AS TO THE ADMISSIBILITY OF

Application No. 25945/94
by Ensio HUKKATAIVAL
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 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
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 22 November 1994 by Ensio HUKKATAIVAL against Finland and registered on 14 December 1994 under file No. 25945/94;

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 1913. He is a commercial counsellor residing in Helsinki. Before the Commission he is represented by Mr. Pekka Pinomaa, a lawyer practising in Helsinki.

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

In August 1991 the applicant sued the estate of a person called A., who had died in 1987, for a debt. The applicant claimed that in 1984 he had, together with A, entered into a guarantee. He further claimed that he had in 1986 payed out on the guarantee alone after having orally agreed with A that A's portion of guarantee payment was to be commuted into a debt of FIM 350,000, which A would later pay to the applicant.

The case was heard in the City Court (raastuvanoikeus) of Helsinki. The court heard evidence from one witness called by the applicant and one witness called by the estate. The witnesses evidence was tape-recorded, and the tapes were transcribed.

On 22 June 1992 the City Court, after evaluating the evidence, found in favour of the applicant and obliged the estate to pay the applicant FIM 350,000.

The estate appealed to the Court of Appeal (hovioikeus) of Helsinki.

On 26 January 1994 the Court of Appeal quashed the City Court's judgment and rejected the applicant's claim. No oral hearing had been requested. No oral hearing was held pursuant to chapter 26 section 7 of the Code of Judicial Procedure, according to which the Court of Appeal may, if it considers it necessary, hold an oral hearing. In its reasoning the Court of Appeal set out the facts and the relevant provisions on which its judgment was based. After evaluating the evidence it stated, inter alia, that the applicant's right of recourse, in respect of the suretyship, had lapsed under the statute of limitation. It furthermore stated that it had not been proven that A had agreed to commute the guarantee into a debt.

The applicant appealed against the judgment referring, inter alia, to the fact that no oral hearing was held in the Court of Appeal.

On 23 May 1994 the Supreme Court (korkein oikeus) refused the applicant leave to appeal.

COMPLAINTS

1) The applicant complains, under Article 6 para. 1 of the Convention, that his right to a fair hearing was violated. He maintains that the Court of Appeal quashed, to his disadvantage, the City Court's judgment without holding an oral hearing in the case.

2) The applicant further complains, under Article 6 para. 1 of the Convention, that the Court of Appeal did not give proper reasons for its evaluation of the witness evidence which differed from the City Court's evaluation.

3) Finally, the applicant complains, under Article 1 of Protocol No. 1 to the Convention, that the judgments have deprived him of his right to peaceful enjoyment of possessions since he lost his right to request payment from the estate.

THE LAW

1) The applicant complains that his right to a fair hearing was violated since the Court of Appeal did not arrange an oral hearing although it came to a different outcome from that reached by the City Court.

Article 6 para. 1 (Art. 6-1) of the Convention reads as far as relevant:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by (a) ... tribunal ... "

In respect of the oral hearing in the Court of Appeal the Commission notes Finland's reservation to Article 6 (Art. 6) which reads, in so far as relevant, as follows:

> "For the time being, Finland cannot guarantee a right to an oral hearing in so far as the current Finnish laws do not provide such a right. This applies to:
>
> 1. proceedings before the Courts of Appeal, ... in accordance with Chapter 26 Sections 7 and 8, ... of the Code of Judicial Procedure ..."

The Commission observes that chapter 26 section 7 of the Code of Judicial Procedure does not provide a right to an oral hearing in

appeal proceedings in civil cases in the Court of Appeal. The Commission finds that Finland's reservation covers the applicant's complaint concerning the lack of an oral hearing in the Court of Appeal.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2) The applicant complains further, under Article 6 para. 1 (Art. 6-1) of the Convention, that the Court of Appeal did not give proper reasons for its judgment.

The Commission recalls that under specific circumstances the absence of reasons in a court decision might raise an issue as to the fairness of the procedure (No. 8769/79, Dec. 16.7.81, D.R. 25, p. 240).

The Commission notes that the Court of Appeal set out the facts and stated the relevant provisions on which the judgment was based. The Commission considers that the reasons given in the Court of Appeal's judgment do not give rise to any appearance of the proceedings having been unfair and contrary to the requirements of Article 6 para. 1 (Art. 6-1) of the Convention in respect of the reasons given in the relevant court decision.

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.

3) Finally, the applicant complains that the judgments resulted in interference with his property rights.

Article 1 of Protocol No. 1 (P1-1) reads, in so far as relevant, as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
> ..."

The Commission recalls that a person complaining of an interference with his right to possessions must show that such a right existed (No. 12164/86, Dec. 12.10.88, D.R. 58, p. 63). The Commission finds that the applicant has not shown that he has the right referred to. Accordingly, the Commission concludes that there has been no interference with the applicant's possessions in this respect.

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.

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)