

AS TO THE ADMISSIBILITY OF

Application No. 24950/94
by Pertti KINNUNEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

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 7 July 1994 by Pertti Kinnunen against Finland and registered on 19 August 1994 under file No. 24950/94;

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 1935 and resident in Varkaus. He was a legal practitioner up to 1990, when he went on early retirement. This is his second application to the Commission, his first (No. 18291/91) having been declared inadmissible on 13 October 1993.

A. Particular circumstances of the case

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

In 1985 the applicant was arrested and detained, suspected of fraud. In the context of the arrest he was fingerprinted and photographed at the Lahti Police Department. This material was placed in a file pertaining to him and kept by that Police Department. Information pertaining to his personal details was also transferred to the National Police Register of Personal Details (tuntomerkkirekisteri, signalementregistret) kept by the Central Criminal Police.

The applicant was subsequently charged with, inter alia, instigation of fraud, but was finally acquitted by the Court of Appeal (hovioikeus, hovrätten) of Kouvola in 1988.

On 10 June and 13 July 1994 the applicant requested that the

Police Department send him its file with the photographs and fingerprints taken in 1985. He also requested physical access to the registers in which he suspected that he had been included and, in particular, to the Register of Professional Criminals and Recidivists (Ammatti- ja taparikollisten rekisteri; the so-called "ATARI Register) allegedly also kept by the Central Criminal Police.

On 14 July 1994 the Police Department confirmed that the applicant's personal details had been filed in the Register of Personal Details. On that day and in view of the applicant's acquittal in 1988 the Department had requested the Central Criminal Police to delete the information concerning him. The Central Criminal Police was expected to delete him from the register within about a week. His name did not appear in any other police register and he was free to inspect the registered information at any local police department. The applicant's picture would be removed from the Department's own archives but could not be sent to him.

On 15 July 1994 the applicant requested the Police Department to contact the Central Criminal Police so as to prevent it from destroying the material concerning him without he himself being present. He repeated his request to receive the original file with the photographs and fingerprints. No further measures were taken by the Police Department.

On 29 July 1994 the applicant invoked his right of access to the Register of Personal Details at the Varkaus Police Department. He was unable to inspect his file physically, but on 1 August 1994 the Department confirmed in writing that he did not appear in the register.

B. Relevant domestic law

According to the 1987 Act on Registers of Persons (henkilörekisterilaki 471/87, personregisterlag 471/87), anyone shall in principle have access to information possibly pertaining to him and stored in a register (section 11). Access may be denied or restricted, inter alia, if access to the information could hamper the prevention or investigation of crime or be contrary to another particularly important general interest (section 12). Incorrect information shall be corrected at the request of the person concerned (section 15). The Data Protection Ombudsman (tietosuojavaltuutettu, dataombudsmannen) may order the file-keeping authority to grant access to a register and to make such corrections. He may also bring the matter before the Data Protection Board (tietosuojalautakunta, datasekretessnämnden). If the Ombudsman refuses to take measures, the person concerned may seize the Board directly. A final appeal lies to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen) (sections 35 and 38).

COMPLAINTS

1. The applicant complains that the police registered him "as a criminal" even before he had been tried by the courts. He invokes Article 6 para. 2 as well as Article 8 of the Convention.
2. The applicant also complains that for years after his acquittal had acquired legal force the police still considered him "as a criminal". He refers to the confirmation by the Lahti Police Department that on 14 July 1994 he still appeared both in its own file and in the Register of Personal Details kept by the Central Criminal Police. He again invokes Article 6 para. 2 and Article 8.
3. The applicant further complains about the refusal of the Lahti Police Department to send him its file on him. He also complains that he was denied his right of physical access to the registers in which he suspects that he has been included. He invokes Article 13 of the Convention.

4. The applicant finally complains that he has been denied an effective remedy within the meaning of Article 13 of the Convention. He submits, in particular, that he did not receive an appealable decision in writing concerning the deletion by the Central Criminal Police of information pertaining to him.

THE LAW

1. The applicant complains that the police registered him "as a criminal" even before he had been tried by the courts. He invokes Article 6 para. 2 (Art. 6-2) as well as Article 8 (Art. 8) of the Convention.

The Commission recalls that under Article 27 (Art. 27) of the Convention it shall not deal with any application submitted under Article 25 (Art. 25) which is substantially the same as a matter which has already been examined by it and if the fresh application contains no relevant new information. In its decision of 13 October 1993 on the admissibility of Application No. 18291/91 the Commission already dealt with the applicant's grievance that his personal details had been recorded in 1985. His present complaint is in substance the same as that lodged by him in Application No. 18291/91, i.e. a matter which has already been examined by the Commission. Moreover, no "relevant new information" within the meaning of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention has been adduced which would enable the Commission to deal with his present complaint.

It follows that this complaint must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

2. The applicant also complains that for years after his acquittal had acquired legal force the police still considered him as a criminal. He refers to the confirmation by the Lahti Police Department that on 14 July 1994 he still appeared both in its own file and in the Register of Personal Details. He again invokes Article 6 para. 2 (Art. 6-2) and Article 8 (Art. 8).

Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

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

Article 8 (Art. 8) reads, in so far as relevant, as follows:

"1. Everyone has the right to respect for his private ... life, ...

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."

In the present case it appears that the personal details collected from the applicant in 1985 remained in the file of the Lahti Police Department up to July 1994. Up to that time information based on his personal details also remained in the Register of Personal Details kept by the Central Criminal Police.

The Commission recalls that the Convention entered into force with respect to Finland on 10 May 1990. In accordance with the generally recognised rules of international law it only governs, for each Contracting Party, facts subsequent to its entry into force with

respect to that Party (see, e.g., No. 220/56, Dec. 15.7.57, Yearbook 1 pp. 157, 159; No. 9453/81, Dec. 13.12.82, D.R. 31 pp. 204, 208). The present grievance, however, concerns a situation continuing up to July 1994, thus falling within the Commission's competence *ratione temporis* (cf. No. 10454/83, Dec. 23.1.86, D.R. 45 p. 91; *mutatis mutandis*, No. 14/56, Dec. 9.6.58, Yearbook 2 pp. 214, 234; cf. also Eur. Court H.R., *Hokkanen v. Finland* judgment of 23 September 1994, Series A no. 299-A, p. 19, para. 53).

The Commission furthermore recalls that in its decision of 13 October 1993 on the admissibility of Application No. 18291/91 it rejected a similar complaint, having found that the applicant had failed to exhaust domestic remedies, a requirement prescribed by Article 26 (Art. 26) of the Convention. It noted that the applicant had not asserted his right of access to the retained information and his subsidiary right to request that it be corrected or deleted. Although the applicant has now requested that he be granted access to the Register of Personal Details and that he be removed from that register, he has not requested the Data Protection Ombudsman to intervene in the matter pursuant to section 35 of the 1987 Act on Registers of Persons. For the reasons below, however, the Commission need not decide whether the domestic remedies have now been exhausted.

(i) As regards Article 6 para. 2 (Art. 6-2) of the Convention, the Commission observes that the applicant's grievance concerns the retention of his personal details and the information based thereupon during a period subsequent to his acquittal in 1988. He has not been charged with any criminal offence after that acquittal. It is true that in certain circumstances an issue may also arise under Article 6 para. 2 (Art. 6-2) if a public authority continues to voice suspicions regarding an accused's innocence despite his final acquittal (see, Eur. Court H.R., *Sekanina v. Austria* judgment of 25 August 1993, Series A no. 266-A, pp. 14-16, paras. 27-31).

In the present case the Commission finds no indication that the retention of the applicant's personal details and the information based thereupon amounted to a finding of guilt or a voicing of suspicions which would be in violation of Article 6 para. 2 (Art. 6-2).

(ii) As regards Article 8 (Art. 8), the Commission must first examine whether the retention at issue amounted to an interference with the applicant's right to respect for his private life within the meaning of that provision. It notes that the material retained by the Lahti Police Department consisted of photographs and fingerprints taken in connection with his arrest in 1985 and therefore did not constitute an intrusion upon his privacy (cf. No. 20542/92, Dec. 29.11.93, D.R. 75 pp. 231, 237-238). Moreover, there is no indication that the Department's file or the Register of Personal Details contained any surveillance or similar information in respect of the applicant or any subjective appreciations which he might have wished to refute (cf. Eur. Court H.R., *Leander* judgment of 26 March 1987, Series A no. 116, p. 22, para. 48; No. 15220/89, Comm. Report 15.10.93, D.R. 75 p. 30).

The Commission therefore considers that the material and information retained by the police was not of such a character that it could have adversely affected the applicant any more significantly than the publicly known fact that he had been charged with, but acquitted of, certain charges. In these circumstances the Commission finds that the retention complained of cannot be considered to amount to an interference with his right to respect for his private life within the meaning of Article 8 (Art. 8) (cf. *Friedl v. Austria*, Comm. Report 19.5.94, paras. 49 et seq., Series A no. 305-B, p. 21; No. 25099/94, Dec. 5.4.95, D.R. 81-B pp. 136, 139). Finally, it appears that the relevant material and information was deleted from the Lahti Police Department's file and the Register of Personal Details in July 1994, as requested by the applicant. Accordingly, there is no appearance of any violation of that provision.

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

3. The applicant further complains about the refusal of the Lahti Police Department to send him its file on him. He also complains that he was denied his right of physical access to the registers in which he suspects that he has been included. He invokes Article 13 (Art. 13) of the Convention.

The Commission has examined this complaint under the above-quoted Article 8 (Art. 8) of the Convention, again assuming that the domestic remedies have been exhausted. It recalls that the Convention organs have left open whether a general right of access to personal data and information may be derived from para. 1 of that provision (Eur. Court H.R., Gaskin judgment of 7 July 1989, Series A no. 160, p. 15, para. 37). Referring to its considerations in point 2 concerning the nature of the retained material and the information concerning the applicant, the Commission considers that the refusal on 29 July 1994 to allow him physical access to various registers and the refusal to send the file with his personal details to him neither amounted to a lack of respect for his private life within the meaning of Article 8 (Art. 8) nor interfered with his right to respect for such private life (cf., *mutatis mutandis*, the above-mentioned Gaskin judgment, pp. 15-17, paras. 38-41 and the above-mentioned No. 25099/94, loc.cit., pp. 139-140).

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

4. The applicant finally complains that he has been denied an effective remedy within the meaning of Article 13 (Art. 13) of the Convention. He submits, in particular, that he did not receive an appealable decision in writing concerning the deletion by the Central Criminal Police of information pertaining to him.

Article 13 (Art. 13) reads as follows:

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

The Commission recalls that, according to the European Court of Human Rights, an applicant, who is found to have no "arguable claim" that another Convention provision has been violated, is not entitled to a remedy under Article 13 (Art. 13) (see, e.g., Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33 and p. 20, para. 46). The concept of an arguable claim nevertheless falls to be determined having regard to the particular facts of the case and the nature of the legal issues raised (cf. Eur. Court H.R., Plattform "Ärzte für das Leben" judgment of 21 June 1988, Series A no. 139, p. 11, para. 27; No. 12474/86, Dec. 11.10.88, D.R. 58 p. 94).

Referring to its findings above in regard to the complaints under Articles 6 and 8 (Art. 6, 8), the Commission can leave aside the question whether the remedies available to the applicant under the Act of Personal Registers were "effective" within the meaning of Article 13 (Art. 13). Instead it concludes that he had no "arguable claim" of a breach of any of those provisions which would have entitled him to a remedy under Article 13 (Art. 13). Accordingly, there is no appearance of any violation of that provision either.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber

(M.F. BUQUICCHIO)

President of the First Chamber

(C.L. ROZAKIS)