AS TO THE ADMISSIBILITY OF

Application No. 17086/90
by Tomi AUTIO
against Finland

The European Commission of Human Rights sitting in private on
6 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G. H. THUNE
SirBasil HALL
MM.F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 11 May 1990 by
Tomi AUTIO against Finland and registered on 28 August 1990 under file
No. 17086/90;

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

The applicant is a Finnish citizen born in 1969 and resident at
Kaarenkylä. He is a carpenter by profession. Before the Commission
he is represented by Mr. Jouni Salminen, lawyer to the Finnish Union
of Conscientious Objectors.

In 1988 the applicant requested to be exempted from ordinary
military service because of his serious ethical conviction. By letter
of 11 October 1988 the Staff of the Military District of Itä-Uusimaa
(Itä-Uudenmaan sotilaspiirin esikunta, staben för Östra Nylands
militärdistrikt) confirmed his exemption and informed him of the terms
of substitute service (siviilipalvelu, civiltjänstgöring).

In 1989 the Ministry of Labour (työministeriö, arbetsministeriet)
ordered the applicant to start his service on 23 October 1989. After
an initial two-month training period the applicant worked from

19 December 1989 at a hospital as an assistant janitor. The hospital was situated about 250 kilometres from his home and he was accommodated in its dormitory.

Until 1 January 1987 the length of substitute service was based on the 1969 Act on Unarmed Military Service and Substitute Service (laki 132/69 aseettomasta palveluksesta ja siviilipalveluksesta, lag 132/69 om vapenfri tjänst och civiltjänst, hereinafter "the 1969 Act"), the length of service being twelve months. Conscientious objectors applying for substitute service had to undergo an inquiry procedure by the Examination Board (tutkijalautakunta, prövningsnämnden) concerning the sincerity of their religious or ethical conviction.

Under the 1950 Military Service Act (laki 452/50 varusmies-palveluksesta, värnpliktslag 452/50) the length of ordinary military service is eight months. Conscripts who receive officers' and certain other kinds of special training perform eleven months of service. By virtue of an amendment to the Act which entered into force in 1989 conscripts receiving certain special training perform nine and a half months of service.

Those opposed to armed service may perform unarmed military service (aseeton palvelu, vapenfri tjänst) of eleven months.

The 1969 Act was based on the principle of proportionality, the Parliamentary Committee on Defence Matters (puolustusvaliokunta, försvarsutskottet) having rejected the Government's proposal that the length of unarmed and substitute service be fourteen months. The Committee stated inter alia:

"... the [proposed] length of unarmed and substitute service ..., that is 120 days and 180 days more than the length of the ordinary service prescribed in the Military Service Act, is unreasonable. It cannot be considered appropriate to treat these conscripts in an essentially more onerous way than the others. ..." (Report No. 5/1968)

On 1 January 1987 the Act on Temporary Amendments to the 1969 Act (laki 647/85 aseettomasta palveluksesta ja siviilipalveluksesta annetun lain muuttamisesta, lag 647/85 om temporär ändring av lagen om vapenfri tjänst och civiltjänst, hereinafter "the 1985 Act") entered into force, prolonging the length of substitute service to sixteen months and abolishing the inquiry procedure. A request for exemption from ordinary military service is now to be made to the Board of Conscription (kutsuntalautakunta, uppbådsnämnden) and should include a declaration that the conscientious objection is based on religious or ethical grounds. Exemption is to be granted upon this request. The objector may then perform unarmed military service or substitute service. The 1985 Act will remain in force until the end of 1991.

According to the reasons given by the Government gave when proposing the 1985 Act to Parliament the substitute service had previously in some respects had a privileged character. The Government therefore intended to adjust the practical performance of this service, making it as burdensome as military service. This aim was to be achieved by the amendment to Section 26 of the 1969 Act and by regulations regarding the conditions of substitute service issued by the Ministry of Justice (oikeusministeriö, justitieministeriet) in 1986. Both measures were taken with the aim of increasing the number of working hours for conscientious objectors and of making the performance of substitute service less a matter of individual treatment.

The prolongation of the substitute service was based on the consideration that the conscientious conviction was to be "measured". The Government stated that the inquiry procedure could be abolished,

provided that the sincerity of the conviction could be ascertained by substantially prolonging the length of substitute service:

"... Provided that substitute service would be 240 days longer than ordinary military service ... there would be a reasonable cause to believe that persons applying for substitute service have a religious or ethical conviction making it impossible to perform armed service ..."
(pp. 3-4 of the Bill to Parliament)

Simultaneously with the 1985 Act, the Act on the Exemption of Jehovah's Witnesses from National Service (laki 645/85 Jehovan todistajien vapauttamisesta asevelvollisuuden suorittamisesta, lag 645/85 om befrielse för Jehovas vittnen från fullgörandet av värnplikt i vissa fall, hereinafter "the Exemption Act") was enacted. On the basis of the Exemption Act members of the religious community "Jehovah's Witnesses" may, on request, be exempted from all forms of national service.

After the Convention entered into force with regard to Finland the applicant, invoking the Convention, requested the Ministry of Labour to shorten the length of his service. By decision of 21 May 1990 this request was rejected.

In February 1991 the applicant's service ended.

COMPLAINTS

The applicant complains inter alia that the length of the substitute service he had to perform was discriminatory in comparison with the length of ordinary military service. He contends that the discrimination related to the enjoyment of his right to freedom of thought, conscience and religion.

He alleges that the length of substitute service was not based on an objective and reasonable justification, since it was the deliberate intention of the Government to make the performance of this service more burdensome than the performance of military service. He submits that the fact that the substitute service was prolonged as a precondition for the exemption of members of "Jehovah's Witnesses" from all national service, that is to say in a "legislative package", is a further indication of the unacceptable purposes behind the prolongation of substitute service.

He further submits that, both conscripts and conscientious objectors being as poorly paid, the longer duration of the substitute service supports the argument that it is discriminatory. He finally submits that under the legislation of other Western European countries providing for substitute service the length of this service is, with one exception, as long as or only somewhat longer than military service. This also goes for Poland and Hungary. Thus, Finland is an exception by international comparison.

He invokes Article 14 read in conjunction with Article 9 of the Convention.

THE LAW

The applicant complains that the length of his substitute service was discriminatory in comparison with the length of ordinary military service. He alleges that the discrimination related to the enjoyment of his right to freedom of thought, conscience and religion. He invokes Article 14 in conjunction with Article 9 (Art. 14+9) of the Convention.

Article 9 (Art. 9) of the Convention reads:

"1.Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2.Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) of the Convention reads:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission has previously found that the right to conscientious objection is not as such guaranteed by Article 9 (art. 9) of the Convention or any other provision of the Convention or its Protocols (cf. e.g. No. 7565/76, Dec. 7.3.77, D.R. 9 p. 117; No. 7705/76, Dec. 5.7.77, D.R. 9 p. 196; No. 10640/83, Dec. 9.5.84, D.R. 38 p. 219; No. 10410/83, Dec. 11.10.84, D.R. 40 p. 203; No. 11850/85, Dec. 2.3.87, D.R. 51 p. 180).

The Commission recalls, however, that Article 9 (art. 9) and the other provisions of the Convention defining substantive rights are supplemented by Article 14 (art. 14) prohibiting discrimination in the enjoyment of such rights. A measure which as such could be in conformity with one of the normative provisions may nevertheless violate that provision taken in conjunction with Article 14 (art. 14), if it is applied in a discriminatory manner. However, there can be no room for the application of Article 14 (art. 14), unless the facts at issue fall within the ambit of one of the other substantive provisions of the Convention (cf. Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 17, para. 36 with further reference).

The Commission finds that, although Finland was not obliged under Article 9 (art. 9) of the Convention to recognise the applicant as a conscientious objector, the applicant's complaints nevertheless fall within the ambit of that provision, and Article 14 (art. 14) of the Convention is therefore applicable (cf. the above-mentioned No. 10410/83, Dec. 11.10.84, D.R. 40 p. 207).

For the purposes of Article 14 (art. 14) of the Convention, a difference in treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim", or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. The scope of the margin will vary according to the circumstances, the subject-matter and its background (see the above-mentioned Inze judgment, p. 18, para. 41 with further references).

The Commission considers that, in certain respects, someone who has opted for substitute service is in a comparable position to someone

who has to do military service. To this extent there was a differential treatment in the present case (cf. the above-mentioned No. 11850/85, Dec. 2.3.87, D.R. 51 p. 182).

The Commission notes, however, that any system of compulsory military service imposes a heavy burden on the citizens. The burden may be regarded as acceptable only if it is shared in an equitable manner and if exemptions from the duty are based on solid grounds (cf. the above-mentioned No. 10410/83, Dec. 11.10.84, D.R. 40 p. 203 [207]). The Commission further notes that the ratio legis of the 1985 Act was explained, in the relevant Bill to Parliament, as follows:

"As the convictions of conscripts applying for civilian service will no longer be examined, the existence of these convictions should be ascertained in a different manner so as not to let the new procedure encourage conscripts to seek an exemption from armed service purely for reasons of personal benefit or convenience. Accordingly, an adequate prolongation of the term of such service has been deemed the most appropriate indicator of a conscript's convictions."

Having regard to these reasons and the other considerations set out above, the Commission is satisfied that the differential treatment in question pursued a "legitimate aim".

The question remains whether the differential treatment also fulfilled the requirement of proportionality, inherent in Article 14 (art. 14). In this regard the Commission accepts, on the one hand, that genuine conscientious objectors, whose conviction does not allow them to opt for the shorter military service, may find the duration of their service unreasonable. On the other hand, the legislation in question has relieved all those opting for substitute service from the duty to prove the genuineness of their conviction. Although the duration of substitute service is considerably longer than that of military service the Commission, taking into account the State's margin of appreciation, finds that the differential treatment in question does not amount to a violation of Article 14 read in conjunction with Article 9 (art. 14+9) of the Convention.

It follows that 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)