

AS TO THE ADMISSIBILITY OF

Application No. 29437/95
by Toivo VUORINEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 21 May 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 May 1995 by Toivo Vuorinen against Finland and registered on 5 December 1995 under file No. 29437/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish citizen, born in 1933 and currently serving a prison sentence in the Turku Central Prison. He is represented by Mr Veikko Lehtevä, a lawyer in Helsinki.

The facts of the case, as submitted by the applicant or apparent from the documents submitted, may be summarised as follows.

The applicant has a long history of convictions for various violent offences. Thus, in 1983 he was convicted of attempted manslaughter committed without his being in full possession of his senses. He was sentenced to over four years' imprisonment. He was incarcerated by the Prison Court (vankilaoikeus, fängelsedomstolen) as a dangerous recidivist and released on parole in 1987. His parole ended successfully in 1989. In 1990 he was convicted of aggravated assault committed without his being in full possession of his senses. He was sentenced to imprisonment and released on parole in 1991. His parole ended successfully in March 1992.

In 1993 the Helsinki City Court (raastuvanoikeus, rådstuvurätten)

found the applicant guilty of attempted murder committed in December 1992 without his being in full possession of his senses. He was found to have stabbed a social worker twice in the stomach and was sentenced to five years' imprisonment.

The 1953 Act on the Incarceration of Dangerous Recidivists (laki vaarallisten rikoksenuusijain eristämisestä, lag om internering av farliga återfallsförbrytare 317/1953) is applicable to offenders convicted of certain offences involving aggravated violence or constituting a particular danger to the life and health of others, and who are sentenced to at least two years' imprisonment. The sentencing court may authorise the offender's incarceration by the Prison Court in an institution for preventive detention, if, during a period of ten years preceding his offence, he has committed another offence of an extremely violent character, or involving a particular danger to the life and health of others, and provided he is clearly to be considered particularly dangerous to the life and health of others. Such an offender is to be regarded as a dangerous recidivist (section 1 of the 1953 Act).

In view of the applicant's criminal background and having obtained expert evidence concerning his mental state, the City Court in its judgment also authorised the Prison Court to order his incarceration as a dangerous recidivist.

On 14 October 1993 the Helsinki Court of Appeal (hovioikeus, hovrätten) partly quashed the City Court's judgment and convicted the applicant of attempted manslaughter. His sentence remained the same. The period of his detention preceding the Court of Appeal's judgment (some ten months) was to be deducted.

On 11 February 1994 the Supreme Court (korkein oikeus, högsta domstolen) refused the applicant leave to appeal. Subsequently the Prison Court began to gather further expert evidence concerning his mental health. In October 1994 it informed the applicant of the potential grounds for his incarceration, noting that he had previously been convicted of attempted manslaughter (committed in 1982), aggravated assault (committed in 1990) and assault (committed in 1992). The Prison Court afforded him an opportunity to comment on the expert evidence and summoned him to its hearing on 22 November 1994. He was later granted legal aid for the purpose of being assisted by counsel. Before the Prison Court counsel objected to the applicant's possible incarceration. The hearing was in the Helsinki Central Prison and allegedly because of his poor physical condition the applicant himself could not attend it. In its decision of 22 November 1994 the Prison Court noted that after his release from his previous incarceration in 1987 he had committed not only attempted manslaughter but also two assaults the second of which had involved particularly gross violence. Although finding him to be ailing and suffering from atrophy and various other illnesses, the experts investigating his mental state nevertheless suggested that he should be incarcerated. The Prison Court found that he could not control his tendency towards violent behaviour and that the risk for recidivism involving further violent crimes was significant. In conclusion, he was clearly to be considered particularly dangerous to the life and health of others. The Prison Court therefore ordered his immediate incarceration in an institution for preventive detention. Its decision was final.

An institution for preventive detention is either a separate institution or part of another penitentiary (section 10 of the 1953 Act). In view of the small number of incarcerated recidivists no separate institution exists at present. The Prison Court shall reconsider an incarceration order if this is found to be clearly unnecessary in the light of new information (section 9 of the 1953 Act).

An incarcerated recidivist shall be released on parole only upon

having served his total term of imprisonment, unless the Prison Court still considers him dangerous to the life and health of others. If he is not released, the matter shall be re-examined by the Prison Court at least every six months (sections 14 and 15 of the 1953 Act).

COMPLAINTS

1. The applicant complains that his incarceration in 1994 as a dangerous recidivist has amounted to both inhuman punishment (as far as regards his current sentence) and inhuman treatment (in so far as his detention can be expected to exceed that sentence). He refers, in particular, to his age and poor health. He also considers that the conditions for his incarceration were not fulfilled. His conditional releases in 1987 and 1991 were both successful and outside prison he is able to live off his pension. Already due to his poor state of health there would be no risk that he might commit further violent offences. He invokes Article 3 of the Convention, read in conjunction with Article 6 para. 1.

2. In his submissions of 29 November 1995 the applicant furthermore complains that, when ordering his incarceration in 1994, the Prison Court was not an impartial and independent tribunal within the meaning of Article 6 para. 1 of the Convention. He refers to the fact that the Director General of the National Prison Administration sat on the Court ex officio, although this body is responsible for the execution both of prison sentences in general and of the incarceration of dangerous recidivists.

THE LAW

1. The applicant complains that his incarceration in 1994 as a dangerous recidivist has amounted to both inhuman punishment (as far as regards his current sentence) and inhuman treatment (in so far as his incarceration can be expected to exceed that sentence). He refers, in particular, to his age and poor health. He invokes Article 3 of the Convention, read in conjunction with Article 6 para. 1 (Art. 3+6-1).

The Commission has considered the above complaint under Article 3 (Art. 3) which reads as follows:

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

The Commission recalls that the assessment of the minimum level of severity of treatment contrary to Article 3 (Art. 3) of the Convention is relative and must take account of all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see, e.g., Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The Commission notes that the applicant's present five-year prison sentence imposed in 1993 has not yet expired. As regards the inhuman punishment to which he has allegedly been subjected while serving this sentence as an incarcerated recidivist, it is true that certain experts have found that he is ailing and suffering from atrophy and various other illnesses. Though the Commission would not doubt that his imprisonment must therefore cause him certain additional hardship, it has not been submitted that his prison conditions are such as to deprive him of adequate medical care. In these circumstances the Commission finds no indication that his current incarceration has subjected him to treatment proscribed by Article 3 (Art. 3).

As for the inhuman treatment to which he will allegedly be subjected on expiry of his prison term, the Commission notes that there

is no certainty yet as to whether or not he will at that time remain incarcerated by order of the Prison Court.

No further issue arises under Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. In his submissions of 29 November 1995 the applicant furthermore complains that, when ordering his incarceration in 1994, the Prison Court was not an impartial and independent tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 26 (Art. 26) of the Convention stipulates that the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken. According to Rule 44 para. 4 of the Commission's Rules of Procedure, the date of introduction of an application shall in general be considered the date of the first communication from the applicant. The Commission may nevertheless for good cause decide that a different date shall be considered the date of introduction (cf., e.g., No. 18660/91, Dec. 7.12.94, D.R. 79, p. 11).

The Commission notes that the applicant's first complaint (regarding his incarceration) was raised in substance already in his first submissions of 22 May 1995. However, his second complaint regarding the status of the Prison Court when ordering his incarceration in 1994 must be regarded as a separate complaint. This complaint was not raised in substance until 29 November 1995, ie. more than six months after the Prison Court's order which constituted the final decision for the purposes of Article 26 (Art. 26).

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber