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

FOURTH SECTION

CASE OF KUKKONEN v. FINLAND

(Application no. 57793/00)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

07/09/2007

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 Kukkonen v. Finland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 16 May 2006 and on 15 May 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 57793/00) 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 Hannu Kukkonen (“the applicant”), on 27 March 2000.

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

3. The applicant alleged, in particular, that he was denied a fair hearing within the meaning of Article 6 of the Convention on account of the Insurance Court's failure to provide him with an opportunity to comment on some documents which were included in his case file.

4. By a decision of 16 May 2006, the Court declared the application partly admissible.

5. 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

6. The applicant, who is a carpenter by profession, was born in 1967 and lives in Helsinki.

7. On 31 January 1994 the applicant had an accident at work. He sustained a splinter fracture of his left elbow which later developed into degenerative arthritis. The insurance company paid him an occupational injury pension (*tapaturmaeläke, olycksfallspension*) until 31 May 1996.

8. The applicant applied to have the pension continued from 1 June 1996 onwards. On 8 May 1996 the insurance company rejected his application finding that the applicant's working capacity had been reduced by less than 10%. It further held that the applicant's inability to return to his previous profession as a carpenter was not based on the injury to his left arm, but on his neck and shoulder pains which had not been caused by the accident.

9. The applicant appealed to the Accident Board (*tapaturmalautakunta, olycksfallsnämnden*), repeating his requests. He relied on a medical opinion dated 13 May 1996 in which he was found to be unfit for carpentry work as well as an another medical opinion dated 4 June 1996. He submitted two further medical opinions dated 28 June 1996 and 19 January 1996 respectively.

10. The Accident Board rejected his appeal on 13 March 1997 by four votes to one. It ruled, *inter alia*, as follows:

> "[t]he medical opinions at its disposal show that the strain tolerance of [the applicant's] left elbow was reduced due to the limitations on moving it and its susceptibility to pain. Therefore he is incapable of full-time carpentry work. ... In the work-testing project (*työkokeilututkimus, arbetsprövning*) no plan for vocational education was tested due to [the applicant's] pain. [The applicant's] neck and head pains were not caused by the accident and therefore cannot be compensated under the Act on Accident Insurance."

11. The applicant, represented by a lawyer, appealed to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) submitting further evidence. The Insurance Court received several other documents, for example medical opinions and case histories of the applicant. The insurance company gave its opinion, to which the applicant replied.

12. On 17 November 1998 the Insurance Court rejected the bulk of his appeal. It however modified the Accident Board's decision so as to grant the applicant a 100% occupational injury pension for the period 20 May to 19 June 1997, during which the applicant had participated in a work-testing project.

13. Having telephoned the Insurance Court, the applicant was told that his case file consisted of over 1,000 pages of material. He acquainted

himself with the case file at the office of the court's registry and found three documents, which allegedly had not been communicated to him by the Insurance Court. In his application for leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) he claimed, *inter alia*, that he had not been sent all the documents relevant to his case.

14. The Supreme Court refused the applicant leave to appeal on 21 October 1999.

15. On 27 March 2000 the applicant, using an extraordinary procedure, requested the Supreme Court to annul its decision and that of the Insurance Court. He argued that the latter court had failed to send him documents, including a hand-written memorandum dated 9 October (year not indicated) written by a lawyer of the insurance company concerning her telephone conversation with an employee of the Insurance Rehabilitation Association (*Vakuutuskuntoutus VKK r.y., Försäkringsbranschens Rehabilitering r.f.*, "the Association"). The note included, *inter alia*, the following comments: "[the applicant] does not consider pain rehabilitation possible" and "[the applicant] is currently awaiting the Insurance Court's decision". On 22 January 2002 he submitted that the case file had also included an assessment and rehabilitation advice by the Association dated 11 April 1995 and 8 February 1996, respectively, which had not been sent to him.

16. On 13 November 2003 the Supreme Court rejected his application by a majority. It found that the non-communicated documents related to decision-making within the insurance company and that it remained unclear when and how the memorandum was included in the case file, which was exceptionally voluminous. In any event, the non-communicated documents were not submitted to the court in connection with either of the parties' submissions relied on in evidence by them or by the court in reaching its decision. One of the Justices considered that the three documents mentioned by the applicant were not entirely irrelevant to the proceedings before the Insurance Court. In his view, the Insurance Court had made a procedural error and concluded that the applicant had not received a fair trial within the meaning of Article 6 of the Convention.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that he had been denied a fair hearing within the meaning of Article 6 § 1, which, insofar as relevant, reads as follows:

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

1. The parties' submissions

18. The applicant maintained that the proceedings had not been adversarial as his case file before the Insurance Court had included several documents which he had not seen before a decision had been taken in his case. In particular, there was a memorandum written by an insurance company lawyer, which included several inaccuracies and arguments irrelevant to the court proceedings. In his view the phrase “[the applicant] does not consider pain rehabilitation possible” not only gave misleading information about his willingness to take part in pain rehabilitation but also a negative impression of him. He alleged that an officer of the insurance company had told him that “the memorandum was submitted to the Insurance Court because it was considered to reveal considerable further information on the matter”. In the applicant's view the memorandum had had an effect on decision-making in the Insurance Court.

19. The Government, referring to the decision of *Ylipää v. Finland* (no. 21357/93, 29 November 1995), contested the applicant's claim that he had been placed at a disadvantage *vis-à-vis* the insurance company. The applicant had identified only one non-communicated document. That document, in the Government's view, had not had any bearing on the proceedings, being an individual's note of a telephone conversation, not a reasoned opinion on the merits of the applicant's case. The Government further observed that the applicant, who was represented by a lawyer, had not substantiated his complaint about the non-communication of other documents submitted to the Insurance Court, nor had he specified how the undisclosed document might have affected the fairness of the proceedings.

2. The Court's assessment

20. The Court recalls that the fairness of proceedings must be assessed with regard to the proceedings as a whole (*Dallos v. Hungary*, no. 29082/95, § 47, ECHR 2001-II). One of the elements of the broader concept of a fair trial is the principle of equality of arms, which requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among many other authorities, *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 107-08, § 23). That right means in principle the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision (*Lobo Machado v. Portugal*, judgment of 20 February 1996, *Reports* 1996-I, p. 206, § 31). Nor is the position altered when the

observations are neutral on the issue to be decided by the court (*Göç v. Turkey* [GC], no. 36590/97, § 55, ECHR 2002-V), or in the opinion of the court concerned, the observations do not present any fact or argument which has not already appeared in the impugned decision. Only the parties to a dispute may properly decide whether this is the case; it is for them to say whether or not a document calls for their comments (*Nideröst-Huber*, cited above, § 29).

21. In the instant case it is undisputed that following the applicant's appeal to the Insurance Court, the insurance company submitted its observations to that court. The observations were communicated to the applicant and he filed a reply. It is likewise common ground that after the Insurance Court's decision, the applicant acquainted himself with the case file and found some documents which had not been sent to him during the proceedings. In his application to this Court the applicant identified one such document. Consequently, the Court will examine whether the omission to transmit this document to the applicant by the Insurance Court amounted to a violation of Article 6 § 1.

22. The Court observes at the outset that the impugned document was a half-page personal note, hand-written by an insurance company lawyer following a telephone conversation with an official of the Insurance Rehabilitation Association. The note was not explicitly addressed to the Insurance Court, nor was it signed. The note was dated "9/10", without stating the year. As it was mentioned in the note that "[the applicant] is currently awaiting the Insurance Court's decision", the Court considers it plausible that it had been written in October 1997 or 1998 when the applicant's case was pending before the Insurance Court. It still remains unresolved when and how the note was included in the applicant's case file. Most likely, the note was in the file before the Insurance Court reached its decision. However, there is no indication in the documents or in the Insurance Court's decision that the note would have been a document relied on by the insurance company in the proceedings (see *Bendenoun v. France*, judgment of 24 February 1994, Series A no. 284, § 52, *Walston v. Norway*, no. 37372/97, § 64, 3 June 2003).

23. Further, the question to be decided by the Insurance Court was whether or not the applicant was entitled to an accident pension from 1 June 1996 onwards, *i.e.* whether his working capacity was reduced by less than 10% at that time. Whatever the purpose of the hand-written note, it referred to the applicant's attitude at the time it was written.

24. The Court finds that the instant case is to be distinguished from cases such as *Fortum Corporation v. Finland* (no. 32559/96, § 41, 15 July 2003), *K.S. v. Finland* (no. 29346/95, § 22-23, 31 May 2001) and *K.P. v. Finland* (no. 31764/96, § 26-27, 31 May 2001), in which the Court found a violation on account of a failure to communicate an opposing party's opinion. In those cases the non-communicated documents constituted

reasoned opinions on the merits of the applicant's appeals, manifestly aimed at influencing the court's decision-making. In the two latter cases the opposing party also called for the appeals to be dismissed. Likewise, in the case of *Lomaseita Oy and Others v. Finland* (no. 45029/98, § 37, 5 July 2005) the Court found a violation of Article 6 § 1 on account of the failure to communicate to the applicants material in which the other party had expressed his opinion on the relevance of the supplementary police report and the additional legal submission to the Court of Appeal, thereby intending to influence the court's judgment.

25. The Court does not consider that the note in the instant case constituted a reasoned opinion on the merits of the applicant's appeal nor was it such a piece of evidence or an observation, filed with the Insurance Court by the other party (the insurance company), with a view to influencing that court's decision. The applicant's lack of knowledge of the note did not adversely affect his ability to challenge the insurance company's and Accident Board's decision before the Insurance Court.

The Court is not therefore persuaded that there was any procedural unfairness as regards the manner in which the applicant's case was examined in the Insurance Court.

26. Accordingly, there has 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 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY	Nicolas BRATZA
Registrar	President