AS TO THE ADMISSIBILITY OF

Application No. 24620/94
by Rainer Pertti MALMSTRÖM
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 1 June 1994 by Rainer Pertti MALMSTRÖM against Finland and registered on 13 July 1994 under file No. 24620/94;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish citizen, born in 1953. He is a worker and is currently serving a prison sentence in the Helsinki Central Prison. Before the Commission he is represented by Mr. Sami Heikinheimo, a lawyer practising in Helsinki.

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

The applicant was arrested on 4 September 1992 under suspicion of an aggravated narcotics offence and he was detained on remand. On the same day his home was searched and a small amount of hashish was found.

By six indictments of 30 September 1992, 14 October 1992 and 15 October 1992, containing a total of eleven counts, the applicant was charged with aggravated narcotics offences, aggravated narcotics smuggling, illegal possession of firearms and ammunition and insurance fraud, all committed between May 1987 and August 1992.

The case was heard in the City Court (raastuvanoikeus) of Helsinki from 1 October to 24 November 1992. In addition to the applicant there were twelve other accused. During these proceedings the

Court heard evidence from all the accused and one witness in relation to the charges brought against the applicant. In relation to the charge of insurance fraud the City Court had at its disposal a copy of the notice of damage the applicant had submitted to his insurance company.

The applicant requested that evidence from a witness named J be heard concerning an alleged "gang war" in order to prove that there was no "war" between himself and that person. The City Court rejected this request, stating that the case before the Court did not concern relations between J and the applicant.

The applicant further requested that a person named A be called as a witness. A, who was present in the City Court, answered the questions put to her but did not give evidence under oath.

Finally, the applicant requested that the case be adjourned in order to hear evidence from a person named K in connection with the insurance fraud charge. This witness would testify that the alleged insurance fraud would not have been profitable for the applicant taken into account that the applicant had just let K repair his car. The City Court rejected the applicant's request for adjournment as it found such a measure unnecessary having regard to the evidence already available.

On 24 November 1992 the City Court found the applicant guilty on the charges brought against him save two counts concerning narcotics smuggling. The City Court sentenced him to three years and ten months' imprisonment, the two months and 19 days spent in detention on remand being credited towards the sentence.

The applicant appealed to the Court of Appeal (hovioikeus) of Helsinki. He requested that either the witnesses J, A and K be heard in the Court of Appeal or the case be referred back to the City Court with a view to hearing these persons as witnesses.

By its judgment of 6 July 1993 the Court of Appeal rejected the request for an oral hearing and upheld the City Court's judgment.

In his appeal to the Supreme Court (korkein oikeus) the applicant reiterated the grounds of appeal which he had submitted to the Court of Appeal.

On 1 December 1993 the Supreme Court refused the applicant leave to appeal.

COMPLAINTS

The applicant complains of infringements of Article 6 of the Convention in connection with the criminal proceedings instituted against him.

He complains that he was not informed in detail of the cause of the accusations against him. In this respect he maintains that the City Court based its judgment on pieces of information which had been obtained in the preliminary investigation but which did not, however, lead to charges.

The applicant further submits that his guilt has not been proved according to law since the courts refused to hear evidence from three witnesses on his behalf. He maintains that this violated his right to a fair hearing.

THE LAW

1. The applicant complains that he was not informed in detail of the cause of the accusations against him.

The Commission has examined this complaint under Article 6 para.

3 (a) (Art. 6-3-a), which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> a. to be informed promptly, ... and in detail, of the nature and cause of the accusation against him;
> ..."

The Commission recalls that this provision points to the need for special attention to be paid to the notification of the "accusation" to the defendant (cf. Eur. Court H.R., Kamasinski judgment of 19 December 1989, Series A no. 168, p. 37, para. 79).

In the present case the Commission notes that the applicant was served with indictments which contained the charges, a statement of the criminal acts involved and the relevant legal provisions. In these circumstances the Commission finds that the applicant was sufficiently informed of "the nature and cause of the accusation against him", for the purposes of paragraph 3 (a) of Article 6 (Art. 6-3-a). Furthermore, the question of using evidence obtained in the preliminary investigation does not fall under Article 6 para. 3 (a) (Art. 6-3-a) but concerns the evaluation of evidence.

It follows that this part of the application is manifestly ill-founded and must be rejected in pursuance of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that his guilt has not been proved according to law and refers to the refusal to hear three witnesses on his behalf.

The Commission has examined this complaint under Article 6 para. 3 (d) (Art. 6-3-d), which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> d. ... to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ... "

The Commission recalls that in regard to the hearing of witnesses it is as a general rule for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. Article 6 para. 3 (d) (Art. 6-3-d) of the Convention leaves it to the national courts to assess whether it is appropriate to call witnesses and it does not require the attendance and examination of every witness. Its essential aim is to secure an equality of arms in the matter (cf. Eur. Court H.R., Vidal judgment of 22 April 1992, Series A no. 235-B, p. 32, para. 33).

The Commission recalls that in the present case the criminal proceedings instituted against the applicant concerned eleven counts, inter alia related to narcotics offences and fraud. The Commission also recalls that one of the proposed three witnesses was questioned and that her statement, even if not given under oath, was entered in the court transcripts. As to one of the proposed three witnesses the City Court based its refusal to hear this evidence on the fact that the case did not concern relations between the applicant and the proposed witness and therefore it found it unnecessary to hear this evidence. The evidence of the third proposed witness was likewise excluded as the City Court found it unnecessary to adjourn the case for this purpose.

The Commission has found no factors which would indicate that the City Court's decision was unfair or arbitrary. The City Court did not, in the Commission's view, go beyond its proper discretion in refusing

to hear the witnesses requested. Accordingly, an examination of this complaint does not disclose any appearance of a violation of Article 6 para. 3 (d) (Art. 6-3-d) of the Convention.

In conclusion, the Commission considers that an examination of the conformity of the trial as a whole with the rules laid down in Article 6 (Art. 6) of the Convention has not disclosed any appearance of a violation of this provision.

It follows that this part of the application is also manifestly ill-founded and must be rejected in pursuance 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 First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)