AS TO THE ADMISSIBILITY OF

Application No. 21581/93
by K.L.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 6 September 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

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 24 November 1991 by K.L. against Finland and registered on 25 March 1993 under file No. 21581/93;

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 Finnish citizen, born in 1948 and resident at Lahti. He is a salesman by profession.

Particular circumstances of the case

Between 1963 and 1989 the applicant was convicted on 28 occasions of, inter alia, illegal possession of firearms. On 27 February 1991 he was arrested on suspicion of attempted manslaughter. Upon his arrest he admitted to having fired shots with a serial firearm near two other persons, K.L. and R.L. Some of these shots had hit K.L.

On 2 March 1991 the applicant was detained on remand pending trial. After a hearing, where the applicant was assisted by counsel, the City Court (raastuvanoikeus, rådstuvurätten) of Lahti noted that the applicant had previously been convicted a number of times of illegal possession of firearms and that one witness had not yet been heard in the pre-trial investigation. Having regard to his previous behaviour, the City Court therefore considered that there was a risk that the applicant might influence the witnesses.

The applicant was charged with, inter alia, attempted manslaughter, suspected of having shot at K.L. from behind in connection with a fight between the victim and R.L. He was also charged

with having unlawfully threatened P.B. at gunpoint after this person had begun to follow him when he had been leaving the scene of the crime.

At a hearing before the City Court on 19 March 1991 the applicant disputed, inter alia, the charges for attempted manslaughter. He admitted, however, to having caused K.L. bodily injury by negligence, since he had fired shots during the fight. These shots had allegedly not been fired directly at K.L., since the applicant's intention by the firing had been to stop the fight.

Before the City Court the victim K.L. stated that, "had the applicant wished to kill him, he would have succeeded". In these circumstances K.L. personally pressed charges only for aggravated assault.

Also certain other witnesses were heard before the City Court. The applicant, assisted by counsel, disputed the credibility of certain witness statements, alleging that they were inconsistent with one another.

The City Court ordered the suspension of the hearing until 2 April 1991 in order to hear further witnesses. It also prolonged the applicant's detention on remand. A prolongation had been requested by the prosecution, referring, inter alia, to further charges against the applicant which were under preparation and which concerned the same type of offence committed with firearms. The prosecution had also referred to the risk that the applicant might, if released, influence the future witnesses. The applicant had objected to his further detention, since the pre-trial investigation had been completed, since there was no risk that he would flee, as he was permanently resident in Lahti. Nor was there any risk that he would commit any further offence, since all his firearms had been seized.

Having heard certain further witnesses the City Court, on 2 April 1991, convicted the applicant of, inter alia, attempted manslaughter. The City Court in essence relied on the prosecution's description of the shooting incident and the unlawful threat against P.B. The City Court considered, inter alia, that "since P.B. had only moments earlier seen the applicant fire shots", he had had a legitimate reason to fear for his own life. The applicant was sentenced to three years and eight months' imprisonment.

The applicant, represented by counsel, appealed against his conviction and sentence to the Court of Appeal (hovioikeus, hovrätten) of Kouvola. He did not withdraw his confession to having caused bodily harm by negligence. He nevertheless requested an oral hearing "for the purpose of obtaining a re-evaluation of the evidence". Annexed to the appeal were copies of several letters which the applicant had written to his counsel after his conviction and placement in a prison. In one of these letters the applicant stated that he had "surprisingly found an eye witness, who [was] willing to testify in the case". This purported witness was said to have seen at least from where and in which direction the first shots had been fired. In the applicant's case the Court of Appeal also received a statement written by the purported witness himself, A.L., according to which he would be willing to testify in the applicant's case, if need be.

On 11 July 1991 the Court of Appeal rejected the applicant's request for a re-hearing, considering that the facts had already been established.

The applicant, represented by counsel, requested leave to appeal to the Supreme Court (korkein oikeus, högsta domstolen), arguing in essence that he should have been convicted merely of having caused bodily injury by negligence and not of attempted manslaughter. In the request, as lodged by counsel, no request for a re-hearing was made.

Annexed to counsel's submission was the applicant's own "request for leave to appeal" in which he, in addition to what had been stated by counsel, requested that the case be referred back to the City Court "or otherwise heard orally". He referred to the new purported eye witness A.L.

On 12 November 1991 the Supreme Court refused leave to appeal. As a result the applicant's sentence acquired legal force and he started serving his sentence.

On 17 June 1992 the Court of Appeal rejected the applicant's request to obtain a copy of the memorandum of the Referendary in so far as it concerned the Court's deliberations in camera. His appeal in this respect was rejected by the Supreme Court on 5 October 1992.

On 5 April 1993 the Supreme Court rejected the applicant's request for a re-opening of the criminal proceedings for the purpose of, inter alia, hearing the purported witness A.L.

Relevant domestic law

1. Remedy against detention on remand

According to the 1987 Coercive Criminal Investigation Means Act (pakkokeinolaki 450/87, tvångsmedelslag 450/87) there is no ordinary appeal against a decision in a detention matter. It is nevertheless possible to challenge the detention by lodging a special appeal (kantelu, klagan) with the competent court. This appeal is provided for by section 27 of the 1987 Act.

2. Right to a re-hearing before a court of appeal

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

A court of the first instance may only exceptionally rely on a statement of a private character which has been written for the purpose of being invoked as evidence in pending or future court proceedings. If such a statement is invoked before an appellate court and this court finds that it should be taken into account, it shall order that the author of the statement be heard as witness in the case either before itself or before a lower court (chapter 17, section 11, subsection 2 of the Code of Judicial Procedure).

3. The confidential nature of records of court deliberations

According to the 1951 Act on the Publicity of Official Documents (laki 83/51 yleisten asiakirjain julkisuudesta; lag 83/51 om allmänna handlingars offentlighet; "the 1951 Act") official documents are, in principle, public (section 1). Such documents include, inter alia, documents drawn up and issued by an authority. A party to court proceedings may, however, be refused access to a record of a court's deliberations in camera (section 19, subsection 4; cf. chapter 1, section 7 of the Code of Judicial Procedure).

COMPLAINTS

1. The applicant complains that no sufficient grounds existed for his detention on remand. He submits that there was no reasonable suspicion that he committed the offences under examination in the relevant pre-trial investigation. Nor could his detention reasonably have been considered necessary for the purpose of preventing him from committing an offence. Moreover, when prolonging his detention on remand on 19 March 1991, the City Court allegedly had regard to a further indictment concerning him which was under preparation. The applicant submits that no charges were ever brought in that case. He invokes Article 5 para. 1 (a) and (c) of the Convention.

2. The applicant furthermore complains that the criminal proceedings were unfair and amounted to inhuman treatment. He claims to be innocent and alleges that the main reason for his conviction was his background of previous criminality. In any case, he should have been convicted of a lesser offence than that of attempted manslaughter.

The applicant alleges, in particular, that the pre-trial investigation was conducted in a partial manner. He also complains that he was not allowed to hear witness A.L. before the higher courts. He submits that the Finnish reservation to Article 6 as regards the right to a re-hearing on appeal does not answer this aspect of his complaint, since the Court of Appeal or the Supreme Court could, instead of holding a hearing itself, have referred his case back to the City Court for the purpose of hearing A.L.

In respect of the above complaint as a whole the applicant invokes Article 3 and Article 6 para. 3 (b), (c) and (d) and Articles 13 and 14 of the Convention as well as Article 4 of Protocol No. 7 of the Convention.

3. The applicant finally complains that he was not allowed access to that part of the memorandum of the Referendary of the Court of Appeal which concerned the Court's deliberations in camera. He invokes no particular provision of the Convention in this respect.

THE LAW

1. The applicant complains that no sufficient grounds existed for his detention on remand. He invokes Article 5 para. 1 (a) and (c) (Art. 5-1-a, 5-1-c) of the Convention.

The Commission has examined this complaint under Article 5 para. 1 (c) (Art. 5-1-c) which, in so far as it is relevant, 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:
> ...
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

The Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with an application, inter alia, after all domestic remedies have been exhausted, according to the generally recognised rules of international law. It finds no indication that the applicant challenged his detention on remand by lodging an appeal pursuant to section 27 of the 1987 Coercive Criminal Investigation Means Act. For the reasons below, however, the Commission need not

determine whether such an appeal constitutes a remedy which the applicant should have used in order to comply with the requirements of Article 26 (Art. 26) of the Convention.

The Commission is satisfied that the applicant's detention on remand was "lawful", "in accordance with a procedure prescribed by law" and effected in order to bring him before a "competent legal authority". It remains to be considered whether his detention was based on one of the grounds prescribed by Article 5 para. 1 (c) (Art. 5-1-c).

The Commission has first examined whether it was grounded on a "reasonable suspicion" that the applicant had committed an offence. It recalls that having a "reasonable suspicion" presupposes the existence of facts and information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will, however, depend upon all the circumstances (e.g., Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, pp. 16-17, para. 32).

The Commission observes that on his arrest the applicant confessed to having fired shots near the victim K.L. In view of this confession and the other evidence obtained at the time when his detention on remand was ordered and subsequently prolonged, the Commission finds that his detention on remand was based on a "reasonable suspicion" that he had committed an offence. In these circumstances the Commission need not determine whether the applicant's detention on remand was also based on one or both of the other grounds prescribed in Article 5 para. 1 (c) (Art. 5-1-c). Accordingly, there is no appearance of a violation of that provision.

It follows that this complaint must 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 criminal proceedings were unfair and amounted to inhuman treatment. He claims to be innocent and alleges that the main reason for his conviction was his background of previous criminality. In any case, he should have been convicted of a lesser offence than that of attempted manslaughter.

The applicant alleges, in particular, that the pre-trial investigation was conducted in a partial manner. He also complains that he was not allowed to hear witness A.L. before the higher courts. His submits that the Finnish reservation to Article 6 (Art. 6) as regards the right to a re-hearing on appeal does not answer this aspect of his complaint, since the Court of Appeal or the Supreme Court could, instead of holding a hearing itself, have referred his case back to the City Court for the purpose of hearing A.L.

In respect of the above complaint as a whole the applicant invokes Article 3 (Art. 3) and Article 6 para. 3 (b), (c) and (d) and Articles 13 and 14 (Art. 6-3-b, 6-3-c, 6-3-d, 13, 14) of the Convention as well as Article 4 of Protocol No. 7 (P7-4) of the Convention.

The Commission has primarily examined this complaint under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention which, in so far as they are relevant, read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> b. to have adequate time and facilities for the

preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

As the requirements of Article 6 para. 3 (Art. 6-3) represent particular aspects of the right to a fair trial guaranteed in Article 6 para. 1 (Art. 6-1), the Commission has examined the application from the point of view of these two provisions taken together (e.g., Eur. Court H.R., Lüdi judgment of 15 June 1992, Series A no. 238, p. 20, para. 43).

The Commission has first examined whether the fact that the applicant was unable to have the purported witness A.L. examined before a court discloses an appearance of a violation of his right to a fair trial within the meaning of Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d). It 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 [and] 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 under chapter 26, section 8 of the Code of Judicial Procedure a judgment of a court of a lower instance as regards the charges brought against an accused cannot be amended following a re-evaluation of the evidence without a re-hearing having been held, unless the sentence imposed by a court of appeal amounts only to fines or unless a re-hearing would clearly be unnecessary. In the applicant's case his conviction was not amended on appeal and his sentence was reduced. Under Finnish law he was thus not entitled to a hearing before the Court of Appeal.

The Commission observes, however, that the Court of Appeal could, in principle, have referred the applicant's case back to the City Court for the purpose of hearing witness A.L. The question arises whether, even if, as in the applicant's case, the conditions for refusing a re-hearing on appeal were met, this fact and the Finnish reservation in themselves answer the applicant's complaint that the proceedings were unfair in that he was unable to have witness A.L. examined before any court. For the reasons below, these questions, including the relevance of the Finnish reservation in the circumstances of the present case, need not be answered.

The Commission recalls that the manner of application of Article 6 (Art. 6) to proceedings before appellate courts depends on the special features of the proceedings involved. Account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (cf., e.g., Eur. Court H.R., Jan-Åke Andersson and Fejde judgments of 29 October 1991, Series A nos. 212-B and 212-C, pp. 43-44, para. 22, and p. 67, para. 26, respectively). Even where a higher court has jurisdiction to review a case both as to its facts and as to law, Article 6 (Art. 6) does not always require a right to a "re-hearing" irrespective of the nature of the issue to be decided (cf., e.g., the above-mentioned Fejde judgment,

pp. 68-69, para. 31). In the Commission's view similar considerations apply in respect of the "right" of an accused to have his case referred back to the court of the first instance for the purpose of having a fresh witness examined at an oral hearing.

The Commission furthermore recalls that Article 6 (Art. 6) of the Convention does not apply to the leave to appeal proceedings as such before the Finnish Supreme Court (e.g., No. 19823/92, Dec. 9.2.93, unpublished). For the purposes of the present complaint the Commission will nevertheless consider the proceedings as a whole, thereby including those which took place before the Supreme Court.

The Commission notes that the Finnish courts of appeal are, in principle, competent to review a case both as regards its facts and the applicable law. The same is true as regards the Supreme Court, provided it has granted leave to appeal in a case. The Commission observes, however, that in the proceedings before these courts the applicant did not dispute that he had fired shots during the fight between K.L. and R.L. His appeal and subsequent request for leave to appeal thus appear to have been based, in essence, on a disagreement as to the legal classification of his offence.

In these circumstances the Commission therefore considers that his appeal raised no question of fact or law which could not be adequately resolved on the basis of the case-file. Considering also the circumstances surrounding the appearance of the purported witness A.L., the Commission finds that the Court of Appeal could, as a matter of fair trial, properly decide not to refer the case back to the City Court and that the Supreme Court likewise had no obligation emanating from Article 6 (Art. 6) to grant leave to appeal with a view to having A.L. examined (cf., mutatis mutandis, the above-mentioned Fejde judgment, pp. 69-70, para. 33).

The Commission finds no substantiation of the remainder of the applicant's complaint concerning the fairness of the overall proceedings, including the pre-trial investigation. In this connection the Commission recalls that it is normally not competent to deal with a complaint alleging that errors of law and fact have been committed by domestic courts. An exception could only be made where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention or one of its Protocols, for instance in that a judgment has no legal justification and thereby violates a party's right to receive a fair trial (cf. Eur. Court H.R., De Moor judgment of 23 June 1994, Series A no. 292-A, p. 18, para. 55; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45). As a general rule, however, it is for the domestic courts to assess the evidence before them, in particular since they have the benefit of hearing witnesses and assessing their credibility (e.g., Eur. Court H.R., Klaas judgment of 22 September 1993, Series A no. 269-A, pp. 17-18, paras. 29-30). The Commission's task is to ascertain whether the proceedings, considered as a whole, including the way in which evidence was taken and submitted, were fair (e.g., the above-mentioned Lüdi judgment, loc.cit.). It follows that the Commission cannot examine whether or not the applicant was guilty or innocent of the offences of which he was convicted nor whether or not he should have been convicted of a lesser offence than that which the courts had found him to have committed.

Accordingly, there is no appearance of any violation of Article 6 (Art. 6) of the Convention as regards the fairness of the proceedings as a whole. Nor can the Commission find any appearance of a violation of Article 3, 13 or 14 (Art. 3, 13, 14) of the Convention nor of Article 4 of Protocol No. 7 (P7-4) 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.

3. The applicant finally complains that he was not allowed access to that part of the memorandum of the Referendary of the Court of Appeal which concerned the Court's deliberations in camera. The Commission has examined this complaint primarily under the above-cited Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention. It finds no indication, however, that the refusal to disclose the notes from the Court of Appeal's deliberations to the applicant violated his rights under those provisions.

The Commission has also examined the complaint in the light of Article 10 (Art. 10) of the Convention which, in so far as it is relevant, reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom ... to receive ... information ... without interference by public authority ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, ... for ... maintaining the authority and impartiality of the judiciary."

Even assuming that Article 10 para. 1 (Art. 10-1) applies in the instant case, the Commission considers that the interference with the applicant's right to receive information was "prescribed by law" (section 19 of the 1951 Act). It can furthermore be regarded as "necessary in a democratic society ... for maintaining the authority and impartiality of the judiciary" (cf., mutatis mutandis, No. 10039/82, Dec. 11.5.84, D.R. 38 p. 74). Accordingly, there is no appearance of a violation of Article 10 (Art. 10) 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.

Secretary to the First Chamber	President of the First Chamber
(M.F. BUQUICCHIO)	(C.L. ROZAKIS)