AS TO THE ADMISSIBILITY OF

Application No. 18607/91
by H.V.
against Finland

The European Commission of Human Rights sitting in private on 10 January 1992, the following members being present:

MM.C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mrs.G. H. THUNE
SirBasil HALL
MM.F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

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 12 December 1990 by H.V. against Finland and registered on 26 July 1991 under file No. 18607/91;

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 1941 and resident at Y.. She is a clerical officer by profession. Before the Commission she is represented by Mr. Kari Peippo, Public Legal Adviser of Y.

The facts, as submitted on behalf of the applicant, may be summarised as follows.

Particular circumstances of the case

On 15 November 1989 the applicant was convicted of continuous breach of domiciliary peace and sentenced to fines by the District Court (kihlakunnanoikeus, häradsrätten) of Y.. She was found to have called Mr. and Mrs. K. on fifteen occasions from April to the end of August 1989. The Court considered Mrs. K.'s story credible as, during the pre-trial investigation, the applicant had at first denied the charges; having been informed, however, that two calls (on 13 and 29 August 1989) had been traced to her telephone she subsequently confessed having made the calls; the calls had been made subsequent to

the appointment of Mr. K. to a municipal post which the applicant had also applied for; and the calls had stopped following the pre-trial interrogation of the applicant.

The applicant appealed to the Court of Appeal (hovioikeus, hovrätten) of Vaasa, requesting a hearing or, alternatively, that the case be referred back to the District Court for examination of the applicant's husband as a witness for the defence. The applicant stated inter alia that, as the pre-trial record did not contain sufficient evidence of her guilt, she had not prepared herself to present counter-evidence before the District Court.

On 15 June 1990 the requests were rejected and the District Court's decision upheld.

On 15 October 1990 the Supreme Court (korkein oikeus, högsta domstolen) refused the applicant leave to appeal.

The applicant was either assisted or represented by a lawyer throughout the domestic proceedings.

In December 1990 the applicant complained of the proceedings before the District Court and the Court of Appeal to the Parliamentary Ombudsman (Eduskunnan oikeusasiamies, Riksdagens justitieombudsman).

On 5 February 1991 the Deputy Ombudsman found no reason to criticise the proceedings.

Relevant domestic law

Under Chapter 26 Section 7 of the Code of Judicial Procedure (oikeudenkäymiskaari, Rättegångs Balk) a Court of Appeal may, when necessary, arrange a hearing at which parties, witnesses or expert witnesses may be heard or other kinds of evidence be presented. Under Section 10 the Court of Appeal may, for weighty reasons, decide that a party, a witness or an expert witness be heard by a court of first instance, that is by a City Court or a District Court.

COMPLAINT

The applicant complains of her conviction. Although the burden of proof lay on the Prosecutor he submitted no evidence to the District Court showing her guilt. Thus, she was convicted of having made all the telephone calls reported to the police by the complainants, although she admitted having made only the two calls which had been traced. Furthermore, those calls were not and could not be considered to be of a criminal character. Moreover, she was not allowed to put forward evidence in her favour when this became necessary, that is following the District Court's decision. She invokes Article 6 para. 3 (d) of the Convention.

THE LAW

The applicant complains of her conviction. She submits that no evidence showing her guilt was presented by the Prosecutor. When, following the District Court's decision, it became necessary to have her husband examined as a witness, this was refused by the Court of Appeal. She invokes Article 6 para. 3 (d) (Art. 6-3-d) of the Convention which reads:

"Everyone charged with a criminal offence has the following minimum rights:
... to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, ..."

(a)The Commission first has to ascertain whether, and to what extent, it is competent ratione temporis to deal with the application. It recalls that in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see e.g. No. 9453/81, Dec. 13.12.82, D.R. 31 pp. 204, 208). In its case-law the Commission has held that, where the facts consist of a series of legal proceedings in the same case, the date of entry into force of the Convention in respect of the Contracting State in question has the effect of dividing the period into two, the earlier part falling outside the Commission's jurisdiction ratione temporis, whereas a complaint relating to the latter part cannot be rejected on this ground. On the other hand, where a court gives judgment after the entry into force of the Convention, the Commission is competent to ensure that the proceedings leading up to this judgment were in conformity with the Convention, as the proceedings before a court are embodied in its final decision which thus incorporates any defect by which they may have been affected (cf. No. 8261/78, Dec. 11.10.79, D.R. 18 p. 150, confirmed in No. 11306/84, Dec. 16.10.86, D.R. 50 p. 162 and No. 17925/91, Dec. 8.10.91, not published).

In the present case, the District Court's decision was given on 15 November 1989, while the Convention entered into force with regard to Finland on 10 May 1990. The proceedings before the District Court of Y. are therefore, as such, outside the competence of the Commission ratione temporis.

It follows that the part of the application pertaining to these proceedings is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(b)The Commission has next considered the application insofar as it pertains to the proceedings before the Court of Appeal of Vaasa. The Commission first recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 p. 31, 45).

As the guarantees under Article 6 para. 3 (Art. 6-3) of the Convention are specific aspects of the right to a fair trial secured in Article 6 para. 1 (Art. 6-1), the Commission has considered the complaint under the two provisions taken together (cf. Eur. Court H.R., Asch judgment of 26 April 1991, to be published as Series A no. 203, para. 25).

Article 6 para. 1 (Art. 6-1) of the Convention reads, insofar as it is relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law..."

The admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Convention organs' task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (cf. ibid., para. 26).

There is no absolute right under the Convention for a person charged with a criminal offence to have witnesses examined on his behalf (e.g. No. 8417/78, 4.5.79, D.R. 16 p. 200). The domestic courts have discretion to decide upon the relevance of proposed evidence insofar as this is compatible with the concept of fair trial (Eur. Court H.R., Engel and Others judgment of 8 June 1976, Series A no. 22, pp. 38-39, para. 91; Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A no. 158, p. 31, para. 89).

The Commission observes that Finland, in its reservation made in accordance with Article 64 (Art. 64) of the Convention, states that it cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies inter alia to proceedings before the Courts of Appeal in accordance with Chapter 26 Section 7 of the Code of Judicial Procedure.

The Commission does not find it necessary to examine whether this reservation applies in the present case, as this part of the application is manifestly ill-founded on the following grounds. It appears that the Court of Appeal, by accepting the District Court's reasoning, had regard to the fact that two of the calls to the complainants had been traced to the applicant's telephone, to her confession during the pre-trial investigation as well as to circumstantial evidence (the phone calls took place subsequent to the appointment of Mr. K. to a municipal post which the applicant had also applied for and the calls had stopped following the pre-trial interrogation of the applicant). The Commission further notes that the applicant had not asked the witness in question to be heard by the court of first instance. Moreover, the applicant was either assisted or represented by lawyer throughout the domestic proceedings.

In these circumstances the Commission does not find that the Court of Appeal of Vaasa acted arbitrarily by disregarding evidence which would have been vital for the determination of the charges against the applicant.

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.

(c)The Commission has finally considered the application insofar as it may be regarded as pertaining to the Supreme Court's refusal of leave to appeal. Even assuming that Article 6 (Art. 6) applies to the leave to appeal proceedings before that court there is no appearance of any violation of Article 6 (Art. 6) of the Convention.

It follows that this part of the application is also 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 Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)