CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 59578/00
by Mirja ILVESVIITA-SALLINEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 22 June 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 4 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Mirja Ilvesviita-Sallinen, is a Finnish national, who was born in 1942 and lives in Tampere. She is not represented before the Court.

A. The circumstances of the case

The facts of the case, as submitted by the applicant and as they appear from the documents, may be summarised as follows.

On 4 July 1994, the applicant had an accident in the street and suffered injuries to her head and right shoulder.

An insurance company granted the applicant a daily allowance (*päiväraha, dagpenning*) for 100 % reduction of her working capacity until 3 July 1995 and a disability pension (*tapaturmaeläke, olycksfallspension*) for 100 % reduction of her working capacity from 4 July 1995 to 29 February 1996.

By its decision of 19 February 1996 the insurance company granted the applicant a further disability pension for 100 % reduction of her working capacity for March 1996. As to the period 1 April 1996 onwards, it considered that the injuries sustained in the accident reduced the applicant's working capacity by less than 10 %. The company alleged that other medical problems rendering the applicant incapable of working had not been caused by the said accident. It also rejected the application for disability compensation (*haittaraha, menersättning*) as it considered that the accident had not caused a permanent disability of the minimum level required for compensation.

The applicant appealed to the Accident Board (*tapaturmalautakunta, olycksfallsnämnden*).

On 1 July 1996 the Accident Board rejected the appeal, giving the following reasons:

> "According to section 18a (1) of the Accident Insurance Act (*tapaturmavakuutuslaki, lagen om olycksfallsförsäkring,* 608/1948) disability compensation shall be paid to an employee, who is not entitled to a daily allowance and who as a result of an accident has suffered a permanent general disability due to injury or illness.
>
> A general disability is to be considered as permanent when the injury or the state of illness will not improve according to medical probability.
>
> According to ... section 1 (1), the lowest level 1 disability is applicable only to eye and finger injury and illness. As to other kinds of injury, disabilities that do not attain level 2 cannot be assessed due to their minor nature.
>
> According to the medical information presented in the case, the applicant is not suffering from a permanent general disability attaining level 2.

> According to the information presented in the case, the scratches on the applicant's forehead, the strain in her right shoulder, forearm and shoulder joint reduce the working capacity by less than 10 % after 31 March 1996. Thus, the applicant is not entitled to an accident pension after that date. As for the injuries sustained in the accident, she is to be considered to be fit to work as a typist and a salesperson in her own company as from 31 March 1996.
>
> The applicant's incapacity to work and the medical expenses as from 31 March 1996 have been caused by a chronic symptom complex, depression, insomnia and scoliosis, which do not relate to the accident and which do not give rise to an entitlement to accident compensation.
>
> ..."

The applicant appealed to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*), claiming, *inter alia*, a disability pension as from 1 April 1996. She underlined, referring to several medical reports, that the chronic symptom complex was caused by the accident.

On 10 February 1998 the Insurance Court upheld the Accident Board's decision, giving the following reasons:

> "The reasons mentioned in the Accident Board's decision. The submitted new evidence does not give rise to different conclusions. The Insurance Court finds, having regard to the new evidence, that the displacement of the shoulder blade did not result from the accident and therefore it does not give rise to an entitlement to compensation based on the Accident Insurance Act."

The applicant sought leave to appeal from the Supreme Court, which requested observations from the National Board of Medicolegal Affairs and observations in reply from the insurance company and the applicant. At this point the applicant requested that the Supreme Court hold an oral hearing with a view to hearing her physician H. She also wanted to be heard in person. The applicant filed several further submissions. By its decision of 7 December 1999 the Supreme Court refused leave to appeal.

Subsequently, apparently in June 2000, the applicant lodged an application for an annulment, *inter alia*, on the strength of evidence that had not been at the courts' disposal during the previous proceedings. She requested on oral hearing with a view to hearing physicians as witnesses. She also wanted to be heard in person. By its decision of 3 May 2001 the Supreme Court transferred the application to the Insurance Court. By its decision of 3 September 2002 the Insurance Court, refusing the request for on oral hearing as manifestly unnecessary having regard to the character of extraordinary appeal proceedings, rejected the application for an annulment as it considered that there were no grounds for re-examining the case. The applicant sought leave to appeal, maintaining that she had the right to an oral hearing. On 10 June 2003 the Supreme Court refused leave to appeal.

B. Relevant domestic law and practice

1. Disability pension

According to section 18a (1) of the Accident Insurance Act (*tapaturmavakuutuslaki, lagen om olycksfallsförsäkring,* 608/1948) disability compensation shall be paid to an employee, who is not entitled to a daily allowance and who as a result of an accident has suffered a permanent general disability due to injury or illness.

Pursuant to section 18 (2) a person is entitled to a disability pension, if her working capacity has been reduced by at least 10 % due to an injury or an illness caused by an accident.

2. Procedure

Section 33 of the Act on Judicial Procedure in Administrative Matters (*hallintolainkäyttölaki, förvaltningsprocesslagen*; 586/1996) provides that an appellate body must ensure that a case is examined properly. Subsection 2 provides that an appellate body must invite necessary further material of its own motion when the interests of justice, equality of arms or the nature of the case so require.

Section 34 (1) provides that a party must be afforded a possibility to give her opinions on submissions made by parties or received from other sources and on other material which may influence the outcome of the matter.

Section 53 (1) of the Accident Insurance Act provides that appellate bodies in accident insurance matters are the Accident Board, the Insurance Court and the Supreme Court. Section 1 of the Decree on the Accident Board (*asetus tapaturmalautakunnasta, förordningen om olycksfallsnämnden*; 839/1981) provides that the Accident Board functions as the first appeal instance in matters concerning obligatory accident insurance.

Section 9 (1) of the Insurance Court Act (*laki vakuutusoikeudesta, lagen om försäkringsdomstolen*; 14/1958, as in force at the relevant time) provided that proceedings in the Insurance Court were written. When there were exceptional reasons, the Insurance Court could however decide to hold an oral hearing.

Section 9 (2-3) contained provisions concerning, e.g., witness examination before the Insurance Court. Subsection 4 provided that in other respects proceedings in the Insurance Court were governed by provisions applicable to district courts.

Chapter 24, section 15 of the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångbalken*; 4/1734, as in force at the relevant time) provided that a judgment should be reasoned. It was required that it indicate the facts and legal argumentation on which the decision was based.

The judgment also had to contain an account of the reasoning which led the court to hold a disputed issue established or unsubstantiated.

3. Reservation to the Convention

According to the reservation made by Finland in accordance with Article 64 of the Convention, as in force at the relevant time, Finland could not guarantee a right to an oral hearing in so far as Finnish laws at the time of the events at issue did not provide such a right. This applied, *inter alia*, to proceedings which were held before the Insurance Court as the court of final instance, in accordance with section 9 of the Insurance Court Act (14/1958), and proceedings before the Supreme Court in accordance with chapter 30, section 20 of the Code of Judicial Procedure. Finland withdrew the reservation on 1 April 1999.

COMPLAINTS

1. The applicant complains that the Insurance Court prior to deciding the case on 10 February 1998 failed to inform her that it did not have a tactile bar chart relating to a "thermo test" at its disposal.

2. In addition, she complains that the Insurance Court failed to communicate to her additional notes in a medical report written by her physician S.

3. She also complains that prior to refusing leave to appeal on 7 December 1999 the Supreme Court did not request additional observations from the National Board of Medicolegal Affairs after the applicant had submitted a medical report from her physician.

4. The applicant furthermore complains that the Accident Board and the Insurance Court did not hold an oral hearing of their own motion and that the Supreme Court refused her request that such a hearing be held.

5. Moreover, she complains that the decisions by the domestic authorities were not duly reasoned. In particular, they failed to reason adequately why they had disregarded the medical reports favouring the applicant's case.

6. Finally, she complains that the proceedings that ended on 7 December 1999 were exceedingly long.

The applicant invokes Article 6 § 1 of the Convention.

THE LAW

The applicant alleges violations of Article 6 § 1 of the Convention, which provides in relevant part:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ..."

1. As to the complaint that the Insurance Court failed to inform the applicant that it did not have a tactile bar chart at its disposal when deciding the case, the Court notes that she has failed to show that she relied on the test in question as evidence. The Court finds no indication of any shortcomings by the Insurance Court in relation to this issue.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that the Insurance Court failed to communicate to her additional notes in a medical report by her physician S.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant complains that the Supreme Court should have requested further observations from the National Board of Medicolegal Affairs.

The Court recalls that an examination under Finnish law as to whether leave to appeal to the Supreme Court shall be granted only amounts to an examination as to whether the conditions under chapter 30, section 3 (1) of the Code of the Judicial Procedure are fulfilled. It does not amount to an examination of the merits of the appeal. The leave to appeal examination by the Supreme Court did not, therefore, involve a determination of the applicant's civil rights within the meaning of Article 6 § 1 of the Convention (see *T.H. and S.H. v. Finland*, no. 19823/92, Commission decision of 9 February 1993, unpublished).

It follows that this complaint must be rejected as incompatible *ratione materiae* pursuant to Article 35 § 3 and 4 of the Convention.

4. The applicant complains that the Accident Board, the Insurance Court and the Supreme Court did not hold oral hearings.

Having regard to the terms of the Finnish reservation, the Court notes that the scope of it was, at the relevant time, limited to relieving, *e.g.*, the Insurance Court and Supreme Court from the obligation to hold an oral hearing and consequently finds that the reservation was valid and applicable to the Insurance Court and Supreme Court in the present case (see *Helle v. Finland*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44; *Tamminen and Tammelin v. Finland*, (dec.) no. 33003/96, 28 September 1999).

As regards the Accident Board, the Court notes that the reservation did not expressly mention it. It observes, however, that in *Helle v. Finland* no violation of Article 6 § 1 of the Convention was found as an oral hearing before the Supreme Administrative Court would have sufficed to satisfy the requirements of Article 6 § 1 of the Convention in a situation where a lower judicial body had not held an oral hearing (see the above-cited judgment, §§ 45-47 and also the Commission's report of 15 October 1996, §§ 53-59). Similarly, in the present case, an obligation to hold an oral hearing cannot be re-imposed on the Insurance Court or the Supreme Court during the subsistence of the reservation's validity in order to compensate for the absence of such a hearing at a lower instance in the domestic legal order.

The Court accordingly rejects these complaints as incompatible *ratione materiae* pursuant to Article 35 § 3 and 4 of the Convention.

5 (a) The applicant complains that the Accident Board and the Insurance Court did not give adequately reasoned decisions.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

5 (b) As regards the lack of reasoning of the Supreme Court's decision to refuse leave to appeal, the Court recalls that the examination by the Supreme Court did not involve a determination of the applicant's civil rights within the meaning of Article 6 § 1 of the Convention (see *T.H. and S.H. v. Finland*, cited above).

It follows that this complaint must be rejected as incompatible *ratione materiae* pursuant to Article 35 § 3 and 4 of the Convention.

6. Insofar as the applicant complains that the length of the proceedings exceeded a reasonable time, the Court observes that the Accident Board issued its decision on 1 July 1996, the Insurance Court on 10 February 1998 and the Supreme Court on 7 December 1999. The case-file does not indicate when the case became pending before the Accident Board: however, the contested decision of the insurance company was dated 19 February 1996. In these circumstances the Court finds that there is no indication of a failure to comply with the reasonable time requirement in Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning alleged non-communication by the Insurance Court and the reasoning of the Accident Board's and the Insurance Court's decisions;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President