AS TO THE ADMISSIBILITY OF

Application No. 26739/95
by Esko HELIN and Others
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
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 2 December 1994 by Esko HELIN and Others against Finland and registered on 20 March 1995 under file No. 26739/95;

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 applicants are set out in the Annex. They are represented by Mr Erkki Laakso in Lahti.

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

The applicants have been serving prison sentences in the Riihimäki Central Prison. Some of them have now been released and one applicant has been transferred to another prison.

On 21 November 1994 the applicants' representative before the Commission, himself imprisoned at the time, complained to the Board (johtokunta, direktionen) of the Riihimäki Central Prison about the systematic inspection of correspondence. Contrary to the practice in certain other Finnish prisons, the prisoners had to place their letters unsealed in an internal mail box for final dispatching by prison staff. This practice allegedly violated the prisoners' right to respect for their privacy as guaranteed to them under the Convention.

In a letter to the applicants' representative dated 24 November 1994 the Prison Board considered that the practice of inspecting correspondence was in compliance with the relevant legal provisions and rules. The Board referred to chapter 2, section 9 (1) and (2) of the 1889 Decree on the Enforcement of Punishments (asetus 39/1889 rangaistusten täytäntöönpanosta, förordning 39/1889 om verkställighet af straff, as amended in 1974). According to these provisions, the Prison Governor or a prison official appointed by him may inspect correspondence or packages to and from a prisoner. Letters shall not be read, unless this is necessary for the purpose of preventing crime or there is a reason for suspecting that the prisoner's right to send and receive correspondence is being abused. If, for one of these reasons, the letter or package is not delivered, it shall be returned to the sender or handed over to the prisoner at the time of his or her release, unless the nature of the correspondence renders this impossible. Letters from the prisoner to an authority supervising the prison or to his or her counsel must be immediately forwarded without inspection.

On 1 May 1995 the above-mentioned Decree was renamed as the Act on the Enforcement of Punishments and amended in several respects (no. 128/1995). The provisions of the previous Decree now also prohibit the inspection of incoming mail from counsel and authorities supervising the prisons as well as the inspection of correspondence between prisoners and international human rights bodies to which they are entitled to complain.

A prisoner in a Finnish prison must ask for permission to make a telephone call. Up to 1 May 1995 interception of calls was regulated by a circular of the Ministry of Justice (of 24 June 1975). A call which was to be intercepted either had to be made/received in the presence of prison staff or staff could listen in on it by using an extension. In the latter case the prisoner was to be informed of the intended interception. Save for exceptional reasons calls between a prisoner and his counsel could not be intercepted.

Pursuant to the above-mentioned 1995 Act a prisoner's telephone call may now be intercepted only if this is deemed necessary in order to prevent crime or there are special grounds for suspecting misuse of the prisoner's right to make telephone calls. The prisoner and the other party shall be notified of any intended interception. Calls to and from a supervising authority or counsel shall not be intercepted (section 9 (3)).

COMPLAINTS

1. The applicants complain that their right to respect for their correspondence has been violated in the Riihimäki Central Prison. Except for letters addressed to their counsel, the Minister of Justice, the Department for Prison Administration, the President of the Republic and the European Commission and Court of Human Rights, the applicants were unable to seal their outgoing correspondence, with the result that prison staff allegedly read it in their absence. Moreover, the applicants have not been allowed to attend the inspection of incoming correspondence - other than that emanating from the above-mentioned sources - in order to verify that it was not being read.

2. The applicants also complain that telephone calls made by them have been intercepted by prison staff.

The applicants invoke Article 8 of the Convention.

THE LAW

1. The applicants complain that their right to respect for their correspondence has been violated due to the practice of systematic inspection of certain categories of mail in the Riihimäki Central

Prison. They invoke Article 8 (Art. 8) of the Convention which reads, in so far as relevant, as follows:

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

Inspection and reading of prisoners' correspondence constitutes an interference with the exercise of their right to respect for their correspondence. Such an interference would contravene Article 8 (Art. 8) unless it was "in accordance with the law", pursued one or more of the legitimate aims referred to in Article 8 para. 2 (Art. 8-2) and, furthermore, was "necessary in a democratic society" in order to achieve them (see, Eur. Court HR, Silver and Others v. the United Kingdom judgment of 25 March 1983, Series A no. 61, p. 32, para. 84; Kruslin v. France judgment of 24 April 1990, Series A no. 176-A, p. 20, para. 26; Huvig v. France judgment of 24 April 1990, Series A no. 176-B, p. 52, para. 25; and Campbell v. the United Kingdom judgment of 25 March 1992, Series A no. 233, p. 16, para. 34). Nevertheless, some measure of control of prisoners' correspondence is called for and is not of itself incompatible with the Convention, particularly having regard to the ordinary and reasonable requirements of imprisonment (see the Silver and Others judgment, op. cit., p. 38, para. 98 and the Campbell judgment, op. cit., p. 18, para. 45).

As regards notably the question whether an interference with prisoners' correspondence would be "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2), the Commission recalls that this provision requires, first of all, that the interference should have some basis in domestic law; that the law should be adequately accessible and that it should be formulated with sufficient precision to enable the citizen to regulate his conduct (see Eur. Court HR, Silver and others judgment, op. cit., p. 33, paras. 85-88). Nevertheless, while a law which confers a discretion must indicate the scope of that discretion, it is impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity (see, among many other authorities, the Silver and Others judgment, op. cit., p. 33, para. 88).

In the present case the Commission notes that domestic law empowers the Prison Governor or a prison official appointed by him to inspect correspondence or packages to and from a prisoner. Letters shall not be read, unless this is necessary for the purpose of preventing crime or there is reason to suspect that the prisoner's right to send and receive correspondence is being abused. If, for one of these reasons, the letter or package is not delivered, it shall be returned to the sender or handed over to the prisoner at the time of his or her release, unless the nature of the correspondence renders this impossible.

The Commission observes, moreover, that letters from the prisoner to an authority supervising the prison or to his or her counsel must be immediately forwarded without inspection. Finally, as from 1 May 1995 the relevant Act also prohibits the inspection of incoming mail from counsel and authorities supervising the prisons as well as the inspection of correspondence between prisoners and, among other bodies, the Commission.

In the present case the Commission notes that the applicants had to place part of their outgoing correspondence unsealed in an internal mail box for final dispatching by prison staff. In addition, they were not allowed to attend the inspection of part of their incoming correspondence in order to verify that it was not being read. However, as recalled above, some measure of control of prisoners' correspondence is called for and is not of itself incompatible with the Convention (see, e.g, the Campbell judgment referred to above).

Indeed the present applicants do not allege that their correspondence with their counsel, authorities supervising the prison or the Commission has been inspected and possibly read. Nor do they complain of correspondence having been returned to its sender without being delivered. As for the remainder of their purported correspondence, the Commission finds that they have failed to provide details of any letters which they suspect might have been inspected and possibly read by prison staff. On this point the applicants' complaint has not been sufficiently substantiated. In these particular circumstances there is no appearance of a violation of Article 8 (Art. 8) of the Convention.

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

2. The applicants also complain that telephone calls made by them have been intercepted by prison staff, this being contrary to the above-cited Article 8 (Art. 8) of the Convention.

The Commission recalls that communication by telephone is included in the concepts of "private life" and "correspondence" within the meaning of Article 8 para. 1 (Art. 8-1) (see, e.g., Eur. Court HR, Malone v. the United Kingdom judgment of 2 August 1984, Series A no. 84, p. 30, para. 64).

In the present case the Commission notes that, according to the practice up to 1 May 1995 (laid down by the Prison Department's circular letter of 1975), calls which were to be intercepted had to be made/received in the presence of prison staff. Alternatively, staff could listen in on the call by using an extension but only after having notified the prisoner of the intended interception. Thus, any interception of a prisoner's calls was necessarily brought to his or her attention. Furthermore, save for exceptional reasons calls between a prisoner and his or her counsel could not be intercepted. As from 1 May 1995 calls to and from a supervising authority shall not be intercepted either.

The Commission finds that the present applicants have not in any way specified even the nature of the calls which have allegedly been intercepted either before or after the entry into force of the 1995 Act (cf. also No. 25652/94, Dec. 12.4.96, not published). In these circumstances the Commission considers that the applicants' complaint has not been sufficiently substantiated. Accordingly, there is no indication of any violation of Article 8 (Art. 8) of the Convention on this point 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber

ANNEX

The applicants are:

1. Mr Esko J. HELIN; a prisoner in the Riihimäki Central Prison;

2. Mr Juha P. PITKÄNIEMI, currently resident in Rauma;

3. Mr Kari KNUUTILA; a prisoner in the Riihimäki Central Prison;

4. Mr Matti KIRJAKOFF; currently resident in Espoo;

5. Mr Timo PUNKKINEN; a prisoner currently in the Helsinki Central Prison;

6. Mr Ari PIETARILA; currently resident in Turenki;

7. Mr Jari RYTTERHEIM; currently resident in Turku; and

8. Mr Juha LIEDES, currently resident at Ii.