AS TO THE ADMISSIBILITY OF

Application No. 25652/94
by A.K.L.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
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 25 August 1994 by A.K.L. against Finland and registered on 14 November 1994 under file No. 25652/94;

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 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.

The applicant has been in imprisonment since at least from August 1993. In 1993 he was serving his prison sentence in the Central Prison of Riihimäki, hereinafter "the Central Prison". At the beginning of 1994, on or before 7 March 1994, he was transferred to the County Prison of Häme, hereinafter "the County Prison".

By petitions of 13 August 1993, 27 August 1993, 14 December 1993 and 1 January 1994 to the Ministry of Justice (oikeusministeriö) and to the Parliamentary Ombudsman (eduskunnan oikeusasiamies), the applicant complained generally about the conditions in the Central Prison as regards, inter alia, the surveillance of prisoners' telephone calls and restrictions on the use of money in prison.

On 1 December 1993 the Department for Prison Administration (vankeinhoito-osasto) of the Ministry of Justice, hereinafter "the Prison Department", responded to the applicant's complaints by stating, inter alia, that the restrictions on the use of money in prison were

based on a regulation made by the Prison Department in February 1992. It further stated that, under section 28 of the 1975 Decree on the Treatment of Prisoners (vankeinhoitoasetus), the Prison Governor (vankilan johtaja) was empowered, where special grounds existed, to grant a prisoner a wider right to use money.

On 31 August 1994 the Deputy Parliamentary Ombudsman (eduskunnan apulaisoikeusasiamies) responded to the applicant's petitions by referring, firstly, to her previous decision of 31 January 1992, in which she had stated that the applicant's petition did not establish a need for further measures. She found that the applicant's petitions were so general that they did not give her grounds to change her previous decision. As regards the surveillance of telephone calls, she stated, furthermore, that a Bill proposing an amendment to the Decree on Penal Enforcement (asetus rangaistusten täytäntöönpanosta) was before Parliament.

By a petition of 7 March 1994 to the Parliamentary Ombudsman the applicant complained about the prison conditions in the County Prison as regards, inter alia, the surveillance of telephone calls. The Parliamentary Ombudsman requested the Prison Governor and two guards to give reports and also sought an opinion on the case from the Prison Department. It appears that the applicant had during his imprisonment in the County Prison made a total of 20 telephone calls. The Prison Department stated in its opinion that the surveillance of prisoners' telephone calls was based on a previous circular letter issued by the Prison Department on 24 June 1975 as well as on a more recent regulation concerning prisoners' correspondence, which had come into force on 1 January 1993. The Prison Department argued that the practice of the surveillance was justified taking into account the need for the maintenance of order in prison.

On 22 August 1994 the Parliamentary Ombudsman decided not to take any further measures in the case. The Parliamentary Ombudsman stated that, at that time, there was no statute law on the surveillance of telephone calls in prisons. The practice of the surveillance of telephone calls was based on a previous circular letter issued by the Prison Department on 24 June 1975. He furthermore referred to the legislative proposal concerning an amendment to the Decree on Penal Enforcement. The Parliamentary Ombudsman found that the surveillance of prisoners' telephone calls could not be considered to be unlawful taking into account the reasons given in the Prison Department's opinion.

According to the circular letter of 24 June 1975 concerning telephone calls, a prisoner's telephone call could be put under surveillance in two ways: either by being present in the same room or by listening in an extension, but informing the prisoner about the surveillance beforehand. It was prohibited to listen to calls between a prisoner and his advocate or legal aid counsel save for special reasons. This directive was replaced as from 1 January 1993 by an directive on prisoners' correspondence. The previous practice observed in connection with the surveillance of prisoners' calls was not changed.

Under section 9, subsection 3 of the Act on Penal Enforcement (laki rangaistusten täytäntöönpanosta), which was amended on 31 January 1995 and came into force on 1 May 1995, a prisoner may be granted permission to make a telephone call to someone outside the prison. A prisoner's telephone call may be put under surveillance if such surveillance is necessary in order to prevent a crime or if there exist special grounds to suspect misuse of the right to use the telephone. The prisoner and the person whom the prisoner is going to phone are to be informed about the surveillance beforehand. Telephone calls to an authority with supervisory responsibility for the prison or to the prisoner's counsel may not be put under surveillance.

Under section 28 of the 1975 Decree on the Treatment of Prisoners, the Ministry of Justice issues regulations on prisoners' right to have money in their possession. The Prison Governor is empowered, where special grounds exist, to allow a prisoner a right to have money in his possession and to use it. By virtue of section 32 of the relevant Decree, there is to be a shop for prisoners in the prison. If a prisoner is not allowed to have money in his possession, his purchases shall be charged to his account. The costs of mail and telephone calls are charged to a prisoner's account. The new Decree on the Treatment of Prisoners, as amended on 16 June 1995, contains similar provisions (in sections 34, 38 and 39), and it introduces a payment card which can be used instead of money.

COMPLAINTS

The applicant complains, under Article 8 of the Convention, that certain conditions in Finnish prisons violate his right to respect for his private life.

Firstly, the applicant alleges that prisoners' telephone calls are being placed under surveillance using technical equipment, although there is no authorization for this practice in legislation. He maintains that the authorities supervising the prisons do not deny that telephone calls may be put under surveillance. He further maintains that he himself does not have any evidence of his own telephone calls having been placed under surveillance but that, taking into account that the authorities admit the possibility that telephone calls can be put under surveillance, he is not obliged to present any evidence concerning his own telephone calls.

Secondly, as regards the right to use money, the applicant maintains that prisoners' right to use money is restricted to FIM 300 per month. He complains that this restriction is arbitrary and restricts in an unjustified manner his opportunities to make purchases in the prison shop and that, therefore, his right to respect for his private life has been violated.

THE LAW

The applicant complains that, during his imprisonment in the Central Prison of Riihimäki and later in the County Prison of Häme, the practice of the surveillance of prisoners' telephone calls and the restriction on the use of money violated his right to respect for his private life as he, too, was subjected to these practices complained of. He invokes Article 8 (Art. 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."

The Commission notes, firstly, that it is questionable whether the application, as regards the conditions in the first prison, namely in the Riihimäki Central Prison, has been lodged in time having regard to the requirements of Article 26 (Art. 26) of the Convention. The Commission finds, however, that this question can be left open since it finds that the application is in any event inadmissible for the following reasons.

1. As regards the telephone calls, the Commission recalls that communication by telephone is included in the concepts of "private life" and "correspondence" (see, for example, Eur. Court H.R., Malone judgment of 2 August 1984, Series A no. 84, p. 30, para. 64).

The Commission notes, however, that the applicant has not in any way substantiated his allegation as regards the surveillance of his own telephone calls. The applicant has neither specified what telephone calls he has made, nor on what basis he believes that his telephone calls have been put under surveillance. The Commission also notes that the practice which was used in the prisons as regards the surveillance of prisoners' telephone calls was not such as could escape a prisoner's notice since telephone calls were listened to by a guard being present in the same room with a prisoner or by listening in an extension, but in the latter case the prisoner was informed about the surveillance before the call. The applicant has failed to put forward any argument why these conditions would have been disregarded in his case.

In these circumstances the Commission finds that the applicant's allegation concerning an interference in his right under Article 8 (Art. 8) of the Convention has been unsubstantiated.

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.

2. As regards the complaint concerning the possession and use of money in prison the Commission accepts that this question falls under Article 8 (Art. 8) of the Convention as being part of "private life" (cf. No. 8231/78, Dec. 6.3.82, D.R. 28 p. 5).

Article 26 (Art. 26) of the Convention provides that the Commission may deal with a matter only 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. It is established case-law that "the final decision" refers only to domestic remedies which can be considered to be "effective and sufficient" for the purpose of rectifying the subject-matter of the complaint (see, for example, No. 11763/85, Dec. 9.3.89, D.R. 60 p. 128).

The Commission notes that under Finnish law the applicant had the opportunity to request the Prison Governor to grant him greater freedom to have money in his possession and to use it than prescribed by the general regulation issued by the Prison Department of the Ministry of Justice. The applicant has, neither in the Central Prison of Riihimäki nor in the County Prison of Häme, lodged such a request. The Commission finds that an individual's request to the relevant Prison Governor is an "effective remedy" as regards the question of the right to have money in one's possession and to use it.

The Commission concludes that the applicant has not exhausted the remedies available to him under Finnish law. It follows that this part of the application must be rejected, under Article 27 para. 3 (Art. 27-3) of the Convention, for failure to exhaust domestic remedies.

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)