Application No. 17694/91
by Eero, Jorma and Pertti KORPPOO
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 13 October 1993 the following members being present:

Present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA

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 23 November 1990 by Eero, Jorma and Pertti Korppoo against Finland and registered on 21 February 1991 under file No. 17694/91;

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 applicants, all Finnish citizens, are born in 1937, 1945 and 1941, respectively. The first and third applicants are sawmill technicians and the second applicant is a manager. The first and second applicants reside at Jäminkipohja and the third one at Ruovesi. Before the Commission the applicants are represented by Mr. Seppo Nieminen, a lawyer practising in Tampere.

The facts of the case, as submitted on behalf of the applicants, may be summarised as follows.

Particular circumstances of the case

I.

In 1986 the applicants were ordered by the County Administrative Court (lääninoikeus, länsstyrelsen) of Häme to pay residual taxes for a number of preceding years.

The decisions were largely upheld by the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen) on 14 March 1988. The applicants' requests for oral hearings in order to hear certain taxation officials were rejected, as was their request for access to certain documents pertaining to the case and kept by the Central Criminal Police (keskusrikospoliisi, centralkriminalpolisen).

Subsequent to the Supreme Administrative Court's decision the applicants obtained further evidence allegedly showing that certain assumed currency transfers of relevance to the imposition of residual taxes had never taken place. The applicants requested the Supreme Administrative Court to re-open part of the taxation proceedings, referring to the new evidence.

On 4 June 1990 the applicants' requests were rejected.

II.

On 29 November 1985 the District Court (kihlakunnanoikeus, häradsrätten) of Ruovesi convicted the applicants inter alia of continued tax fraud (from 1977 to 1983) and continued violation of currency regulations (from 1976 to 1982) and sentenced them to fines. The applicants were acquitted inter alia on the charges of continued gross tax fraud (from 1972 to 1976).

On 16 February 1987 the Court of Appeal (hovioikeus, hovrätten) of Turku acquitted the first and third applicants on the above charges. The second applicant was convicted of continued gross tax fraud from 1971 to 1975.

On 8 June 1987 the Supreme Court (korkein oikeus, högsta domstolen) refused leave to appeal.

Subsequently the applicants were charged with gross embezzlement before the District Court, which held hearings in the case on 6 January and 16 March 1988.

The District Court heard, inter alia, G.K., a German citizen resident in the Federal Republic of Germany, as a witness. He had been summoned to appear before the District Court by the Chief of Police (nimismies, länsmannen) of Mänttä, while staying in Finland allegedly for reasons other than the pending trial against the applicants.

The applicants had objected to the District Court's intention to hear him as a witness by granting him immunity in accordance with Chapter 1, Section 11, para. 1 of the Penal Code (rikoslaki 39/1889, strafflag 39/1889) and Chapter 17, Section 26a of the Code of Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balk). They submitted that G.K. had not been summoned in the manner prescribed in the law and that he himself could have committed, or acted as an accomplice in, the offence which the applicants had been charged with.

The applicants further referred to their acquittals in 1987 and argued that they could not be tried twice for the same offence.

On 19 May 1988 the District Court convicted the applicants of gross embezzlement and sentenced them to seven months' suspended imprisonment.

The applicants appealed to the Court of Appeal.

Subsequent to the expiry of the time-limit for appealing the applicants learnt about a statement of 14 July 1988 by K.K., a former employee of G.K., regarding G.K.'s alleged unreliability as a witness in the case. However, the applicants' request for permission to supplement their appeal by hearing K.K. as witness or by allowing her to submit a written statement to the Court of Appeal was rejected.

On 6 March 1990 the Court of Appeal upheld the District Court's decision in all respects.

On 16 July 1990 the Supreme Court refused the applicants leave to appeal.

Relevant domestic law

A person who voluntarily arrives from abroad on the basis of a summons issued by a Finnish authority in order to testify in a criminal case shall not, during the period he is staying in Finland for the purpose of testifying or as long as he is legally prevented from leaving the country, be charged with or arrested for a previous offence, nor be detained on the basis of a previous sentence or as a suspected accomplice in the offences at issue in the case in which he is to testify (Chapter 1, Section 11, para. 1 of the Penal Code).

Anyone who is not or has not been a party to a case before a court of law may be heard as a witness in that case (Chapter 17, Section 18, para. 1 of the Code of Judicial Procedure).

A summons to be served on a witness residing outside Finland shall be issued by the President of the competent court of the first instance. The summons shall be sent to the competent authority in the country where the witness is staying (Chapter 17, Section 26a).

The Supreme Court may grant leave to appeal only if this is of importance, having regard to the application of the law in other similar cases, or to the uniformity of that application, or if, because

of a procedural or other fault, there is a particular reason to annul or nullify a decision, or there is another weighty reason warranting the granting of leave to appeal (Chapter 30, Section 3, para. 1).

COMPLAINTS

1. The applicants complain that the court proceedings in the taxation matter were unfair. Despite the applicants' acquittals of the charges brought against them residual taxes of a punitive nature and assessed in an arbitrary way were imposed on them. Moreover, the applicants were not informed of certain documents relied upon by tax officials and were thus unable to verify whether the documents were authentic. The Supreme Administrative Court further wrongly refused to hear certain tax officials as witnesses. In conclusion, the burden of proof was wrongly placed on the applicants.

In the applicants' view the Commission is competent ratione temporis to examine the whole of their complaint, as conclusive evidence could, for reasons beyond their control, only be invoked by them in their request for a re-opening of part of the taxation proceedings. As the refusal to re-open the case was rendered subsequent to the entry into force of the Convention with regard to Finland, the Supreme Administrative Court was obliged to apply the Convention. Moreover, part of the residual tax imposed has still not been fully collected.

The applicants invoke Article 6 paras. 1, 2 and 3 (b) and (d) of the Convention.

2. As regards the criminal proceedings ending in 1990 the applicants complain that they were not given a fair trial, as they were convicted on the basis of the statement by G.K., who had wrongly been granted immunity despite the fact that he had not been properly summoned. In any case, his statement was unreliable.

The applicants further allege to have been convicted in spite of their acquittal on similar charges in 1987. The courts further refused to obtain certain evidence regarding G.K.'s business activities in the Federal Republic of Germany. The Court of Appeal of Turku finally refused to allow them to supplement their appeal with a statement by K.K.

The applicants invoke Article 6 paras. 1, 2 and 3 (d) of the Convention.

THE LAW

1. The applicants complain of the alleged unfairness of the court proceedings in the taxation matter. They invoke Article 6 paras. 1, 2 and 3 (b) and (d) (Art. 6-1, 6-2, 6-3-b, 6-3-d) of the Convention, which read, insofar as they are relevant:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> 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;
> ...
> (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."

The Commission first has to ascertain whether, and to what extent, it is competent ratione temporis to deal with this complaint. 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 are 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, as regards Finland, No. 17506/90, Dec. 7.4.93).

(i) The Commission recalls that the ordinary taxation proceedings concerning the imposition of residual taxes on the applicants ended with the Supreme Administrative Court's decision of 14 March 1988, 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 complaint in this respect is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (art. 27-2).

(ii) It follows from the above-cited case-law that the re-opening proceedings ending with the Supreme Administrative Court's decision of 4 June 1990 fall within the Commission's competence ratione temporis.

The Commission considers that the request for a re-opening of the proceedings cannot have the effect of bringing the original proceedings within the Commission's competence ratione temporis. Moreover, the Commission recalls that neither the Convention nor any of its Protocols contains an obligation for a Contracting State to allow someone the opportunity to apply for a review of a decision having become res iudicata. Nor does Article 6 (Art. 6) of the Convention apply to proceedings for re-opening a trial given that someone who applies for

his case to be reopened and whose sentence has become final is not someone "charged with a criminal offence" within the meaning of that provision (No. 7761/77, Dec. 8.5.78, D.R. 14 p. 171). This also applies to a request for a re-opening of taxation proceedings.

It follows that the complaint in this respect is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (art. 27-2).

2. The applicants also complain of the alleged unfairness of the criminal proceedings ending in 1990. They invoke the above-cited Article 6 paras. 1, 2 and 3 (d) (Art. 6-1, 6-2, 6-3-d) of the Convention.

The Commission again has to ascertain whether, and to what extent, it is competent ratione temporis to deal with this complaint.

(i) The Commission first observes that the proceedings up to and including those before the Court of Appeal of Turku ended on 6 March 1990, that is before the entry into force of the Convention with regard to Finland. These proceedings are, as such, outside the Commission's competence ratione temporis.

It follows that the complaint in this respect is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(ii) As to the subsequent proceedings the Commission observes that the Supreme Court's examination did not extend to an examination of the merits of the applicant's appeal (cf. No. 17925/90, Dec. 8.10.91; e contrario the above-mentioned No. 17506/90, Dec. 7.4.93).

The Commission has already held that an examination under Finnish law as to whether leave to appeal to the Supreme Court shall be granted only amounts to an examination of the question whether or not the conditions under Chapter 30, Section 3, para. 1 of the Code of Judicial Procedure are at hand. It does not amount to an examination of the merits of the appeal (T. and S.H. v. Finland, No. 19823/92, Dec. 9.2.93, cf. also Håkansson and Sturesson v. Sweden, No. 11855/85, Dec. 15.7.87, D.R. 53 p. 190 at pp. 199-200). The proceedings before the Supreme Court did not therefore involve a determination of the criminal charges brought against the applicants within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the complaint in this respect is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (art. 27-2).

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) — (A. WEITZEL)