AS TO THE ADMISSIBILITY OF

Application No. 29328/95
by Jarmo KOSKINEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 9 November 1995 by Jarmo KOSKINEN against Finland and registered on 21 November 1995 under file No. 29328/95;

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, a Finnish citizen born in 1954, was detained in the Turku Central Prison. He is represented by Mr Sami Heikinheimo, a lawyer in Helsinki. This is the applicant's second application to the Commission. The first one (No. 20560/92) was declared inadmissible on 30 August 1994.

The facts of this case, as submitted by the applicant or apparent from the documents submitted, may be summarised as follows.

The applicant was apparently imprisoned since 1979 on account of various violent offences and other crimes. In 1981 he was convicted of having killed a fellow prisoner and of having assaulted two other prisoners. He was sentenced to twelve years' further imprisonment. The judgment included an authorisation for the Prison Court (vankilaoikeus, fängelsedomstolen) to order his incarceration in preventive detention as a dangerous recidivist. Such an order was issued in 1983. Pursuant to domestic law he was initially to be placed on a semi-open ward.

The 1953 Act on the Incarceration of Dangerous Recidivists (laki vaarallisten rikoksenuusijain eristämisestä, lag om internering

av farliga återfallsförbrytare 317/1953) is applicable to offenders convicted of certain 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 particularly dangerous to the life and health of others. Such an offender is to be regarded as a dangerous recidivist (section 1 of the 1953 Act).

Between 1983 and 1991 the applicant was also convicted on five counts of violent resistance against prison officers as well as of various other offences.

On 11 August 1990 the applicant had served two thirds of his sentence. An incarcerated recidivist, however, 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 and health of others. If he is not released, the matter shall be re-examined by the Prison Court at least every six months (sections 14 and 15 of the 1953 Act).

In January 1994 the applicant was transferred to the Turku Central Prison, where he was allegedly isolated on the so-called northern ward. He considers this to be a closed ward within the meaning of the legislation on the institutions for preventive detention. He was allegedly not allowed to work or participate in activities with other dangerous recidivists or other prisoners, including participation in religious services. He was allowed only one hour's outdoors exercise per day.

The Prison Court shall reconsider an incarceration order if it is found to be clearly unnecessary in the light of new information (section 9 of the 1953 Act). In 1994 the applicant requested the Prison Court to re-examine the grounds for his incarceration which he argued was no longer justified. He referred, inter alia, to the fact that the psychiatric reports suggesting his incarceration dated back to 1982. At any rate, he submitted, his incarceration was not being properly enforced, as he was not placed on a semi-open ward.

Having obtained an opinion from the Board (johtokunta, direktionen) of the Turku Central Prison, the Prison Court, on 16 November 1994, held a hearing and inspected the prison premises. The Prison Court refused the applicant's request that Chief Physician T of the Kellokoski mental hospital be invited to examine the grounds for his incarceration. Instead the Prison Court invited Chief Physician J of the Prisoners' Mental Hospital to state whether a fresh investigation of the grounds for incarceration was necessary.

In his opinion of 6 March 1995 J considered that a fresh investigation of the grounds for the applicant's incarceration was not necessary. The opinion was based on J's interview with the applicant in February 1994, his previous knowledge of the applicant (who had been his patient up to 1980) as well as on an assessment of previous expert reports.

In January 1995 the applicant requested the Department for Prison Administration (oikeusministeriön vankeinhoito-osasto, justitie-ministeriets fångvårdsavdelning) to allow Chief Physician T to examine him in person. The Department referred the request to Chief Physician K of the applicant's prison. It appears that no reply was given.

Having heard the applicant in writing in regard to the material obtained, the Prison Court, on 9 May 1995, refused his request for a

re-examination of the grounds for his incarceration.

In response to the applicant's petition the Parliamentary Ombudsman (eduskunnan oikeusasiamies, riksdagens justitieombudsman) heard, among others, the Prison Governor and Deputy Governor. According to them, the applicant's placement on the northern ward corresponded to placement on a semi-open ward and was thus in accordance with domestic law. The cell doors were kept open for about one hour per day; the daily exercise also lasted about one hour; and twice a week the prisoners could spent one hour in the room for leisure activities.

In his decision of 31 August 1995 the Ombudsman found, inter alia, that the applicant was not being isolated in his cell for up to 23 hours a day but was being offered opportunities similar to those offered to normal prisoners in regard to participation in leisure activities. The Ombudsman concluded that the conditions on the northern ward of the Turku Central Prison were not contrary to the provisions on semi-open wards, albeit that the placement of dangerous recidivists was not sufficiently regulated on a national level.

An institution for preventive detention shall either be a separate institution or form part of another penitentiary (section 10 of the 1953 Act). In view of the small number of incarcerated recidivists the Ministry of Justice has not designated any separate institutions for this purpose.

The Ombudsman urged the Ministry of Justice (oikeusministeriö, justitieministeriet) to comply with its obligation under domestic law to issue an instruction regarding the institutions for preventive detention. Moreover, it was for the Ministry and not for the prisons themselves to decide which wards should function as institutions for preventive detention.

On 1 May 1997 the applicant was released from prison, having served his sentence in full as well as some additional days of disciplinary punishment.

COMPLAINTS

1. The applicant complains that the requirement that he serve his full sentence instead of the normal two thirds with parole meant that as from 11 August 1990 he was imprisoned by virtue of the Prison Court's order of 1983. This body does not fulfil the requirements of a "court" or "tribunal" within the meaning of Articles 5 and 6 of the Convention, as it has close connections with the Department for Prison Administration and had failed to ensure that its incarceration order in the applicant's case was being properly enforced. Accordingly, this part of his detention was unlawful, contrary to Article 5 para. 4 of the Convention.

2. The applicant also complains that he was denied an effective remedy within the meaning of Article 13 of the Convention in that the Prison Court in 1995 refused to re-examine the grounds for his incarceration. The Prison Court's summary investigation did not meet domestic law requirements according to which he had an absolute right to obtain a regular, thorough and impartial examination of the justification for his continued incarceration. The applicant was thus effectively prevented from adducing fresh evidence supporting his release.

3. Finally, the applicant complains that his alleged isolation as from January 1994 was unlawful, as he should have been placed on a semi-open ward. He considers that his ward's daily schedule, as submitted to the Parliamentary Ombudsman, did not conform with reality. Despite the Ombudsman's criticism the applicant's allegedly unlawful placement on a closed ward continued and he had no effective remedy

whereby he could challenge this. He invokes Articles 6 and 13 of the Convention.

THE LAW

1. The applicant complains that the requirement that he serve his full sentence instead of the normal two thirds with parole meant that as from 11 August 1990 he was unlawfully detained by order of the Prison Court, allegedly not a "court" or a "tribunal" within the meaning of Articles 5 and 6 (Art. 5, 6) of the Convention.

The Commission recalls that under Article 27 (Art. 27) of the Convention it shall not deal with any application submitted under Article 25 (Art. 25) which is substantially the same as a matter which has already been examined by it and if the fresh application contains no relevant new information. The Commission finds that the applicant's present complaint is in substance essentially the same as one of his complaints in Application No. 20560/92 which was examined on 30 August 1994. Moreover, no "relevant new information" within the meaning of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention has been adduced which would enable the Commission to deal with this complaint.

It follows that this part of the application must be rejected pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

2. The applicant also complains that he was denied an effective remedy within the meaning of Article 13 (Art. 13) of the Convention in that the Prison Court refused to re-examine the grounds for his incarceration.

The Commission has considered this complaint under Article 5 para. 4 (Art. 5-4) of the Convention which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Where a prison sentence is imposed after "conviction by a competent court", the supervision required by Article 5 para. 4 (Art. 5-4) is incorporated in the court's judgment. Prisoners serving imprisonment of a discretionary character are entitled under Article 5 para. 4 (Art. 5-4) to take proceedings at reasonable intervals to have the lawfulness of their detention decided by a court where the punitive period of their sentence has expired (see Eur. Court HR, Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 114, p. 28, para. 56; Thynne, Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190-A, pp. 26-27, para. 68).

The present applicant was serving a prison sentence of a punitive character. While serving that sentence he was thus not entitled to have the lawfulness of his incarceration decided by a "court" within the meaning of Article 5 para. 4 (Art. 5-4). It is true that under section 15 of the 1953 Act the Prison Court may also order that a dangerous recidivist should remain in preventive detention once he has served his full sentence. In the present case no such order was issued. Accordingly, there is no appearance of a violation of Article 5 para. 4 (Art. 5-4) of the Convention. No further issue arises under Article 13 (Art. 13).

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.

3. Finally, the applicant complains that his alleged isolation as

from January 1994 was unlawful, as he should have been placed on a semi-open ward. Moreover, he had no effective remedy whereby he could challenge his placement. He invokes Articles 6 and 13 (Art. 6, 13) of the Convention.

The Commission has first considered this complaint in the light of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention which reads as follows:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> a. the lawful detention of a person after conviction by a competent court; ..."

In the present case the only question arising under this provision is whether or not the applicant's detention as from January 1994 was "lawful", having regard to the manner in which it was implemented.

It is true that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (cf. Eur. Court HR, Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 21, para. 44). As regards sentences, however, the arrangements for implementing these may sometimes be caught by the Convention - in particular where they are incompatible with Article 3 (Art. 3) - but they cannot, in principle, have any bearing on the "lawfulness" of a deprivation of liberty (see Eur. Court HR, Bizzotto v. Greece judgment of 15 November 1996, Reports 1996-V, No. 21, para. 34.

The Commission finds that the conditions in which the applicant's sentence was allegedly implemented as from January 1994 do not disclose any appearance of a violation of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention.

The Commission has already found (in para. 2 above) that while serving his sentence the applicant was not entitled to have the lawfulness of his incarceration decided by a "court" within the meaning of Article 5 para. 4 (Art. 5-4). The Commission does not need to examine whether any separate issue arises under Article 13 (Art. 13) of the Convention with regard to the manner in which the applicant's incarceration was allegedly being implemented, as his complaint under Article 13 (Art. 13) is in any case inadmissible for the following reasons.

The Commission recalls that an applicant, who is found to have no "arguable claim" that another Convention provision has been violated, is not entitled to a remedy under Article 13 (Art. 13) (see, e.g., Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33 and p. 20, para. 46). The concept of an arguable claim nevertheless falls to be determined having regard to the particular facts of the case and the nature of the legal issues raised (cf., e.g., Eur. Court HR, Plattform "Ärzte für das Leben" v. Austria judgment of 21 June 1988, Series A no. 139, p. 11, para. 27).

In the present case the Commission considers that the applicant had no arguable claim of a breach of Article 5 para. 1 (a) (Art. 5-1-a) - on account of the allegedly unlawful implementation of his sentence - which would have warranted a remedy within the meaning of Article 13 (Art. 13). Accordingly, there is no appearance of a violation of this provision. Finally, no issue arises under Article 6 (Art. 6).

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber