AS TO THE ADMISSIBILITY OF

Application No. 26753/95
by Pekka HELIN
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 Pekka HELIN against Finland and registered on 20 March 1995 under file No. 26753/95;

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 applicant is a Finnish citizen, born in 1960 and currently serving a prison sentence in the Turku Central Prison. He is represented by Mr Veikko Lehtevä, a lawyer in Helsinki.

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

In 1993 the applicant was found guilty of, among other offences, manslaughter and violent resistance against a civil servant. He was sentenced to ten years' imprisonment.

The 1953 Act on the Incarceration of Dangerous Recidivists (laki vaarallisten rikoksenuusijain eristämisestä, lag om internering av farliga återfallsförbrytare 317/53) is applicable to offenders convicted of certain offences involving aggravated violence or constituting a particular danger to the life and health of others, and who are sentenced to at least two years' imprisonment. The sentencing court may authorise the offender's incarceration by the Prison Court (vankilatuomioistuin, fängelsedomstolen) in an institution for preventive detention, if, during a period of ten years preceding his offence, he has committed another offence of an extremely violent character, or involving a particular danger to the life and health of

others, and provided he is clearly to be considered particularly dangerous to the life and health of others. Such an offender is to be regarded as a dangerous recidivist (section 1 of the 1953 Act).

The Prison Court consists of the Director-General of the National Prison Administration of the Ministry of Justice (oikeusministeriön vankeinhoito-osasto, justitieministeriets fångvårdsavdelning) or his Deputy and four other members appointed by the President of the Republic for a period of five years. Two of these four members shall have judicial experience and one of them shall be a physician experienced in psychiatry. Members shall swear a judicial oath (section 5 of the 1953 Act). As regards the grounds for disqualifying a member, the provisions of the Code of Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balk) relating to courts of appeal shall be applicable, mutatis mutandis (section 6 of the 1953 Act).

In view of the applicant's criminal background and having obtained expert evidence concerning his mental state, the Helsinki City Court (raastuvanoikeus, rådstuvurätten) in its judgment also authorised the Prison Court to order his incarceration as a dangerous recidivist. The applicant had objected to such an authorisation being issued.

In February 1994 the Helsinki Court of Appeal (hovioikeus, hovrätten) upheld the City Court's judgment. Leave to appeal was refused by the Supreme Court (korkein oikeus, högsta domstolen) on 3 June 1994.

Subsequently the Prison Court began to gather further expert evidence concerning the applicant's mental health. In March 1995 it informed the applicant of the potential grounds for his incarceration, afforded him an opportunity to comment on the expert evidence and summoned him to its hearing on 30 May 1995. He was later granted legal aid for the purpose of being assisted by counsel.

At the hearing on 30 May 1995 the applicant objected to his possible incarceration. In its decision of the same day the Prison Court noted that during the ten preceding years the applicant had been convicted of a number of violent offences and twice of manslaughter. The offences had often been committed soon after his release from prison. He was therefore clearly to be considered particularly dangerous to the life and health of others. The Prison Court therefore ordered his immediate incarceration in an institution for preventive detention.

An institution for preventive detention is either a separate institution or part of another penitentiary (section 10 of the 1953 Act). In view of the small number of incarcerated recidivists no separate institution exists at present.

The Prison Court shall reconsider an incarceration order if this is found to be clearly unnecessary in the light of new information (section 9 of the 1953 Act). No information has been supplied as to the applicant's current circumstances.

An incarcerated recidivist shall be released on parole only upon having served his total term of imprisonment, unless the Prison Court still considers him dangerous to the life and health of others. If he is not released, the matter shall be re-examined by the Prison Court at least every six months (sections 14 and 15 of the 1953 Act).

COMPLAINTS

1. The applicant complains that the City Court's order authorising his incarceration as a dangerous recidivist amounted to inhuman treatment and punishment. He challenges the ordinary courts' finding that the conditions for authorising such incarceration were fulfilled. He invokes Article 3 of the Convention, read in conjunction with Article 6 para. 1.

2. In his submissions of 29 December 1995 the applicant furthermore complains that the Prison Court was not an impartial and independent tribunal within the meaning of Article 6 para. 1 of the Convention which he invokes in conjunction with Article 3. He refers to the fact that the Director General of the National Prison Administration sat on the Court ex officio, although this body is responsible for the execution both of prison sentences in general and of the incarceration of dangerous recidivists.

THE LAW

1. The applicant complains that the City Court's order authorising his incarceration as a dangerous recidivist subjected him to inhuman treatment and punishment. He invokes Articles 3 and 6 para. 1 (Art. 3, 6-1) of the Convention.

(a) Article 3 (Art. 3) of the Convention

Article 3 (Art. 3) reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that the assessment of the minimum level of severity of treatment contrary to Article 3 (Art. 3) of the Convention is relative and must take account of all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see, e.g., Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The applicant essentially questions the domestic courts' finding that the conditions for authorising his incarceration as a dangerous recidivist were fulfilled. It is not for the Commission to substitute itself for the competent domestic courts in assessing whether those conditions were met. In any case, the authorisation in itself was only a preliminary step preceding the Prison Court's final examination of this matter. In these circumstances the Commission finds no indication that the impugned measure subjected the applicant to treatment proscribed by Article 3 (Art. 3).

Finally, it has not been submitted that the conditions to which the applicant has been subjected during his incarceration as a dangerous recidivist are in themselves in violation of Article 3 (Art. 3).

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

(b) Article 6 para. 1 (Art. 6-1) of the Convention

Article 6 para. 1 (Art. 6-1) reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Commission finds no indication that the court proceedings in which the applicant's incarceration was authorised violated Article 6 para. 1 (Art. 6-1) or any other paragraph of that provision.

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

2. The applicant furthermore complains that the Prison Court comprised, among others, the Director General of the National Prison Administration, who sat on the Court ex officio. Therefore the conditions for his incarceration were not finally examined by an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention, read in conjunction with Article 3 (Art. 6-1+3).

The Commission considers that the complaint concerning the status of the body ordering the applicant's incarceration falls to be examined under Article 5 para. 1 (a) (Art. 5-1-a) of the Convention. This provision reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> a. the lawful detention of a person after conviction by a competent court; ..."

The Commission recalls that in order for detention after conviction to be lawful within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention, it must result from, follow and depend upon, or occur by virtue of a "conviction by a competent court". In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (Eur. Court HR, Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 114, p. 23, para. 42).

The Commission observes that the applicant's present imprisonment is based on his conviction by an ordinary court, whose competence within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) has not been challenged by him. On the basis of this conviction and the sentence imposed on him the ordinary court also authorised his incarceration as a dangerous recidivist.

It is true that under section 15 of the 1953 Act the Prison Court, having ordered the applicant's incarceration, may also order that he should remain in preventive detention once he has served his full prison term. Such an order has not yet been issued, given that the prison sentence imposed in 1993 is not yet near expiry. The Prison Court's incarceration order of 1995 therefore relates merely to the implementation of his present term of imprisonment as imposed by the Helsinki City Court and upheld by the Helsinki Court of Appeal. Accordingly, there is, at least for the time being, a sufficient causal connection between the applicant's conviction and his incarceration as a dangerous recidivist (see No. 20560/92, Dec. 30.8.94; No. 21221/93, Dec. 28.6.95, neither published). In these circumstances there is no appearance of any violation of Article 5 (Art. 5) of the Convention.

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.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber