



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

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1959 · 50 · 2009

FOURTH SECTION

**CASE OF KAURA v. FINLAND**

*(Application no. 40350/05)*

JUDGMENT

STRASBOURG

23 June 2009

**FINAL**

***23/09/2009***

*This judgment may be subject to editorial revision.*



**In the case of Kaura v. Finland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

## PROCEDURE

1. The case originated in an application (no. 40350/05) 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 Seppo Vihtori Kaura (“the applicant”), on 10 November 2005.

2. The applicant was represented by Mr Jari Kattelus, a lawyer practising in Seinäjoki. 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 the length of the proceedings had been excessive and that his right to a fair trial had been violated as the Insurance Court had not organised an oral hearing.

4. On 23 June 2008 the President of the Fourth Section decided to give notice of the application to the Government. 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

5. The applicant was born in 1966 and lives in Louko.

6. The applicant had been unemployed since 13 November 1999 and had applied for unemployment benefit. On 28 September 2000 the Social

Insurance Institution (*Kansaneläkelaitos, Folkpensionsanstalten*) decided to refuse benefit for the period from 4 September to 2 November 2000. According to section 9, subsection 1, of the Act on Unemployment Benefits (*työttömyysturvalaki, lag om utkomstskydd för arbetslösa*), if an unemployed person's own behaviour has caused an employment contract not to be concluded, he or she has no right to unemployment benefit for two months. According to the Social Insurance Institution, the applicant's own behaviour had meant that the intended employment contract, which was to last for more than five days, had not been concluded on 4 September 2000. As the applicant had not given a valid reason for not accepting the work offered to him, the benefit was refused.

7. On 26 October 2000 the applicant appealed to the Unemployment Appeal Board (*työttömyysturvalautakunta, arbetslöshetsnämnden*), claiming that the Social Insurance Institution's decision had been based on incorrect information. He claimed that he had spoken with the employer in September 2000 but that no starting date for the work had been agreed upon. He denied having at any point refused to accept the offered work. On the contrary, he claimed that in early September he had offered to take the job. In late September he had contacted the employer on two occasions but the employer had not yet decided who to employ. He claimed to have told the employer many times that he would be available for the job offered. The applicant requested that the Unemployment Appeal Board ask the employer to submit a written statement of his account of the facts.

8. On 15 March 2001 the Unemployment Appeal Board rejected the appeal. It found that the applicant had not contacted the employer immediately after having heard that the employer had called him in early September and that, due to this delay, the employment contract could not be concluded. The unemployment benefit could thus be refused. It rejected the applicant's request concerning the written statement as unnecessary.

9. The applicant appealed to the Insurance Court (*vakuutusoiikeus, försäkringsdomstolen*), reiterating his grounds and, in particular, pointing out that the case had not been adequately established as no written statement had been requested from the employer.

10. On 5 September 2002 the Insurance Court quashed the Unemployment Appeal Board's decision and referred the case back to it for a new examination. It found that in this case it was essential to find out what the employer and the applicant had agreed regarding the starting date and the modalities of the employment contract. The case had thus not been adequately established.

11. On 5 December 2003 the Unemployment Appeal Board, after having acquired a written statement from the employer and a reply from the applicant, rejected the appeal. It found that the employer had called the applicant and that they had agreed to meet. The applicant had not come to the meeting and the employer had not been able to reach him by telephone.

The employer had left a message for the applicant but he had been told that the applicant would be absent for a week. The unemployment benefit could thus be refused.

12. On 14 January 2004 the applicant appealed to the Insurance Court requesting, *inter alia*, that an oral hearing be held in order to hear witnesses.

13. On 2 June 2005 the Insurance Court, without holding an oral hearing, upheld the Unemployment Appeal Board's decision. It found that an oral hearing was not necessary as it would not have added anything to what was already in the case file. As to the merits of the case, it found that the applicant should have contacted the employer immediately after having heard that he had tried to reach him in early September. Due to this delay, the employment contract could not be concluded and the unemployment subsidy could thus be refused.

## II. RELEVANT DOMESTIC LAW

14. According to section 38, subsection 1, of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslagen*, Act No. 586/1996, as amended by Act No. 433/1999), an administrative court shall conduct an oral hearing if a private party so requests. The same applies to the Supreme Administrative Court where it is considering an appeal against the decision of an administrative authority. The oral hearing requested by a party need not be conducted if the claim is dismissed without considering its merits or immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.

15. According to section 39, subsection 4, of the Unemployment Security Act (*työttömyysturvalaki, lagen om utkomstskydd för arbetslösa*, Act No. 602/1984, as amended by Act No. 301/1999) in force at the relevant time, the Administrative Judicial Procedure Act applies also to the proceedings before the Unemployment Appeal Board.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LENGTH OF PROCEEDINGS

16. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which 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...”

17. The Government contested that argument.

### **A. Admissibility**

18. The Court notes that this complaint 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.

### **B. Merits**

19. The period to be taken into consideration began on 26 October 2000 when the applicant appealed to the Unemployment Appeal Board and ended on 2 June 2005 when the Insurance Court delivered a final decision in the case. It thus lasted some four years and seven months at two levels of jurisdiction, both of which twice.

20. 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 employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

21. The Government pointed out that the case had not been complex but had concerned certain social benefits which had been of personal significance for the applicant. The second set of proceedings before the Unemployment Appeal Board had lasted fifteen months in total due to the fact that, despite numerous requests, the written statement from the employer, a private person not party to the proceedings, had not been received by the Board until 17 October 2003. The Board had requested the statement twice through the Seinäjoki Labour Commission (*työvoimatoimikunta, arbetskraftskommissionen*), on 9 October 2002 and 27 March 2003, and again on 10 September 2003 directly from the employer. On this last occasion the employer had been given a strict two-week time-limit to submit the statement which he had finally done on 17 October 2003, more than one month later. The delay of more than a year in obtaining the written statement from a private person could not be attributed to the Government. Moreover, the applicant himself had requested that the case be referred back to the Unemployment Appeal Board.

22. The applicant maintained that the Unemployment Appeal Board had functioned inefficiently and slowly in the matter. The Board had also been too passive even though it had had at its disposal the employer's contact information. The request to refer the case back to the Board had been justified and reasonable. The Government had been under a duty to clarify the circumstances of the case.

23. 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).

24. 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. The Court notes that national courts must *ex officio* clarify the circumstances of the case, to the extent needed in each case. Moreover, the Contracting States are under a duty to organise their legal systems in such a way that their courts can meet the requirements of Article 6 § 1 of the Convention, including the obligation to decide cases within a reasonable time (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II).

25. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LACK OF AN ORAL HEARING

26. The applicant also complained under Article 6 § 1 of the Convention that he had not had a fair trial due to the fact that the Insurance Court had not organised an oral hearing. Article 6 § 1 of the Convention reads, in its relevant parts, as follows:

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

27. The Government contested that argument.

### A. Admissibility

28. The Court notes that this complaint 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.

## B. Merits

29. The applicant pointed out that in the present case the crucial question was the credibility of the witness statements, not any technicality. An oral hearing would have had crucial importance for the proceedings. The need to request an oral hearing had only become apparent after the applicant had received the employer's written statement. The credibility of the evidence could not have been assessed only on the basis of the written documents as the statement of the applicant and that of the employer were completely contradictory.

30. The Government maintained that the applicant had requested the oral hearing only at a very late stage of the proceedings and he could thus be regarded as having waived his right to an oral hearing. The Insurance Court had found that an oral hearing had not been necessary as the facts of the case could be properly determined on the basis of the employer's written statement. In the Insurance Court's view, the employer's written statement and the applicant's reply thereto had largely been consistent with each other.

31. The Court reiterates at the outset that the entitlement to a "public hearing" in Article 6 § 1 in principle 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 may be explicit or tacit, 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*, 21 February 1990, § 66, Series A no. 171-A; and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263).

32. In the present case, the applicant specifically requested an oral hearing before the Insurance Court. The fact that he did so only at a late stage of the proceedings and after having seen the employer's written statement does not mean that he waived his right to an oral hearing. It remains to be examined whether the circumstances of the applicant's case were such as to justify the absence of such a hearing.

33. The Court reiterates 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, § 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*, 29 October 1991, § 36, Series A no. 212-A). 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. A hearing may not be necessary, for example when it raises no question 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*, no. 38978/97, § 34, 12 November 2002; and *mutatis mutandis*, *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A; and *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312).

34. In the present case, the Court notes at the outset that no public hearing was held at any stage of the proceedings.

35. It remains to be examined whether a departure from the principle that there should be such a hearing could, in the circumstances of the case, be justified by the special features of the domestic proceedings viewed as a whole. In order to decide on this question, regard must be had to the nature of the Finnish legal system, to the scope of the Insurance Court's powers and to the manner in which the applicant's interests were actually presented and protected before the Insurance Court, particularly in the light of the nature of the issues to be decided by it (see, *mutatis mutandis*, *Ekbatani v. Sweden*, 26 May 1988, § 28, Series A no. 134).

36. The Court observes that the Insurance Courts' jurisdiction is not limited to matters of law but also extends to factual issues. Under section 38, subsection 1, of the Administrative Judicial Procedure Act, an administrative court shall conduct an oral hearing if a private party so requests. The oral hearing need not, however, be conducted if the claim is dismissed without considering its merits or immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.

37. The applicant claimed that in the present case the crucial question had not been a technicality but the credibility of the witness statements, which had been contradictory. The Court agrees with this view. For the Insurance Court the crucial question was whether or not the applicant's own behaviour had caused an employment contract not to be concluded. Nevertheless, the Insurance Court decided, without a public hearing, to uphold the Unemployment Appeal Board's decision. The Court finds that, in the circumstances of the instant case, the question of the credibility of the statements of the persons involved could not, as a matter of fair hearing, be properly determined without a direct assessment of the evidence given in person by the applicant as well as the employer.

38. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the refusal to hold an oral hearing in the Insurance Court.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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**

40. The applicant claimed 983.41 euros (EUR) plus interest in respect of pecuniary damage and EUR 5,000 plus interest in respect of non-pecuniary damage.

41. The Government contested the claim for pecuniary damage, considering that there was no causal link between the alleged violations of Article 6 § 1 of the Convention and any pecuniary damage suffered by the applicant. As to the claim for non-pecuniary damage, the Government considered that the applicant’s claim was excessive as to *quantum* and that the award should not exceed EUR 2,500 in total.

42. The Court does not discern any causal link between the violation found in respect of the length of proceedings and the pecuniary damage alleged. Nor can it speculate as to what the outcome of the proceedings before the Insurance Court would have been if the latter had held an oral hearing. Accordingly, no pecuniary damage can be awarded (see *Bakker v. Austria*, no. 43454/98, § 36, 10 April 2003). However, the Court is satisfied that the applicant has suffered distress and frustration resulting from the breaches of Article 6 § 1 of the Convention, which cannot be sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 under this head.

### **B. Costs and expenses**

43. The applicant also claimed EUR 1,915.40 (including value added tax) for the costs and expenses incurred before the Court.

44. The Government considered that the total amount of compensation for costs and expenses was reasonable but, if need be, the amount should be reduced accordingly, depending on the nature and extent of the violation of Article 6 § 1 found.

45. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full.

### C. Default interest

46. 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. *Declared* the application admissible;
2. *Held* that there has been a violation of Article 6 § 1 of the Convention in respect of the excessive length of the proceedings;
3. *Held* that there has been a violation of Article 6 § 1 of the Convention in respect of the lack of an oral hearing;
4. *Held*
  - (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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 1,915.40 (one thousand nine hundred and fifteen euros and forty cents), plus any tax that may be chargeable, 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;
5. *Dismissed* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President