AS TO THE ADMISSIBILITY OF

Application No. 25159/94
by Teuvo HOKKANEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 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 5 August 1994 by Teuvo Hokkanen against Finland and registered on 15 September 1994 under file No. 25159/94;

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 and resident at Jäniksenlinna. He is a farmer. Before the Commission he is represented by Mr. Heikki Salo, a lawyer practising in Helsinki.

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

From 1985 to 1994 the applicant was involved in a dispute with his parents-in-law principally concerning custody and access in respect of his daughter Sini. Following his wife's death he had provisionally accepted that Sini's maternal grandparents care for her, but these had subsequently refused to restore her to him. In 1987 the Supreme Court confirmed the applicant's custody of Sini and ordered her return. The grandparents refused to comply with the order which was not enforced.

The further underlying facts are summarised in the Hokkanen v. Finland judgment of the European Court of Human Rights which was rendered on 23 September 1994 in respect of Application No. 19823/93 (Series A no. 299-A).

The present application concerns the proceedings which the applicant instituted on 22 June 1992 by requesting enforcement of a

judgment of 25 September 1991 rendered by the Helsinki Court of Appeal (hovioikeus, hovrätten) insofar as it had prescribed certain access arrangements between him and Sini (Hokkanen judgment, loc.cit., pp. 13-14, para. 29 and pp. 14-16, paras. 33-37).

The Court of Appeal's judgment was given in a second round of proceedings instituted by the Social Welfare Board (sosiaalilautakunta, socialnämnden) of Tuusula in 1990 with a view to having custody of Sini transferred to her grandparents. This request was granted by the Court of Appeal on 25 September 1991 and leave to appeal was subsequently refused by the Supreme Court (korkein oikeus, högsta domstolen) on 21 January 1992 (ibid., p. 14, para. 31).

In the ensuing enforcement proceedings the County Administrative Board (lääninhallitus, länsstyrelsen) of Uusimaa on 31 December 1992 ordered the grandparents to comply with the access arrangements ordered by the Court of Appeal on 25 September 1991 on pain on having to pay an administrative fine (ibid., p. 15, para. 35). Despite the grandparents' refusal to comply with those arrangements no such fines were ordered to be paid. On 21 October 1993 the Court of Appeal upheld an appeal lodged by the grandparents against the County Administrative Board's decision. On 4 February 1994 the Supreme Court refused the applicant leave to appeal (ibid., pp. 15-16, para. 37).

In the present application the applicant refers to a confidential memorandum of 5 March 1987 drawn up by a lawyer of the National Board for Social Welfare (sosiaalihallitus, socialstyrelsen). This memorandum allegedly suggested that an "unofficial procedure" could be followed when the authorities were to apply domestic law concerning the possible return of children to their custodians in "difficult cases". The memorandum explained that, although domestic law required strict enforcement of court orders in this field, the "unofficial practice" in "difficult cases" could be "less strict". The applicant allegedly gained access to a copy of this memorandum only on 10 March 1994 but he has not submitted any copy thereof to the Commission.

COMPLAINTS

1. The applicant complains that the Court of Appeal was biased when examining the grandparents' appeal against the County Administrative Board's decision of 31 December 1992, since it took into account a certain medical report submitted at the grandparents' request. This report was not based on any real psychological examination of Sini nor did it take into account her complete personal background. The applicant invokes Articles 6 and 8 of the Convention separately as well as Article 14 in conjunction with those provisions.

2. The applicant complains that he was denied a fair trial in the proceedings concerning the enforcement of the access arrangements ordered by the Court of Appeal on 25 September 1991. The authorities failed to ensure effective enforcement of the Court of Appeal's judgment in this respect and thus favoured the defiance shown by Sini's grandparents in obstructing the court-ordered access arrangements. The enforcement proceedings instituted by the applicant were also unnecessarily delayed by the Court of Appeal, if compared with the preceding ordinary court proceedings resulting in the transfer of custody of Sini to her grandparents. Moreover, the authorities' failure to order that the grandparents should pay administrative fines for not complying with the access arrangements was not in accordance with domestic law, since it followed the "unofficial procedure" suggested in the memorandum of the National Board for Social Welfare dated 5 March 1987. The failure on the part of the authorities effectively to enforce the prescribed access arrangements also discriminated against the applicant, particularly since it favoured the life style and home environment of Sini's grandparents rather than that of the applicant. The applicant again invokes Articles 6 and 8 of the Convention separately as well as Article 14 in conjunction with those

provisions.

THE LAW

1. The applicant complains that the Court of Appeal was biased when examining the grandparents' appeal against the County Administrative Board's decision of 31 December 1992. He invokes Articles 6 and 8 (Art. 6, 8) of the Convention separately as well as Article 14 (Art. 14+6+8) in conjunction with those provisions.

The Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with the matter 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. An applicant must make normal use of remedies likely to be effective and adequate in respect of the matters of which he complains (see, e.g., No. 13251/87, Dec. 6.3.91, D.R. 68 pp. 137 et seq., at pp. 163-164).

The proceedings of relevance to the present complaint ended with the Supreme Court's decision of 4 February 1994 to refuse the applicant leave to appeal, while the application was lodged on 4 August 1994. The Commission recalls that the day on which the final national judgment was rendered forms no part of the six months' period prescribed by Article 26 (Art. 26) of the Convention. The period starts to run on the day after and expires six calendar months later (No. 21034/92, Dec. 9.1.95, D.R. 80-A p. 87). Accordingly, the present complaint has been lodged within the time-limit contained in Article 26 (Art. 26), regardless of whether or not the applicant received the Supreme Court's decision on 4 February 1994 or later (cf. No. 22714/93, Dec. 27.11.95, D.R. 83-A p. 17).

The applicant has not shown, however, that he brought his present grievance at least in substance to the attention of the Supreme Court. The Commission cannot therefore find that he exhausted the remedies available to him under Finnish law (cf., e.g., Eur. Court H.R., Cardot judgment of 19 March 1991, Series A no. 200, pp. 18-19, paras. 34-36; No. 11244/87, Dec. 2.3.87, D.R. 55 pp. 98; No. 11921/86, Dec. 12.10.88, D.R. 57 p. 81). Moreover, an examination of the application does not disclose the existence of any special circumstance which might have absolved him, according to the generally recognised rules of international law, from exhausting the remedy available to him.

It follows that this complaint must be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains that he was denied a fair trial in the proceedings concerning the enforcement of the access arrangements ordered by the Court of Appeal on 25 September 1991; that the proceedings were unnecessarily delayed by the Court of Appeal; that the authorities' refusal to order that the grandparents should pay administrative fines for not complying with the access arrangements was not in accordance with domestic law, since it followed the "unofficial procedure" suggested in the memorandum of the National Board for Social Welfare dated 5 March 1987; and that the failure on the part of the authorities effectively to enforce the court-ordered access arrangements also discriminated against the applicant on account of his life style and home environment as compared with that of Sini's grandparents. The applicant again invokes Articles 6 and 8 (Art. 6, 8) of the Convention separately as well as Article 14 (Art. 14+6+8) in conjunction with those provisions.

The Commission recalls that under Article 27 (Art. 27) of the Convention it shall not deal with any application submitted under Article 25 (Art. 25) which is substantially the same as a matter which has already been examined by it and if the fresh application contains

no relevant new information. In its decision of 9 February 1993 on the admissibility of Application No. 19823/93 which was brought by the present applicant and his daughter Sini (T. and S. H. v. Finland, Comm. Report 22.10.93, Appendix II, p. 45) the Commission summarised two of the applicants' complaints as follows:

> "1. The applicants complain of a violation of their right to respect for their family life. By allowing [the grandparents] to keep [Sini] despite court decisions to the contrary, the authorities failed to promote the re-unification of the applicants speedily. Whilst an interference with the right at issue may be justified, for instance for the protection of a child's health, no such circumstances were at hand in the applicants' case. On the contrary, all authorities involved found the first applicant suited to be responsible for the second applicant's upbringing and that he could give her a good home environment. ... The applicants object to the reasoning of the Court of Appeal in its decision of 25 September 1991 according to which an arbitrary keeping of a child, if long enough, amounts to a particularly weighty reason for depriving a parent of legal custody of his child. Such reasoning clearly jeopardises the principle of legality. The applicants invoke Article 8 (Art. 8) of the Convention and Article 5 of Protocol No. 7 (P7-5) to the Convention.
> ...
> 3. The applicants ... complain that they have been and continue to be deprived of an effective remedy as guaranteed under Article 13 (Art. 13) of the Convention, having regard to the authorities' failure to take measures in order to have them re-united, the excessive length of the proceedings, and the fact that, in view of [the grandparents'] financial situation, the administrative fines imposed on them had no effect and were, in any case, not executed."

The Commission declared the above complaints admissible insofar as they had been lodged by the present applicant. They were finally examined by the Court in its judgment of 23 September 1994 (see above).

The Commission considers that the applicant's present complaints are in substance essentially the same as the above complaints lodged by him in Application No. 19823/92, i.e. a matter which has already been examined by the Commission partly in its decision on the admissibility of that application and partly in its Report of 22 October 1993 (see, in particular, paras. 144-151, Eur. Court H.R., Series A no. 299-A, pp. 37-38). Moreover, no "relevant new information" within the meaning of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention has been adduced which would enable the Commission to deal with any aspect of these fresh complaints.

It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) 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)