AS TO THE ADMISSIBILITY OF

Application No. 22470/93
by Fernand JACQ
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, 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
G.B. REFFI
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 14 July 1993 by Fernand Jacq against Finland and registered on 18 August 1993 under file No. 22470/93;

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 French citizen, born in 1949. He is a technical translator and resides at Hyvinkää, Finland. Before the Commission he is represented by Mr. Bernard Lancin, a lawyer practising in Luxembourg.

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

A. The particular circumstances of the case

On 29 February 1988 the applicant offered to purchase shares in a housing corporation from its owners, a married couple, Mr. and Mrs. S. According to Finnish law as it stood at the time shares in a housing corporation could be subject to a restriction on foreign ownership. In the relevant housing corporation 4/5 of shares held a restriction on foreign ownership. As there were previously no foreign owners in the housing corporation, the parties assumed that Mr. and Mrs. S could sell their shares to the applicant. On 3 March 1988 Mr. and Mrs. S, by signing a document entitled "receipt of deposit/sale commitment" (kuitti saadusta käsirahasta/myyntisitoumus), agreed to sell their shares to the applicant for the price of FIM 520,000, of

which the applicant paid a deposit of FIM 100,000. However, the parties found out that the restriction concerned particular shares and was not only a general rule of 4/5 restriction as regards the housing corporation as a whole. The relevant shares were subject to a restriction on foreign ownership. Negotiations on a possible transfer of the restriction from the shares in question to the unrestricted shares did not succeed. The vendors informed the applicant that they could not sell their shares to the applicant on the grounds that the deal would be invalid by virtue of the Act on Foreign Ownership and Possession of Real Property and Shares (laki ulkomaalaisten sekä eräiden yhteisöjen oikeudesta omistaa ja hallita kiinteätä omaisuutta ja osakkeita). Subsequently, on 18 April 1988 Mr. and Mrs. S returned the deposit with interest at 2.75 % per annum.

On 15 August 1988 the applicant sued Mr. and Mrs. S for damages totalling FIM 91,069.44 together with 16 % interest. The claim included inter alia the loss the applicant had allegedly suffered when selling his condominium in haste for less than the current market value in order to be able to pay the balance of the purchase price and the loss he suffered when he was unable to realize the increase in value of the shares in question, which Mr. and Mrs. S had in June 1988 sold for FIM 580,000 instead of FIM 520,000. He alleged that Mr. and Mrs. S had reneged on their word because they had obtained a higher offer and not because of the restriction on foreign ownership.

The District Court (kihlakunnanoikeus) of Hollola heard the case between 20 September 1988 and 3 August 1989. On 20 September 1988 and on 24 November 1988 the applicant was absent from the court due to illness and the case was adjourned on the request of his counsel. The applicant's counsel replied to a question put by Mr. and Mrs. S's counsel concerning the applicant's proficiency in Finnish that the applicant had lived in Finland for 17 years and spoke perfect Finnish. On 21 February 1989 both parties were present and they were assisted by counsel, respectively. The case was adjourned on the request of Mr. and Mrs. S's counsel. On 9 May 1989 the court heard one witness summoned by the applicant and one witness summoned by Mr. and Mrs. S. During this hearing Mr. S personally answered one question put by the applicant's counsel and once completed a statement made by his counsel. The applicant requested an adjournment in order to hear one more witness, who had disobeyed a summons. On 3 August 1989 the court heard the aforementioned witness summoned by the applicant. Both parties declared that they were ready for the case to be decided. Subsequently, on 3 August 1989 the District Court rejected the applicant's claim for damages.

In September 1989 the applicant appealed to the Court of Appeal (hovioikeus) in Kouvola, which by its judgment of 2 September 1992 upheld the District Court's judgment without holding an oral hearing in the case. The Court of Appeal stated inter alia as follows:

(translation)

> "... the Court of Appeal finds that the parties meant the document (of 3 March 1988) to be a preliminary contract between the parties concerning the sale of shares in a housing corporation.
> ...
> On the grounds of this (evidence) the Court of Appeal finds that (the applicant) was aware of the restriction on his buying the relevant shares on the basis of his being an alien. (The applicant) has not proved that Mr. and Mrs. S, notwithstanding the information obtained, would have guaranteed that they could sell the shares to (the applicant). In spite of this (the applicant) wanted to make the preliminary contract and paid Mr. and Mrs. S the deposit mentioned in the agreement. The Court of Appeal finds that (the applicant) has in this situation on his own

responsibility made the preliminary contract and after that undertaken the measures for which he ... demands damages from Mr. and Mrs. S. Because of this (the applicant) does not have a right to obtain any compensation."

On 4 February 1993 the Supreme Court (korkein oikeus) refused the applicant leave to appeal.

B. Relevant domestic law

The Court of Appeal may, if it considers it necessary, hold an oral hearing in a case in which an appeal against the judgment of the court of first instance has been lodged. Such a judgment cannot, as regards the charges brought against an accused, be amended by the Court of Appeal following a re-evaluation of the evidence without a re-hearing having been held, unless the sentence imposed by the Court of Appeal amounts only to fines or unless a re-hearing would clearly be unnecessary. In assessing the latter special regard shall be had to the interests of the accused (chapter 26, sections 7 and 8 of the Code of Judicial Procedure, oikeudenkäymiskaari). Also the Supreme Court may, if necessary, hold an oral hearing in a case in which an appeal against the judgment of the Court of Appeal has been lodged (chapter 30, section 20 of the Code of Judicial Procedure).

COMPLAINTS

1. The applicant complains that he did not have a fair trial. He maintains in this respect that the District Court and the Court of Appeal were not impartial, since they uncritically adopted the opinion of the opposing party. He maintains that the parties were not treated equally since the District Court heard Mr. S in person, but gave the applicant the opportunity to express himself only through his counsel. He further claims that he did not have an effective remedy before a national authority. He claims in this respect that neither the Court of Appeal nor the Supreme Court carried out any critical examination of the evidence or heard the parties. The applicant invokes Articles 6 and 13 of the Convention.

2. The applicant also submits, under Article 6 of the Convention, that the proceedings in the Court of Appeal and in the Supreme Court were not public. Finally, he complains that the Supreme Court's refusal to grant him leave to appeal violates his rights under Articles 6 and 13 of the Convention, taken together.

3. The applicant complains further under Article 6 of the Convention that the length of the proceedings was not reasonable.

4. Finally, the applicant complains that his right to the peaceful enjoyment of his possessions has been violated on the grounds of his national origin especially since the Court of Appeal considered that the promise to sell was invalid only because of the applicant's foreign origin and on the other hand did not order the vendors to pay damages.

In this respect the applicant invokes Article 1 of Protocol No. 1 to the Convention taken together with Article 14 of the Convention.

THE LAW

1. The applicant complains of several infringements of Article 6 (Art. 6) of the Convention in connection with the civil proceedings he instituted against Mr. and Mrs. S. He refers in this respect also to Article 13 (Art. 13) of the Convention. The Commission considers that the complaints fall to be examined primarily under Article 6 (Art. 6) of the Convention which, in so far as relevant, reads as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public

hearing within a reasonable time by an independent and impartial tribunal established by law..."

a) The applicant complains that the District Court was not impartial and that it violated the principle of equality of arms.

The Commission first has to ascertain whether, and to what extent, it is competent ratione temporis to deal with these complaints. In its case-law the Commission has held that, where the facts consist of a series of legal proceedings, the date of entry into force of the Convention in respect of the Contracting State in question has the effect of dividing the period into two, the earlier part escaping the Commission's jurisdiction ratione temporis, whereas a complaint relating to the later part cannot be rejected on this ground. On the other hand, where a court gives judgment after the entry into force of the Convention, the Commission is competent to ensure that the proceedings leading up to this judgment were in conformity with the Convention, as the proceedings before a court a embodied in its final decision which thus incorporates any defect by which they may have been affected (cf. No. 8261/78, Dec. 11.10.79, D.R. 18, p. 150, confirmed in No. 11306/84, Dec. 16.10.86, D.R. 50, pp. 162-163 and 17506/90, Kerojärvi v. Finland, Dec. 7.4.93, unpublished).

In the present case, the proceedings before the District Court terminated with the judgment of 3 August 1989, i.e. prior to 10 May 1990, which is the date of the entry into force of the Convention with respect to Finland. These proceedings are therefore, as such, outside the Commission's competence ratione temporis.

It follows that the complaints regards the District Court are incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

b) The applicant also complains about the alleged impartiality of the Court of Appeal. As the proceedings before the Court of Appeal ended after the entry into force of the Convention with regard to Finland the present complaint falls within the Commission's competence ratione temporis.

The Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) must be determined according to a subjective test and also according to an objective test (cf. Eur. Court H.R., Fey judgment of 24 February 1993, Series A no. 255, p. 12, para. 28). As regards the subjective test, the Commission and the Court of Human Rights have constantly held that the impartiality of a judge must be presumed until the contrary is established (cf. for example, Eur. Court H.R., Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 25, para. 58).

In the present case the applicant claims that the judges were not impartial since they adopted, allegedly uncritically, the opinion of the opposing party.

The Commission notes that no evidence has been adduced which could raise doubt as to the subjective or objective impartiality of the judges in the Court of Appeal.

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.

2. The applicant complains that the proceedings in the Court of Appeal and in the Supreme Court were not public in so far as there was no public hearing. The applicant further complains that the Supreme Court's refusal to grant him leave to appeal violated his rights under Articles 6 and 13 (Art. 6+13) of the Convention, taken together.

In respect of the oral hearing 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, the Supreme Court, ... in accordance with Chapter 26 Sections 7 and 8, as well as Chapter 30 Section 20, 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 the Court of Appeal. Chapter 26, section 8 of the Code of Judicial procedure concerns only criminal cases. Further, the Commission observes that chapter 30, section 20 does not provide a right to an oral hearing in the Supreme Court.

Under Finnish law the applicant was not entitled to a hearing before the Court of Appeal or in the Supreme Court. The Commission finds that Finland's reservation covers these complaints.

Further, the Commission notes that an examination as to whether leave to appeal shall be granted is not an examination of the merits of the appeal (No. 11855/85, Dec. 15.7.87, D.R. 53, p. 190). A leave to appeal examination by the Finnish Supreme Court does not involve a determination of "civil rights or obligations".

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.

3. Further, under Article 6 (Art. 6) of the Convention, the applicant complains of the length of proceedings.

The Commission reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the following criteria: the complexity of the case, the conduct of the parties and that of the authorities dealing with the case (Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission notes that the period to be taken into consideration did not start on 15 August 1988, when Mr. and Mrs. S. were summoned, but only on 10 May 1990 when the Convention entered into force with regard to Finland. In order to determine the reasonableness of the length of time which elapsed after that date, regard must be had, however, to the state of the case at that time (Eur. Court H.R., Pandolfelli and Palumbo judgment of 27 February 1992, Series A no. 231-B, p. 18, para.14).

The proceedings in the District Court lasted about one year. The adjournments were mainly due to the applicant's requests. The proceedings in the Court of Appeal lasted from September 1989 to 2 September 1992. However, the time to be taken into account was about two years four months. The proceedings in the Supreme Court lasted five months. This period ended on 4 February 1993 when the Supreme Court refused the applicant leave to appeal.

The Commission notes that the case was not very complex as regards either the legal issues or the facts. The Commission has not overlooked the length of the proceedings in the Court of Appeal. However, the final decision was made within two years nine months after the Convention entered into force with regard to Finland. Before that the proceedings had lasted about nine months.

The Commission, making an overall assessment of the circumstances of the case, considers that a reasonable time was not exceeded. 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.

4. Finally, the applicant complains under Article 14 (Art. 14) of the Convention taken together with Article 1 of Protocol No. 1 (P1-1) to the Convention that his right to the peaceful enjoyment of his possessions has been violated on the grounds of his national origin.

Article 14 (Art. 14) of the Convention reads in so far as relevant as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... national origin .. or other status."

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

> "Every national 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 Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and the Protocols. It may be applied in an autonomous manner as breach of Article 14 (Art. 14) does not presuppose breach of those other provisions. On the other hand, it has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by the other substantive provisions (see Eur. Court. H.R., Van der Mussele judgment of 29 September 1983, Series A no. 70, p. 22, para. 43).

The Commission further recalls that the Convention does not protect a right to obtain possessions. The text set out above is limited to enshrining the right of everyone to the peaceful enjoyment of "his" possessions; it thus applies only to existing possessions (see Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 23, para. 50 and Eur. Court. H.R., Van der Mussele judgment of 29 September 1983, Series A no. 70, p. 23, para. 48).

The Commission notes that in this case the relevant shares in a housing corporation were not owned by the applicant, although he planned to purchase them. Thus, with regard to the shares it is a question of the applicant's future possessions. This applies also to the damages the applicant claimed.

Consequently, there is no scope for the application of Article 1 of Protocol No. 1 (P1-1), whether taken on its own or together with Article 14 (P1-1+14) of the Convention.

It follows that this part of the application is incompatible ratione materiae with the Convention and Protocol No. 1 (P1) 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)