AS TO THE ADMISSIBILITY OF

Application No. 24738/94
by Timo Taavetti KAUKONEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 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 July 1994 by Timo Taavetti KAUKONEN against Finland and registered on 1 August 1994 under file No. 24738/94;

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 1933. He is a pensioner and resides in Kuopio, Finland. Before the Commission he is represented by Mr. Heikki Salo, a lawyer practising in Helsinki, Finland.

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

I

The applicant was charged with giving false evidence with the intention that an innocent person be charged (perätön ilmianto) and with public defamation (julkinen herjaus) committed on 24 January 1990, contrary to chapter 26 section 1 and chapter 27 section 1 of the Penal Code (rikoslaki), respectively, in connection with a case in which the applicant had acted as counsel.

The case was heard in the District Court (kihlakunnanoikeus) of Pyhäjärvi. On 20 November 1991 the District Court ordered the applicant to appear in court in person on 29 January 1992. The applicant was brought to this session by the police.

On 18 March 1992 the District Court, presided over by judge E, found the applicant guilty of giving false evidence contrary to chapter 26 section 1 of the Penal Code and sentenced him to three months and fifteen days' imprisonment.

The applicant appealed against the judgment to the Court of Appeal (hovioikeus) of Vaasa, which upheld the District Court's judgment on 7 June 1993.

On 6 September 1993 the Supreme Court (korkein oikeus) refused the applicant leave to appeal.

II

On 5 May 1992 the applicant instituted private prosecution proceedings against the aforementioned presiding judge E, maintaining that E had committed offences in office contrary to chapter 40 section 10 of the Penal Code when acting as chair in the applicant's case in the District Court. The applicant requested that E be convicted and sentenced and that E be dismissed from office. The applicant further requested that E, jointly with the State, be ordered to pay the applicant compensation of FIM 220,000 for mental suffering as well as to pay his legal costs. The applicant requested an oral hearing. He also requested that evidence from a witness named K be taken.

The Court of Appeal gave the applicant an opportunity to submit his final statement in the case in writing. The applicant did not avail himself of this opportunity.

By judgment No. 1123 of 7 June 1993, the Court of Appeal dismissed the applicant's private prosecution against E and also rejected the applicant's claim for damages. As regards the question of an oral hearing, the Court of Appeal stated that as a general rule the Court of Appeal would hold an oral hearing in cases where it functioned as a first instance court if a party requested an oral hearing or if there was otherwise reason to hold an oral hearing. If the claim was manifestly ill-founded there was, however, no reason to hold an oral hearing. As the applicant's claims were manifestly ill-founded, the Court of Appeal rejected the applicant's request for an oral hearing.

The applicant appealed against the judgment to the Supreme Court.

On 5 January 1994 the Supreme Court refused the applicant leave to appeal. There was no oral hearing in the Supreme Court.

III

In addition to the above proceedings the applicant instituted, on 8 May 1992, private prosecution proceedings against the police officers JV, TS, TR and MK claiming that they had committed offences in office in connection with the criminal case against the applicant (see part I above), in which JV and TS had acted as prosecutors, and TR and MK had taken part in the preliminary investigation. The applicant invoked chapter 40 sections 10 and 11 of the Penal Code. The applicant further requested that the police officers, jointly with the State, be ordered to pay the applicant compensation of FIM 220,000 for mental suffering as well as to pay his legal costs.

On 25 May 1992 the applicant brought a further private prosecution against the aforementioned police officer JV, claiming that JV had given false evidence in his witness evidence in the criminal case against the applicant. The applicant invoked chapter 17 sections 1 and 2 of the Penal Code. The applicant also brought a private prosecution against a fifth police officer, PR, in connection with the preliminary investigation in the criminal case against the applicant, claiming that PR had committed offences in office contrary to chapter 40 section 11 of the Penal Code. The applicant requested that JV and

PR, jointly with the State, be ordered to pay him compensation of FIM 55,000 for mental suffering as well as to pay his legal costs.

The applicant requested an oral hearing.

The Court of Appeal gave the applicant an opportunity to submit his final statement in the case in writing. The applicant did not avail himself of this opportunity.

By judgment No. 1122 of 7 June 1993 the Court of Appeal rejected the applicant's request for an oral hearing on the grounds that the applicant's claims were manifestly ill-founded. The Court of Appeal stated that the private prosecution against JV as regards the alleged false evidence did not concern JV's duties in office. Since the alleged crime was not to be characterised as an offence in office, the Court of Appeal was not competent to consider, as a first instance court, the relevant private prosecution or the claim for damages based thereon. The Court of Appeal further stated that TR, MK and PR were not appointed by the President of the Republic or the Council of State, which meant, by virtue of section 33 of the Decree on Police Administration (poliisin hallinnosta annettu asetus) that they were to be charged with offences in office in the relevant first instance court instead of in the Court of Appeal. Therefore the Court of Appeal did not consider the case against TR, MK and PR on the merits.

The Court of Appeal stated, as regards the private prosecution the applicant had brought against JV and TS, that they had not, when bringing charges against the applicant and when acting as prosecutors in the criminal case, violated their official duties. The Court of Appeal dismissed the private prosecution and also rejected the claim for damages based thereon.

The applicant appealed against the judgment to the Supreme Court.

On 5 January 1994 the Supreme Court refused the applicant leave to appeal. There was no oral hearing in the Supreme Court.

IV

In January and February 1994 the applicant requested the Supreme Court to postpone the execution of the sentence of imprisonment imposed by the District Court of Pyhäjärvi on 18 March 1992, whereupon the final decision was taken by the Supreme Court on 6 September 1993 (see part I above). He also requested the Supreme Court to reopen his criminal case. The results of these requests are unknown.

COMPLAINTS

As regards the criminal proceedings against him (cf. part I above), the applicant complains that he was subjected to inhuman and degrading treatment when he was brought to the District Court by the police on 29 January 1992. He also complains that the court order concerning his presence in the District Court constituted inhuman and degrading treatment in itself. He invokes Article 3 of the Convention. He also complains, under Article 8 of the Convention, that the incident violated his right to respect for his private life and his home.

The applicant further complains that the District Court refused to take evidence from certain witnesses on his behalf. He invokes in this respect Article 6 para. 3 (d) of the Convention.

Finally, as regards the criminal proceedings instituted against the applicant, he complains under Article 14 of the Convention that he has been discriminated against.

As regards the private prosecution proceedings he brought against judge E and the claim for damages based thereon (cf. part II above),

the applicant complains, under Article 6 of the Convention, of the lack of an oral hearing in the Court of Appeal. He also complains that there was no oral hearing in the Supreme Court. The applicant maintains that the Finnish reservation to the Convention does not give Finland the right to refuse an oral hearing totally.

He further maintains that the proceedings as a whole were not fair and that the principle of equality of arms was violated.

He complains, under Article 6 para. 3 (d) of the Convention, that the lack of an oral hearing deprived him an opportunity to have witnesses examined in order to prove his allegations.

The applicant further complains, under Article 13 of the Convention, that the did not have an effective remedy before a national authority. He also complains, under Article 14 of the Convention, that he was discriminated against.

As regards the private prosecution proceedings he had brought against five police officers and the claims for damages based thereon (cf. part III above), the applicant complains, under Article 6 of the Convention, of the lack of an oral hearing in the Court of Appeal. He also complains that there was no oral hearing in the Supreme Court. The applicant maintains that the Finnish reservation to the Convention does not give Finland the right to refuse an oral hearing totally.

He further maintains that the proceedings as a whole were not fair and that the principle of equality of arms was violated.

He complains, under Article 6 para. 3 (d) that the lack of an oral hearing deprived him an opportunity to have witnesses examined in order to prove his allegations.

The applicant further complains, under Article 13 of the Convention, that he did not have an effective remedy before a national authority. He also complains, under Article 14 of the Convention, that he was discriminated against.

Finally, the applicant complains that the Supreme Court did not, within a reasonable time, answer his request concerning the execution of his sentence and the reopening of the criminal case instituted against him. He invokes, in this respect, Article 6 of the Convention. He complains further that he has been discriminated against in that the Supreme Court dealt speedily with the cases in which he had brought private prosecutions against certain officials.

THE LAW

1. As regards the criminal proceedings instituted against the applicant, he complains firstly, under Articles 3 and 8 (Art. 3, 8) of the Convention, that the incident on 29 January 1992 constituted inhuman and degrading treatment and violated his right to respect for his home and his private life. He further complains, under Article 6 para. 3 (d) (Art. 6-3-d), that his right to call witnesses was violated. Finally, under Article 14 (Art. 14) of the Convention, he complains that he was discriminated against.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the incident which allegedly violated the applicant's rights under Articles 3 and 8 (Art. 3, 8), took place on 29 January 1992. Furthermore, the decision of the Supreme Court which

was the final decision regarding the subject of this particular complaint, was given on 6 September 1993. The application was submitted to the Commission on 5 July 1994, that is, more than six months after 29 January 1992 as well as more than six months after 6 September 1993, i.e. the date of Supreme Court's decision. It is true that the applicant lodged a request for a reopening of his criminal case at the beginning of 1994. However, the Commission recalls on this point its constant jurisprudence according to which an application for a retrial or similar extraordinary remedies cannot, as a general rule, be taken into account in the application of Article 26 (Art. 26) of the Convention (cf., for example, No. 10326/83, Dec. 6.10.83, D.R. 35 p. 218). Furthermore, an examination of the case does not disclose the existence of any other special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. As regards the private prosecution proceedings the applicant brought against judge E and the claim for damages based thereon, the applicant complains of the lack of an oral hearing in the Court of Appeal. He also complains that there was no oral hearing in the Supreme Court. He further complains that the proceedings as a whole were not fair and that the principle of equality of arms was violated. Finally, he complains that his right to call witnesses was violated. He invokes Article 6 (Art. 6) of the Convention.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of the application in so far as it concerns the lack of an oral hearing. Therefore it is necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice thereof to the respondent Government both in relation to the question of the applicability of Article 6 (Art. 6) and in relation to the lack of an oral hearing. The Commission considers further that the examination of the other complaints submitted by the applicant in relation to these proceedings should be adjourned.

3. As regards the private prosecution proceedings which the applicant brought against five police officers, the applicant submits the same complaints as in respect of the private prosecution proceedings against judge E.

The Commission first notes that the Court of Appeal tried the private prosecution on the merits only in so far as it concerned two of the five police officers. In these respects the same problems occur as in respect of the above private prosecution proceedings against judge E.

The Commission considers that it is necessary to give notice of this part of the application to the respondent Government both in relation to the question of the applicability of Article 6 (Art. 6) and in relation to the lack of an oral hearing.

The Commission considers further that the examination of the other complaints submitted by the applicant in relation to these proceedings should be adjourned.

4. The Commission further notes that the Court of Appeal refused, on the basis of lack of competence, to try the private prosecution in so far as it concerned three of the five police officers, and in so far as it concerned one of them in his capacity as a private person. The Commission finds that in these respects the applicant had the opportunity to bring the private prosecution before the relevant court of first instance. However, he has not availed himself of this opportunity and has thus failed to exhaust domestic remedies as required by Article 26 (Art. 26) of the Convention.

It follows that this part of the application must be rejected, under Article 27 para. 3 (Art. 27-3) of the Convention.

5. The applicant complains that the Supreme Court failed to answer, within a reasonable time, his request concerning the postponement of the enforcement of his sentence of imprisonment and his request for the reopening of his criminal case. He complains, under Article 6 (Art. 6) of the Convention, that his right to a fair hearing within a reasonable time has been violated. In relation to these proceedings he complains further, under Article 14 (Art. 14) of the Convention, that he has been discriminated against.

As regards the complaint concerning the request for the postponement of the enforcement of the sentence made under Article 6 (Art. 6) the Commission recalls that where the person concerned has already been convicted, any dispute concerning the postponement of the enforcement of the sentence falls outside the scope of Article 6 (Art. 6) of the Convention since the dispute has ceased to involve a criminal charge against the applicant within the meaning of Article 6 (Art. 6) (cf. mutatis mutandi No. 10733/84, Dec. 11.3.85, D.R. 41 p. 211).

As regards the complaint concerning the request for the reopening of the criminal case instituted against the applicant, the Commission recalls that, according to its constant case-law, Article 6 (Art. 6) of the Convention does not apply to proceedings for re-opening a trial, given that someone who applies for his case to be re-opened and whose sentence has become final, is not someone "charged with a criminal offence" within the meaning of the said Article (cf. No. 7761/77, Dec. 8.5.78, D.R. 14 p. 171).

The applicant further complains, under Article 14 (Art. 14) of the Convention, that he has been discriminated against in the proceedings concerning his requests for the re-opening of his case and for the postponement of the enforcement of his sentence.

In this respect the Commission recalls that Article 14 (Art. 14) of the Convention complements the other substantive provisions of the Convention and the Protocols. On the one hand, 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).

With reference to its findings above, the Commission finds that there is no scope for the application of Article 14 (Art. 14) of the Convention.

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.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the complaints relating to the two sets of private prosecution proceedings in so far as the cases were examined on the merits by the Court of Appeal in its judgments nos. 1122 and 1123 of 7 June 1993;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)