CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF HIRVISAARI v. FINLAND

(Application no. 49684/99)

JUDGMENT

STRASBOURG

27 September 2001

FINAL

25/12/2001

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 Hirvisaari v. Finland,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 6 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 49684/99) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Eero Olavi Hirvisaari ("the applicant"), on 20 April 1999.

2. The applicant was represented before the Court by Mr J. Ahomäki, a lawyer practising in Järvenpää. The Finnish Government ("the Government") were represented by their Agent, Mr A. Kosonen, Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that he was not afforded a fair trial guaranteed by Article 6 § 1 of the Convention as the Pension Board (*eläkelautakunta, pensionsnämnden*) and the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) did not give adequate reasons for their decisions.

4. 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.

5. On 12 December 2000, having obtained the parties' observations on the admissibility and merits of the case, the Chamber declared the application partly admissible.

6. On 11 May 2001, after an exchange of correspondence, the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 25 June 2001, the applicant's representative submitted a formal declaration refusing a friendly settlement of the case.

7. The Chamber decided, after having consulted the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). Mr Hirvisaari filed claims for just satisfaction under Article 41 of the Convention, on which the Government submitted comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 14 February 1992 the pension fund of the applicant's employer granted the applicant a full temporary disability pension as from 1 March 1992 until 30 June 1992. Thereafter the period of full pension was prolonged several times.

9. On 13 June 1997 the pension fund reviewed its previous decision and changed the applicant's pension into a partial one for an indefinite period beginning on 1 June 1997. The pension fund reasoned its decision by observing that, according to the documents submitted to the pension fund, the applicant's capability to work could no longer be considered reduced to such an extent as entitling him to a full disability pension. It was also noted that the applicant could be expected to work at least part-time.

10. The applicant appealed to the Pension Board, which on 4 March 1998 rejected the appeal. The decision was reasoned as follows:

> "An employee is entitled to a full disability pension provided that his or her ability to work has continuously been reduced by at least three fifths for a minimum of one year and that this reduction has been caused by an illness, a defect or an injury. The employee's remaining ability to earn income by carrying out work that would be available to him or her and that he or she could reasonably be expected to perform must be taken into account when assessing the reduction in the employee's ability to work. Furthermore, the employee's education, previous activities, age, living conditions and other comparable factors must be taken into consideration.
>
> According to the statements on [the applicant's] state of health, [the applicant] suffers from depression that has become more difficult during the autumn of 1997. However, [the applicant's] symptoms must be considered as mild. Therefore, the Pension Board finds [the applicant] still partly capable of working as from 1 June 1997."

11. The applicant appealed to the Insurance Court. He referred, *inter alia*, to several medical statements according to which he was for the time being incapable of working because of his mental illness. On 27 October 1998, the Insurance Court rejected the appeal reasoning the decision as follows:

> "[The Insurance Court refers to] the reasons given in the Pension Board's decision. The new material filed while the case was pending [before the Insurance Court] does not change the evaluation of [the applicant's] disability."

12. The pension fund decided later, on 27 January 1999, to reject the applicant's renewed application for a full disability pension instead of partial one. The Pension Board rejected the applicant's appeal on 25 May 1999. The applicant further appealed to the Insurance Court which, on 22 June 2000, found that the applicant's capability of working had been reduced at least by 60 percent on account of his illness as from the beginning of December 1999, and ordered the pension fund to grant the applicant a full disability pension as from 1 January 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. According to the Employee's Pensions Act (*työntekijäin eläkelaki, lag om pension för arbetstagare*; 395/1961) and the Employment Pensions Decree (*työntekijäin eläkelaki, förordning om pension för arbetstagare*) a party who is not satisfied with a decision of a pension fund concerning private sector employment pensions may appeal against such a decision to the Pension Board.

14. The Pension Board applies written procedure. A case file concerning disability pension contains a written doctor's opinion prepared in accordance with Section 11 of the Employment Pensions Decree. Such a medical opinion shall provide information on symptoms, medical examination results and any other factors affecting the health of the patient. The doctor will also give his or her own opinion on the patient's capability to work and on his or her possibilities to rehabilitate. The Pension Board's decision may be appealed against to the Insurance Court.

15. According to Section 9 of the Insurance Court Act (*laki vakuutusoikeudesta, lag om försäkringsdomstolen*), as in force at the relevant time, the provisions concerning proceedings in ordinary courts were, *mutatis mutandis*, applied to those in the Insurance Court. The said provisions can be found in the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*). The relevant provisions concerning the statement of reasons for a decision were included in Chapter 24, Section 3 (573/1984), according to which a judgment shall clearly indicate those main reasons and legal provisions on which the decision is based.

16. The provisions in Chapter 24 of the Code of Judicial Procedure were amended in 1998 (Act 165/1998). The new provisions were not applicable to the applicant's case.

17. Section 9 of the Insurance Court Act has later been amended so as to make the provisions of the Act on Judicial Procedure in Administrative Matters (*hallintolainkäyttölaki, förvaltningsprocesslag*) applicable in cases

which have become pending before the Insurance Court on 1 April 1999 or later.

18. A decision of the Insurance Court may not be appealed against. According to Section 21-d of the Employment Pensions Act, the Insurance Court may annul a final decision, if it is based on incorrect or deficient evidence or is manifestly against the law.

19. In accordance with Section 5 of the Insurance Court Act, the members of the Insurance Court include a doctor in cases where medical assessment is necessary.

THE LAW

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

20. The applicant complains that he did not have a fair trial as the Pension Board and the Insurance Court did not give adequate reasons for their decisions concerning the applicant's right to receive full invalidity pension.

21. Article 6 § 1 of the Convention, in so far as relevant, provides:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Submissions of the parties

1. The Government

22. The Government disagreed. They emphasised that the extent to which the duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. Moreover, while Article 6 of the Convention guarantees a right to a fair hearing, it does not lay down any rules on the admissibility of evidence or

the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts.

23. The Government noted that the reasons on which the Insurance Court based its decision were the same as those applied by the Pension Board. The justification given by the Insurance Court for upholding the decision of the Pension Board was essentially that it found no reason to alter this decision. The Insurance Court thus incorporated the reasons given by the Board, whose decision was, moreover, appended to the decision which it delivered. Nor can it be maintained in the circumstances that the Insurance Court did not address the essence of the points submitted by the applicant for its consideration.

Furthermore, the Insurance Court briefly stated that the new material filed while the case was pending before it did not change the evaluation of the applicant's disability. In so doing the Insurance Court referred to the new documents sent by the applicant to the court. The Insurance Court thus ruled in essence that none of the documents referred to had a bearing on the appeal or supported the conclusion that the decision of the Pension Board was not fair.

24. The Government also noted that the reasoning of the Pension Board went much further than that used by the pension fund in its decision. Neither could the Government find any fault with the way in which the Pension Board dealt with the evidence before it. The Pension Board, in full cognisance of the written evidence presented by the applicant, concluded that that evidence did not substantiate his claim. In its decision the Board did not explain how the general grounds referred to in the quoted provision were applied to the applicant's specific circumstances. The Government noted that the Insurance Court could have specified those reasons. In cases involving disability pension a detailed statement of reasons may, however, often be difficult because the assessment of the capability to work is an overall assessment.

25. The Government maintained that, although a more substantial statement of reasons in the present case might have been desirable, the Pension Board and thus also the Insurance Court gave sufficient reasons for rejecting the applicant's request and appeal, and accordingly the proceedings in issue were not rendered unfair on the grounds invoked by him.

2. The applicant

26. The applicant noted first that the documents referred to in the pension fund's decision of 13 June 1997 are not specified anywhere. Nor is it explained why, as from 1 July 1997, there were no more reasons to grant him the full disability pension he had received so far. The only thing that the applicant could read from the pension fund's decision was that the pension fund had, for an unknown reason, decided as it had.

27. In so far as the Pension Board's decision is concerned, the applicant noted that it is again not mentioned on what statements on the applicant's health the decision was based. The medical statements submitted by the applicant himself had all recommended that the applicant be granted full disability pension. If there were contradictory statements, the full content of them should at least have been mentioned in the Pension Board's decision. More importantly, it was impossible for the applicant to understand how the worsening of his depression, specifically mentioned in the decision, could justify refusing full pension he had received so far.

28. As the Insurance Court merely upheld the Pension Board's decision without giving any reasons of its own, the Insurance Court in the applicant's view fully accepted the insufficient reasoning given by the Pension Board.

29. The applicant emphasised that the authorities have a duty to give a reasoned decision. A mere reference made to the statements submitted to the court and to the applicable provisions of law cannot be regarded as sufficient. For the exercise of his right of appeal it would have been of vital importance to the applicant to know what the decision had been based on. Moreover, the importance of the outcome of the appeal was crucial to the applicant as the decision concerned his means of subsistence. A more elaborate reasoning should have accompanied a decision reducing his pension to half of its previous amount.

B. The Court's assessment

30. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see the *García Ruiz v. Spain* judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 26; and the Helle v. Finland judgment of 19 December 1997, *Reports* 1997-VIII, §§ 59 and 60). A lower court or authority in turn must give such reasons as to enable the parties to make effective use of any existing right of appeal.

31. In the present case, the Court observes that the first part of the reasons given by the Pension Board merely referred to the relevant provisions of law, indicating the general conditions under which an employee is entitled to receive pension. In the second part of the reasoning it was mentioned that the applicant's mental state had deteriorated during the autumn of 1997, the symptoms of his illness, however, being considered

mild. On these grounds the Pension Board found the applicant partly capable of working as from 1 June 1997. While this brevity of the reasoning would not necessarily as such be incompatible with Article 6, in the circumstances of the present case the decision of the Board failed to satisfy the requirements of a fair trial. In view of the fact that the applicant had earlier received a full invalidity pension, the reference to his deteriorating state of health in a decision confirming his right to only a partial pension must have left the applicant with a certain sensation of confusion. In these circumstances the reasoning cannot be regarded as adequate.

32. Nor was the inadequacy of the Board's reasoning corrected by the Insurance Court which simply endorsed the reasons for the lower body's decision. While such a technique of reasoning by an appellate court is, in principle, acceptable, in the circumstances of the present case it failed to satisfy the requirements of a fair trial. As the applicant's main complaint in his appeal had been the inadequacy of the Pension Board's reasoning, the more important was it that the Insurance Court give proper reasons of its own.

33. Taking into account what was at stake for the applicant, the Court considers that the *prima facie* contradictory reasoning by the Pension Board and the subsequent approval of such inadequate reasoning by the Insurance Court as an appellate body failed to fulfil one of the requirements of a fair trial. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed the sum of 163,142 Finnish Marks (FIM) in compensation for the pecuniary damage arising from the loss of his pensions during the period from 1 January 1997 until 31 December 1998, and FIM 100,000 for non-pecuniary damage arising from the suffering and distress caused by the alleged violation. In this respect the applicant emphasised that the proceedings at issue lasted over three years and that the time passed has added to the distress and suffering to the whole family.

36. The Government submitted that there was no causal link between the facts in respect of the alleged violation of Article 6 § 1 of the Convention

and the alleged pecuniary damage. Therefore, no compensation under this heading could be awarded.

In so far as the applicant had claimed FIM 100,000 for non-pecuniary damage, the Government agreed that a reasonable compensation under this heading should be awarded in case the Court was to find a violation of Article 6 § 1 of the Convention. The amount claimed by the applicant was, however, considered grossly excessive by the Government which regarded the sum of FIM 10,000 as a reasonable compensation. The Government, however, left it finally to the Court's discretion to award the applicant just satisfaction under this heading on the basis of the Court's case-law in similar cases.

37. The Court cannot speculate as to the outcome of the domestic proceedings if the requirements of Article 6 had been complied with. In view of this, there is no causal link between the violation and the alleged pecuniary damage. On the other hand, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be made good by the mere finding of a violation. The Court, making its assessment on an equitable basis, awards the applicant FIM 20,000 in respect of non-pecuniary damage, dismissing the remainder of the applicant's claims for just satisfaction.

B. Costs and expenses

38. The applicant claimed the sum of FIM 4,636 in respect of the costs he had incurred for his representation before the domestic courts and FIM 8,820.20 in respect of the costs he had incurred for his representation before the Court, the total sum of his legal expenses thus being FIM 13,456.20.

39. The Government accepted the claimed amount to be reasonable as such. As part of the applicant's application was declared inadmissible by the Court in its decision of 12 December 2000, the costs and expenses related to that complaint could not, however, be awarded. The Government left it to the Court's discretion to rule on the applicant's costs and expenses on an equitable basis.

40. Making its assessment on an equitable basis and taking into account the fact that the applicant's complaint concerning the alleged non-communication of some documents was declared inadmissible, the Court awards the applicant FIM 10,000 in respect of the proceedings before the Court and for domestic costs together with any relevant value added tax.

C. Default interest

41. 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, the following amounts:
      (i) 20,000 (twenty thousand) Finnish marks in respect of non-pecuniary damage;
      (ii) 10,000 (ten thousand) Finnish marks in respect of costs and expenses, together with any value-added tax that may be chargeable;
   (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 27 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President