



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

FOURTH SECTION

CASE OF KUKKONEN v. FINLAND (no. 2)

(Application no. 47628/06)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Kukkonen v. Finland (no. 2),

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 47628/06) 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 29 November 2006.

2. The applicant 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. On 10 January 2008 the President of the Fourth Section decided to communicate to the Government the complaint concerning the length of the applicant’s civil proceedings. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Helsinki.

5. On 30 January 1994 the applicant had an accident at work. The insurance company paid him an occupational injury pension until 31 May 1996.

6. 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 work 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 the result of the injury sustained during the accident, but of pains which had not been caused by the accident.

7. In June 1996 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. He also submitted further medical opinions. The Board rejected his appeal on 13 March 1997. It ruled, *inter alia*, that he was incapable of full-time carpentry work. However, the applicant's pains were not caused by the accident and therefore could not be compensated under the Employment Accidents Act.

8. The applicant, represented by a lawyer, appealed to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) submitting further evidence. On 17 November 1998 the court rejected the bulk of his appeal. However, it modified the Accident Board's decision so as to grant the applicant a 100% occupational injury pension for the period from 20 May to 19 June 1997, during which the applicant had participated in a work-testing project. The case was referred back to the insurance company for further measures.

9. On acquainting himself with his case file at the office of the Insurance Court's registry, he found three documents which he claimed had not been communicated to him. 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.

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

11. 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.

12. On 13 November 2003 the Supreme Court rejected his application. It found that the non-communicated documents related to decision-making within the insurance company and that the documents had not been submitted to the court in connection with the parties' submissions or relied on by the court in reaching its decision.

13. On 27 March 2000 the applicant lodged an application (no. 57793/00) with the European Court against Finland. He alleged, in particular, that he had been denied a fair hearing within the meaning of Article 6 of the Convention on account of the failure to provide him with an opportunity to comment on some documents which had been included in his case file. On 7 June 2007 the Court held unanimously that there had been no violation of Article 6 § 1 of the Convention.

14. Meanwhile, the case was pending before the insurance company. On 7 February 2000 the insurance company decided that the new medical evidence submitted was not capable of changing the conclusions of the

Accident Board in its decision of 13 March 1997. The insurance company found that, even though the applicant was incapable of full-time carpentry work, he was capable of other work.

15. On 9 March 2000 the applicant appealed to the Accident Board against the insurance company's decision. In his appeal, which became pending before the Accident Board on 26 July 2000, he requested compensation for total incapacity for work. On 28 May 2002 the Board held an oral hearing. On 26 September 2002 it modified the insurance company's decision, changing the applicant's handicap allowance category from 3 to 5 and ordering the insurance company to pay him a 50% occupational injury pension for the period from 16 May 2002 to 31 May 2004. As concerned the time after that date, the case was referred back to the insurance company. The Board found that the applicant was still capable of working in another profession where his earnings could reach about half the level of his earnings before the accident. The Board referred to his relatively young age and the number of years that he could expect to work.

16. The applicant appealed to the Insurance Court, repeating his requests. On 14 June 2005 the court ordered the insurance company to pay the applicant a 50% occupational injury pension for the period from 26 June 2001 to 31 May 2004 and rejected the remainder of the claims. Referring to several medical opinions, the court estimated that the applicant's ability to work had been reduced from 26 June 2001 onwards, when he started treatment for pain.

17. The applicant appealed to the Supreme Court which, on 5 June 2006, refused leave to appeal.

II. RELEVANT DOMESTIC LAW

18. According to section 53c (893/1994) of the Employment Accidents Act (*tapaturmavakuutuslaki, lagen om olycksfallsförsäkring*), an appeal against a decision of an insurance company must be submitted to the company in question. If the company cannot change the decision appealed against, it must refer the case, together with its opinion, to the Accident Board within a period of 30 days from the end of the appeal period or, if the time-limit has been extended, at the latest within a period of 60 days from the end of the period of appeal.

THE LAW

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

19. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings had been incompatible with the “reasonable time” requirement, that the Supreme Court had refused leave to appeal and its decision in this respect had not been reasoned, and that the Accident Board’s and the Insurance Court’s decisions had not been sufficiently reasoned.

20. Article 6 § 1 of the Convention, in its relevant part, reads as follows:

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

21. The Government contested these arguments.

A. Admissibility

22. The Court notes that the complaint about the excessive length is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

23. The applicant also complained that the Supreme Court had refused leave to appeal and that its decision, as well as the decisions of the Accident Board and the Insurance Court, had not been sufficiently reasoned.

24. As to the proceedings in the Supreme Court, the Court observes that these related only to the question of whether or not the court should grant the applicant leave to appeal. Even assuming that Article 6 § 1 applied to this type of proceedings, the Court reiterates that the extent to which the duty to give reasons applies may vary according to the nature of the decision at issue (see *Helle v. Finland*, 19 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII). Where a supreme court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention. This principle extends to the Supreme Court’s decisions on applications for leave to appeal (see *Nerva and Others v. the United Kingdom*, no. 42295/98, ECHR 2002-VIII). The Court considers that, in the present case, it was not necessary for the Supreme Court to give more detailed reasons for its decision.

25. The Court notes that its task is not to examine whether the applicant should have been granted leave to appeal. This question is primarily a matter for regulation by national law and it is, in principle, for the national courts to assess the grounds for granting such leave. The Court’s task is to

ascertain whether the proceedings as a whole were fair (see, for example *Doorson v. the Netherlands*, 26 March 1996, § 67, *Reports of Judgments and Decisions* 1996-II).

26. As to the reasoning of the Accident Board's and the Insurance Court's decisions, the Court reiterates that Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument. Nor is the European Court called upon to examine whether arguments are adequately met (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). The Court notes that both the Accident Board and the Insurance Court referred to several medical opinions in their reasoning, and made an overall conclusion thereon. The decisions were thus sufficiently reasoned.

27. The Court finds that the matters complained of do not disclose any appearance of a violation of the applicant's rights set out in Article 6 § 1 of the Convention. It follows that these complaints must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Merits

28. The Government submitted that the period to be taken into consideration began on 26 July 2000 when the applicant's appeal became pending before the Accident Board. The Court points out that in civil matters the reasonable time may begin to run, in certain circumstances, even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute. This is the situation, *inter alia*, when the applicant cannot seize a competent court before having the lawfulness and the expediency of impugned administrative acts examined in preliminary proceedings before an administrative authority (see *König v. Germany*, 28 June 1978, § 98, Series A no. 27).

29. In the present case, the applicant appealed to the Accident Board against the insurance company's decision on 9 March 2000 (see paragraphs 15 and 18 above). The Court finds that the proceedings began on that date. They ended on 5 June 2006 when the Supreme Court refused leave to appeal. Consequently, they lasted almost six years and three months for three levels of jurisdiction.

30. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court reiterates that special diligence is necessary in pension disputes (see *H.T. v. Germany*, no. 38073/97, § 37, 11 October 2001).

31. The Government maintained that the applicant had submitted new medical opinions and statements to the Accident Board and Insurance Court and that these submissions had prolonged the proceedings. Although the proceedings before the Insurance Court had lasted over two years, there had been no periods of inactivity. The Government submitted that the proceedings had not been very complex but that the many submissions by the parties had rendered them procedurally more complicated. The case file had been more voluminous than an average case and both courts had voted on the outcome of the case. The Government maintained that the outcome of the case had been partly in the applicant's favour due to the time that had elapsed as the applicant's capacity to work could be assessed over a longer period of time.

32. The applicant maintained that the case had been important to him as it concerned his ability to earn his living. It had been necessary for him to submit new medical opinions but that had not prolonged the proceedings. There had been no progress in the Insurance Court during 2003. The court could have decided the case in the spring of 2004, but it had not done so. The applicant contested the Government's argument that his submissions had rendered the case more complicated. The fact that the outcome of the case had been partly favourable to him did not justify the excessive length of the proceedings.

33. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

34. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage. He claimed that he did not receive any pension before the Accident Board rendered its decision.

37. The Government contested the claim, finding that it was excessive as to *quantum* and contending that the award should not exceed EUR 2,000.

38. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,500 under that head.

B. Costs and expenses

39. The applicant also claimed EUR 640 for the costs and expenses incurred before the Court.

40. The Government considered the applicant's claim, if inclusive of value-added tax, reasonable.

41. The Court reiterates that an award under this head may be made only in so far as the costs and expenses were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, among other authorities, *Hertel v. Switzerland*, judgment of 25 August 1998, § 63 *Reports* 1998-VI). In the present case, regard being had to the information in its possession, the above criteria and the fact that the application was examined under the joint procedure provided for under Article 29 § 3 of the Convention, the Court considers it reasonable to award the applicant the claimed amount in full (inclusive of value-added tax).

C. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 640 (six hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President