AS TO THE ADMISSIBILITY OF

Application No. 23532/94
by Sulo JUNTUNEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 August 1993 by Sulo Juntunen against Finland and registered on 24 February 1994 under file No. 23532/94;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 14 June 1995 and the observations in reply submitted by the applicant on 18 and 24 July 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Finnish citizen, born in 1930. He is resident in Tampere. He is on early retirement and placed under guardianship.

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

Particular circumstances of the case

In 1991 the applicant was hit by a car. On 13 February 1992 the City Court (raastuvanoikeus, rådstuvurätten) of Tampere convicted the perpetrator (H.), sentenced him to fines and ordered him to compensate the procedural costs incurred by the applicant.

Acccording to the applicant, who was not assisted by counsel, he had also requested compensation for damages but the City Court had refused to consider this claim. According to the Government, the applicant had failed to show that H.'s insurance company had refused to pay him compensation, for which reason the Court had been unable to

examine his claim.

The applicant's appeal was rejected by the Court of Appeal (hovoikeus, hovrätten) of Turku on 5 May 1993 and he was ordered to pay the defendant's costs for submitting a reply to his appeal. The prosecution had not appealed. On 3 August 1993 the Supreme Court (korkein oikeus, högsta domstolen) refused the applicant leave to appeal.

On 27 November 1992 the City Court replaced the applicant's guardian with M.

By letter of 22 September 1993 the City Court informed the applicant that it had requested the Guardianship Board (holhouslautakunta, förmyndarenämnden) of Tampere to institute proceedings in order to have a guardian ad litem appointed for him in respect of his intended action for damages against his guardians. At the Board's request the City Court, on 6 October 1993, appointed a guardian ad litem, a lawyer, for the purpose of bringing a possible action. The applicant had consented to the appointment.

According to the Government, the applicant soon thereafter lost confidence in his guardian ad litem, who then withdrew from the matter.

On 20 July 1993 the Social Insurance Institution (kansaneläkelaitos, folkpensionsanstalten) decided that the applicant's disability pension should be paid to M. The pension had been granted in 1975. The applicant appealed, arguing that the pension should be paid to himself. On 22 December 1993 the Appellate Board for Social Insurance (tarkastuslautakunta, prövningsnämnden) rejected the appeal after an examination of its merits. No further appeal lay open.

At the applicant's request the District Court (käräjäoikeus, tingsrätten) of Tampere (the former City Court), on 15 December 1994, appointed the Official Guardian (virkaholhooja, tjänsteförmyndare) of Tampere as his new guardian.

Relevant domestic law

1. Compensation claims relating to traffic accidents

According to the 1959 Traffic Insurance Act (liikennevakuutuslaki 279/59, trafikförsäkringslag 279/59), a compensation claim relating to the use of a motor vehicle and based on other legislation shall not be examined by a court, unless the claimant shows that the adversary's insurance company has refused to pay the compensation demanded (section 12, subsection 2).

2. The Appellate Board for Social Insurance

According to the 1963 Sickness Insurance Act (sairasvakuutuslaki 364/63, sjukförsäkringslag 364/63), the members of the Appellate Board for Social Insurance are appointed by the Council of State (valtioneuvosto, statsrådet) for a maximum of four years but with a possibility of being reappointed (section 54, subsections 2 and 3).

According to the 1964 Decree on the Appellate Board (asetus 422/64 tarkastuslautakunnasta, förordning 422/64 om prövningsnämnden), the Board consists of a Chairman, two Vice-Chairmen and fifteen further members with personal substitute members. The Chairman, the Vice-Chairmen as well as six further members must have a law degree. The Chairman and the Vice-Chairmen must also have experience as judges (section 2). The Appellate Board may sit in chambers consisting of the Chairman, two other lawyers and three further members (section 7). The casting vote both in plenary and chamber sessions rests with the Chairman (section 14).

The Council of State may, when necessary, appoint a Chairman ad interim or appoint a member to temporarily replace a member of the Board (section 6). Although the procedural rules applicable to regular courts in principle also apply to the Appellate Board, its procedure is merely written (section 8). The rules concerning a member's bias are to be found in the Code of Judicial Procedure. All members must have sworn or must swear a judicial oath before taking up office (section 9 of the 1964 Decree).

3. Protection of a ward's correspondence and possessions

Under section 12 of the 1919 Constitution Act (Suomen hallitusmuoto 94/19, Regeringsform för Finland 94/19), as in force at the relevant time, there was to be no interference with the secrecy of correspondence other than by means of an exception provided for by law. As of 1 August 1995, the secrecy of correspondence is guaranteed by section 8 of the Constitution Act, although restrictions may be imposed by law (as amended by Act no. 969/95).

Prior to its amendment as of 1 December 1995 the 1898 Guardianship Act (holhouslaki 34/1898, lag 34/1898 angående förmynderskap) contained no explicit provision concerning the screening of a ward's correspondence.

A ward's possessions shall be administered by his guardian in a manner ensuring that the property and any proceeds thereof are used for the ward's benefit (section 42 of the Guardianship Act). The ward shall have recourse to any possessions needed for his personal use as well as to a reasonable amount of cash, having regard to his needs and other circumstances. Any possessions not used for the ward's subsistence or otherwise for his needs shall be invested so as to ensure adequate preservation of their value as well as reasonable proceeds (section 43). A guardian ad litem shall be appointed for the ward, inter alia, in matters where his interests conflict or may conflict with those of the guardian (section 65).

If, for certain reasons, a pension cannot be paid directly to the person entitled thereto and no guardian has been appointed, the Social Insurance Institution may order that the pension shall be paid to the Social Welfare Board (sosiaalilautakunta, socialnämnden) or, with the pensioner's consent, to some other suitable receiver (section 44 of the 1956 Social Insurance Act (kansaneläkelaki 347/56, folkpensionslag 347/56)).

COMPLAINTS

1. The applicant complains that he was denied a fair hearing in the criminal proceedings against H., since his compensation claim was not at all examined by the courts. He was, moreover, deprived of his possessions, as in the traffic accident his moped was destroyed and he could not obtain compensation for this, allegedly since the vehicle causing the damage had not been insured. He invokes Article 6 para. 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

2. The applicant further complains that in the criminal proceedings against H. he was unlawfully ordered to compensate H.'s costs for replying to his appeal to the Court of Appeal. He invokes no express Convention provision in this respect.

3. The applicant also complains about the length of the criminal proceedings against H. He again invokes Article 6 of the Convention.

4. The applicant complains that he has been denied a public hearing of his action for damages which he considers to have instituted against his guardians in 1993. He refers to the City Court's "decision" of 22 September 1993. In his submissions of 17 April 1994 he also complains about the length of the above proceedings. He invokes

Articles 6, 17 and 18 of the Convention.

5. The applicant complains that he has been denied access to an appeal court in order to challenge the City Court's "decision" of 22 September 1993. He again invokes Articles 6, 17 and 18 of the Convention.

6. In his submissions of 11 February 1994 the applicant also complains about the absence of a right of appeal against the decision of the Appellate Board for Social Insurance of 22 December 1993. He invokes no express provision in this respect.

7. In his submissions of 20 January 1995 the applicant finally complains about interference with his correspondence. He invokes Article 8 of the Convention.

8. Finally, in his submissions of 20 January 1995 the applicant complains that his pension has been collected by his guardian M. He further alleges that out of the collected pension a monthly amount of 1.000 FIM has "disappeared", but that no police investigation has been carried out in this respect. He invokes Article 1 of Protocol No.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 August 1993 and registered on 24 February 1994.

On 5 April 1995 the Commission decided to communicate complaints nos. 1, 4, 6 and 7 to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 14 June 1995. The applicant replied on 18 and 24 July 1995.

THE LAW

1. The applicant complains that he was denied a fair hearing in the criminal proceedings against H., since his compensation claim was not at all examined by the courts. He also complains that he was deprived of his possessions, since he was allegedly unable to obtain the compensation which he had claimed. He invokes Article 6 para. 1 (Art. 6-1) of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6 para. 1 (Art. 6-1) reads, as far as relevant to the case, as follows:

> "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. ..."

Article 1 of Protocol No. 1 (P1-1) reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government principally submit that the applicant cannot claim status as a "victim" within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention of a violation of any of the above provisions. Under domestic law his claim could not be examined by the courts, since he had not shown that his adversary's insurance company had refused to pay the compensation claimed. In any case, the applicant received appropriate compensation from that company.

Leaving aside the question whether the applicant can still claim "victim" status, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention secures, inter alia, the right of access to a court (e.g., Eur. Court H.R., Philis judgment of 27 August 1991, Series A no. 209, p. 20, para. 59). This provision does not, however, debar Contracting States from making regulations, in the interests of the good administration of justice, concerning such access. Such regulations must not reduce the right of access to court to such an extent that the very essence of the right is impaired (ibid.). In the present case the Commission observes that the applicant was barred from presenting his compensation claim to the courts, since he had failed to show that his adversary's insurance company had refused to pay the requested compensation. The Commission finds that this regulation by law of the applicant's right of access to a court was in the interests of the good administration of justice and finds no indication that it was contrary to Article 6 para. 1 (Art. 6-1). Nor is there any appearance of a violation of the applicant's property rights under Article 1 of Protocol No. 1 (P1-1).

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that in the criminal proceedings against H. he was unlawfully ordered to compensate H.'s costs for replying to his appeal to the Court of Appeal. He invokes no express Convention provision in this respect.

Even assuming that Article 1 of Protocol No. 1 (P1-1) to the Convention is applicable and that domestic remedies have been exhausted, the Commission finds that the applicant has not referred to any specific element which might permit it to conclude that there has been an unjustified interference with his property rights. Accordingly, there is no appearance of any violation of Article 1 of Protocol No. 1 (P1-1).

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains about the length of the criminal proceedings against H. He again invokes Article 6 (Art. 6) of the Convention.

The Commission observes that there was no determination of any criminal charge against the applicant, but against H. Therefore Article 6 para. 1 (Art. 6-1) does not apply in its criminal aspect. In addition, the Commission has just found that the domestic courts were unable to examine the applicant's claim for compensation. They were thus unable to determinate any pecuniary and thereby "civil" right of the applicant. It follows that Article 6 para. 1 (Art. 6-1) is not applicable in its civil aspect either.

It follows that this complaint must be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

4. The applicant further complains that he has been denied a public hearing of his action for damages which he considers to have instituted

against his guardians in 1993. He refers to the City Court's "decision" of 22 September 1993. In his submissions of 17 April 1994 he also complains about the length of the above proceedings. He invokes Articles 6, 17 and 18 (Art. 6, 17, 18) of the Convention.

(a) As far as the complaint concerns the alleged lack of a hearing, the Government underline that a guardian ad litem was appointed by the City Court for the purpose of bringing a possible action for damages on the applicant's behalf. He was thus offered a possibility of gaining appropriate access to a court. He did not, however, avail himself of this possibility.

The Commission has examined this complaint under the above-cited Article 6 para. 1 (Art. 6-1) of the Convention only. It recalls that the access to a court guaranteed by this provision may be subjected to certain regulation. Moreover, this provision cannot be interpreted as including an unlimited right to have an ad hoc guardian appointed for the purpose of bringing a court action (cf., e.g., No. 10877/84, Dec. 16.5.85, D.R. 43 p. 184).

In the present case the Commission observes that a guardian ad litem was appointed for the purpose of bringing a possible court action for damages on behalf of the applicant. He was thus offered a possibility of gaining effective access to a court. He did not, however, avail himself of this possibility, apparently having lost confidence in his guardian ad litem. He has not explained his reasons therefor nor shown that he has attempted to have another guardian ad litem appointed in her place. In these circumstances the Commission finds no indication that his alleged lack of access to a court is imputable to the respondent State. Accordingly, there is no appearance of a violation of Article 6 para. 1 (Art. 6-1) on this point.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) As far as the applicant complains about the length of "the proceedings", the Commission finds that Article 6 para. 1 (Art. 6-1) is again inapplicable, since no court action has yet been brought on his behalf.

It follows that this aspect of the complaint must be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) .

5. The applicant also complains that he has been denied access to an appeal court in order to challenge the City Court's "decision" of 22 September 1993. He again invokes Articles 6, 17 and 18 (Art. 6, 17, 18) of the Convention.

The Commission has examined this complaint under the above-cited Article 6 para. 1 (Art. 6-1) of the Convention only. It considers that the letter of the City Court dated 22 September 1993 did not constitute a formal decision or judgment in which the applicant's "civil rights" were determined. Accordingly, Article 6 para. 1 (Art. 6-1) does not apply.

It follows that this complaint must also be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

6. In his submissions of 11 February 1994 the applicant also complains about the absence of a right of appeal against the decision of the Appellate Board for Social Insurance of 22 December 1993. He invokes no express provision in this respect.

The Government primarily argue that Article 6 para. 1

(Art. 6-1) of the Convention does not apply. They concede that the applicant's right to a disability pension was a "civil right" within the meaning of that provision. However, the sole issue at stake in the proceedings ending before the Appellate Board for Social Insurance was whether his pension should be paid to the applicant's guardian or to himself. According to the Government, domestic law provided that it be paid to his guardian in pursuance of section 44 of the Social Insurance Act. The applicant's guardian M.'s request to receive the pension thus gave the Social Insurance Institution and the Appellate Board very little discretion. The Government conclude that the proceedings before the Appellate Board did not determine any "civil right" of the applicant.

Subsidiarily, the Government argue that the complaint is manifestly ill-founded. The Appellate Board is a permanent body established by law. Its jurisdiction is compulsory and its composition defined by law. Half of its members are lawyers and any casting vote rests with such a member. All members must have sworn a judicial oath before taking up office. The procedure before the Appellate Board resembles that before administrative courts. The Government therefore assert that the Appellate Board was "an independent and impartial tribunal" within the meaning of Article 6 para. 1 (Art. 6-1), when examining the applicant's appeal.

Assuming that Article 6 para. 1 (Art. 6-1) is applicable, the Commission must examine whether the Appellate Board met the requirements of a "tribunal" within the meaning of that provision. In the determination of whether a body can be considered to be independent of the executive and of the parties to the case regard must be had to the manner of appointment of its members and the duration of their term of office, the existence of regulations governing their removal or guarantees for their irremovability, laws prohibiting their being given instructions by the executive in their adjudicatory role, the existence of legal guarantees against outside pressures, the question whether the body presents an appearance of independence and the attendance of members of the judiciary in the proceedings (e.g., Eur. Court H.R., Campbell and Fell judgment of 28 June 1984, Series A no. 80, pp. 39-41, paras. 78-81, with further references). The existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (e.g., Eur. Court H.R., Piersack v. Belgium judgment of 1 October 1982, Series A no. 53, p. 14, para. 30).

The Commission finds that the applicant has not referred to any specific element which might permit it to conclude that the Appellate Board for Social Insurance was not an "independent and impartial tribunal" within the meaning of Article 6 para. 1 (Art. 6-1). Insofar as his complaint may concern the absence of a right to appeal against the decision of the Board, the Commission recalls that Article 6 (Art. 6) does not guarantee any right to appeal (e.g., No. 11826/85, Dec. 9.5.89, D.R. 61 p. 138).

In this connection the Commission also recalls Article 13 (Art. 13) of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in this 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 word "remedy" in this context does not imply a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (e.g., No. 11468/85,

Dec. 15.10.86, D.R. 50 p. 199). The Commission notes that the applicant challenged the Social Insurance Institution's decision of 20 July 1993 in his appeal to the Appellate Board which was fully competent to examine it. Accordingly, there is no appearance of any violation either of Article 6 or Article 13 (Art. 6, 13) of the Convention in this particular case.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. In his submissions of 20 January 1995 the applicant also complains about interference with his correspondence. He invokes Article 8 (Art. 8) of the Convention which, as far as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government consider that the complaint is unsubstantiated. Moreover, their own investigation of the alleged screening of his correspondence has not enabled them to conclude that an interference has taken place.

The Commission recalls that in a previous case against Finland it has found a violation of Article 8 (Art. 8) of the Convention in that the screening by a guardian of a ward's correspondence was not foreseeable and thus not in accordance with the law (Ollila v. Finland, Comm. Report 30.6.93; Resolution DH (96) 3 of the Committee of Ministers). As in the Ollila case, the alleged screening in the present case also predates 1 December 1995, i.e. the date when the Guardianship Act was amended so as to include provisions concerning the conditions for such screening. However, the applicant has in no way indicated the dates or even the contents of the allegedly screened letters. In this connection the Commission bears in mind that he is unrepresented in the Convention proceedings. Nevertheless, considering the circumstances as a whole, the Commission cannot find that the present complaint has been sufficiently substantiated. Accordingly, there is no appearance of any violation of Article 8 (Art. 8) of the Convention.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

8. Finally, in his submissions of 20 January 1995 the applicant complains that his pension has been collected by his guardian M. He further alleges that out of the collected pension a monthly amount of 1.000 FIM has "disappeared", but that no police investigation has been carried out in this respect. He invokes the above-cited Article 1 of Protocol No. 1 (P1-1).

(a) As far as the complaint concerns the guardian's administration of the applicant's pension, the Commission recalls that such a measure constitutes an interference with his right to the peaceful enjoyment of his possessions. It amounts to a control of the use of his property which must be examined under the second paragraph of Article 1 of Protocol No. 1 (P1-1) as to its lawfulness, purpose and proportionality (e.g., Eur. Court H.R., Tre Traktörer AB judgment of 7 July 1989,

Series A no. 159, pp. 22-24, paras. 55-62). The Commission has previously found that such an interference with a ward's possessions was in accordance with Finnish law and in the general interest. Finally, having regard to the State's wide margin of appreciation in the field of property rights, the measure was found to be proportionate to the legitimate aim of safeguarding a ward's possessions (No. 18969/91, Dec. 30.11.92, not published). In the circumstances of the present case the Commission finds no reason to depart from this finding.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) As regards the alleged "disappearance" of certain pension amounts, the Commission observes that under section 65 of the Guardianship Act the applicant is entitled to be represented by a guardian ad litem in matters where his and his ward's interests conflict or may conflict. The applicant may therefore request the competent court to appoint such a guardian for the purposes of bringing a possible criminal complaint concerning the "disappearance" of part of his pension. The applicant has apparently not availed himself of this opportunity. In these circumstances the applicant has not yet exhausted domestic remedies, as required by Article 26 (Art. 26) of the Convention, and the Commission is not required to decide whether or not the complaint discloses any appearance of a violation of Article 1 of Protocol No. 1 (P1-1).

It follows that this aspect of the complaint must be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)