CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38742/97
by Jorma ANTIKAINEN
against Finland

The European Court of Human Rights, sitting on 18 October 2001 as a Chamber composed of

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

Having regard to the above application introduced with the European Commission of Human Rights on 8 August 1997 and registered on 25 November 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the decision of 19 September 2000 to communicate the application to the respondent Government,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Jorma Antikainen, is a Finnish national, born in 1942 and living in Joensuu. He is represented before the Court by Mr U.Väänänen, a lawyer practising in Joensuu.

Commented [Note1]: To be checked.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is a professional race horse trainer who participates in trotting races with his own horses and/or horses trained by him. On 9 November 1996 a horse called *Brisco Vencedor*, which was trained by the applicant, tested positive in a doping-test at the Kouvola Race.

On 18 December 1996 the Board of Directors of Hippos (*Suomen Hippos r.y., Finlands Hippos r.f*; the Central Organisation for Finnish Horse Racing and Breeding*.)* suspended the applicant and *Brisco Vencedor* from racing for a period of six months (from 2 December 1996 until 1 June 1997). The suspension order included racing, training a horse as its official trainer and enrolment of a horse in a race. The prize money of 30,000 Finnish Marks (FIM) won by *Brisco Vencedor* in Kouvola was withdrawn and the prize money of 20,000 FIM won by the same horse in the Vermo Race earlier was ordered to be refunded to the race organiser. The applicant's request to be heard before the Board of Directors and to hold an oral hearing was refused.

On 31 December 1996 the applicant appealed against the Board of Directors' decision to the Race Court (*ravituomioistuin, travdomstolen*), requesting an oral hearing. The applicant insisted that it would have been important to hear witnesses about the circumstances in which the doping-test was taken and the methods used.

On 14 May 1997 (i.e. two weeks before the suspension order ended) the Race Court rejected the applicant's appeal without holding an oral hearing.

The applicant has not instituted any proceedings before ordinary courts.

B. Relevant domestic law and practice

Horse racing (in the present case, in particular, trotting) is administered in Finland by Hippos, a registered association to which the Act on Associations (*yhdistyslaki, föreningslag*; 1989/503) is applied. The Board of Directors of Hippos ratifies the trotting regulations to be followed in the trotting races in Finland. Rule 40 of the above-mentioned regulations deals with questions concerning doping, medical substances and punishment for breaching the rule. According to Rule 40, the punishment for a breach of the said rule is determined by the Board of Directors of Hippos. If the length of such a punishment exceeds three months, the decision may be appealed against to the Race Court. The Members of the Race Court are appointed by the Delegation of Hippos.

According to the Act on Associations, an association must have rules which fulfil all the conditions given in the Act. The lawfulness of the rules of an association are examined by the Association Register *(yhdistysrekisteri, föreningsregistret)* at the time of the registration of the association. According to Section 32 of the Act on Associations, a member of an association may institute proceedings against the association before ordinary courts if he considers a decision of the association to be unlawful.

Hippos only allows other associations as it members. Private persons are members of such associations instead of being members of Hippos itself and have, thus, no right to institute proceedings against Hippos.

In its decision of 14 October 1998 the Supreme Court (KKO 1998:122) observed that a manifest and sufficient need for legal protection constitutes a ground for bringing a case concerning a suspension order given by a sports association before a court to obtain a decision on merits. The Supreme Court further reasoned that such a need for legal protection arises when the suspension order has "such significant financial and other effects as are usually not involved in the membership of an association". In the said case the District Court had issued its decision on 22 May 1996 and the Court of Appeal on 24 October 1996.

The decision of 25 November 1998 of the Supreme Court (KKO 1998:143) did not concern the legitimacy of a suspension order but a request to have enforcement of a suspension order repealed as an interim measure in the ordinary court. The Supreme Court found that the repealing of the enforcement of a suspension order fell within the scope of application of Chapter 7, Section 3 of the Code on Judicial Procedure, providing for interim measures. In the said case the District Court had issued its decision on 29 October 1997.

COMPLAINTS

1. The applicant complains, under Article 6 § 1 of the Convention, that

a) he did not have a right to fair and public hearing as both the Board of Directors of Hippos and the Race Court refused to hold an oral hearing, and as he was denied the right to defend himself properly during the disciplinary proceedings in question;

b) he was suspended from his profession for six months by a decision of a tribunal which was neither independent nor impartial as the members of the Board of Directors of Hippos as well as those of the Race Court were nominated and appointed by Hippos;

c) the proceedings before the Race Court exceeded a reasonable time as the Race Court's decision was given only two weeks before the suspension ended; and

2. The applicant further complains, under Article 13 of the Convention, that he had no effective remedy before a national authority. There is neither an appeal against the Race Court's decision nor a possibility to lodge proceedings regarding the substance of the present case before an ordinary court, as the authorities are not competent to intervene with the internal decisions of an association of a private nature, i.e. such as Hippos. Neither had he an opportunity to request that the suspension order not be executed pending the final domestic decision.

THE LAW

1. The applicant complains, under Article 6 § 1 of the Convention that he did not have a fair trial as there was no oral hearing, he was denied his right to defend himself properly, the Board of Directors of Hippos as well as the Race Court were neither independent nor impartial, and as the proceedings before the Race Court exceeded a reasonable time.

Article 6 § 1 reads, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Government denied the applicability of Article 6 in the applicant's case, observing that the procedures before the Board of Directors of Hippos or the Race Court were not directly decisive for the applicant's private rights.

The Court, however, does not find it necessary to examine whether Article 6 is applicable in the present case as the application is in any event to be declared inadmissible for the following reasons.

The applicant argued that the Board of Directors of Hippos and the Race Court are both biased and partial as the members of the latter are appointed by the Board of Directors of Hippos. As there are no established principles concerning the court's possibility to examine and decide actions brought by members of an association against disciplinary matters, an action before the ordinary courts would therefore have not been an effective remedy. It was also stressed by the applicant that it should be taken into account what was at stake for him as he had been prevented from practising his profession.

The applicant stressed that he had to consider the existence or non-existence of an effective domestic remedy in the light of the domestic case-law as it was in 1996 and in the summer of 1997. The Finnish Supreme Court's first decision in respect of matters relating to suspensions given to athletes was made only on 25 November 1998 (KKO 1998:143). As of August 1997, to the applicant's knowledge, no injunction had ever been issued in any Finnish case to suspend the enforcement of a suspension

imposed on an athlete, coach or trainer. This holds true for the lower courts as well. The Supreme Court decided on 14 October 1998 (KKO 1998:122), that an ordinary court could consider, in certain respects, the question of an athlete's use of performance-enhancing substances. One of the Supreme Court's judges had, however, voted against such a finding. In the summer of 1997 the possibility that an ordinary court would have examined a matter of this kind was thus completely unclear in the terms of both case-law and legal practice.

The applicant stressed that it could not be considered his responsibility to test the Finnish legal system. Domestic legislation or, at least, domestic case-law and legal practice must be adequately clear and effective from the standpoint of both private citizens and the implementation of human rights. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice.

The Government contested the applicant's allegations and observed that the applicant had not exhausted all the available domestic remedies in the present case. They noted that the Associations Act and the Code on Judicial Procedure (*oikeudenkäymiskaari, rättegångs balken*) do not contain explicit provisions on the ordinary courts' competence to examine and decide on actions belonging to the internal affairs of associations, including disciplinary measures. This does not, however, mean that an ordinary court would lack competence. According to the legal doctrine and national case-law of the Supreme Court, the applicant could, if necessary, have brought the matter before the ordinary courts. In the legal doctrine it has been considered that an ordinary court should at least examine whether a disciplinary measure has been manifestly unreasonable. The domestic case-law on disciplinary measures imposed by associations has partly developed after the introduction of the applicant's present application. The Government further emphasised that the District Court of Helsinki had, by the time of the introduction of the present application, already given its decision of 22 May 1996, which was later upheld by the Supreme Court (KKO 1998:122, mentioned above), according to which the imposition of a suspension order was a matter for the ordinary courts to examine.

The Government argued that, under Finnish law, the applicant had the right to bring an action against Hippos before an ordinary court in respect of the suspension order, and to request the court to repeal the suspension order as a protective measure under Chapter 7, Section 3, of the Code of Judicial Procedure. In principle, this would have been possible both before and after the Race Court issued its decision. Thus, the applicant himself left the matter to be decided by the internal decision-making body of Hippos. The Government emphasised that where the legal situation is unclear, and when the decision of the association adequately affects the *de facto* position of the person in question, a disciplinary matter can and should be brought before an ordinary court. They observed that there were no specific reasons

absolving the applicant from the requirement to exhaust the court remedy referred to above.

The Court recalls, in accordance with its established case-law, that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, the Vernillo v. France judgment of 20 February 1991, Series A no. 198, § 27; and the Johnston and Others v. Ireland judgment of 18 December 1986, Series A no. 112, § 45).

The Court notes that, while it is true that the Act on Association or the Code on Judicial Procedure do not provide any provisions on appeal against an association's decision in respect of a disciplinary measure, it is also true that the domestic case-law allows such an appeal, or has allowed it at least since October 1998. The Court, however, notes that the first decisions in respect of matters relating to suspensions given to athletes were given by the District Court of Helsinki in May 1996 and by the Court of Appeal in October 1996. As the Board of Directors' decision in the applicant's case was given on 18 December 1996, and the subsequent appeal to the Race Court was also made in December 1996, the applicant should have been aware at least of the Court of Appeal's decision which was available to the public, *inter alia*, in Finlex, which is a Finnish case-law database and which includes important decisions given by courts of appeal. The applicant, who was assisted by legal counsel, could therefore be regarded as having had access to relevant information in respect of the domestic practice. Thus, the Court does not accept that the applicant could have been excused from exhausting domestic remedies available to him.

Accordingly, the Court is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 as, under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must be rejected under Article 35 § 4 of the Convention.

2. The applicant also complains, under Article 13 of the Convention, that he had no effective remedy before a national authority as there is no appeal against the Race Court's decision.

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court notes that, as the applicant's first complaint made under Article 6 § 1 of the Convention was rejected as the applicant had not exhausted the domestic remedies available to him under Finnish law, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

It follows that this part of the application must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President