CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF K.S. v. FINLAND

(Application no. 29346/95)

JUDGMENT

STRASBOURG

31 May 2001

FINAL

12/12/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of K.S. v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 May 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29346/95) against the Republic of Finland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national ("the applicant"), on 10 April 1995.

2. The Finnish Government ("the Government") were represented by their Agents, Mr Holger Rotkirch, Director-General for Legal Affairs, and Mr Arto Kosonen, Director, both of the Ministry for Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that he was denied a fair hearing within the meaning of Article 6 § 1 of the Convention due to the non-communication of opinions obtained *ex officio* in the proceedings regarding his entitlement to an unemployment allowance.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 16 March 2000, the Chamber declared the application partly admissible.

7. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In May 1991 the applicant was dismissed, with six months' notice, from his post as tax inspector, and immediately suspended from office. He was deemed unable to perform his duties adequately and found to have continuously failed to comply with, or to have neglected, his obligations as a civil servant. His appeals were rejected, in the last resort by the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*).

9. In February 1992 the Unemployment Fund (*työttömyyskassa, arbetslöshetskassan*) for Lawyers and Legal Associates refused to pay the applicant a salary-related unemployment benefit for the period 28 November 1991 - 8 January 1992. The Fund had regard to an opinion from the Employment Commission (*työvoimatoimikunta, arbetskrafts-kommissionen*) of Vaasa which concluded that the applicant had himself caused his dismissal. Under domestic law the Unemployment Fund was bound by the Employment Commission's opinion. The applicant had received a copy thereof in the beginning of December 1991.

10. The applicant appealed to the Board for Unemployment Benefits (*työttömyysturvalautakunta, arbetslöshetsnämnden*), essentially contesting the Employment Commission's opinion, as adhered to by the Unemployment Fund in an unsigned computer-printed decision. The appeal was first processed by the Unemployment Fund which requested the Employment Commission to comment on it. Having received the Employment Commission's opinion, the Unemployment Fund forwarded it to the Board for Unemployment Benefits together with the appeal itself and the Unemployment Fund's own opinion.

11. The Employment Commission's opinion referred to the Supreme Administrative Court's decision upholding the applicant's dismissal. The opinion further stated that no such evidence had been presented which would have warranted a change of the Employment Commission's earlier opinion. The Unemployment Fund's opinion referred to the earlier stages of the proceedings and noted that unemployment funds were authorised to dispatch electronically signed decisions. The opinion further stated that no evidence had been presented which could be considered by the Unemployment Fund and that, accordingly, its decision should stand.

12. None of the above opinions were communicated to the applicant in the proceedings before the Board for Unemployment Benefits. In its decision of 31 January 1994 the Board summarised the facts, the applicant's appeal and the opinions of the Employment Commission and the Unemployment Fund. The Board then dismissed the appeal, considering

that a person who had himself caused the termination of his employment was not entitled to unemployment benefits for a period of six weeks. As the applicant's suspension from office had resulted in his dismissal, he was deemed to have caused the termination of his employment himself. He was therefore not entitled to unemployment benefits for the period in question. The Board relied on section 9 of the Act on Unemployment Benefits (*työttömyysturvalaki, lagen om utkomstskydd för arbetslösa* 602/1984).

13. The applicant appealed further to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*). In an opinion requested by the Insurance Court the Unemployment Fund considered that no such evidence had been presented which it had been unaware of when making its decision of 1992. Accordingly, that decision should be upheld. The Unemployment Fund's opinion was not communicated to the applicant in the course of the proceedings. The Insurance Court also obtained from the Supreme Administrative Court its decision regarding the applicant's dismissal.

14. In its decision of 9 March 1995 the Insurance Court upheld the decision of the Board for Unemployment Benefits, referring to the reasons stated therein.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Section 9, subsection 1, of the Act on Unemployment Benefits stipulates that a person who causes the termination of his or her employment shall not be entitled to an unemployment benefit for a period of eight weeks. According to established practice, the period is shortened to six weeks in certain circumstances. If a dismissal has been challenged the withdrawal of unemployment benefits should normally be based on a decision which has acquired legal force (section 9, subsection 2). The competent employment commission shall issue an opinion in respect of someone's entitlement to unemployment benefits. Such an opinion is binding on the competent unemployment fund (section 3, subsection 2).

16. According to section 39, subsection 4, and section 42, subsection 4, an appellant shall be given an opportunity to be heard in a matter before the Board for Unemployment Benefits or the Insurance Court, if such new evidence is presented of which the appellant is not aware.

17. At the relevant time the Insurance Court applied mainly the principles derived from the rules of procedure of the courts of appeal. Insofar as relevant, the Code of Judicial Procedure provided as follows. According to Chapter 25, sections 17 to 20, the opposing party was to be heard in proceedings before appellate courts. According to Chapter 25, section 19, subsection 1, a copy of the observations of the opposing party was to be forwarded to the appellant on request. According to Chapter 26, section 6, the court of appeal was to request written observations from the parties when it obtained evidence on its own initiative and such evidence

could affect the decision in the case, unless such hearing of the parties was manifestly unnecessary.

18. From 1 April 1999 onwards the Insurance Court has been applying the Act on Administrative Judicial Procedure (*hallintolainkäyttölaki, förvaltningsprocesslagen* 586/1996) except with regard to extraordinary proceedings, in respect of which special rules apply (section 9 of the Act on the Insurance Court, as amended by Act no. 278/1999).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained that he had been denied a fair hearing within the meaning of Article 6 § 1 of the Convention due to the failure of the Board for Unemployment Benefits and the Insurance Court to communicate to him the opinions which they had obtained *ex officio* in the proceedings regarding his entitlement to an unemployment allowance. He relied on Article 6 § 1 of the Convention which provides, insofar as relevant, as follows:

> "In the determination of his civil rights and obligations..., everyone is entitled to a fair ... hearing within a reasonable time by [a] tribunal established by law. ..."

20. The Government argued that the non-communication had not violated the applicant's right to a fair hearing. The opinions in question had primarily referred to his appeal and subsequent observations as well as to the facts of the case. The opinions had further noted that no new evidence affecting the outcome of the case had been presented, and had concluded in a brief recommendation to reject the appeal. The opinions had not revealed any facts which could have affected the outcome of the case, nor had any fresh evidence been adduced in relation to such facts. As the Board for Unemployment Benefits had reproduced the essence of the opinions, the applicant had become aware of their existence and had thus been afforded the possibility of acquainting himself with their contents. In these circumstances the non-communication of the opinions in question had not adversely affected the applicant's capability of challenging the decision of the Board for Unemployment Benefits before the Insurance Court. Nor had the opinion which the Insurance Court had obtained from the Unemployment Fund contained any evidence which the applicant had been unaware of, that opinion having been essentially similar to the one which the Unemployment Fund had previously submitted to the Board for Unemployment Benefits. The only information of which the applicant had been unaware when the Insurance Court had decided on his appeal had been

the Unemployment Fund's explanation, in its opinion to the Board for Unemployment Benefits, as to why the Unemployment Fund's decision had not been signed by hand. No comments by the applicant on this point would have affected the substance of the Insurance Court's decision. The Unemployment Fund's position on the merits of the case had already become known to the applicant and his possible observations in respect of the opinion obtained by the Insurance Court would not have affected its decision, in which it had simply upheld the decision of the Board for Unemployment Benefits.

21. The Court recalls that the right to adversarial proceedings means in principle the opportunity for the parties to court proceedings falling within the scope of Article 6 to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision (see, for example, the Kerojärvi v. Finland judgment of 19 July 1995, Series A no. 322, § 42; the Nideröst-Huber v. Switzerland judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I, § 24; and the Kuopila v. Finland judgment of 27 April 2000, § 37).

22. In the present case it is undisputed that the opinions on the applicant's initial appeal which the Board for Unemployment Benefits had obtained from the Employment Commission and the Unemployment Fund were not communicated to him before the Board reached its decision. It is likewise common ground that before deciding on the applicant's further appeal the Insurance Court failed to communicate to him the fresh opinion which it had obtained from the Unemployment Fund.

23. The Court notes that the opinions in question constituted reasoned opinions on the merits of the applicant's appeals, manifestly aiming at influencing the decisions of the Board for Unemployment Benefits and the Insurance Court by calling for the appeals to be dismissed. Whatever the actual effect which the various opinions may have had on the decision of the Insurance Court in the final instance, it was for the applicant to assess whether they required his comments. The onus was therefore on the Insurance Court to afford the applicant an opportunity to comment on the opinions prior to its decision.

24. The procedure followed, however, did not enable the applicant to participate properly in the proceedings and thus deprived him of a fair hearing within the meaning of Article 6 § 1 of the Convention. Accordingly, this provision has been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

26. As far as the Court is able to ascertain the applicant's claims, he requests 892,000 Finnish marks (FIM) in compensation for various pecuniary damage allegedly inflicted on him. He claims a further FIM 1,400,000 in compensation for non-pecuniary damage.

27. The Government have not commented on these claims.

28. The Court finds no causal connection between the violation complained of and the pecuniary damage alleged. It cannot speculate about the outcome of the proceedings had they been in conformity with Article 6. An award of just satisfaction can therefore only be based on the fact that the applicant did not have the benefit of the guarantees of that provision.

29. The Court accepts that the lack of such guarantees has caused the applicant non-pecuniary damage which cannot be made good by the mere finding of a violation. Making its assessment on an equitable basis, the Court therefore awards the applicant FIM 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant claimed FIM 42,913 for his costs and expenses.

31. The Government have not commented on this claim.

32. The Court recalls that only one of the applicant's complaints was declared admissible. The large majority of the costs and expenses claimed cannot be considered to have been necessary for the purpose of enabling the applicant to vindicate his right to a fair hearing within the meaning of Article 6 of the Convention. The Court, making its assessment on an equitable basis, therefore awards him FIM 1,000 in respect of photocopying and related costs.

C. Default interest

33. According to the information available to the Court, the statutory rate of interest applicable in Finland at the date of adoption of the present judgment is 11% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
      (i) for non-pecuniary damage 5,000 (five thousand) Finnish marks;
      (ii) for costs and expenses 1,000 (one thousand) Finnish marks;
   (b) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 10 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President