he spent in detention, calculated according to domestic rates;
e) EUR 100,000 in a single sum for "emotional damages" and the resulting loss of earning capacity in the future.

64. The Government submitted that these claims were unsubstantiated and in any case unreasonably high. They also questioned the likelihood that the applicant would ever have had any future income not derived from social security.

65. Rule 60 of the Rules of Court provides, *inter alia*, that "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents", failing which "the Chamber may reject the claim in whole or in part". The attention of the applicant's representative was drawn to this provision by the Registrar at the appropriate stage of the proceedings.

66. As to pecuniary damage, itemised particulars and supporting documents are entirely lacking. The Court therefore rejects the claims under these heads in their entirety.

67. The Court accepts however that the applicant suffered non-pecuniary damage as a result of the violation found. Deciding on an equitable basis, it awards the applicant EUR 9,000 under this head.

B. Costs and expenses

68. The applicant claimed the following sums in respect of costs and expenses:

a) EUR 900, the total of the mandatory personal contributions (*eigen bijdragen*) and court registration fees which he had had to pay in the domestic proceedings;
b) EUR 250 per hour, plus value-added tax, for lawyers' fees covering an unspecified number of hours.

69. The Government drew attention to the absence of precision of these claims and the lack of supporting documents.

70. The Court notes that these claims are entirely unspecified and unsupported by documentary evidence. Having regard to the clear terms of Rule 60 and referring to paragraph 65 above, it therefore rejects them.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President