AS TO THE ADMISSIBILITY OF

Application No. 24626/94
by A.K.L.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 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
K. HERNDL

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 March 1994 by A.K.L. against Finland and registered on 18 July 1994 under file No. 24626/94;

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 1953. He is a worker and is presently serving a prison sentence in the county prison of Häme.

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

On 18 February 1990 the police in Riihimäki conducted a search of a kiosk building which the applicant had rented. The police found, inter alia, some brand labels for leather clothes and jeans as well as price labels, clothes hangers bearing the name of a company called "SN" and plastic bags bearing the name of a company called "ME".

On 9 March 1990 the police in Riihimäki conducted a search of an abandoned house which a person named R had rented. The police found, inter alia, five empty bottle cases of the State Alcohol Monopoly and a cognac box containing two bottles of wine.

On the basis, inter alia, of the findings from the above searches the applicant was in December 1990 charged with professional concealment of illegally obtained goods and illegal possession of

firearms contrary to chapter 32 section 3 of the Penal Code (rikoslaki) and sections 5 and 5 (a) of the Act on firearms and ammunition (laki ampuma-aseista ja ampumatarpeista), respectively. The indictment contained a total of eleven counts in relation to these categories of offence. There were seven other accused and fifteen complainants, including the companies SN and ME. The goods in question were leather jackets, jeans, alcohol, firearms and electronics. The applicant was also charged with drunken driving and other traffic offences contrary to chapter 23 section 1 of the Penal Code and sections 98 and 102 of the Road Traffic Act (tieliikennelaki).

The case commenced in the District Court (kihlakunnanoikeus) of Riihimäki on 18 December 1990. Although summoned, the applicant did not appear in court and he was subsequently fined for being absent from the court without lawful excuse on 18 December 1990.

On 14 May 1991 the District Court found the applicant guilty of the charges brought against him. The court also found the other accused, inter alia persons named V and P, guilty of the charges brought against them. As these persons did not appeal against the judgment it became final in so far as it concerned them.

The applicant, however, appealed against the judgment to the Court of Appeal (hovioikeus) of Kouvola. He maintained that the District Court had not given adequate reasons for its judgment.

On 25 August 1992 the Court of Appeal quashed the District Court's judgment in so far as the applicant had appealed against it and referred the case back to the District Court on the ground that it found that the District Court had not properly stated the factual findings on which its decision was based.

The applicant's case was reheard by the District Court on 12 January 1993. The applicant, assisted by counsel, was present in court and had the opportunity to make any submissions which he considered of importance to the outcome of the case. Furthermore, during the proceedings the District Court heard witnesses called A and B, summoned by the applicant. It further heard, inter alia, a witness called L in connection with the charge of illegal possession of firearms and a witness called K in connection with the charge of drunken driving and other traffic offences. It appears that during the proceedings the applicant considered it of importance that a person named H be called as a witness in connection with the traffic offence charges. It does not appear, however, that H was summoned or gave evidence. As regards documentary evidence, the District Court had at its disposal, inter alia, a copy of its judgment of 14 May 1991 which had gained legal force in respect of the co-accused, including V and P.

On 12 January 1993 the District Court found the applicant guilty of all the charges brought against him and sentenced him to one year and eight months' imprisonment and to 50 day-fines totalling FIM 1,000. As regards the traffic offences the Court relied on the evidence given by the witness K and did not consider that the person named H, who had been mentioned by the applicant, could provide any evidence which would be of relevance to the outcome of these charges.

The applicant appealed against the judgment to the Court of Appeal. He requested an oral hearing in the Court of Appeal with a view to the co-accused and the witnesses A and B giving their evidence again. He further requested that H be called as a witness in connection with the traffic offences. Finally, he requested that two new witnesses, R and D, be called. R would testify about the applicant's possibilities to have access to the abandoned house and D was mentioned in the statement given by the applicant's co-accused V.

On 30 September 1993 the Court of Appeal acquitted the applicant on four counts of concealment of illegally obtained goods and illegal

possession of firearms but found him guilty on the other charges brought against him. There was no oral hearing in the Court of Appeal and thus no evidence was heard from any of the witnesses mentioned by the applicant. The Court of Appeal reduced the sentence to six months' imprisonment and altogether 80 day-fines totalling FIM 1,600.

In his appeal to the Supreme Court (korkein oikeus) the applicant, assisted by counsel, requested that evidence from his co-accused V be heard again and that H, R and D be called as witnesses.

On 17 February 1994 the Supreme Court refused the applicant leave to appeal.

COMPLAINTS

1. As regards his conviction the applicant complains, under Article 6 para. 2 of the Convention, that he was not presumed innocent and that the Court did not take into account evidence submitted by him.

2. As regards the proceedings in the District Court the applicant complains, under Article 6 para. 3 (d) of the Convention, that the Court prevented him from obtaining the examination of witnesses on his behalf since the Court did not hear evidence from the potential witnesses H, R and D. He further alleges that he did not have the opportunity to question his co-accused V.

3. Finally, in connection with the criminal proceedings instituted against him as a whole, the applicant refers to Articles 3 and 14 of the Convention.

THE LAW

1. The applicant complains of infringements of Article 6 (Art. 6) of the Convention in connection with the criminal proceedings instituted against him.

Article 6 (Art. 6) of the Convention reads, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> ..."

The applicant has referred not only to Article 6 para. 1 (Art. 6-1) but also to paras. 2 and 3 of this Article. In this respect the Commission recalls that the guarantees in paras. 2 and 3 are specific aspects of the right to a fair trial set forth in para. 1 (cf., for example, Eur. Court H.R. Unterpertinger judgment of 24 November 1986, Series A no. 110, p. 14, para. 29). Accordingly, the Commission will have regard to these aspects when examining the facts under para. 1 of Article 6 (Art. 6-1).

The applicant has raised the question of a fair hearing with regard to the presumption of innocence. He also complains that the courts did not take into account evidence submitted by him.

The Commission recalls in this regard that its task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (cf., for example, No. 21283/93, Dec. 5.4.94, D.R. 77-A p. 81).

The Commission finds that no evidence has been adduced to show that the applicant's right to the presumption of innocence was violated.

2. The applicant further complains, under Article 6 para. 3 (d) (Art. 6-3-d), that his right to obtain the attendance and examination of witnesses on his behalf was violated since the District Court allegedly refused to hear evidence from witnesses on his behalf. The applicant also alleges that he did not have an opportunity to be present when the District Court heard evidence from the co-accused V.

The Commission recalls that, as a rule, it is for the national courts to assess the evidence before them. The Commission's task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (cf., for example, Eur. Court H.R., Isgrò judgment of 19 February 1991, Series A no. 194-A, p. 11, para. 31).

As regards taking evidence the Commission recalls that one of the purposes of Article 6 para. 3 (d) (Art. 6-3-d) is to ensure equality between the defence and the prosecution as regards the summoning and examination of witnesses but it does not grant the accused an unlimited right to secure the appearance of witnesses in court. Furthermore, it is in the trial court's discretion to refuse to take evidence which is considered irrelevant or unobtainable (cf. Eur. Court H.R., Engel and Others judgment of 8 June 1976, Series A no. 22, pp. 38-39, para. 91).

It is true that the three persons, H, R and D, whose evidence the applicant considered important, were not heard during the proceedings. However, in so far as the application concerns the alleged refusal to hear evidence from witnesses on behalf of the applicant, the Commission notes that the applicant, who was assisted by counsel, had the opportunity to call these witnesses to be heard in the District Court by virtue of chapter 17 section 26 of the Code of Judicial Procedure (oikeudenkäymiskaari). The Commission further notes in this respect that the applicant did in fact call two witnesses in the District Court, whose evidence was heard. The applicant did not call any further witnesses. He did not ask for the case to be adjourned in order to have further witnesses called and the District Court did not refuse to hear evidence from witnesses which were readily available. Furthermore, the District Court, as well as the Court of Appeal, found that the proposed evidence was not necessary for the evaluation of the substance of the case which the courts had to consider.

The Commission finds no indications that the District Court in these circumstances went beyond its proper discretion when it decided the case without hearing evidence from H, R and D. Accordingly, this part of the complaint submitted under Article 6 para. 3 (d) (Art. 6-3-d) of the Convention has not disclosed any unfairness in respect of the applicant's trial.

As regards the applicant's opportunity to question his co-accused V the Commission recalls that all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. As a rule the respect of the rights of the

defence requires that the defendant be given an adequate and proper opportunity to challenge and question a witness against him either when he was making his statements or at a later stage of the proceedings (cf., for example, Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, p. 10, para. 27).

As regards the co-accused V, the Commission notes that it is true that V was heard in the District Court on 18 December 1990 when the applicant was absent from the court without lawful excuse. The Commission further notes that the District Court had at its disposal a copy of its judgment of 14 May 1991, which had gained legal force and by which V had been convicted of concealment of illegally obtained goods. However, the evidence obtained from this previous judgment was far from being the only evidence in the case. Under these circumstances the Commission finds that the limitation deriving from the fact that the applicant was not personally present when evidence from his co-accused V was taken did not hamper the defence to a degree that was irreconcilable with the Convention.

Summing up, the Commission recalls that the guarantees in paragraphs 2 and 3 of Article 6 (Art. 6-2, 6-3) of the Convention are specific aspects of the right to a fair trial set forth in paragraph 1. The Commission has considered the particular aspects and incidents invoked by the applicant and has found that these did not assume such importance as to make the trial as a whole unfair.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the applicant refers to Articles 3 and 14 (Art. 3, 14) of the Convention.

In this respect the Commission has not found any facts in the case which could justify a further examination of this part of the application.

It follows that this part of the application is 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 — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)