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. 30742/02
by Jani Matti Kalevi ELO
against Finland

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 7 August 2002,

Having regard to the partial decision of 20 January 2004,

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, Mr Jani Matti Kalevi Elo, is a Finnish national, who was born in 1974 and lives in Rauma, Finland. He is represented before the Court by Mr Jarmo Kinnunen, a lawyer practising in Espoo, Finland. The respondent Government are represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

A. The circumstances of the case

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

The applicant worked as a sheet-iron worker. He had graduated from secondary school and he had taken one and a half years' training in technical design. He had also taken a four months' 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 the applicant commenced business studies at a university in 1999.

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.

On 27 June 2000 the insurance company gave two decisions regarding the applicant's further insurance compensation claims. The insurance company granted the applicant an allowance for one year starting from 1 September 1999 for studies which would upgrade the applicant's skills in technical designing. The applicant was also granted funding for a half years' support training for finding a job. The insurance company held that due to his health the applicant was incapable of working as a sheet-iron worker but that he could continue working as a technical designer, for which he was trained. The company also held that it was possible for the applicant to use the one and a half years' benefit for his university studies. However, the company did not agree to fund the applicant's university studies directly.

In a second decision on 27 June 2000 the insurance company decided to grade the compensation at scale 3.

The applicant appealed to the Accident Board (*tapaturmalautakunta, olycksfallsnämnden*) about the said decisions. He demanded, *inter alia*, the quashing of the decisions on 27 June 2000 and full reimbursement of the expenses of his university studies and a higher grading of his compensation. He supported his claim with reference to his youth (24 years) and stated that his prior educational and work history did not exclude university studies from the scope of the educational expenses. He asserted that he had never

worked as a technical designer. He also demanded that his compensation be graded at scale 7 (instead of 3). For this purpose, the applicant submitted two medical reports in which the compensation was evaluated to be at scale 6 or 7 respectively.

The applicant requested an oral hearing in order to present evidence in support of his view of the grading of the compensation. In particular, the applicant wanted two medical doctors (A and H) to be heard concerning the facts on which they based their estimation of the grading of the compensation. The applicant also wanted to give an oral statement himself about the handicaps in his everyday life due to his injuries.

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 supporting his view of the grading of the compensation.

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

The applicant appealed to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*), again requesting full reimbursement of the expenses of his university studies and a higher (scale 7) grading of his compensation. He also requested an oral hearing as he wanted himself as well as medical doctors A and H to be heard as witnesses concerning his disability in movement and standing and concerning the grading of his compensation. He demanded that the latter question be examined from the wider perspective of the condition of his lower limbs in general and not from the more restricted perspective of the condition of his heels and ankles.

The Insurance Court received further observations from the parties regarding their demands and a new medical report. On 19 June 2002 the Insurance Court 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 was unnecessary as the court had decided to examine the grading of the applicant's compensation on the basis of his heels and ankles, in which assessment it was satisfied with the written medical evidence. The Insurance Court maintained that the several medical reports at its disposal were sufficient evidence without their confirmation 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. It also upheld the decision of the Accident Board. There was no appeal against the judgment of the Insurance Court.

B. Relevant domestic law

Compensation

Section 18a, paragraph 1 of the Accident Insurance Act (*tapaturmavakuutuslaki, lag om olycksfallsförsäkring*, 608/1948) provides that compensation shall be paid to an employee who, *inter alia*, has suffered permanent injuries from an accident.

Section 5 of the Act on Compensation of Rehabilitation Expenses pursuant to the Accident Insurance Act (*laki tapaturmavakuutuslain perusteella korvattavasta kuntoutuksesta, lag on rehabilitering son ersätts enligt lagen om olycksfalls försäkring*, 625/1991) provides for reimbursement of such necessary rehabilitation expenses aimed to maintain or enhance a person's working and/or earning capacity, which help the person to continue at his/her previous work or profession despite his/her injuries or sickness, or which help the person to start a new profession capable of supporting the person.

Pursuant to paragraph 2 of the said section, the person's age, prior working activities, education, living conditions, handicaps caused by the injury or the sickness and the person's chances of finding a job according to normally applicable recruitment conditions after rehabilitation shall be taken into account when assessing his/her need for rehabilitation.

Grading of injuries

According to the decision issued by the Ministry of Social Affairs and Health (*sosiaali- ja terveysministeriö, social- och hälsovårdsministeriet*) on 23 December 1986 (23.12.1986/1012), injuries and disabilities are divided into 20 categories. The grade of injuries is determined by choosing an equivalent or comparable injury on the scale. In cases where for specific reasons the scale of specific injuries cannot be applied, a more general title, for example lower limbs as a whole, may be used. For the determination of the grade of injuries the quality and extent of the injuries are taken into consideration. The assessment of the comparable injuries in a formalised way, according to the scale, is intended to ensure a uniform determination of the disability suffered. The injured person's degree of disability is compared with the abilities of a healthy person of a same age.

Procedure

The procedure in the Accident Board is governed by the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslag,* 586/1996), which entered into force on 1 December 1996. Section 53 paragraph 6 of the Accident Insurance Act (*tapaturmavakuutuslaki, lag om olycksfallsförsäkring*, 608/1948, as amended by act 297/1999) provides that

the Administrative Judicial Procedure Act shall be applied when examining a case in the Accident Board if not otherwise stipulated. An oral hearing shall be held when necessary according to section 37 of the said Act.

Section 37 of the said Act provides that an oral hearing, in which for example parties, witnesses and experts may be heard, shall be held when necessary.

Section 38 paragraph 1 of the said Act provides that an oral hearing must be held if requested by a private party. An oral hearing may however be dispensed with if a party's demand is ruled inadmissible or immediately dismissed or if an oral hearing would be clearly unnecessary due to the nature of the case or other circumstances.

The explanatory part of the Government Bill to the Administrative Judicial Procedure Act (HE 217/1996) considers the right to oral hearing as provided by Article 6 of the Convention and the possibility in administrative matters to dispense with the hearing when it would be clearly unnecessary, as stated in Section 38 paragraph 1 of the said Act. According to the Government Bill an oral hearing contributes to the centralised and direct procedure but since it does not always bring any added value, it must be ensured that the flexibility and cost effectiveness of the administrative procedure is not undermined. An oral hearing is to be held when it is necessary for the clarification of the issues and the hearing can be considered beneficial for the case as a whole.

The procedure in the Insurance Court is also governed by the Administrative Judicial Procedure Act. Under section 9 of the Insurance Court Act (*laki vakuutusoikeudesta, lag on försäkringsdomstolen*, 14/1958), as in force at the relevant time, the Administrative Judicial Procedure Act shall be applied when examining a case in the Insurance Court if not otherwise stipulated.

Section 5 of the Insurance Court Act, as in force at the relevant time, provides that the members of the Insurance Court include a medical doctor in cases where medical assessment is necessary.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that he did not receive a fair hearing as the Insurance Court rejected his request for an oral hearing.

THE LAW

The applicant complained that he was denied an oral hearing before the Insurance Court. He complained of a violation of Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

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

The Government contended that in the present case there were circumstances which justified dispensing with a hearing and thus that there was no violation of Article 6 § 1. They were of the opinion that the relevant consideration was whether the decision-making was based on appropriate and sufficient information. They argued that the grading of an injury or disability was based solely on the quality of the injury or disability, not on the personal circumstances of the applicant. Hence they were of the view that hearing the applicant would have been unnecessary for clarification.

The Government submitted that the medical statements provided by the applicant's two doctors since 1996 on the applicant's injuries and on their treatment were available to the Accident Board and the Insurance Court. They further emphasised that the applicant was given an opportunity to provide additional written statements and additional medical certificates to them after his request for an oral hearing was denied. They pointed out that the applicant provided written statements and current medical certificates which, however, did not include any reasons for changing the previous grading of the injuries. Furthermore, the applicant was represented by a counsel throughout the proceedings and he could thus not be considered to have had difficulties in arguing his case in writing and submitting arguments as he saw fit.

Finally the Government observed that the issue at hand was very technical, being based on medical certificates. There was nothing to indicate that questions of fact or law would have emerged which 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 the applicant personally or the doctors, who had already provided several reports during the entire length of applicant's treatment.

The applicant pointed out that there was substantial disagreement concerning the right category of disability, *i.e.* the functional disability of the lower extremities. He was of the opinion that the scale of injuries was not applicable in his case as his disability could not be compared to an amputation of the instep bones, for example. He argued that his disability meant that he could not walk long distances, and therefore he considered that the degree of disability should have been estimated not by using a scale of specific injuries but rather by using a title based on more general

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

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President