AS TO THE ADMISSIBILITY OF

Application No. 20560/92
by Jarmo KOSKINEN
against Finland

The European Commission of Human Rights sitting in private on 30 August 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 May 1992 by Jarmo KOSKINEN against Finland and registered on 28 August 1992 under file No. 20560/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 17 March 1993 and 19 July 1994 and the observations in reply submitted by the applicant on 24 June 1993 as well as on 7 March and 28 August 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Finnish citizen born in 1954, has been imprisoned since 1980. As from January 1994 he is serving his sentence in the Central Prison of Turku. Before the Commission he is represented

by Mr. Sami Heikinheimo, a lawyer practising in Helsinki.

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

I. The particular circumstances of the case

1. (a) The applicant's initial imprisonment, incarceration, isolation and further prison sentences

In the 1970s the applicant committed several offences and was sentenced by ordinary courts to a number of prison sentences. He started serving his total prison term in 1980. In May 1980 he killed a fellow prisoner and was then chained whenever leaving his cell for two and a half years. He further appears to have been isolated for an unknown period of time.

In 1981 the applicant was convicted by an ordinary court of the above-mentioned killing in 1980, of one count of aggravated assault on a fellow prisoner and of one count of assault on a fellow prisoner, all offences having been committed without full possession of his senses. He was sentenced to twelve years' imprisonment. The judgment included an authorisation for the Prison Court (vankilaoikeus, fängelse-domstolen) to order his incarceration in preventive detention as a dangerous recidivist. Such an order was issued in 1983.

In 1983 the applicant was convicted by an ordinary court of violent resistance against a guard, again without being in full possession of his senses, and sentenced to six months' imprisonment.

In 1986 the applicant was convicted by an ordinary court of assault on, and violent resistance against, a guard, again without being in full possession of his senses, and sentenced to four months' imprisonment.

From July 1987 to August 1988 the applicant was isolated pursuant to the 1889 Decree on the Enforcement of Punishments (asetus 39/1889 rangaistusten täytäntöönpanosta, förordning 39/1889 om verkställighet af straff, "the 1889 Decree").

In 1989 the applicant was convicted by an ordinary court of escape and possession of an edged weapon, again without being in full possession of his senses, and sentenced to two months' imprisonment.

From May 1989 to July 1990 the applicant was placed in a so-called closed prison ward.

On 15 September 1990 the applicant had served two thirds of his imprisonment, 35 days of disciplinary punishment having been added (see below under para. 1(b)).

On 3 February 1992 the applicant was convicted by an ordinary court of aggravated assault on, and violent resistance against, a guard in combination with the possession of, inter alia, an edged weapon. He was sentenced to two years and one month's imprisonment. The incident had taken place on 31 May 1991 (see below under para. 3) and the applicant was again considered not to have been in full possession of his senses.

On 31 March 1992 the applicant was convicted by an ordinary court of violent resistance against a guard on 23 August 1991 and sentenced to four months' imprisonment (see below under para. 4).

On 9 April 1992 the Supreme Court (korkein oikeus, högsta domstolen) rejected the applicant's request for an annulment of the court decision authorising his incarceration as a dangerous recidivist, as well as the order issued by the Prison Court in this respect.

On 9 September 1992 the applicant was convicted by an ordinary court of assault on, and violent resistance against, a guard on 5 December 1990 and sentenced to four months' imprisonment (see below under para. 2).

From July 1990 to February 1993 the applicant was placed in a so-called semi-open ward in various prisons having reserved wards for incarcerated dangerous recidivists (see below).

The applicant's disciplinary records show that he threatened prison staff on 28 October 1985, 17 May and 13 August 1987, 23 June and 22 December 1988 and 20 March 1989.

The applicant's present prison term expires in 1997.

(b) The applicant's disciplinary sentences

In January 1980 the applicant was ordered to serve a disciplinary punishment of five days' solitary confinement. In April 1980 he was ordered to serve ten further days, in June 1981 five and ten further days and in July 1982 five further days. In addition and pursuant to Chapter 2, Section 10, subsection 1 of the 1889 Decree, these periods were not regarded as part of the applicant's prison term. The punishments were imposed by the Prison Board (vankilan johtokunta, fängelsets direktion).

2. The applicant's further isolation in the Helsinki Central Prison from October 1990 to January 1991

Apparently on 3 October 1990 the Governor of the Helsinki Central Prison ordered that the applicant be isolated from the other prisoners, pursuant to Chapter 2, Section 10c, subsection 1 of the 1889 Decree, on the ground that he was suspected of having again behaved violently. The isolation having later been upheld under Chapter 3, Section 9, the applicant was moved to a so-called "hard cell". On 11 October 1990 he was moved to a so-called "soft cell" and on 20 October 1990 he was moved to a so-called "day cell". The hard cell had two steel doors behind which there was a "porch" separated from the cell by bars. It had a toilet and wash-basin, as well as outlets for electrical equipment and a television aerial. The toilet was flushed by the guard in the corridor and the water and the lights could also be switched on and off from the corridor.

According to the applicant, the cells were located partly underground. Moreover, their windows were very near the ceiling and only ensured a "theoretical" possibility of letting through natural light.

On 5 December 1990 the applicant violently resisted a guard and was again moved to a "hard cell". The applicant was later convicted of this and sentenced to further imprisonment (see above under para. 1(a)).

After the incident on 5 December 1990, the applicant was only allowed to exercise outdoors and go to and from the wash-room handcuffed. He then refused to exercise or wash until 14 December 1990, when the order was revoked.

On 7 December 1990 the Prison Governor ordered that the applicant again be isolated from the other prisoners in pursuance of Chapter 3, Section 9 of the 1889 Decree.

On 19 December 1990 the Prison Court rejected a request by the Prison Board that the applicant be transferred to the closed ward.

On 5 January 1991 the applicant was again moved to a day cell.

On 14 February and 20 August 1991 the Prison Court rejected requests by the applicant that he be transferred to the open ward.

3. The applicant's isolation in the Turku Central Prison from January to June 1991

On 22 or 23 January 1991 the applicant was transferred to the Central Prison of Turku, where he was, on 23 or 25 January 1991, placed in a cell in the isolation ward in view of his behaviour in the Helsinki Central Prison. The cell was partly underground, but had a window, a toilet and a wash-basin.

According to the applicant, the cell was damp and dark, as it received no daylight. This allegation is refuted by the Government.

According to the applicant, he was never medically examined during this period of isolation and was allegedly refused antibiotics for the treatment of an inflammation and athlete's foot. This allegation is also refuted by the Government.

On 31 May 1991 the applicant assaulted a guard. He was subsequently convicted of this offence and sentenced to further imprisonment (see above under para. 1(a)).

4. The applicant's isolation in the Riihimäki Central Prison from June to November 1991

On 7 June 1991 the applicant was transferred to the Central Prison of Riihimäki. His cell had a toilet.

On 8 June 1991 the applicant threatened prison staff in connection with being brought inside from his daily exercise in the prison courtyard after he had disturbed the order there.

On 11 June 1991 the Deputy to the Prison Governor ordered that the applicant be isolated from the other prisoners pursuant to Chapter 3, Section 9 of the 1889 Decree in view of the incident on 31 May 1991 in the Central Prison of Turku. The applicant's cell had a toilet.

On 3 July 1991 the applicant again threatened prison staff during his exercise outdoors.

On 10 July 1991 and 6 August 1991 the applicant's isolation was reviewed and upheld.

On 23 August 1991 the applicant violently resisted a guard when exercising outdoors. According to the applicant, the incident was provoked at the outset of his exercise by a guard prohibiting him from replying to a fellow prisoner who had initiated a conversation. As he had refused to comply with the prohibition, he had been ordered to end his exercise. He had then refused to do so. The applicant was later convicted of his resistance and sentenced to further imprisonment (see above under para. 1(a)).

Following the incident the applicant was immediately isolated in accordance with Chapter 3, Section 9 of the 1889 Decree.

As a further consequence of the incident on 23 August 1991 the Prison Governor ordered that the applicant could only exercise outdoors if handcuffed and even then only in solitude. The applicant then refused to exercise outdoors until 6 February 1992, when the order was revoked.

Furthermore, the applicant was no longer allowed to serve himself meals from a cart outside his cell unless he agreed to being chained. He then refused to serve himself in the manner proposed until 3 October

1991, when he was again allowed to serve himself.

On 4 September, 2 October and 1 November 1991 the applicant's isolation was again reviewed and upheld.

In response to a further petition by the applicant, the Department for Prison Administration of the Ministry of Justice (oikeusministeriön vankeinhoito-osasto, justitieministeriets fångvårdsavdelning) on 2 June 1992 recalled that chaining should only be used in situations where no other measure can restrain the prisoner's violent behaviour. Thus, it should not be used as a primary and preventive measure but only following an actual incident. This was brought to the attention of the Governors of the Central Prisons of Riihimäki and Helsinki.

In her decision of 31 August 1992 in response to a petition by the applicant, the Deputy Ombudsman (eduskunnan apulaisoikeusasiamies, riksdagens biträdande justitieombudsman) found that means other than chaining should primarily be used for the purpose of maintaining prison order. Such measures are, for instance, the increase of the number of guards during outdoor exercise.

When staying in the Riihimäki Central Prison the applicant visited the Prison Physician on seventeen occasions between 11 June and 31 October 1991. On two occasions he was examined in the Riihimäki Prisoners' Hospital.

5. The applicant's particular conditions in the Helsinki Central Prison from November 1991 to June 1992

On 29 November 1991 the applicant was transferred to the Central Prison of Helsinki where he was placed in a specially prepared cell in the section for prisoners serving disciplinary punishments. The cell had a toilet and a wash-basin.

The applicant was again prohibited from serving himself from the meal-cart outside his cell unless chained. Having objected to being chained, he was not served any meals until the middle of January 1992, except for one occasion when his counsel was visiting him. Apparently, he obtained food from the prison shop instead.

On 4 December 1991 the Deputy Prison Governor again ordered the applicant's isolation from the other prisoners pursuant to Chapter 3, Section 9 of the 1889 Decree. The applicant was placed in a solitary cell with a toilet and a wash-basin.

On 3 January, 4 February, 4 March and 3 April 1992 the applicant's isolation was reviewed and upheld.

According to the applicant, he was repeatedly prevented from contacting his counsel and the organisation of their meetings was unsatisfactory. In particular, they could only discuss matters relating to criminal proceedings against the applicant or his complaints of his treatment through the cell door or with guards listening.

According to the applicant, he was not properly medically examined prior to his isolation and up to 17 January 1992. Furthermore, he was not allowed to visit the Prison Nurse, who had only inspected him visually through the cell door.

According to the applicant, the collection of refuse from his cell failed to function for several weeks as from 4 December 1991.

From 5 January to 22 January 1991 the applicant was placed in a cell in another ward similar to a "hard cell" except for the fact that it had only one steel door.

In its response of 6 February 1992 to another complaint by the applicant concerning inter alia the conditions in his cell, the Prison Board stated that he had always had the possibility of cleaning his own cell by placing all refuse in a bag which would then have been collected by the cleaner-prisoner. The Prison Board further stated that the applicant had been able to borrow books from the prison library by writing a list to the staff. The same procedure had been applied when he had wished to buy things from the prison shop.

On 6 February 1992 the Prison Governor revoked the chaining order concerning the applicant's outdoor exercise.

On 24 March 1992 the Prison Court rejected a request by the Prison Board that the applicant be transferred to a closed ward. Although his placement in a closed ward could not be considered appropriate, the Prison Court found that a recidivist in an institution for preventive detention could, if necessary, be isolated pursuant to Chapter 3, Section 9 of the 1889 Decree. However, as institutions for preventive detention were under the supervision of the Ministry of Justice, matters relating to the enforcement of the applicant's sentence did not, with the exception of his placement in a particular prison ward, fall within the competence of the Prison Court. The Prison Court also rejected the applicant's request that he be moved to the open prison ward.

On 4 May 1992 the Prison Governor revoked the isolation order concerning the applicant. According to the applicant, his isolation nevertheless continued, as, on 5 May 1992, he was placed in a cell similar to a "hard cell". This cell was partly underground, but had one window. It also had a toilet and a wash-basin. He was only allowed to leave his cell to go into the corridor of the ward, and could not associate with fellow prisoners.

On 8 May 1992 the applicant was moved to a so-called "travel cell" which had recently been renovated. It was also partly underground, but had a window, a toilet and a wash-basin.

6. The applicant's particular prison conditions as from 1 June 1992

On 1 June 1992 the applicant was again moved to the Riihimäki Central Prison, where he was placed in the so-called "bunker ward". The section had a maximum of ten prisoners, each with his own cell. The applicant could, within the ward, exercise outdoors for one hour a day and participate in hobby activities for about five hours a day. Two prisoners at a time were allowed to stay in the leisure room. They were not allowed to have any contact with other wards. Up to December 1992 the Sunday exercise of the prisoners in the ward coincided with the religious service in the prison.

For a certain period of time the applicant worked as a cleaner and could then move freely within his own ward and other prison sections. He was allowed to borrow books from the prison library by writing a list of them. The same procedure applied for items he wished to buy from the prison store.

By a decision of 2 June 1992 the Department for Prison Administration found no reason to take measures in response to the applicant's complaint that Chapter 3, Section 9 of the 1889 Decree was not applicable to recidivists placed in an institution for preventive detention. The Department considered that the Decree had the status of law and that it was applicable, mutatis mutandis, also to recidivists.

The Department further found no indication that the applicant and the Prison Doctor had not been heard in connection with the applicant's isolation. It further considered that, although under the 1889 Decree and its own instruction of 1987 isolation of a prisoner shall not last longer than necessary, no maximum period is prescribed.

On 18 August 1992 the Prison Court upheld a decision by the Prison Board not to move the applicant to an open ward. The applicant himself had objected to such a move.

In the autumn of 1992 the Prison Court inspected the Central Prison of Riihimäki. On this occasion the applicant again requested the Court to examine the lawfulness of his placement in the "bunker ward" which he alleged contravened the Court's order that he be placed in a semi-open ward. The Prison Court, however, found no reason to take any measures.

The applicant appears to have been the only prisoner in the "bunker ward" as from January 1993. On 26 January 1993 the Prison Court decided that he could be transferred to an open ward.

On 12 February 1993 the applicant was moved to the Hämeenlinna Central Prison, where he was placed in a cell in an open ward. On 15 February 1993, however, he was moved back to the semi-open ward of the Central Prison of Riihimäki.

On 30 March 1993 the Prison Court upheld the transfer decision, noting the submissions of the Board of the Hämeenlinna Central Prison, according to which the applicant's threatening behaviour had jeopardised prison order in that, inter alia, his fellow prisoners might resist the applicant's threats with the use of arms.

Subsequently the applicant was moved to the Helsinki Central Prison, where he shared his cell with another prisoner and worked as a cleaner.

On 28 January 1994 the applicant was moved to the Turku Central Prison, where he claims to have been de facto isolated by the Prison Governor without any decision having been made in accordance with Finnish law. According to the applicant, he is not allowed to work or participate in other activities outside his cell. Apart from exercising with the four other prisoners in the ward for one hour a day he is only allowed to associate with other prisoners for two hours a week. The sanitary arrangements of the cell are allegedly unsatisfactory.

On 25 February 1994 the Department for Prison Administration informed the applicant that he had been transferred from the Helsinki Central Prison since he had been one of the few prisoners who could have been involved in a shooting incident. Moreover, the Department had received a death threat concerning him.

The applicant submits that the suspicion is groundless and that he has not at all been heard by the police on the matter. He claims that his transfer was ordered by the Department for Prison Administration due to its very negative attitude towards him.

According to the Government, the applicant is currently placed in the closed ward of the Turku Central Prison. They refute, however, his allegation that the Prison Governor has ordered his isolation.

7. Remedies pursued by the applicant

From June 1990 to January 1993 the Parliamentary Ombudsman or his Deputy made nine decisions in response to petitions lodged by the applicant concerning his prison conditions. In two of these decisions the Deputy Ombudsman reprimanded prison officials for faulty procedures or negligence, but those incidents had taken place prior to the entry into force of the Convention with regard to Finland on 10 May 1990.

The applicant has further lodged petitions with the Chancellor of Justice (valtioneuvoston oikeuskansleri, justitiekanslern i statsrådet), the Prison Court and the Department for Prison

Administration. He has also instituted court proceedings against individual civil servants.

8. Facts established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

On 1 April 1993 the above-stated Committee ("the CPT"), an organ of the Council of Europe, issued its report following its visit in May 1992 to, inter alia, the Helsinki and Hämeenlinna Central Prisons. This report was followed by an interim report in reply by the Finnish Government of 26 August 1993 and a further follow-up report of 18 February 1994 (for extracts from these reports, see the Appendix to the Commission's decision).

II. Selected relevant domestic law and administrative regulations

1. The incarceration of dangerous recidivists

The 1953 Act on the Incarceration of Dangerous Recidivists (laki 317/53 vaarallisten rikoksenuusijain eristämisestä, lag 317/53 om internering av farliga återfallsförbrytare, "the 1953 Act") is applicable to offenders convicted of certain offences, attempted offences or complicity in the commission of offences, involving aggravated violence or constituting a particular danger to the life and health of others, and who are sentenced to at least two years' imprisonment. The sentencing court may authorise the offender's incarceration by the Prison Court in an institution for preventive detention, if, during a period of ten years preceding his offence, he has committed another offence of an extremely violent character, or involving a particular danger to the life and health of others, and provided he is clearly to be considered to be particularly dangerous to the life and health of others. Such an offender is considered as a dangerous recidivist (Section 1, as amended by Acts nos. 303/71, 491/71 and 702/91).

If the Prison Court decides to incarcerate a dangerous recidivist, he shall immediately be transferred to an institution for preventive detention in order to serve his imprisonment. The Prison Court shall reconsider its incarceration order if the placement of a recidivist in such an institution is found to be clearly unnecessary in the light of new information (Section 9, subsection 1, as amended by Act no. 303/71, and subsection 2).

If an incarcerated recidivist is sentenced to a further prison sentence, the enforcement of his total period of imprisonment shall continue to take place in an institution for preventive detention (Section 13, subsection 1, as amended by Act no. 702/91). An incarcerated recidivist shall be released on parole only upon having served his total term of imprisonment, unless the Prison Court still considers him dangerous to the life or health of others. If he is not released, the matter shall be re-examined by the Prison Court at least every six months (Section 14 and Section 15, subsection 1, both as amended by Act no. 303/71; see also below under para. 9).

2. Institutions for preventive detention

The institution for preventive detention is either a separate institution or part of another penitentiary (Section 10). In view of the small number of incarcerated recidivists no separate institution currently exists (circular letter of 2 June 1988 issued by the Department for Prison Administration). The recidivists shall be grouped according to their special features and their need for treatment (Section 11, subsection 1). An incarcerated recidivist shall have the right to enjoy, at his own expense, better food and more comfort than that normally available in the institution, provided this would not jeopardise prison order or his safe placement (Section 12, subsection 1).

Pursuant to the 1971 Decree on the Institution for Preventive Detention (asetus 448/71 pakkolaitoksesta, förording 448/71 om tvångsinrättning, "the 1971 Decree"), such an institution shall have a semi-open, an open and a closed ward (Section 2). The recidivist shall initially be placed in a semi-open ward, but shall be transferred to an open ward as soon as he can be expected to adjust to the order and the conditions there, and provided his transfer would not jeopardise his safe placement. At the Prison Board's request the Prison Court may transfer him to a semi-open ward, if this is considered necessary for his own security, his safe placement or if, for some other reason, he cannot adjust to the order and the conditions in an open ward. A recidivist who refuses to comply with the order or the conditions in a semi-open ward may be transferred to a closed ward. In the case of an emergency his transfer can be ordered by the Prison Board and shall then be immediately reviewed by the Prison Court. A recidivist shall not be kept in a closed ward longer than necessary. His placement there shall be reviewed by the Prison Court at least every three months (Sections 3 and 4). Placement in a specific ward is not subject to appeal.

A recidivist placed in an open or a semi-open ward shall either be placed in a single cell or share his cell with other incarcerated prisoners, consideration being given, as far as possible, to his own wishes. Unless the Governor of the institution for particular reasons decides otherwise, the recidivist shall be permitted to work with the other incarcerated prisoners and also to associate with them during his spare time (Section 6).

A recidivist placed in a closed ward shall have a single cell. By permission of the Governor he may, however, work and, for particular reasons, also associate with other incarcerated prisoners during his spare time (Section 8).

In addition to what is prescribed in the 1971 Decree, Chapters 2 and 3 of the 1889 Decree shall also be applicable to institutions for preventive detention and to recidivists placed in such institutions (Section 13, subsection 2 of the 1971 Decree, as amended by Decree no. 449/75).

3. Isolation of prisoners

(a) Isolation for security reasons

A prisoner may spend his spare time with fellow prisoners, unless the Prison Governor decides otherwise in order to maintain prison order or for another reason laid down by decree. Thus, he may be isolated from his fellow prisoners if this is necessary in order to prevent him from seriously endangering the life and health of others, in order to prevent a clear escape attempt or a clear attempt to have him unlawfully released, in order to prevent him from continuing to use drugs, in order to prevent him from committing a drug offence or in order to prevent other similar behaviour seriously jeopardising prison order, and provided that those acts cannot otherwise be prevented (Chapter 3, Section 9, subsections 1 and 2 of the 1889 Decree, the latter as amended by Act no. 128/87).

The isolation of a prisoner shall be ordered by the Prison Governor following consultation with the Prison Physician, who shall also be consulted during the enforcement of the isolation order. The isolation shall last no longer than necessary and the prisoner's rights shall not be restricted further than necessary. The isolation order shall be reviewed at least once a month (Section 9, subsection 3, as amended by Act no. 128/87).

A prisoner isolated for security reasons shall primarily be placed in a ward not used for prisoners in investigatory or

disciplinary isolation (see below under paras. 3 (b) and (c); circular letter of 24 April 1987 issued by the Department for Prison Administration).

(b) Isolation for investigatory reasons

During the investigation of an offence suspected to have been committed by a prisoner, and in anticipation of his possible disciplinary punishment, the Prison Board or its representative may order his placement in isolation, provided this is necessary for the maintenance of the prison order or for other particular reasons. Such isolation shall not exceed seven days (Chapter 2, Section 10c, subsection 1 of the 1889 Decree, as amended by Act no. 612/74).

(c) Isolation for disciplinary reasons

The Prison Board or Governor may order a prisoner's placement in solitary confinement for a maximum of twenty days or seven days respectively (Chapter 2, Section 10a, subsections 1 and 2 of the 1889 Decree, as amended by Act no. 612/74; see below under para. 8).

4. Chaining

A prisoner shall only be chained if this is necessary for the prevention of his escape during transportation or in order to restrain his violent behaviour in the absence of other effective measures, provided his behaviour would endanger his own and other persons' safety or significantly damage property. For the purpose of restraining violent behaviour the prisoner may instead be placed in isolation. He shall not be chained longer than necessary (Chapter 2, Section 11, subsection 1 of the 1889 Decree, as amended by Act no. 612/74).

5. Outdoor exercise

A prisoner shall be allowed to engage in suitable exercise outdoors for at least an hour a day (Section 36 of the 1975 Decree on the Treatment of Prisoners (vankeinhoitoasetus 431/75, fångvårdsförordning 431/75, "the 1975 Decree")).

6. Medical care

The Prison Physician shall monitor the state of health of prisoners placed in solitary confinement or in other forms of isolation and, in particular, the conditions in which such isolation is being carried out (Section 27, no. 4 of the 1986 Prison Administration Decree (asetus 134/86 vankeinhoitolaitoksesta, förordning 134/86 om fångvårdsväsendet; repealed by Decree no. 819/92)). A similar provision has been included in instructions issued by the Department for Prison Administration (Response of the Finnish Government to the Report of the CPT, p. 36).

7. Participation in religious activities

A prisoner shall be given the opportunity to participate in religious activities in the prison and have access to religious counselling (Chapter 2, Section 4, subsection 1 of the 1889 Decree, as amended by Act no. 612/74).

8. Disciplinary punishments

A prisoner who does not comply with prison order, or who commits an offence in prison punishable by a fine, may be subjected inter alia to a disciplinary punishment in the form of solitary confinement (yksinäishuone, enrum) and, additionally, an obligation imposed by the Prison Board to serve the whole or part of his confinement without it being regarded as part of his prison term (suoritetun ajan menettäminen, förlust av avtjänad tid) (Chapter 2, Section 10,

subsection 1 and Section 10a, subsection 2 of the 1889 Decree, both as amended by Act no. 612/74; see also above under para. 3(c)).

An appeal lies from the Prison Board to the Ministry of Justice against a disciplinary measure which has the effect of prolonging his prison term by over ten days (Section 73, subsection 1 of the 1975 Decree).

9. Release on parole

A prisoner sentenced to imprisonment for a certain period of time may be released on parole upon having served two thirds of his term or, for particular reasons, having served half of it. A recidivist in preventive detention shall be released on parole only after completion of his whole term of imprisonment, unless the Prison Court still considers him dangerous to the life or health of others in accordance with Section 1 of the 1953 Act. If the recidivist is not released on parole the matter shall be re-examined by the Prison Court at least every six months (Chapter 2, Section 13, subsection 1 of the 1889 Decree, as amended by Act no. 506/88 and Chapter 3, Section 15, subsection 1 of the 1953 Act, as amended by Act no. 303/71; see also above under para. 1).

10. Remedies under domestic law

According to Chapter 10, Section 93, subsection 2 of the Constitution Act (Suomen hallitusmuoto 94/19, Regeringsform för Finland 94/19), anyone who has suffered an infringement of his rights, or damage, through an illegal act or negligence on the part of a civil servant, is entitled to demand that the civil servant be convicted and held liable for damages, or may report him for the purposes of having charges brought against him. Under the Tort Liability Act (vahingon-korvauslaki 412/74, skadeståndslag 412/74) proceedings for damages may also be instituted against the State for actions taken by civil servants (Chapters 3 and 4).

A prisoner may complain of his treatment to the Prison Governor or the Prison Board, and may complain of their decisions to the Department for Prison Administration. He can also turn to the Parliamentary Ombudsman, whose special obligation is to supervise compliance with the law in prisons.

11. The Prison Court

The Prison Court shall consist of the Director-General for the Prison Administration or his Deputy and four other members appointed by the President of the Republic for a period of five years. Two of these four members shall have judicial experience and one of them shall be a physician experienced in psychiatry. The President and the Vice President of the Prison Court shall be appointed by the President of the Republic among the lawyer members of the Court. Members shall swear a judicial oath (Section 5, subsections 2-4 of the 1953 Act).

As regards the grounds for disqualifying a member and the Prison Court's deliberations, the provisions of the Code of Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balken) relating to courts of appeal shall be applicable, mutatis mutandis (Section 6, subsection 1).

COMPLAINTS

1. The applicant complains of inhuman treatment in that, with the exception of a few interruptions, he has been placed in de facto isolation in unsatisfactory conditions from 1980 onwards. He was chained, refused necessary medical care, his contacts with his lawyer were restricted and he was unable to attend religious services. The isolation seriously disturbed his mental or physical health. Taking all the above elements together, he alleges that they constitute a

violation of Article 3 of the Convention.

2. The applicant claims that his disciplinary punishments, obliging him to serve an additional prison term of 35 days, have not been ordered by a "court" within the meaning of Article 5 para. 1 (a) of the Convention.

3. The applicant also submits that the requirement that he serve his full sentence, instead of the normal two thirds with parole, means that, in effect, his further detention has been decided by the Prison Court. He alleges that this body does not fulfil the requirements of a court under Article 5 para. 1 (a) of the Convention, as it has close connections with the Department of Prison Administration. Accordingly, his imprisonment as of 15 September 1990, when two thirds of his sentence had been served, is unlawful.

4. The applicant also complains that his isolation was unlawful, not being based on the 1971 Decree, purportedly a lex specialis, which prescribes that questions regarding the placement of a recidivist in a particular prison ward shall be decided by the Prison Court. The prisons, however, circumvented the Prison Court's order that he be placed in a semi-open ward. He again invokes Article 5 para. 1 (a) of the Convention.

5. The applicant also complains that he had no effective remedy in order to have the alleged inhuman treatment terminated. He invokes Articles 6 and 13 of the Convention.

6. Finally, the applicant complains that his obligation to serve the total length of his ordinary prison sentence before being released on parole is discriminatory in comparison with ordinary prisoners serving a sentence of the same length as his, who can be released on parole after serving only two thirds of their sentence. He invokes Article 5 para. 1 (a) of the Convention, in conjunction with Article 14.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 May 1992 and registered on 28 August 1992.

On 6 January 1993 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits, limited to the applicant's complaints under Articles 3 and 13 of the Convention.

Following two extensions of the time-limit fixed for this purpose, the Government's observations were submitted on 17 March 1993.

On 14 May 1993 the applicant was granted legal aid.

The applicant's comments in reply to the Government's observations were submitted on 24 June 1993. Additional observations were submitted by him on 7 March and 28 August 1994 and by the Government on 19 July 1994.

THE LAW

1. The applicant complains of inhuman treatment during his imprisonment, notably due to his isolation, which he alleges had lasted approximately twelve years by 1992. Taking all elements of his imprisonment together, he claims that they constitute a violation of Article 3 (Art. 3) of the Convention.

Article 3 (Art. 3) reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submit that the complaint is manifestly ill-founded. They refer to the relevant isolation orders as indicated above in "The Facts". Due to the applicant's violent behaviour his isolation lasted longer than normal, but its necessity was reviewed at the required intervals. His isolation was sometimes of a disciplinary character based on his violent behaviour and sometimes it was aimed at preventing similar behaviour which could have seriously jeopardised prison order. Isolation was the ultimate alternative chosen. His conditions in isolation have, however, been appropriate and have complied with the Council of Europe's Prison Rules.

In particular, as regards the applicant's association with others during his isolation, the Government submit that he was allowed to receive visits by his family and others, although in the Helsinki Central Prison only under surveillance. He was also allowed to have certain contacts with fellow prisoners and could receive visits by his counsel on condition that the meetings be fixed in advance. He was furthermore given material enabling him to correspond. He had access to radio, television, newspapers and books from the prison libraries. He was allowed to shop in the prison stores. His contacts with his counsel were not restricted more than necessary in view of the need to maintain prison order. The requirement that the applicant be handcuffed when exercising outdoors which led to his refusal to exercise was justified for security reasons.

According to the Government, the applicant's cell conditions were acceptable from the point of view of Article 3 (Art. 3). Some of his cells were better equipped than those of other prisoners. The chaining requirement imposed in August 1991 leading to his refusal to eat the prison meals was a result of his own violent conduct and aimed at maintaining prison order. The chaining would only have entailed the handcuffing of the applicant. Moreover, as a recidivist he had the right to acquire, at his own expense, better food than that normally served. Thus, when refusing to eat the prison meals the applicant bought food in the prison shop. As a recidivist the applicant was also in a more privileged position than other prisoners regarding the right to keep possessions in his cells. For instance, in the Helsinki Central Prison his cell had outlets for electrical equipment, as well as for television and radio aerials.

As regards the applicant's medical care, the Government consider his allegation that the isolation had seriously disturbed his mental or physical health to be unsubstantiated. His state of health has been supervised as well as possible, bearing in mind that he sometimes refused to undergo medical examinations in the presence of guards. Once he refused to be examined by a dentist. The Government admit, however, that for security reasons medical staff occasionally had to assess his state of health visually without entering his cell. Moreover, the medical approval of the applicant's isolation had sometimes been given retrospectively.

The Government further contest that the applicant has been refused the right to attend religious services in any of the prisons. In the Helsinki Central Prison he was informed that his visits to the prison chapel would be subject to special surveillance, following which he refused to attend any services. In the Turku and Riihimäki Central Prisons no special surveillance rules were imposed. In the Riihimäki Central Prison the applicant had continuous contact with the Prison Chaplain.

The applicant submits that the offences already committed in the early 1980s, leading to his incarceration, cannot constitute sufficient justification for his long-lasting de facto isolation. With the exception of the serious assault on a guard on 31 May 1991, the incidents in the prisons, for which he was also punished by ordinary courts, were rare and not serious. The incidents were the result of a

"vicious circle" starting with the excessively lengthy period of isolation. For instance, the normal disciplinary punishment following the incident in the Helsinki Central Prison on 5 December 1990 would have been a maximum ten days of isolation. Instead it lasted six months. In order to exemplify the alleged "vicious circle" leading to and maintaining his inhuman treatment, the applicant makes reference to the incident in the Riihimäki Central Prison on 23 August 1991 leading to his violent behaviour against a guard. Finally, the review of the applicant's isolation was mostly automatic and not sufficiently thorough.

The applicant further emphasises that the grounds for transferring a recidivist from a semi-open to a closed ward are the same as those justifying his isolation in accordance with Chapter 3, Section 9 of the 1889 Decree. The last-mentioned isolation, however, is a significantly harsher implementation of a prison sentence. Thus, by applying the 1889 Decree the Prison Governors circumvented the Prison Court's repeated decisions not to place him in a closed ward and thereby the requirement in a domestic lex specialis that isolation in accordance with Chapter 3, Section 9 of the 1889 Decree shall not be applied to recidivists in preventive detention.

The applicant maintains that he was not allowed to associate with other inmates. Visits by family members and other persons did not satisfy the need for social contacts, the condition for such visits being severe. For example, in the Helsinki Central Prison, such visits had to take place in the presence of four guards in special premises and not in the normal meeting rooms. Not even his counsel was allowed to consult the applicant in the normal meeting rooms and faced a negative attitude from the prison staff. Neither did contacts with the outside world via radio, television and newspapers compensate for the lack of physical interaction with others.

The applicant further maintains that the requirement that he be handcuffed during exercise outdoors was unjustified, given that his exercise was scheduled to take place in the absence of all other prisoners. The guards' attitude to him was often "bullying". For instance, once when he had asked for that day's newspaper, a guard had answered that it was not available. When leaving the applicant, his counsel had seen it lying on a table. The applicant asserts that he has been unable to borrow books from the prison library himself, being required to tell the guards which books he wished to borrow. He was, for unjustified reasons, not allowed to keep certain personal belongings. For instance, during his isolation in the Riihimäki Central Prison he was not allowed to keep a microphone for his tape recorder, although it had been paid for by prison funds in order to assist him in his studies.

The applicant contends that he was not properly medically examined prior to the isolation orders and during his isolation. He again refers to the above-mentioned Report by the CPT (para. 75) concluding that doctors rarely visited prisoners in isolation units. Moreover, in connection with one of the isolations ordered in the Turku Central Prison, the Prison Physician reported, even without examining him, that his isolation in the beginning of the 1980s had already caused such major changes in his physical and psychological health that renewed isolation would no longer have any essential influence on the applicant. Only one Prison Physician agreed to examine him in the absence of guards. On one occasion he unsuccessfully proposed to be examined in chains provided no guards would be present. He objected to being examined in the presence of other prison staff, fearing that information about his state of health would be spread to others.

As regards the possibility for him to attend religious services and seek such counselling, the applicant refutes the Government's assertion that he was allowed to attend services in any of the prison chapels. Reference is made, in particular, to a judgment of the City

Court of Riihimäki of 14 April 1993 purportedly establishing that he had no such right.

The applicant finally questions the findings by the Deputy Ombudsman invoked by the Government. The Ombudsman has very limited possibilities to investigate complaints and mostly has to base his findings on the mere written submissions of the officials to whom objection is made. As regards, notably, his treatment in the Helsinki Central Prison, the applicant also refers to the CPT's report which concludes that the material conditions of detention in the isolation unit at the Helsinki Central Prison are poor.

The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is relative and must take account of all the circumstances of the case, including the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the person subjected to it (e.g. Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). In order for a punishment to be "degrading" and in breach of Article 3 (Art. 3), the humiliation or debasement involved must attain a particular level and must in any event be other than the usual element of humiliation associated with imprisonment after a criminal conviction. Such an examination is also relative and depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution (Eur. Court H.R., Tyrer judgment of 25 April 1978, Series A no. 26, p. 15, para. 30).

The Commission further recalls that the segregation of a prisoner from the prison community does not in itself constitute a form of inhuman or degrading treatment. Whilst prolonged removal of a person from association with others is undesirable, the question whether such a measure is contrary to Article 3 (Art. 3) of the Convention depends on the particular conditions of its application, including its stringency, duration and purpose, as well as its effects on the person concerned. The removal of a prisoner from association with fellow inmates for security, disciplinary or protective reasons does not normally amount to inhuman treatment or punishment (cf. e.g. Bouajila v. Switzerland, Comm. Report 1.7.93, paras. 102-104, to be published; Dhoest v. Belgium, Comm. Report 14.5.87, paras. 116-118, D.R. 55 pp. 5-50, at pp. 20-21, with further references, and No. 14610/89, Dec. 9.7.91, D.R. 71 pp. 168-221, at pp. 190-191, with further references).

Finally, the Commission recalls that a lengthy prison sentence or a combination of prison sentences does not in itself raise any issue under Article 3 (Art. 3) of the Convention (e.g. the above-mentioned No. 14610/89, p. 191).

As regards the facts of the present case, the Commission first observes that the applicant has been imprisoned since 1980. It notes that the Convention entered into force with regard to Finland on 10 May 1990. Subsequent to that date the applicant was formally isolated, except for some brief interruptions, for about one and a half years either from October or December 1990 to May 1992. Although not being competent to evaluate the individual decisions and events preceding 10 May 1990, the Commission must also take those into account as background to the applicant's situation on that day (cf. T.H. v. Finland, Comm. Report 22.10.93, para. 135). Thus, it observes that prior to that date the applicant had been formally isolated for an unknown period of time in the beginning of the 1980s and for about a year from July 1987 to August 1988. The applicant's assertion that he has been "de facto isolated" during the main part of his prison term has not found support in the documents submitted.

The Commission finds it established that the applicant's periods of isolation were ordered due to his repeated violent and threatening behaviour. The isolation orders were reviewed at least on a monthly basis and there is no indication that they were arbitrarily upheld. It has not been shown that his isolation was so severe as to make it contrary to Article 3 (Art. 3). On the contrary, there is no indication that he was prevented from receiving visits, notably from his counsel, at reasonable intervals provided prison order was not jeopardised. He had daily contact with prison staff. He was provided with reading and writing materials. The fact that he was not himself allowed to visit the library and the prison shop does not alter this conclusion, as he was not prevented from borrowing books and buying items through staff intermediaries. Most of his cells had outlets for television and radio aerials which he could have used at his own expense. It has not been shown that he was unable to receive at least religious counselling provided he complied with the relevant security arrangements.

In particular, the Commission finds it established that, following his violent resistance against a guard on 23 August 1991, the applicant was justifiably not allowed to exercise outdoors without being handcuffed. He then refused to exercise outdoors until the handcuffing order was revoked in February 1992. Thus, this isolation was self-inflicted and limited in time. There is no indication that the applicant was subjected to complete isolation even during this period.

The Commission further observes that, following the incident on 23 August 1991, the applicant was no longer allowed to serve himself from the meal-cart in the prison corridor without being chained. Having refused to comply with this order, he did not eat prison meals for forty-two days. This consequence was, however, self-inflicted by the applicant and there is no indication that he was unable to procure food items from the prison shop, nor is there any indication that this practice caused him excessive mental distress. As regards the second order issued in November 1991 concerning his chaining during the serving of meals, similar considerations apply.

In assessing the applicant's cell conditions the Commission has also had regard to the CPT's report of 1 April 1993, as well as the respondent Government's interim and follow-up reports concerning the relevant wards of the Helsinki and Hämeenlinna Central Prisons (see the Appendix). It considers, however, that the fact that some of his cells were located partly underground is not sufficient to raise an issue under Article 3 (Art. 3). Nor has it been established that the hygienic conditions were unsatisfactory. In particular, it has not been alleged that the toilet arrangements in any of the cells caused any particular inconvenience to the applicant.

As regards the applicant's medical treatment, the Government have acknowledged that on certain occasions the medical examinations of him had to be conducted visually through his barred cell door. There is no indication, however, that this method was used other than for security reasons.

The Commission finally finds no indication that the applicant's right to keep certain personal belongings in his cells was restricted in an excessive manner in view of the security and other relevant considerations.

Having made an overall assessment of the established conditions during the applicant's detention, the Commission concludes that they did not disclose any appearance of a violation of Article 3 (Art. 3) of the Convention.

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 next complains that his disciplinary punishments, obliging him to serve an additional prison sentence of 35 days, have not been ordered by a court within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention.

Article 5 para. 1 (a) (Art. 5-1-a) of the Convention reads as follows:

> "1. 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:
>
> a. the lawful detention of a person after conviction by a competent court; ..."

The Commission observes that the prolongation of the applicant's prison term stems from the disciplinary punishments imposed on him in 1980-1982, that is during a period prior to the entry into force of the Convention with regard to Finland. The Commission considers that the prolongation of his prison term is a result of those disciplinary punishments which as such lie outside the Commission's competence ratione temporis (Nos. 8560/79 and 8613/79, Dec. 3.7.79, D.R. 16 p. 209; cf., mutatis mutandis, No. 10733/84, Dec. 11.3.85, D.R. 41 pp. 211-225 at p. 224, and, contra, No. 7031/75, Dec. 12.7.76, D.R. 6 p. 124).

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

3. The applicant further complains that the requirement that he serve his full sentence, instead of the normal two thirds with parole, means that his further detention has been decided by the Prison Court. He claims that this body does not fulfil the requirements of a court under Article 5 para. 1 (a) (Art. 5-1-a) of the Convention, as it has close connections with the Department of Prison Administration. Accordingly, his current imprisonment is unlawful.

The Commission observes that, according to Section 14 of the 1953 Act, an incarcerated recidivist shall serve his total term of imprisonment. The applicant's incarceration was already ordered in 1983, i.e. prior to the entry into force of the Convention with regard to Finland. Even assuming, however, that the complaint is within the Commission's competence ratione temporis, it recalls that, in order for detention after conviction to be lawful within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention, it must result from, follow and depend upon, or occur by virtue of a "conviction by a competent court". In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty at issue (Eur. Court H.R., Weeks judgment of 2 March 1987, Series A no. 114, p. 23, para. 42; Eur. Court H.R., Thynne, Wilson and Gunnell judgment of 25 October 1990, Series A no. 190, pp. 26-27, para. 68 et seq.). The Convention does not secure any right as such to be released on parole (e.g. the above-mentioned No. 14610/89, p. 191).

The Commission notes that, as a result of the Prison Court's order to incarcerate the applicant as a dangerous recidivist, the applicant could not be released on parole after having served two thirds of his sentence on 15 September 1990. Instead he must serve his whole sentence, expiring in 1997, following which he will be released on parole, unless he is considered to be a danger to the life or health of others. The Commission observes that the applicant's present imprisonment is based on a number of convictions by ordinary courts whose competence within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) has not been challenged by him. The Commission finds that there is a sufficient causal connection between those convictions and

the current deprivation of the applicant's liberty. Accordingly, it concludes that this aspect of the case discloses no appearance of a violation of Article 5 (Art. 5) of the Convention.

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.

4. The applicant further complains that his isolation was unlawful, as it was not based on the 1971 Decree on Institutions for Preventive Detention, a purported lex specialis. He again invokes Article 5 para. 1 (a) (Art. 5-1-a) of the Convention.

The Commission observes that the applicant's isolation was part of the implementation of his prison sentence, which was imposed "after conviction by a competent court" within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention. The conditions in which the sentence is served do not, in principle, fall within the ambit of Article 5 para. 1 (Art. 5-1), but are to be controlled under Article 3 (Art. 3) of the Convention, which the Commission has already done above (cf. No. 7754/77, Dec. 9.5.77, D.R. 11 p. 216). The Commission finds, therefore, that no further issue arises under Article 5 para. 1 (a) (Art. 5-1-a) of the Convention in respect of the present complaint.

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.

5. The applicant also complains that he had no effective remedy against his alleged inhuman treatment. He invokes Articles 6 and 13 (Art. 6, 13) of the Convention.

The Commission has examined this complaint under Article 13 (Art. 13) which reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government submit that this complaint is also manifestly ill-founded, as the applicant has no arguable claim in respect of his complaint under Article 3 (Art. 3) of the Convention. Should the Commission conclude otherwise, the Government argue that a number of remedies are available to the applicant either separately or in aggregate, satisfying the requirements of Article 13 (Art. 13). Reference is made to the Prison Court, the Prison Governor, the Prison Board, the Department for Prison Administration, the Parliamentary Ombudsman and the possibility for the applicant under Section 93 of the Constitution Act to institute criminal and civil proceedings for damages against officials.

In view of its above conclusion with regard to the complaint under Article 3 (Art. 13) of the Convention, the Commission considers that the applicant has no "arguable claim" of a breach of a violation of this provision which would warrant a remedy under Article 13 (Art. 13) (see Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 20, para. 46).

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.

6. Finally, the applicant complains that his obligation to serve the total length of his ordinary prison sentence is discriminatory in

comparison with ordinary prisoners serving a sentence of the same length as his, who can be released on parole having served two thirds of their sentence. He invokes the above-cited Article 5 para. 1 (a) (Art. 5-1-a) of the Convention, in conjunction with Article 14 (Art. 14), which reads:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission observes that the reason for not releasing the applicant on parole after he had served two thirds of his ordinary prison sentence was his classification as a dangerous recidivist. Accordingly, he was not in a situation comparable to that of ordinary prisoners. In these circumstances, no issue arises under Article 14 (Art. 14).

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 Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)

APPENDIX

EXTRACTS FROM THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT") OF 1 APRIL 1993

> [As regards solitary confinement, notably in the Helsinki Central Prison; pp. 28-31:]
>
> "...
> 69. Reference has already been made to the large number of prisoners in Helsinki Central Prison who had requested to be placed in solitary confinement... . The prisoners concerned were accommodated in the isolation unit of the prison, which also housed those who had been placed in non-voluntary solitary confinement (including prisoners classified as dangerous recidivists - cf. paragraph 77) and inmates undergoing the disciplinary penalty of cellular confinement.
>
> The CPT has serious reservations about both the material conditions in this unit and the regime applied to prisoners placed there for non-disciplinary reasons.
>
> 70. The isolation unit was located in the "day cells" wing in the prison. Most of the cells contained only a platform bed and a lavatory - both made of concrete. Four of the cells had been converted to accommodate prisoners thought to be especially dangerous and likely to be held in solitary confinement for extended periods. Material conditions in those cells were of a slightly higher standard. None of the cells possessed any storage space, with the result that the limited range of personal possessions allowed to prisoners tended to be left strewn on the floor.
>
> Many of the cells were in an unhygienic condition and some were extremely dirty. The condition of the in-cell lavatories also

left a great deal to be desired. In this respect, it should be noted that the lavatories could only be flushed from outside the cell and prisoners alleged that their requests for this to be done were frequently ignored by the staff.

71. In short, the material conditions of detention in the isolation unit at Helsinki Central Prison were poor.
...

72. The delegation [of the CPT] discussed the regime provided in the isolation unit with staff and prisoners there. It emerged that the inmates' activities consisted of reading and writing in their cells, together with one hour of outdoor exercise each day, when they might be allowed to associate with the other prisoners from the unit. No work was available, even in the cells, and no group association or sporting activities were provided. To sum up, the vast majority of prisoners spent their time alone in their cells, with little to occupy them. Given the extended periods for which persons may be held under voluntary or non-voluntary segregation, the regime which was offered to them cannot be regarded as acceptable.

73. It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities. The delegation found that the regime applied in the solitary confinement unit in Helsinki Central Prison did not provide such stimulation.

75. ... Finnish law obliges prisons doctors to supervise the health of those placed in isolation; however, the delegation found that, in practice, doctors rarely visited the isolation units in the adult prisons visited.
...

77. Finally, reference should be made to the small number of [dangerous recidivists] (nine at the time of the visit) subject to the terms of [the 1953 Act]. ...

78. The delegation was informed that such prisoners were often held for very long periods under a solitary confinement-type regime. ..."

[With regard to the material conditions of detention in the Helsinki Central Prison; p. 32:]

79. "[The prison] provided accommodation for inmates in two areas, referred to as the 'day cells' and 'night cells' sections. ... The ground floor of the 'day cells' east wing contained the isolation unit ... . The prison was not overcrowded and prisoners lived one to a cell throughout the establishment.

80. Most of the cells were of a reasonable size (up to 9 m2), acceptably furnished (bed, table, chair, wardrobe and bookshelf) and benefited from adequate lighting and sanitation. However, it would be preferable for sanitation facilities to be partitioned off from the living areas in the cells.
...

83. ... [G]enerally, the delegation was struck by the poor general state of repair of the prison; further, some areas were extremely dirty.
..."

[With regard to the material conditions of detention in the

Hämeenlinna Central Prison; p. 34:]

"88. The cells were all of a reasonable size for the number of prisoners accommodated and were well lit, adequately ventilated and furnished to a satisfactory standard. In general, material conditions of detention in the prison were good, ...

89. Only one landing in the prison had cells which were equipped with lavatories. Prisoners who worked had access to toilet facilities during the day but during the night had to use a bucket for toilet purposes. Certain other prisoners appeared to stay in their cells for much of the day (apart from exercise periods, visits etc). Prison staff informed the delegation that such prisoners would often have to rely on the bucket in their cells as a toilet facility during the day. ..."

[With regard to the general conditions of detention inter alia in the Helsinki and Riihimäki Central Prisons; pp. 44-46:]

"128. ... [A]s regards particularly the cells [in the isolation unit of Helsinki Central Prison] used to accommodate those undergoing cellular confinement as a disciplinary sanction [the CPT considers that], in addition to improving hygiene within the cells, ... it would be desirable for them to be equipped with a table and chair, if necessary fixed to the floor.
...

134. The arrangements for visits in the establishments visited were found to be satisfactory. ..."

[With regard to the medical issues inter alia in the Helsinki and Hämeenlinna Central Prisons; p. 37:]

"100. In Helsinki Central Prison, a doctor ... and a psychiatrist were employed on a full-time basis. A range of other outside specialists visited the prison at regular intervals and nursing cover appeared to be adequate.

At Hämeenlinna, the Central ... Prison ... used the services of the Prison Hospital within [its] grounds ... . This was modern ... and very well equipped ..."

****

EXTRACTS FROM THE RESPONSE OF THE FINNISH GOVERNMENT TO THE REPORT OF THE CPT (DATED 26 AUGUST 1993)

[With regard to solitary confinement; pp. 34-35:]

"The isolation unit of Helsinki Central Prison is located in the section of day cells east where renovations will begin in 1994. The cells used for solitary confinement will have to be rebuilt to meet reasonable standards for the accommodation of prisoners.
...

The Prison Administration Department will during the current year issue new instructions on the application of chapter 3 section 9 of [the 1889 Decree] concerning solitary confinement, taking into account the recommendation by the CPT for informing the prisoner in writing of the reasons for solitary confinement.

The prisoner is heard before any decision is taken on solitary confinement."

[p. 41:]

"... Since 1971, two prisoners have been held in solitary

confinement for extended periods.
..."

[With regard to the Hämeenlinna Central Prison; pp. 43-44:]

"[The prison] will release the prisoners from their cells to use a toilet during the day.
...

... It is impracticable to require that the plans recommended by the CPT to be drawn up to give all prisoners in Hämeenlinna Central Prison access to toilet facilities at all times be put into effect at this stage. The Prison Administration Department believes that the provision of such access in all prisons is indispensable and will attach special importance to finding practical solutions to the problem in the connection of structural changes and reallocation of premises. In Hämeenlinna, this objective will not be fully attained until each cell has a toilet facility of its own. Staff on duty at night are few, and for security reasons it is impossible to give all prisoners access to a toilet at night. For a special reason, such as illness, a prisoner is in any case released to use a toilet at night.
..."

[With regard to the Helsinki Central Prison; pp. 45-47:]

"... The building which houses the cells at Helsinki Central Prison will be fully renovated in the years to come. ... The areas to be rebuilt will be fitted with central heating and automatic ventilation. Most of the cells will be fitted with toilets and wash-basins, some also with a shower. The furniture will be: bed, chair, desk, bookshelf, two lockers and notice board. The technical equipment will be: central heating, hot and cold water, automatic ventilation, fire alarm, call system, receiver for PA system, tv antenna, overhead light, and reading-lamp.
...

Prisons have drawn up a cleaning plan, which defines the manner and frequency of cleaning of the particular premises as well as the person in charge. The cleaning plan for Helsinki Central Prison was checked and approved by the Prison Administration Department in 1989.
...

As a result of the CPT's report, senior officers in Helsinki Central Prison have been urged to improve the general cleanliness of the units. The basic idea that the prisoners take care of the cleaning under the supervision of the staff has not been revised. This practice is in conformity with the objective of involving the prisoners in the regime of the prison.
...

In their comments on the dirty condition of the isolation unit, Helsinki Central Prison stated that the prisoners occupying the unit refuse to work, take drugs, are violent or afraid of other prisoners. Not all of them are easily motivated to clean their cells. The cells can be cleaned more thoroughly only when empty. In addition, the bad state of repair makes maintenance of hygienic standards difficult. Despite these difficult circumstances, the cleanliness of these premises continues to be in focus. As for the other parts of the prison, improvements have been achieved during the spring of 1993. For example, waste is taken out daily from the living quarters, and discarded materials from the workshop areas have been taken away.

On 10 May 1993, inspectors of the Prison Administration Department visited Helsinki Central Prison to scrutinize the standard of hygiene. Sub-standard conditions were found to still exist in the isolation unit, and the Prison was urged to carry out a thorough cleaning. ..."

[p. 75:]

"... Renovation of the part of Helsinki Central Prison with isolation cells will begin next year. The CPT's comment can be accommodated in that process. Some cells currently in use are being equipped with a table and chair.
..."

[In general; p. 80:]

"Finnish closed prisons have a capacity of 3000, of which a third is in cells without separate toilet facilities. In some of these cells (open units) prisoners have access to a toilet facility at all times; in other units prisoners can be released by an officer to use a toilet at night, but units continue to exist where prisoners are not permitted to leave their cells to use a toilet facility at night because of the reduced number of staff on duty.

With the renovation of prisons, most of the cells will be equipped with separate toilet facilities, but this process will take time. ..."

****

EXTRACTS FROM THE FOLLOW-UP REPORT OF THE FINNISH GOVERNMENT IN RESPONSE TO THE REPORT OF THE CPT (DATED 18 FEBRUARY 1994)

[With regard to the conditions of detention in the Helsinki Central Prison; pp. 14-18:]

"... In Helsinki Central Prison, the renovation of day cells west was completed recently. ...

The isolation unit is located in the day cells east where renovation will begin in 1994. The CPT's recommendations will be taken into account in the renovation of the cells of the isolation unit. Some day cells north are being repaired to house a temporary isolation unit. The cells used for solitary confinement as a disciplinary measure have been furnished as recommended by the CPT.
...

Instructions, regarding solitary confinement, on the application of chapter 3 section 9 of [the 1889 Decree] are being revised to accommodate the CPT's recommendation for informing prisoners in writing of the reasons for solitary confinement.
...

In discussions held with every prison on target results for 1994 the issue of allowing prisoners access to toilet facilities at night was raised. It came out that in a number of prisons it is possible to give prisoners access to a toilet at night. For security reasons a cell door must not be unlocked and opened by one guard alone. Prisons which do not have enough staff to allow the presence of two guards in that situation will not be able to give prisoners access to a toilet at night.
...

Since the CPT's visit, the Prison Administration Department has carried out three inspections of the premises of Helsinki Central Prison, issuing instructions to improve the standard of cleanliness in the prison. The prison was aware that the third

inspection would be carried out unannounced, and in that inspection in December 1993 it was observed that the conditions for cleanliness had improved markedly.
..."