AS TO THE ADMISSIBILITY OF

Application No. 26315/95
by Janne KOSONEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
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 4 October 1994 by Janne KOSONEN against Finland and registered on 26 January 1995 under file No. 26315/95;

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 is a Finnish citizen, born in 1972 and currently serving a prison sentence at Kerava. He is represented by Mr Veikko Lehtevä, a lawyer practising in Helsinki.

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

The applicant and K were charged with, inter alia, manslaughter of W, committed on 13 or 14 July 1993. The defendants were suspected of having stabbed W to death with a knife. The applicant denied the charges, claiming that he had acted in legitimate self-defence.

On 2 September 1993 the Vantaa District Court (kihlakunnanoikeus, häradsrätten) convicted the applicant of manslaughter committed in excessive self-defence. He was also convicted of certain other offences and sentenced to a total of five years' imprisonment. K was acquitted.

The applicant, the public prosecutor and one of the complainants appealed. The applicant also requested to be remanded for a complete mental examination. The Court of Appeal obtained a written opinion from a physician of the prison where the applicant was detained on remand.

According to the opinion, a mental examination was at least partially justified.

On 2 December 1993 the Helsinki Court of Appeal (hovioikeus, hovrätten) held a re-hearing of the case, limited to the offence committed on 13 or 14 July 1993. It heard the applicant and K as defendants, their respective counsel, the public prosecutor and counsel of the appealing complainant. At the close of the hearing the parties were informed that a separate record thereof would be drawn up.

On 7 December 1993 the applicant's counsel requested the hearing record and received a copy thereof. This did not include any transcripts of the parties' oral statements. Instead the record indicated that those statements had been audiotaped. Counsel was informed that he was free to listen to the tapes on the Court of Appeal's premises.

By judgment of 21 December 1993 the Court of Appeal refused to remand the applicant for a mental examination and convicted him of manslaughter. It found, among other things, that at its hearing he had partially amended his version of the events immediately preceding W's death. The applicant's other convictions were upheld and he was sentenced to a total of ten years' imprisonment.

The applicant requested leave to appeal and appealed to the Supreme Court (korkein oikeus, högsta domstolen). (Under Finnish law the appeal must be made already in connection with the request for leave to appeal.) The applicant considered, inter alia, that in the light of the Court of Appeal's findings which were based on the oral statements made at its hearing he should have been given a complete record of that hearing. Leave to appeal was refused on 7 April 1994.

The applicant was in detention on remand throughout the proceedings but was represented by court-appointed counsel (his present counsel before the Commission). Referring to fresh medical evidence, he later requested that the Supreme Court reopen the proceedings. On 12 January 1996 the Supreme Court rejected this request.

COMPLAINTS

1. The applicant complains about the Court of Appeal's failure to produce a complete record of its hearing. The Court of Appeal quashed his conviction and sentence due to the discrepancies which it had found between his statements at that hearing and those previously made. In these circumstances the fact that counsel was unable to rely on transcriptions of the oral statements to the Court of Appeal in the applicant's request for leave to appeal and his appeal to the Supreme Court hampered the defence and his right to a fair hearing. He invokes Article 6 para. 3 (a) of the Convention read in conjunction with Article 6 para. 1.

2. The applicant furthermore complains about the failure of the Court of Appeal and the Supreme Court to remand him for a complete mental examination. Had that been done and had he been considered not to have been in possession of his full senses at the time of the manslaughter, he would most likely have received a more lenient sentence. He invokes Article 3 of the Convention, read in conjunction with Article 6 para. 1.

THE LAW

1. The applicant complains about the Court of Appeal's failure to produce a complete record of its hearing. In the particular circumstances of the case the fact that counsel was unable to rely on transcribed oral statements to the Court of Appeal in the applicant's request for leave to appeal and the appeal to the Supreme Court hampered the defence and his right to a fair hearing. He invokes

Article 6 para. 3 (a) (Art. 6-3-a) of the Convention read in conjunction with Article 6 para. 1 (Art. 6-1).

The Commission considers that the complaint should rather be considered under Article 6 para. 3 (b) (Art. 6-3-b) which, insofar as relevant, reads as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
> ...
> b. to have adequate ... facilities for the preparation of his defence; ..."

Article 6 para. 1 (Art. 6-1) reads, insofar as relevant, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing by [a] tribunal established by law. ..."

The Commission must examine whether the proceedings at issue were "fair" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention read in conjunction with para. 3 (b) (cf., e.g., Eur. Court HR, Lüdi v. Switzerland judgment of 15 June 1992, Series A no. 238, p. 20, para. 43). In order to determine whether the aim of Article 6 (Art. 6)- a fair trial - has been achieved, regard must be had to the domestic proceedings as a whole (cf. Eur. Court HR, Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, pp. 13-14, paras. 36-38).

Article 6 para. 3 (b) (Art. 6-3-b) of the Convention recognises the right of an accused to have at his disposal, for the purpose of exonerating himself or of obtaining a reduction in his sentence, all relevant elements that have been or could be collected by the competent authorities. If the element in question is a document, access to that document is a necessary "facility" within the meaning of Article 6 para. 3 (b) (Art. 6-3-b) if this element concerns, for instance, the credibility of the defendant's testimony (see Jespers v. Belgium, Comm. Report 14.12.81, para. 58, D.R. 27, p. 88).

It is true that in the present case the Court of Appeal increased the applicant's sentence radically after having concluded that he had not been acting in self-defence when causing W's death. Explicit reference was made to the applicant's oral statements before the Court of Appeal.

The Commission finds no indication, however, that, when preparing the applicant's request for leave to appeal to the Supreme Court and his actual appeal, counsel was prevented from acquainting himself with the oral statements audiotaped at the hearing before the Court of Appeal, though available to him on the court's premises only. Nor is there any indication that the Supreme Court would have been unable to take into account the contents of those tapes, should it have considered this to be necessary for its own assessment of the case.

In these particular circumstances and considering the proceedings as a whole, the Commission finds no appearance of a violation of Article 6 para. 1 of the Convention read in conjunction with para. 3 (b) (Art. 6-1+6-3-b) .

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 further complains about the failure of the Court of Appeal and the Supreme Court to remand him for a complete mental examination. He invokes Article 3 of the Convention, read in

conjunction with the above-cited Article 6 para. 1 (Art. 3+6-1). Article 3 (Art. 3) reads as follows:

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

The Commission does not find that the failure complained of subjected the applicant to treatment proscribed by Article 3 (Art. 3).

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	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber