AS TO THE ADMISSIBILITY OF

Application No. 23377/94
by X. and Y.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 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 10 November 1993 by X. and Y. against Finland and registered on 2 February 1994 under file No. 23377/94;

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 applicants are Finnish citizens residing in Helsinki and born in 1943 and 1947 respectively. Before the Commission they are represented by Mr. Martin Scheinin, Doctor of Laws, Helsinki.

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

In 1979 the applicants financed the purchase of a share in a housing association with a publically-funded loan granted under the 1975 Act on Improving the Housing Conditions of the Gypsies (mustalais-väestön asunto-olojen parantamisesta annettu laki). Under the terms the loan, the share was subject to a restriction on resale according to which the applicants were obliged to offer the share to the local authority first. The restriction was to apply for 30 years.

By October 1988 the applicants had paid off the loan and requested advance notice as to whether the local authority intended to use its right of pre-emption in case they sold the share.

On 22 November 1988 the Housing Board (asuntolautakunta) of Helsinki informed the applicants in the affirmative.

On 28 March 1990 the applicants reiterated their request. They maintained that, because of threats resulting from a vendetta between certain families, they had to move from Helsinki.

On 31 July 1990 the Housing Board informed the applicants of the Board's intention to exercise its right of pre-emption in case they sold the share.

The applicants then brought the matter before the City Council (kaupunginhallitus) of Helsinki. On 28 January 1991, however, the City Council dismissed the case on the grounds that the Housing Board had not yet decided whether it was going to exercise its right of pre-emption; its response to the applicants merely contained a preliminary opinion which was not a final and appealable decision.

The applicants, represented by Mr. Scheinin, appealed against the decision dismissing the case to the County Administrative Court (lääninoikeus) of Uusimaa. On 9 June 1992 the County Administrative Court of Uusimaa upheld the City Council's decision. It appears from the County Administrative Court's decision that the relevant law had been amended as from 1 April 1991 to the effect that the applicants' share was no longer subject to a right of pre-emption due to the fact that they had paid off their loan.

On 6 May 1993 the Supreme Administrative Court (korkein hallinto-oikeus) upheld the County Administrative Court's decision.

It appears that in the meantime, in 1990, certain other Acts concerning state loans for financing the purchase of apartments were also amended to the effect that the restriction on resale was lifted if the loan was paid off.

COMPLAINTS

1. The applicants complain that the Housing Board's opinion of 31 July 1990 resulted in a violation of their property rights since they were not able to sell their share freely. They further submit that since the Housing Board's refusal of their request prevented them from moving, their family had to live in fear, resulting in a violation of the right to personal safety and the right to respect for their private and family life. Finally, they maintain that they were not able to choose their residence freely. They invoke Article 1 of Protocol No. 1 to the Convention, Article 5 para. 1 and Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention.

2. The applicants complain, under Article 14 of the Convention, that the gypsies were discriminated against in comparison with other groups that also benefit from social housing loans since the Act concerning loans for gypsies was amended later than certain other Acts.

3. Finally, as regards the court proceedings, the applicants complain, under Article 6 of the Convention, that the length of the proceedings was not reasonable. The applicants also invoke Article 13 of the Convention.

THE LAW

1. The applicants complain, firstly, about the alleged effects which the Housing Board's opinion of 31 July 1990 concerning the right of pre-emption had on the applicants' property rights, private and family life, personal safety and ability to choose their residence. They invoke Article 1 of Protocol No. 1 (P1-1) to the Convention, Article 5 para. 1 (Art. 5-1) and Article 8 (Art. 8) of the Convention and Article 2 of Protocol No. 4 (P4-2) to the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicants disclose any appearance of a

violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case, the Commission recalls that the relevant Act on Improving the Housing Conditions of the Gypsies was amended as from 1 April 1991. The applicant's advocate learned about the amendment at the latest in June 1992 from the County Administrative Court's decision. After 1 April 1991 the applicants, who had already paid off their loan in October 1988, were free to sell their share without any interference from the authorities. The application was submitted to the Commission on 10 November 1993, that is, more than six months after the date of the amendment of the relevant Act. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicants further complain, under Article 14 (Art. 14) of the Convention, of discriminatory legislation in respect of, on the one hand, the gypsies and, on the other hand, other groups that benefit from social housing loans.

On this point the Commission refers to its finding above and recalls that the relevant Act was amended as from 1 April 1991. The application was submitted to the Commission on 10 November 1993, that is, more than six months after the date of the amendment of the relevant Act. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the period.

It follows that this part of the application has also been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. Finally, the applicants complain, under Article 6 (Art. 6) of the Convention, about the length of the proceedings concerning the Housing Board's opinion of 31 July 1990 on the right of pre-emption in respect of the applicants' share. They also invoke Article 13 (Art. 13) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention reads, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ... , everyone is entitled to a ... hearing within a reasonable time ... "

Article 13 (Art. 13) of the Convention reads as follows:

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

For Article 6 para. 1 (Art. 6-1) under its "civil" head to be applicable, there must be a "dispute" over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences

not being sufficient to bring Article 6 para. 1 (Art. 6-1) into play (see, for example, Eur. Court H.R., Masson and Van Zon judgment of 28 September 1995, Series A no. 327, para. 44).

The Commission finds that the Housing Board's preliminary notice of 31 July 1990 about its intentions as regards the right of pre-emption was not decisive as this question would be decided only when a sale was actually effected. Furthermore, the Commission recalls that after 1 April 1991, in the light the amendment of the relevant law and the fact that the applicants had paid off their loan, their share was no longer subject to a right of pre-emption. Therefore, the Commission finds that, at least after 1 April 1991, there was no genuine and serious "dispute" over a right.

In view of the above, the Commission finds that, whether or not the proceedings concerned a "right", the outcome of the proceedings was not directly decisive for the right in question and, furthermore, after 1 April 1991 they did not involve a "dispute" for the purposes of Article 6 para. 1 (Art. 6-1). In these circumstances the Commission finds that Article 6 (Art. 6) of the Convention is not applicable to the proceedings.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

As regards the alleged violation of Article 13 (Art. 13) of the Convention the Commission finds, in the circumstances of the case, that the applicants cannot be said to have an arguable claim for the purposes of Article 13 (Art. 13). Therefore the Commission finds that there is no appearance of a violation of Article 13 (Art. 13) of the Convention.

It follows that this part of the application is 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)