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

FOURTH SECTION

CASE OF K.P. v. FINLAND

(Application no. 31764/96)

JUDGMENT

STRASBOURG

31 May 2001

FINAL

05/09/2001

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.P. 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. 31764/96) 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 24 January 1996.

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 her name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that she 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 her entitlement to continued disability allowance and various pensions.

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

A. The requests for a disability allowance

8. In February 1991 the applicant suffered a whiplash injury to her neck as a result of a traffic accident. Her insurance company P. paid her a disability allowance until the end of August 1991. In October 1991 the insurance company refused her a further allowance, considering her continuing disability to be caused by other physical illnesses from which she had been suffering prior to the accident. The Board for Accident Compensation (*tapaturmalautakunta, olycksfallsnämnden*) rejected her appeal. Her further appeal to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) was rejected in November 1992 and the Supreme Court (*korkein oikeus, högsta domstolen*) refused her leave to appeal in March 1993.

9. Subsequently the applicant again applied to her insurance company for a disability allowance, now relying on a medical report of December 1993 concluding that she remained unable to work. This request was rejected in March 1994, the insurance company essentially having found that her medical condition had remained unchanged since the Insurance Court's decision of November 1992. The applicant's appeal was rejected by the Board for Accident Compensation in October 1994 after it had requested an opinion from the insurance company. This opinion was not communicated to the applicant but the company's views were reproduced in the decision.

10. The applicant's further appeal was rejected by the Insurance Court on 20 October 1995 after it had obtained a fresh opinion from the insurance company. This opinion, concluding in a proposal that the appeal be rejected, was not communicated to the applicant. Nor was it reproduced or summarised in the Insurance Court's decision.

B. The requests for an employment-based disability pension

11. In 1992 the applicant's insurance company I. rejected her request for a disability pension, having found that she was not disabled within the meaning of the legislation on employment-based pensions. Her appeal to the Pension Board (*eläkelautakunta, pensionsnämnden*) was rejected. Her further appeal to the Insurance Court was rejected in 1993.

12. The insurance company rejected the applicant's renewed pension request in March 1994, referring to its previous decision and finding that the new evidence adduced did not warrant any change in the insurance company's position. Her appeal to the Pension Board was rejected in June 1994 after it had obtained an opinion from the insurance company. This opinion proposing that the appeal be rejected was not communicated to the applicant, nor was it reproduced or summarised in the Pension Board's decision.

13. The applicant appealed further to the Insurance Court which also requested an opinion from the insurance company. This opinion, again proposing that the appeal be rejected, was not communicated to the applicant. Nor was it reproduced or summarised in the Insurance Court's decision of 14 September 1995 by which her appeal was rejected. The Insurance Court considered, in light of the evidence adduced, that the applicant's ability to work was not so reduced as to render her eligible for an employment-based disability pension.

C. The requests for a national disability pension

14. The applicant's request for a national disability pension was rejected by the Social Security Institution (*kansaneläkelaitos, folkpensionsanstalten*) in March 1992. It found that, although she was still suffering from symptoms caused by her neck injury, her headaches and other symptoms as well as her depression, they were not causing her such inconvenience as to render her incapable of continuing her work as a laboratory assistant when no longer eligible for a daily allowance under the national health insurance scheme. Her appeal to the Appellate Board for Social Insurance (*tarkastuslautakunta, prövningsnämnden*; "the Appellate Board") was rejected in August 1992 and her further appeal to the Insurance Court was rejected in May 1993.

15. The applicant's renewed request for a national disability pension was rejected by the Social Security Institution on 18 April 1994. It found that she was still suffering from neck and shoulder pain, stiffness, aches, depression and insomnia. Her ability to function physically was nonetheless satisfactory. Given her overall state of health, she was able to continue working as a laboratory assistant or performing similar tasks. Accordingly, she could not be regarded as disabled within the meaning of the National Pension Act (*kansaneläkelaki, folkpensionslagen* 347/1956).

16. The applicant's appeal to the Appellate Board was rejected on 15 December 1994 after it had requested an opinion from the Social Security Institution. This opinion was not communicated to the applicant nor was it reproduced or summarised in the Appellate Board's decision. The Appellate Board considered, in light of all medical and other evidence, that

the applicant was not to be regarded as disabled within the meaning of the National Pension Act.

17. The applicant appealed further to the Insurance Court, adducing further medical reports. The Insurance Court obtained an opinion from the Social Security Institution which was dated 27 March 1995 and concluded in a proposal that the appeal should be rejected. This opinion was not communicated to the applicant, nor was it reproduced or summarised in the Insurance Court's decision of 18 September 1995 by which her appeal was rejected. The Insurance Court referred to the reasons invoked in the Appellate Board's decision and found that the fresh evidence submitted did not call for any change in the assessment of the applicant's ability to work.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. 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.

19. 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

20. The applicant complained that she had been denied a fair hearing within the meaning of Article 6 § 1 of the Convention due to the Insurance Court's failure to communicate to her the opinions it had obtained from the insurance companies and the Social Security Institution in the respective proceedings ending in 1995 and concerning her entitlement to continued

disability allowance and the pensions in question. She 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. ..."

21. The Government conceded that the Insurance Court had not communicated the insurance companies' and the Social Security Institution's opinions to the applicant prior to deciding on her appeals. Nonetheless, the applicant's entitlement to a disability allowance had been examined twice by her insurance company P., the Board for Accident Compensation as well as the Insurance Court, and once by the Supreme Court. The applicant had thus been able to challenge the position of that insurance company and the Board for Accident Compensation in the proceedings ending in 1993 and 1995, respectively. The opinion obtained by the Insurance Court in the second set of proceedings had not contained such further evidence which would have affected the outcome of the applicant's appeal. The non-communication of that opinion had not therefore affected adversely her ability to challenge the decision of the Board for Accident Compensation.

22. As for the proceedings concerning the applicant's entitlement to an employment-based disability pension, the Government submitted that the opinion of the insurance company I. which the Insurance Court had not communicated to the applicant had merely referred to the insurance company's earlier opinion to the Pension Board which the applicant had been able to challenge.

23. As regards the proceedings concerning the applicant's entitlement to a national disability pension, the Government submitted that the non-communicated opinion of the Social Security Institution had merely expressed the view that she had not adduced any such new evidence which would affect the outcome of the case. The Government questioned whether such a statement had constituted "a reasoned opinion on the merits of the appeal", as in the Nideröst-Huber v. Switzerland case (judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I). In any case the applicant had been able to challenge, in her appeal to the Insurance Court, the Social Security Institution's position as stated already to the Appellate Board.

24. Summing up, the Government argue that the position of the insurance companies and others involved in the proceedings before the Insurance Court ending in September and October 1995 had already become known to the applicant. The non-communicated opinions had not included any information which had been new to her or which she could not have obtained by consulting the case-files of the relevant authorities. Considering the proceedings as a whole, the applicant had therefore not been denied a fair hearing within the meaning of Article 6 § 1 of the Convention.

25. 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 aforementioned Nideröst-Huber v. Switzerland judgment, § 24; and the Kuopila v. Finland judgment of 27 April 2000, § 37).

26. It is common ground that the opinions submitted by the applicant's insurance companies and the Social Insurance Institution were not communicated to her for possible comments prior to the Insurance Court's decisions in the three proceedings ending in 1995.

27. 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 lower appellate bodies 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 decisions of the Insurance Court in the final instance, it was for the applicant to assess whether they required her comments. The onus was therefore on the Insurance Court to afford the applicant an opportunity to comment on the opinions prior to its decisions.

28. The procedure followed, however, did not enable the applicant to participate properly in the different proceedings and thus deprived her 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

29. 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

30. The applicant claims compensation for non-pecuniary damage in the amount of "at least 100,000 Finnish marks (FIM)" corresponding to the sums which the insurance companies, in her submission, owe her. She claims a further FIM 100,000 in compensation for non-pecuniary damage (suffering).

31. The Government have not commented on these claims.

32. 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.

33. The Court accepts that the lack of such guarantees in as many as three distinct court proceedings 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 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

34. The Court notes that the applicant has filed no claim in this respect.

C. Default interest

35. 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, 15,000 (fifteen thousand) Finnish marks in respect of non-pecuniary damage;

   (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 31 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President