AS TO THE ADMISSIBILITY OF

Application No. 20972/92
by Kaj RANINEN
against Finland

The European Commission of Human Rights sitting in private on 7 March 1996, the following members being present:

MM. S. TRECHSEL, President
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
I. BÉKÉS
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 November 1992 by Kaj Raninen against Finland and registered on 19 November 1992 under file No. 20972/92;

Having regard to the 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 14 March 1995 and the observations in reply submitted by the applicant on 31 May 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish citizen, born in 1967 and resident in Helsinki. He is a student. Before the Commission he is represented by Ms. Marjaana Laine, lawyer of the Union of Conscientious Objectors ("Aseistakieltäytyjäliitto") .

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

Particular circumstances of the case

In 1986 the applicant was called up for military service. On account of his studies he obtained a suspension of his duty to report for service until 20 March 1992. Prior to this date he had objected in writing to performing any kind of military or substitute civilian service.

On 8 April 1992 the applicant was arrested on suspicion of having evaded military service and was eventually brought to the Pori Brigade (Porin Prikaati) at Säkylä, where he should have commenced his service on 20 March 1992. Having been questioned there on 9 April 1992, he again objected to carrying out any military duties and his arrest was prolonged.

Following a hearing on 11 April 1992 the District Court (kihlakunnanoikeus, häradsrätten) of Eura ordered the applicant's detention on remand in the County Prison of Turku. Following a hearing on 24 April 1992 the District Court convicted him of having evaded service on 20 March 1992 and of an offence in duty on 9 April 1992. He was sentenced to 45 days' suspended imprisonment.

Immediately upon his release from prison on 24 April 1992 the applicant was accompanied by military staff back to the Pori Brigade. Having been questioned there, he again objected to carrying out any military duties and was again arrested.

On 28 April 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku. Following a hearing on 12 May 1992 the District Court convicted him of an offence in service on 24 April 1992 and sentenced him to 30 days' imprisonment to be served later.

Having been immediately released from prison after the court hearing on 12 May 1992, the applicant was again accompanied by military staff back to the Pori Brigade. Having been questioned there, he again objected to carrying out any military duties and was again arrested.

On 15 May 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku. Following a hearing on 29 May 1992 the District Court convicted him of an offence in service on 12 May 1992 and sentenced him to 30 days' imprisonment to be served later.

Having been released from prison on 29 May 1992, the applicant was transported by military police back to the Pori Brigade. Having been questioned there, he again objected to carrying out any military duties and was again arrested.

On 2 June 1992 the applicant was transported back to the County Prison of Turku in order to serve his sentence. On 9 June 1992 he was released on parole. Immediately upon his release from prison, he was accompanied by military police back to the Pori Brigade. Having been questioned there, he again objected to carrying out any military duties and was again arrested.

On 11 June 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again detained on remand and transported to the County Prison of Turku. Following a hearing on 18 June 1992 the District Court convicted him of offences in service on 29 May and 9 June 1992. He was sentenced to 40 days' imprisonment to be served later. His release on parole was also revoked.

After the court hearing on 18 June 1992 the applicant was transported back to the County Prison in order to be released. A

conscripts' police squad waited for him already in the prisoners' check-out room inside the prison. In the prison courtyard he was handcuffed and told that he was being apprehended. Outside the prison gate, where his support group was waiting, he entered the conscripts' police vehicle. He was then transported by a conscripts' police squad back to the Pori Brigade at Säkylä. Säkylä is situated some 100-150 kilometres from Turku and normally transportation by car lasts some two hours. On arrival at the Brigade the applicant did not explicitly object to being transported to the military hospital. The handcuffs were taken off in the hospital's entry hall.

According to the applicant, the measures taken by the conscripts' police squad were all carried out against his will. According to the Government, he consented to being transported to the military hospital.

In the military hospital the applicant was not subjected to any medical examinations. Having been questioned by military staff on 19 June 1992, he again objected to carrying out any military duties. Thereupon he was formally arrested at 8.05 hrs.

On 22 June 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

On 26 June 1992 the applicant started serving his aggregated prison sentence. Following a hearing on 29 June 1992 the District Court convicted him of an offence in service on 19 June 1992 and sentenced him to 35 days' imprisonment. It considered that he had been deprived of his liberty as from 19 June 1992.

On 20 August 1992 the applicant was released from prison on parole contrary to his own wish. He was met by a conscripts' police squad and was asked whether he was aware of his obligation to perform his military service. He replied in the affirmative and was accompanied to the Pori Brigade. Having been questioned there, he again objected to carrying out any military duties and was again arrested.

On 24 August 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku. On 9 September 1992 the District Court convicted him of an offence in service on 20 August 1992 and sentenced him to 35 days' imprisonment to be served later. The applicant appealed.

On 11 September 1992 the applicant reported for military service of his own motion.

On 12 September 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

On 25 September 1992 the applicant was examined by Dr. Tomi Lindholm, a specialist in psychiatry. Dr. Lindholm concluded that the applicant was not suffering from any mental disturbance which would affect his fitness for military service.

Following a hearing on 28 September 1992 the District Court convicted the applicant of unauthorised leave from 9 to 11 September 1992 as well as of an offence in service on 11 September 1992. He was sentenced to 36 days' imprisonment to be served later. After judgment had been served he was transported back to the County Prison of Turku for immediate release. On release he was again met by a conscripts' police squad but again objected to being accompanied to the Pori Brigade. On this occasion he was apparently not transported to the Pori Brigade.

On 2 October 1992 the applicant reported for duty of his own

motion and was again arrested. Having been questioned on 3 October 1992, he again refused to comply with any military duties and his arrest was prolonged.

On 5 October 1992 the Chief Physician of the military hospital of the Pori Brigade proposed that the applicant should be considered unfit for service pending further examinations. His reasons were, inter alia, as follows:

(translation from Finnish)

"[The applicant] ... is a total objector. His objections and ensuing placements in detention have occurred a number of times as from April 1992. As a result [he] has been imprisoned ... almost without interruptions. In between he has been detained ... at the Pori Brigade. During his [last-mentioned periods of detention] he has been hunger striking.

It appears that the above described situation will continue until [the applicant] turns thirty. At least no other solution is at hand, given [his] constant objection [to any kind of service].

[The applicant] has ... a support group. Those at the brigade who have had to do with him have suspected that he has been under pressure to continue objecting [to any kind of service]. In addition, several persons have noted his gazing and startling behaviour ...

On the part of the command of the brigade concerns have been expressed ... about the effects possibly resulting from [the applicant's] prolonged stay in prison ... . In addition, it has been considered that the health care staff should take their responsibility ... . It has furthermore been questioned why [the applicant's] obligation to perform] military service has not been suspended, when other conscripts suffering from behavioural disturbances caused by socio-economic problems (i.e. illegal absence from service) have also been granted such suspension.

During [his] short examination by a psychiatrist on 25 September 1992 (lasting about half an hour) ... which I attended ... [the applicant] behaved in a calm, determined and correct way ... To the psychiatrist's question whether he would be willing to spend perhaps five ... years in prison in order to have [the legislation concerning] the duty to perform military service amended he replied that he would be prepared for this in every respect.

He himself reports having lost some 5-10 kilograms during these proceedings.

[His] indifferent attitude towards his personal hygiene and cleanliness ... caught my attention. His hair was long and uncared for and had not been washed. His face was filled with blackheads and his clothes were dirty. His teeth showed signs of caries. This might [be] an indication of [his] future mental disturbance, if the present situation were to continue.

Although [the applicant] does not, for the time being, show any signs of depression, anxiety or breakdown, a possibly five year-long stay in prison ... will create an unreasonable strain on [his] health, taking also into consideration that this [stay] may not lead to the result which [he] wishes to see. ...

In my opinion it is unreasonable that [the applicant] should have to serve a prison sentence until he turns thirty on account of his opinions behind which can be seen a particular personality structure (since [he] has taken up something like this), [i.e.] a certain rigidity.

As the brigade's physician I am, without in any way wishing to make this a psychiatric matter, of the opinion that ... measures must be taken in accordance with the Handbook on Soldiers' Health Care ... [which refers to] uncertainty about the correct fitness classification. Since it is possible that ... [the applicant] does not [wish to be examined by army staff] or does not trust such examinations, they should be carried out [by civilians].

In any case, considering that [the applicant] has been in prison for half a year, he cannot immediately be ordered to perform his service, since the prospects of success are bad ...
So as to enable further examinations, I [therefore] propose that the fitness classification should be changed into:
E-class, 1 year, V629A.

I have discussed this solution with psychiatrist Lindholm and the Chief Physician of the Military County ..., who have both considered this procedure to be a correct solution in this situation.

Diagnosis: V 629A An undefined psychosocial problem
..."

On 5 October 1992 the applicant was discharged from his military service for one year.

Following a hearing on 30 November 1992 the District Court convicted the applicant of an offence in service on 3 October 1992 and unauthorised leave from 28 September to 2 October 1992. He was sentenced to 36 days' imprisonment to be served later. His release on parole was also revoked. Both the applicant and the prosecution appealed to the Court of Appeal (hovioikeus, hovrätten) of Helsinki.

On 7 December 1992 the Commander in Chief of the Military District (sotilaspiiri, militärdistriktet) of Helsinki considered that the applicant was temporarily unfit for service pending a further examination which was to take place in December 1993. The decision was based on rule V629A of the Instruction for Medical Examinations.

On 16 February 1993 the applicant lodged a petition with the Parliamentary Ombudsman (eduskunnan oikeusasiamies, riksdagens justitieombudsman; "the Ombudsman"), in particular concerning his treatment from 18 to 19 June 1992. Heard by the Ombudsman, the General Staff of the Armed Forces (pääesikunta, huvudstaben) conceded that neither the applicant's apprehension nor his handcuffing had been justified.

On 16 March 1993 the Court of Appeal upheld the District Court's judgment of 9 September 1992 in so far as it concerned the applicant's conviction. On 16 March 1993 the Court of Appeal furthermore upheld the District Court's judgment of 30 November 1992. In this respect the applicant was later refused leave to appeal to the Supreme Court.

On 13 December 1993 the applicant did not attend his further call-up and charges were therefore again brought against him.

In his decision of 20 May 1994 the Ombudsman considered that the applicant's apprehension on 18 June 1992 had not been legally grounded,

since he had not been asked whether he would persist in his refusal to perform any military or substitute service. The Ombudsman furthermore found no justification for the applicant's handcuffing. He noted, however, that the orders given by professional military personnel to the commander of the conscripts' police squad had been summary and that the commander, being inexperienced, had himself believed that he was acting in compliance with the relevant orders. The Ombudsman found that more experienced personnel should have been ordered to fetch the applicant on his release from the County Prison but did not order any charges to be brought. He also agreed with the criticism of the unreasonable treatment, according to criminal law, of total objectors to military service.

On 1 June 1994 an amendment to section 39 of the 1950 Military Service Act (asevelvollisuuslaki 452/50, värnpliktslag 452/50; "the 1950 Act") entered into force (see para. 4 of "Relevant domestic law").

In November 1994 the District Court of Helsinki found that the applicant should not be convicted for not having attended the call-up in December 1993. The Court found that it would be unreasonable to convict him of this particular offence, since on account of his refusal to perform any military or substitute service he had already served prison sentences totalling a period exceeding seven months. The Court noted that this period exceeded the maximum punishment to which a conscientious objector could be sentenced, if he had first opted for substitute civilian service (i.e. 197 days).

On 20 December 1994 the Commander in Chief of the Military District considered that the applicant was again fit for service. His reclassification was exclusively based on the applicant's own statement concerning his state of health.

On 9 January 1995 the applicant reported for military service at the Pori Brigade, where he again refused to perform any form of military or substitute service. He was immediately discharged from military service on the basis of section 39 of the amended 1950 Act.

On 20 February 1995 the District Court (käräjäoikeus, tingsrätten) of Kokemäki convicted the applicant of refusal to carry out military service in pursuance of section 39 of the amended 1950 Act and sentenced him to 194 days' imprisonment. The Court observed that the applicant had previously been convicted of offences which corresponded to the description in section 39. Since he had already served 212 days in prison for those offences, the Court considered him to have fully served the sentence imposed on the basis of section 39.

Relevant domestic law

1. The duty to perform military service

According to the 1919 Constitution Act (Suomen hallitusmuoto 94/19, Regeringsform för Finland 94/19), every Finnish citizen is obliged to participate in the defence of the country or to assist therein, as further described by law (section 75, subsection 1). Under the 1950 Act every Finnish male citizen is in principle obliged to serve in the military (section 1).

2. Refusal to perform armed military service

According to the 1950 Act, a conscript who has a serious conscientious objection against armed military service and who does not wish to opt for substitute service shall be exempted from armed military service in peacetime and instead be ordered to perform unarmed military service (section 36a). The duration of such service is 330 days.

3. Refusal to perform substitute civilian service

According to the 1991 Act on Substitute Civilian Service (siviilipalveluslaki 1723/91, civiltjänstlag 1723/91), a conscript who declares a serious conscientious objection to any form of military service shall be exempted from such service in peacetime and instead perform substitute service (section 1). The duration of this service is 395 days (section 3). A conscientious objector who refuses to perform his substitute service only after having been called up to this end shall be convicted and sentenced to a 197-day prison term intended to correspond to half the duration of the substitute service. The obligation to perform substitute service ceases when this prison term has been served. A conscript refusing to perform substitute service after having opted for such service can only be convicted once of this offence (section 26, subsections 1 and 2). The prison sentence shall be unconditional and the convict shall serve his whole sentence, unless he later wishes, and is able to, perform substitute civilian service. In such a case he shall be released on parole for his remaining period of service (section 28, subsection 1 and section 29, subsections 1 and 2).

4. Refusal to perform either military or substitute civilian service

In accordance with the 1889 Penal Code (rikoslaki 39/1889, strafflag 39/1889; extensively amended) a refusal to perform either military or substitute civilian service may be considered as an offence in service punishable with up to one year's imprisonment (Chapter 45, sections 4 and 15, as amended by Act no. 792/89). Alternatively, the refusal may be considered as evasion from service or as unauthorised leave. A punishment imposed for such a refusal does not affect the convict's liability to perform either military or substitute service up to the end of the year of his thirtieth birthday, unless he is exempted from service (section 23, subsection 2 (3) and section 15 of the 1950 Act).

In responding to a written question in Parliament the Minister of Defence, in 1992, stated that her Ministry had considered various alternative ways of dealing with total objectors. It had been found, however, that it would be difficult to create a system similar to that prescribed in the Act on Substitute Civilian Service also for total objectors, who had already been called up to perform military service. A distinction between such total objection and desertion was not clear-cut. It would furthermore be difficult to create a system for punishing total objectors which would be fair, if compared both with the system for punishing ordinary desertion and with the system for convicting those who refuse to perform substitute civilian service after having opted therefor (Written Question no. 452/92).

According to an amendment to the 1950 Act which entered into force on 1 June 1994, a conscript who categorically objects to performing military service and whose behaviour would not change as a result of a punishment ordered on the basis of chapter 45 of the Penal Code shall, provided he does not opt for substitute civilian service, be convicted for having refused to perform military service. Although he shall be convicted in pursuance of chapter 45 of the Penal Code, his punishment shall be governed by the provisions in the Act on Substitute Civilian Service concerning refusal to perform such service (section 39, subsection 1 of the 1950 Act, as amended by Act no. 358/94).

If someone has previously been convicted of behaviour which corresponds to that described in the amended section 39 of the 1950 Act, the period during which he has previously been deprived of his liberty shall be deducted from any further sentence imposed after the entry into force of the amendment (see the transitional provision in Act no. 358/94). If such a person has served his whole sentence, he shall no longer remain liable to perform his military service in peacetime (section 39, subsection 4, as amended by Act no. 358/94).

5. Fetching of a conscript failing to report for military service

According to the 1951 Decree on the Application of the Military Act (asetus 63/51 asevelvollisuuslain soveltamisesta, förordning 63/51 ang. tillämpning av värnpliktslagen), a conscript who has failed to report for military service on a fixed day in the absence of a legal obstacle shall as soon as possible be brought by the police to his place of service (section 36, as amended by Decree no. 1361/88).

6. Classification of a conscript's fitness to perform military service

According to the 1950 Act, a decision concerning a conscript's fitness to perform military service shall always be based on an "examination" (section 15, as amended by Act no. 1169/88). The Examination Board set up at every brigade shall consist of the most senior military physician and two officers (section 66 of the 1951 Decree). No appeal lies against the classification decision (section 37, subsection 3 of the 1950 Act).

7. Remedies

According to 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 to report him for the purpose of having charges brought against him (section 93, subsection 2). 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). The Ombudsman is empowered to order that charges be brought against public officials.

Finally, according to the 1974 Act on Compensation by the State for the Deprivation of the Liberty of Detained or Convicted Innocent Persons (laki 422/74 syyttömästi vangitulle tai tuomitulle valtion varoista vapauden menetyksen johdosta maksettavasta korvauksesta, lag 422/74 om ersättning av statens medel som till följd av frihets-berövande skall betalas till oskyldigt häktad eller dömd; "the 1974 Act"), compensation may be claimed from the State, provided the deprivation of liberty has lasted more than 24 hours (section 1 (4)).

COMPLAINTS

Following the Commission's partial decision on admissibility (see below; "Proceedings before the Commission"), the applicant's remaining complaints are as follows:

1. The applicant complains under Articles 3 and 8 of the Convention that, on 18 June 1992, he was transported in handcuffs to Pori Brigade's military hospital. He considers that his handcuffing constituted degrading treatment and was a disproportionate interference with his right to privacy.

Under the same provisions he further complains about the decision of 7 December 1992 to the effect that he was considered to have "an undefined psychosocial problem" and thus to be unfit for military service. He considers that this decision and the effects thereof have also subjected him to degrading treatment and have constituted a disproportionate interference with his right to privacy.

2. The applicant further complains that the deprivation of his liberty from 18 June 1992, following his release from prison, until the issuing of the arrest order on 19 June 1992 was in violation of Article 5 para. 1 of the Convention. Nor was he informed either orally

or in writing of the reasons for that deprivation of his liberty, this violating Article 5 para. 2.

3. The applicant furthermore complains that he has been convicted repeatedly of the same offence, this being in violation of Article 4 of Protocol No. 7.

4. The applicant also complains that he has been discriminated against for having consistently refused to perform either military or substitute service, if compared with conscientious objectors refusing to perform any kind of service once they have already opted for substitute civilian service. He invokes Article 14 of the Convention read in conjunction with Article 9 of the Convention and Article 4 of Protocol No. 7.

In his observations of 31 May 1995 he complains that the decision to consider him unfit for service also discriminated against him. In this respect he invokes Articles 14 and 17 of the Convention in conjunction with Article 8.

In his observations of 31 May 1995 he additionally complains that he has also been discriminated against, if compared with Jehovah's Witnesses of the male sex, who under Finnish law are exempted from performing any military or substitute service. He again invokes Article 14 of the Convention read in conjunction with Article 9 of the Convention and Article 4 of Protocol No. 7.

In his observations of 31 May 1995 he finally complains that his treatment, taken as a whole, has been degrading and discriminatory. In this respect he invokes Article 14 of the Convention in conjunction with Article 3.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 November 1992 and registered on 19 November 1992.

On 30 November 1994 the Commission (First Chamber) adjourned the examination of part of the application and decided to communicate that part to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. It declared the remainder of the application inadmissible.

The Government's written observations were submitted on 14 March 1995 after an extension of the time-limit fixed for that purpose. The applicant replied on 31 May 1995, also after an extension of the time-limit.

On 11 April 1995 the Commission granted the applicant legal aid.

On 27 February 1996 the plenary Commission ordered the transfer of the application to itself pursuant to Article 20 para. 4 of the Convention.

THE LAW

1. Exhaustion of domestic remedies

(a) The handcuffing on 18 June 1992 and the deprivation of liberty from 18 to 19 June 1992

The Government submit that the applicant has not exhausted domestic remedies in accordance with Article 26 (Art. 26) of the Convention, since he failed to institute proceedings against the public officials responsible for the incidents or, in the alternative, against the State.

The applicant contends that he has exhausted all domestic remedies which could be regarded as effective. The courts declined to consider the period during which he had been handcuffed as a deprivation of his liberty and instead considered it as forming part of his military service. Moreover, although considering that the applicant's handcuffing had not been justified, the Ombudsman refrained from ordering that charges should be brought against any public official.

The applicant admits that he could also have instituted private prosecution proceedings against public officials in pursuance of section 93 of the Constitution Act. However, this remedy would have been directed essentially towards the same end as his petition to the Ombudsman and would in practice have been less effective.

The applicant also admits that he could have sued the State for damages in pursuance of the Tort Liability Act. However, in order to obtain damages pursuant to that Act he would have had to show that a public official either negligently or deliberately failed in his or her duties. Particularly since the Ombudsman found that the commander of the conscripts' police squad had acted in good faith, a claim for damages would also have been ineffective in practice. In any case, civil proceedings to this end would be extremely lengthy.

The Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with a complaint after all domestic remedies have been exhausted, according to the generally recognised rules of international law. An applicant must make normal use of remedies likely to be effective and adequate in respect of the matters of which he complains (cf. Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 30, para. 66; No. 12719/87, Dec. 3.5.88, D.R. 56, pp. 237 et seq., at pp. 243-244; No. 10978/84, Dec. 14.10.86, D.R. 49, pp. 144 et seq., at p. 155, with further references). The burden of proving the existence of available and sufficient remedies lies upon the State (Eur. Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 15, para. 26).

In the present case the Commission notes the Ombudsman's finding that the applicant's treatment, although reprehensible, did not require that charges be brought against any public official. The Commission also notes that under the 1974 Act compensation for illegal deprivation of liberty presupposes that it lasted more than 24 hours. The deprivation of the applicant's liberty did not last that long. In these particular circumstances the Commission considers that the remedies referred to by the Government did not provide reasonable prospects of success. These remedies cannot therefore be considered effective and adequate for the purposes of Article 26 (Art. 26) in respect of the complaints at issue (cf. Eur. Court H.R., A. v. France judgment of 23 November 1993, Series A no. 277-B, p. 48, para. 32; No. 25052/94, Dec. 5.7.95, D.R. 82-A, p. 102, at pp. 114-115). It follows that the Government's objection must be rejected.

(b) The fitness classification

In this respect the Government again object that domestic remedies have not been exhausted, while the applicant contends that there was no remedy whatsoever against the Military Commander's decision of 7 December 1992.

The Commission notes that according to section 37 of the 1950 Act no appeal lies against a fitness classification. It furthermore finds that the remedies referred to by the Government cannot be considered to be effective and adequate for the purposes of Article 26 (Art. 26) in respect of this complaint either. It follows that the Government's objection must again be rejected.

2. Articles 3 and 8 (Art. 3, 8) of the Convention

Under these provisions the applicant complains that, on 18 June 1992, he was transported in handcuffs to the Pori Brigade's military hospital. He also complains of the terms of his fitness classification of 7 December 1992.

Article 3 (Art. 3) of the Convention reads as follows:

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

Article 8 (Art. 8) reads, in so far as relevant, as follows:

"1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

(a) The handcuffing

The Government stress that in the particular circumstances at hand the applicant's handcuffing was part and parcel of his apprehension. They therefore fail to see any issue under Article 3 or 8 (Art. 3, 8) of the Convention which could be separated from that arising under Article 5 (Art. 5) (see point 3 below). Subsidiarily, the Government submit that the complaint is manifestly ill-founded. The threshold of treatment proscribed by Article 3 (Art. 3) was not reached. The handcuffing was only intended as a security measure during the applicant's transportation which at any rate did not take place in public. Nevertheless, the handcuffing was probably unnecessary, considering his calm behaviour.

The applicant contends that the handcuffing amounted to treatment contrary to Article 3 (Art. 3). Its only purpose was to degrade and frighten him so as to influence his personal convictions in respect of military and substitute service. It was, at any rate, disproportionate for the purposes of Article 8 para. 2 (Art. 8-2), since he in no way resisted his purported apprehension. Nor was there any reason to expect such resistance in view of his behaviour during previous incidents.

The Commission has carried out a preliminary examination of this complaint and considers that it raises questions of fact and law of such complex nature that their determination requires an examination of the merits. This complaint cannot therefore be declared inadmissible as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

(b) The fitness classification

The Government consider that neither Article 3 nor Article 8 (Art. 3, 8)has been violated on account of the applicant's fitness classification. In accordance with normal practice the examination of the applicant took into account his ability to perform military service. His personal views did not affect the examination. His repeated refusals to serve in the military nevertheless indicated "at least some maladjustment to the conditions and requirements of the military forces". In any case, his fitness classification was only brought to the attention of himself and the military authorities and could not therefore result in his being stigmatised.

Although the fitness classification could be regarded as an interference with his right to respect for his private life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, the Government consider this interference to have been justified. It was in accordance with the law and served the legitimate aims of protecting the interests of national security and health. It was finally proportionate to those aims and thus necessary within the meaning of Article 8 para. 2 (Art. 8-2), considering the State's wide margin of appreciation.

The applicant maintains that his classification as unfit for service constituted degrading treatment within the meaning of Article 3 (Art. 3). The only reason for considering that he had "an undefined psychosocial problem" was his refusal to perform any military or substitute service. Shortly before being diagnosed, in October 1992, by a physician without any qualifications in the field of psychiatry, a psychiatrist had found that the applicant had no psychiatric disturbances affecting his fitness for service. Moreover, at the end of 1994 he was again considered fit for service without any fresh medical or other examination having taken place. The applicant therefore concludes that the medical and psychiatric sciences were abused for political purposes so as to enable the authorities to facilitate the handling of his case.

The applicant points out that the Army's fitness classification is of an official character and is requested in various contexts of everyday life. His classification as unfit has already caused him damage, since employers normally verify the fitness classification of potential employees. At any rate, his right to respect for his private life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention has been violated. The interference caused by his classification as unfit and the reasons advanced therefor were not in accordance with the law, since they were not grounded on any medical considerations. In any case, they were not proportionate within the meaning of Article 8 para. 2 (Art. 8-2).

(a) Assuming that the classification of the applicant as unfit for service constituted an interference with his right to respect for his private life, the Commission recalls that in order to be justified under the terms of Article 8 para. 2 (Art. 8-2) such an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) and it must be "necessary in a democratic society" for that or those legitimate aims. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, requires that it be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission will also take into account that a margin of appreciation is left to the Contracting States, but its review is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith. Furthermore, in exercising its supervisory function, the Commission cannot confine itself to considering the impugned decisions in isolation, but must look at them in the light of the case as a whole. It must determine whether the reasons adduced to justify the interferences at issue were "relevant and sufficient" (see Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

It has not been argued that the fitness classification was not "in accordance with the law" for any other reason than the alleged lack of medical considerations in support thereof. The Commission finds this allegation unsubstantiated, since it appears that the military physician became concerned about the applicant's health following his repeated imprisonments and hunger strikes in the course of 1992. It was apparently solely for this reason that the physician recommended that

the applicant's obligation to perform his military service should be postponed for a year, pending further examinations by civilian physicians. In these particular circumstances the Commission would consider that the interference in question was aimed at protecting the applicant's health and therefore served at least one of the legitimate aims set out in Article 8 para. 2 (Art. 8-2).

The Commission furthermore considers that the reasons advanced for the classification of the applicant as unfit were clearly relevant and sufficient to justify the interference. As regards, in particular, the proportionality thereof, the Commission is not convinced by the applicant's argument that the particular reasons mentioned in this classification have affected or could affect his everyday life negatively. It observes that both he himself and the Union of Conscientious Objectors have in fact been very active in informing the public about his treatment as a total objector.

Taking all the circumstances into account and having regard to the State's margin of appreciation, the Commission is satisfied that the military physician and the Commander in Chief were reasonably entitled to consider the applicant as unfit for military service for the reasons set out in military physician's opinion of 5 October 1992. The Commission therefore finds no appearance of any violation of Article 8 (Art. 8) in this respect.

(b) Insofar as Article 3 (Art. 3) of the Convention has also been invoked in this context, the Commission recalls that the assessment of treatment alleged to be contrary to that provision is relative and must take account of all the circumstances of the case (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 the specific circumstances of this case the Commission cannot find that the applicant's fitness classification of 7 December 1992 and the alleged effects thereof attained the threshold of "degrading" treatment within the meaning of Article 3 (Art. 3).

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. Article 5 paras. 1 and 2 (Art. 5-1, 5-2) of the Convention

The applicant further complains that the deprivation of his liberty from 18 June 1992, following his release from prison, until the issuing of the arrest order on 19 June 1992 was in violation of Article 5 para. 1 (Art. 5-1) of the Convention. Nor was he informed either orally or in writing of the reasons for that deprivation of his liberty, this being in violation of Article 5 para. 2 (Art. 5-2).

In so far as relevant, Article 5 para. 1 (Art. 5-1) 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:
> ...
> b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having

done so; ..."

Article 5 para. 2 (Art. 5-2) of the Convention reads, as far as relevant, as follows:

"Everyone who is arrested shall be informed promptly, ..., of the reasons for his arrest and of any charge against him."

The Government submit that for the purpose of continuing his military service the applicant was obliged to report at the Pori Brigade as soon as he had been released from the County Prison on 18 June 1992. The commander of the conscripts' police had therefore been instructed to place the applicant in handcuffs, should he persist in his refusal to perform any military or substitute service once released from prison on that day. The conscripts' police was not entitled under domestic law to arrest him outside the County Prison but could only offer him transportation to the Brigade. However, the Government consider that he consented to being transported to the military hospital. In any case, his purported arrest was very brief and lenient in character.

The Government concede that, although the applicant was informed of his arrest, he could not be informed of any reasons therefor nor of any charge against him, since he had not committed any crime before his apprehension.

The applicant contends that the sole reason for his transportation to the military hospital was the authorities' wish to circumvent the domestic legal provisions concerning his detention, both as regards its length and the procedure to be followed. Therefore he was formally asked only on 19 June 1992 whether he still refused to perform any service.

The Commission has carried out a preliminary examination of these complaints and considers that they raise questions of fact and law of such complex nature that their determination requires an examination of the merits. These complaints cannot therefore be declared inadmissible as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring them inadmissible has been established.

4. Article 4 of Protocol No. 7 (P7-4)

Under this provision the applicant complains that he was convicted repeatedly of the same offence.

Article 4 para. 1 of Protocol No. 7 (P7-4-1) reads, as far as relevant, as follows:

"No one shall be liable to be ... punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally ... convicted in accordance with the law and penal procedure of that State."

The Government consider that this provision has not been violated. They point out that the applicant voluntarily chose not to opt for substitute civilian service, although such service was open to him without any examination of his religious or ethical convictions. Had he initially opted for civilian service, he could have later refused to perform such service, and he would then have been treated in the same manner as all others refusing to undergo civilian service only after first having opted for such service. As a result of the applicant's refusal to opt for an alternative which was more advantageous to him, he formally remained a conscript, whose duty to perform military service could not be abolished on account of the

various sentences imposed on him due to his refusals to fulfil that duty. His various refusals were necessarily to be regarded as independent offences for which separate sentences had to be imposed.

The applicant refers to the findings of the Ombudsman and the District Court of Kokemäki which in his view confirm that his treatment and punishments have been unreasonable and out of proportion. He also considers that by introducing the 1994 amendment to the 1950 Act (Act no. 358/94) Parliament acknowledged that his repeated convictions had been unreasonable, having regard both to domestic and international legal principles.

The Commission recalls that Article 4 of Protocol No. 7 (P7-4) prohibits, inter alia, repeated convictions based on the same conduct of the accused (cf. Eur. Court H.R., Gradinger v. Austria judgment of 23 October 1995, Series A no. 328-C, para. 55). However, this provision cannot be interpreted so as to exclude repeated convictions based on conduct shown on a number of distinct occasions, although in essence the conduct would be substantially similar to that previously shown.

The Commission observes that under Finnish law conscripts have the right to opt either for armed or unarmed military service or for substitute civilian service. A refusal to opt for any of these alternatives is placed on an equal footing with an offence committed by a conscript already performing his service. It is undisputed that the applicant has been convicted in accordance with Finnish law and penal procedure. Given that the convictions have been based on his repeated but nevertheless distinct refusals to perform any kind of service, he cannot be considered to have been punished "again" for an offence for which he had "already been ... finally convicted". The fact that the various convictions indirectly stem from his constant opposition to performing any kind of service cannot change this conclusion (cf. No. 17889/91, Dec. 5.5.93, not published). Accordingly, there is no appearance of any violation of Article 4 of Protocol No. 7 (P7-4).

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.

5. Article 14 (Art. 14) of the Convention

Under this provision the applicant complains that he has been discriminated against in various ways for having consistently refused to perform either military or substitute service.

Article 14 (Art. 14) of the Convention reads as follows:

> "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."

(a) The alleged discrimination in the light of the treatment of conscientious objectors voicing total objections at a later stage

The applicant complains that he has been discriminated against, if compared with conscientious objectors refusing to perform any kind of service once they have already opted for substitute civilian service. He invokes Article 14 of the Convention in conjunction with Article 9 of the Convention and Article 4 of Protocol No. 7 (Art. 14+9+P7-4).

Article 9 (Art. 9) of the Convention reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Government consider that Article 14 (Art. 14) of the Convention has not been violated. They recall that Article 9 (Art. 9) does not guarantee any right to be exempted from substitute civilian service in countries where conscientious objectors are recognised. With reference to their above arguments in respect of the complaint under Article 4 of Protocol No. 7 (P7-4), they also consider that Article 14 of the Convention is not applicable in conjunction with that provision (Art. 14+P7-4).

In any case, the Government consider that the applicant was not discriminated against. Objecting at the very outset to any military or substitute service, he was not in a situation comparable with that of conscientious objectors refusing to perform military or substitute service only after having opted for substitute service. At any rate, there existed an objective and reasonable justification for any differential treatment of the applicant. The means employed to this end were not disproportionate. The Government finally refer to the States' wide margin of appreciation in the field of national security.

The applicant submits that since his objection to performing any military or substitute service was based on his political convictions, he was unable to opt for substitute civilian service so as to receive more favourable treatment. Due to his repeated convictions for having refused to perform any military or substitute service he has had to serve 18 days more in prison, if compared with those who objected to substitute service only after first having opted for such service. Even after the 1950 Act was amended on 1 June 1994 he has been arrested on several occasions. He has twice had to appear before a court and he has also been fined.

The Commission recalls that Article 14 (Art. 14) complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (Art. 14) does not presuppose a breach of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one of more of the latter (e.g., Eur. Court H.R., Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A no. 291-B, p. 32, para. 22).

For the purposes of Article 14 (Art. 14) of the Convention a difference of treatment of persons in "relevantly" similar situations is discriminatory if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (cf., ibid., pp. 32-33, para. 24; Eur. Court H.R., Fredin judgment, Series A no. 192, p. 19, para. 60).

It is true that the right to conscientious objection to military and substitute service is not as such guaranteed by the Convention or any of its Protocols. The Commission nevertheless accepts that the present complaint of discrimination falls within the ambit of Article 9 (Art. 9) of the Convention which protects the right to freedom of thought, conscience and religion (cf., e.g., No. 17086/91, Dec. 6.12.91, D.R. 72 pp. 245-250, at p. 249, with further references).

The Commission has just found no appearance of a violation of Article 4 of Protocol No. 7 (P7-4) on account of the various convictions of the applicant based on his distinct refusals to perform military service. It would nevertheless accept that the present complaint of discrimination also falls within the ambit of that provision.

The Commission must first examine whether the applicant was placed in a situation similar to that experienced by those who have objected to substitute service after first having opted for such service. It has recently held that the situation facing a so-called "total objector" refusing to perform both military and substitute civilian service cannot, for the purposes of Article 14 (Art. 14) of the Convention, be regarded as comparable to that of conscientious objectors who are prepared to fulfil their military obligations by opting for substitute civilian service (No. 24630/94, Dec. 22.5.95, not published).

The Commission nevertheless considers that the present case differs from Application No. 24630/94 in that the applicant seeks to compare himself not with conscientious objectors who are willing to perform substitute civilian service but with other "total objectors", who refuse to perform any military or substitute service after first having opted for substitute service. Once the last-mentioned group of objectors have refused to perform any kind of service they can reasonably be placed on an equal footing with total objectors objecting to any kind of service already at the outset. The Commission therefore considers that, for the purposes of Article 14 (Art. 14), the applicant was in a situation comparable to that facing total objectors who, contrary to himself, have expressed their objections at a later stage.

The Commission observes that the applicant's aggregated prison sentence, as already served by him, exceeds by 18 days the fixed one-time sentence which could be imposed on the last-mentioned group of conscientious objectors. Moreover, while the serving of the fixed sentence exempts such objectors from performing any further military or substitute service, the applicant in principle remained liable until 1 June 1994 to complete his military service, irrespective of the prison sentences which he had already served. Accordingly, he has been subjected to differential treatment.

As to the possible justification of this treatment, the Commission must first examine whether it had a "legitimate aim". It notes that prior to the 1994 amendment to section 39 of the 1950 Act the Finnish authorities found it difficult to create a distinction between, on the one hand, a conscript's purely conscientious objection to performing military service and, on the other hand, "classic" military offences with the aim of evading service (see para. 4 of "Relevant domestic law" above). On balance, the Commission can accept that the need to avoid such a distinction constituted a sufficiently legitimate aim.

The question remains whether the differential treatment of the applicant also fulfilled the requirement of proportionality, inherent in Article 14. In this connection the Commission recalls that any system of compulsory military service imposes a heavy burden on the citizens. The burden may be regarded as acceptable only if it is shared in an equitable manner and if exemptions from the duty are based on solid grounds (cf. the above-mentioned No. 17086/90, p. 250). If some

citizens were to be exempted without convincing reasons, a question of discrimination against the other citizens would arise (No. 10410/83, Dec. 11.10.84, D.R. 40, p. 203).

The Commission furthermore recalls that the Convention does not prevent a Contracting State from taking measures to enforce performance of substitute civilian service, or from imposing sanctions on those who refuse to perform such service (No. 10600/83, Dec. 14.10.85, D.R. 44, p. 155). It notes that the Finnish authorities considered it difficult to create a system for punishing total objectors which would be fair, if compared both with the system for punishing ordinary desertion and with the system for convicting those who refuse to perform substitute civilian service after having opted therefor (see para. 4 of "Relevant domestic law" above).

It is true that the applicant's total prison sentence exceeded by 18 days that which was applicable to conscientious objectors voicing their total objection to any kind of service only at a later stage. The Commission considers, however, that the actual punishment served by him is not of such a duration as to make it disproportional to the legitimate aim sought to be realised by the State. It finally notes that as a result of the 1994 amendment to section 39 of the 1950 Act the applicant is no longer liable to perform military service and can no longer be sentenced for refusing to perform any kind of service in peacetime.

In these specific circumstances and having particular regard to the State's margin of appreciation, the Commission can accept that the differential treatment of the applicant was objectively and reasonably justified. Accordingly, it cannot find any appearance of a violation of Article 14 of the Convention read in conjunction either with Article 9 (Art. 14+9) of the Convention or with Article 4 of Protocol No. 7 (Art. 14+P7-4).

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) The alleged discrimination on account of the fitness classification

In his observations of 31 May 1995 the applicant further complains that the infringement upon his privacy on account of the fitness classification has also been discriminatory and contrary to Articles 14 and 17 of the Convention read in conjunction with Article 8 (Art. 14+8, 17+8).

With reference to Article 26 (Art. 26) of the Convention the Commission recalls that, where the alleged violation consists of a continuing situation, the six months' period within which an application must be lodged only starts to run if and when that situation comes to an end (cf., e.g., No. 11123/84, Dec. 9.12.87, D.R. 54, pp. 52 et seq.). It observes that the classification of the applicant as unfit for service on account of his "undefined psychosocial problem" remained in force until 20 December 1994. The complaint concerning discrimination in this respect has therefore been lodged within the prescribed six months' time-limit. The Commission nevertheless finds this complaint unsubstantiated. Accordingly, there is no appearance of any violation of Articles 14 and 17 of the Convention read in conjunction with Article 8 (Art. 14+8, 17+8).

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(c) Further aspects raised in the applicant's observations

Concerning the further aspects of the applicant's complaint under Article 14 (Art. 14) of the Convention which were raised on 31 May 1995, the question arises whether he has thereby expanded his application on points which cannot be considered as particular aspects of any of his initial complaints (cf. No. 10857/84, Dec. 15.7.86, D.R. 48, pp. 106 et seq., at p. 152). If so, the six months' period under Article 26 (Art. 26) of the Convention would not have been respected, the situation complained of having ended on 1 June 1994, when the amendment to the 1950 Act entered into force and the applicant could no longer be called up for military service.

However, even assuming that these grievances can be considered as particular aspects of the applicant's initial application, the Commission nevertheless finds that they are inadmissible for the following reasons.

(ca) The alleged discrimination in the light of the treatment of Jehovah's Witnesses

The applicant complains that he has also been discriminated against, if compared with Jehovah's Witnesses of the male sex, who under Finnish law are exempted from performing any military or substitute service.

The Commission has examined this aspect of the complaint under Article 14 of the Convention in conjunction with Article 9 (Art. 14+9). It has previously noted that membership of Jehovah's Witnesses entails adhering to a comprehensive set of rules of behaviour which cover many aspects of everyday life and require, inter alia, the rejection of both military and substitute service. There is a strict informal control among Jehova's Witnesses that these rules are complied with. Membership of such a religious sect is thus an objective fact which creates a high degree of probability that exemption from military and substitute service is not granted to persons simply wishing to escape service, since it is unlikely that a person would join such a sect only for the purpose of not having to perform any service of the above-mentioned kind (the above-mentioned No. 10410/83, loc. cit.).

In the light of these considerations the Commission finds that the differential treatment of the applicant was objectively and reasonably justified, even if his situation is compared with that of male Jehovah's Witnesses with Finnish citizenship. Accordingly, there is no appearance of any violation of Article 14 of the Convention read in conjunction with Article 9 (Art. 14+9) on this point either.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(cb) The alleged discrimination on account of the applicant's treatment in general

The applicant complains that his treatment in general has also been discriminatory and contrary to Articles 14 of the Convention read in conjunction with Article 3 (Art. 14+3). He refers to his repeated arrests and related de facto isolation, the significant number of separate sets of criminal proceedings brought against him as well as his treatment by the authorities in general.

The Commission finds this complaint wholly unsubstantiated. Accordingly, there is no appearance of any violation of Article 14 of the Convention read in conjunction with Article 3 (Art. 14+3).

It follows that this aspect of the 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 and without prejudging the merits of the case,

DECLARES ADMISSIBLE the complaint relating to the applicant's handcuffing on 18 June 1992;

unanimously,
DECLARES ADMISSIBLE the complaints relating to the lawfulness of the applicant's arrest from 18 to 19 June 1992; and

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)