



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

FOURTH SECTION

CASE OF ELO v. FINLAND

(Application no. 30742/02)

JUDGMENT

STRASBOURG

26 September 2006

FINAL

26/12/2006

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 Elo v. Finland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 December 2005 and on 5 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 30742/02) 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, Mr Jani Matti Kalevi Elo (“the applicant”), on 7 August 2002.

2. The applicant, who had been granted legal aid, was represented by Mr Jarmo Kinnunen, a lawyer practising in Espoo. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged that his rights under Article 6 of the Convention had been violated on account of the lack of an oral hearing before the Insurance Court.

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.

5. By a decision of 13 December 2005, the Court declared the application admissible.

6. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1974 and lives in Rauma, Finland.

8. The applicant worked as a sheet-iron worker. He had graduated from secondary school and had received training in technical design. He had also taken a course in management with the intention of carrying on his father's sheet-iron business. On 17 October 1996 he was involved in an accident at his place of work. He sustained injuries to his legs and heels. After the accident he commenced business studies at a university in 1999.

9. An insurance company granted the applicant an allowance for 100% reduction of his working capacity for the period from 18 October 1996 to 16 October 1997. The same insurance company also granted the applicant an industrial injury pension for the period from 17 October 1997 to 31 August 1999.

10. On 27 June 2000 the insurance company gave two decisions regarding the applicant's further insurance claims. It granted the applicant an allowance for one year for studies which would upgrade his skills in technical design. He was also granted funding for a half year's support training for finding a job.

11. The insurance company also granted the applicant inconvenience compensation (*haittaraha, menersättning*; "compensation") and found that the injuries sustained to the applicant's right leg and heel corresponded to the category 3 disability (*haittaluokka, invaliditetsklass*; "category"; see paragraph 24 below).

12. The applicant appealed to the Accident Board (*tapaturmalautakunta, olycksfallsnämnden*) about the said decisions. He requested, *inter alia*, that his compensation be graded at category 7 (instead of 3). For this purpose, he submitted two medical opinions written by his doctors, H. and A., in which the applicant's injuries were assessed as being comparable to category 6 or 7 injuries.

13. The applicant requested an oral hearing in order to present evidence in support of his view on how his injuries should be graded. In particular, the applicant wanted Drs H. and A. to be heard concerning the facts on which they based their estimation of the injuries. The applicant also wanted to give an oral statement about the handicaps in his everyday life due to his injuries.

14. The Accident Board requested further written arguments from the insurance company, which objected to an oral hearing. The Accident Board then requested the applicant to present his written observations on the insurance company's arguments. The applicant submitted further arguments in support of his view on the grading of his injuries.

15. On 5 April 2001 the Accident Board rejected the applicant's claim and his request for an oral hearing, reasoning that the proceedings before it were usually written. It noted that Drs H. and A. had already submitted their written statements to the Accident Board and, thus, there was no need for an oral hearing.

16. The applicant appealed to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*), again claiming a higher (category 7) grading of his injuries. He also requested an oral hearing, repeating his wish to have Drs H. and A. heard as witnesses concerning his disability in movement and standing in order to assess the disability category to which he was entitled. He requested that the latter question be examined from the wider perspective of the condition of the "lower extremities as a whole" and not from the more restricted perspective of the injuries to his heels and ankles.

17. The Insurance Court received further observations from the parties regarding their demands and a new medical opinion. On 19 June 2002 the Insurance Court upheld the decision of the Accident Board and rejected the applicant's request for an oral hearing, reasoning that the procedure in the Insurance Court was as a general rule written and that an oral hearing in the present case was unnecessary. It found that given the medical opinions submitted, the applicant's entitlement to compensation had to be based on the evaluation of the injuries sustained to his heels and ankles, in which assessment it was satisfied with the written medical evidence. The Insurance Court maintained that the various medical reports at its disposal were sufficient evidence without the need to have them confirmed under oath. It further noted that the hearing of the applicant in person was not necessary as the decisive factor in the decision-making was the medical reports.

18. There was no appeal against the decision of the Insurance Court.

II. RELEVANT DOMESTIC LAW

19. The procedure in the Accident Board and the Insurance Court is governed by the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslag*; Act no. 586/1996), which entered into force on 1 December 1996. Section 9 of the Insurance Court Act (*laki vakuutusoikeudesta, lag om försäkringsdomstolen*; Act no. 14/1958, as amended by the Act no. 278/1999), as in force at the relevant time, provided that the Administrative Judicial Procedure Act was to be applied when examining a matter in the Insurance Court unless otherwise stipulated.

20. On 1 May 2003 the new Insurance Court Act (*vakuutusoikeuslaki, lag om försäkringsdomstolen*; Act no. 132/2003) entered into force. Under section 16 of the Act the Insurance Court shall hold an oral hearing as provided in section 38 of the Administrative Judicial Procedure Act.

21. Under section 37 of the Administrative Judicial Procedure Act an oral hearing, in which witnesses and experts may be heard and other evidence obtained, shall be held when necessary for establishing the facts of the case. Under section 38 an oral hearing must be held if requested by a private party. An oral hearing may however be dispensed with if the application is dismissed without considering its merits or if an oral hearing would be manifestly unnecessary in view of the nature of the matter or for another reason.

22. Section 5 of the Insurance Court Act, as in force at the relevant time, provided that a medical doctor participated in the decision-making in the Insurance Court in cases where a medical assessment was deemed necessary.

23. Section 18a, paragraph 1 of the Accident Insurance Act (*tapaturmavakuutuslaki, lag om olycksfallsförsäkring*; Act no. 608/1948 as amended by Act no. 1642/1992) provides that inconvenience compensation shall be paid to an employee who, *inter alia*, has suffered permanent injuries as a result of an accident.

24. The grading of injuries is based on the decision of the Ministry of Social Affairs and Health (*sosiaali- ja terveystministeriö, social- och hälsovårdsministeriet*; decision No. 23.12.1986/1012; “Ministry’s decision”), according to which injuries and disabilities are divided into 20 disability categories. The applicable category is determined by choosing an equivalent or comparable injury on the scale of injuries. For example, an amputation of instep bones corresponds to category 3 and an amputation of an ankle or an entire foot corresponds to category 4-5. In cases where the above scale of specific injuries cannot be applied, a more general title, for example “the lower extremities as a whole”, may be used. In such a case, minor insufficiency in movement corresponds to category 0-5 and medium insufficiency category 6-10.

The quality and extent of the injuries are taken into consideration in the assessment. On the other hand, personal circumstances, such as a profession, are not material. The injured person's abilities are compared with the abilities of a healthy person of the same age.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained that the lack of an oral hearing had constituted a violation of his rights under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. The submissions of the parties

1. The Government

26. The Government contended that in the present case there were circumstances which justified dispensing with a hearing. The grading of an injury was based solely on the quality of the injury or disability, not on the personal circumstances of the injured person. This technical method of qualification of injuries was aimed at treating similar types of injuries equally. Hence, hearing the applicant personally was unnecessary. Furthermore, the applicant was represented by counsel throughout the written proceedings.

27. As to the hearing of Drs H. and A., the Government observed that they had provided several medical opinions on the applicant's injuries, which were all available to the Accident Board and the Insurance Court. It was the responsibility of the doctors to provide thorough, objective written certificates, including all relevant findings as well as the results of the treatment given. These certificates listed the details necessary for reaching a decision on the grading of the applicant's injuries. Further, it was the role of the doctor member of the Insurance Court to assess the legality of the decision based on the medical opinions provided for the purposes of an appeal. He or she ensured that all applicants were treated equally in the assessment of the medical opinions.

28. The Government considered that the present case could be distinguished from *Salomonsson v. Sweden* (no. 38978/97, 12 November 2002) in that the doctors agreed on the applicant's injuries, the sole question being to determine the disability category to which the applicant's injuries corresponded. The medical doctors could state their opinion, but it was for the authorities to make the actual classification based on the medical statements as well as on the practice and guidelines on the grading of injuries. In the present case the assessment was based entirely on the written evidence.

29. Finally, the issue at hand was very technical, being based on medical certificates. There was nothing to indicate that any questions of fact or law which might have emerged could not have been adequately resolved on the basis of the case file and the written observations of the applicant. In the Government's view, no additional information could have been gathered by hearing either the applicant personally or the doctors treating him.

2. *The applicant*

30. The applicant maintained that the main issue in his application was the substantial disagreement about the determination of the proper disability category. He was of the opinion that the specific scale of injuries in the Ministry's decision was not applicable in his case as it did not include a comparable injury. His injury could not be compared to an amputation of instep bones or the entire foot, for example. He argued that his disability meant that he could not walk long distances. Therefore the disability category should have been determined by using a title based on a more general assessment of his injuries, *i.e.* the functional disability of “the lower extremities as a whole”.

31. For the same reason, in the applicant's view the assessment of the grading of his injuries could not have been made solely by reference to written documents. Finally, he noted that his intention had not been to claim additional compensation for the disruption to his everyday life, but only to present his arguments properly before the Insurance Court.

B. The Court's assessment

32. The Court reiterates at the outset that the entitlement to a “public hearing” in Article 6 § 1 necessarily implies a right to an “oral hearing”. However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be done explicitly or tacitly, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66; and *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58).

33. In the present case, the applicant specifically requested an oral hearing before the Accident Board and the Insurance Court. Thus, no question arises as to whether or not the applicant waived his right thereto. It remains to be examined whether the circumstances of the applicant's case were such as to justify the absence of an oral hearing.

34. The Court recalls that in proceedings before a court of first and only instance there is normally a right to a hearing (see *Håkansson and Sturesson v. Sweden*, cited above, p. 20, § 64). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36). Accordingly, unless there are exceptional circumstances that

justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance.

35. A hearing may not be necessary, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations (see, *inter alia*, *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Lundevall v. Sweden*, no. 38629/97, § 34, 12 November 2002; *Salomonsson v. Sweden*, cited above, § 34, 12 November 2002; and *mutatis mutandis*, *Fredin v. Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22; and *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44).

36. The Court reiterates that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court not to the frequency with which such issues come before the courts. This does not mean that refusing to hold an oral hearing may be justified only in rare cases (see *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005). Thus, the Court has recognised that disputes concerning benefits under social-security schemes are generally rather technical and their outcome usually depends on the written opinions given by medical doctors. Many such disputes may accordingly be better dealt with in writing than in oral argument. Moreover, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security cases (see *Schuler-Zgraggen v. Switzerland*, cited above, pp. 19-20, § 58).

37. Turning to the particular circumstances of the present case, the Court observes that the jurisdiction of the Accident Board and the Insurance Court was not limited to matters of law but also extended to factual issues. The issue before them was whether the applicant's injuries attained the category 7 disability on the scale of injuries and whether his injuries could have been assessed under the general title "the lower extremities as a whole" as alleged by the applicant. The question is whether hearing oral evidence from the applicant and the doctors treating him could have produced anything relevant and decisive which was not already encompassed in the written evidence and submissions. The Accident Board found an oral hearing manifestly unnecessary. Nor did the Insurance Court find an oral hearing necessary as the decisive factor for reaching a decision in the applicant's case was the medical opinions on the applicant's injuries.

38. The Court observes that under the Ministry's decision the personal circumstances of a claimant are not taken into account when assessing the disability category to be attributed. Thus the Accident's Board's and Insurance Court's assessments were entirely based on the medical evidence in the case, presented in the form of written medical certificates issued by

the applicant's doctors. The medical certificates on which the applicant relied supported his claim. It does not appear that the doctors' opinions differed (see, *mutatis mutandis*, *Döry v. Sweden*, cited above, § 42). The Court sees no reason to differ from the finding of the Insurance Court that the applicant's entitlement to compensation had to be based on the evaluation of the injuries sustained to his heels and ankles, which assessment could be made on the basis of the written medical evidence. Further, there is no indication that a hearing was needed in order to hear oral testimony (see *Ringel v. Sweden* (dec.), no. 13599/03, 23 March 2004).

39. In these circumstances, it must be concluded that the dispute in the case concerned the correct interpretation of written medical evidence. The Court considers that the Accident Board and the Insurance Court could adequately resolve this issue on the basis of the medical certificates before them and the applicant's written submissions.

40. Having regard to the foregoing, the Court finds that there were circumstances which justified dispensing with a hearing in the applicant's case.

41. There has accordingly been no breach of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President