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. 31764/96
by K.P.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 16 March 2000 as a Chamber composed of

Mr G. Ress, *President,*
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
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 24 January 1996 and registered on 6 June 1996,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, a Finnish citizen born in 1941, is resident in Merikaarto, Finland.

A. Particular circumstances of the case

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

1. Proceedings under the accident insurance legislation

On 22 February 1991 the applicant suffered a whiplash injury to her neck as a result of a traffic accident. Her insurance company P paid her a disability allowance until 31 August 1991. On 22 October 1991 the insurance company refused her a further allowance, considering her disability subsequent to 31 August 1991 to be caused by other physical illnesses from which she had been suffering prior to the accident.

The Board for Accident Compensation (*tapaturmalautakunta, olycksfallsnämnden*) rejected the applicant's appeal on 4 March 1992 after having obtained an opinion from the insurance company. This opinion was not communicated to the applicant nor was it reproduced or summarised in the decision. The Board for Accident Compensation found that the applicant's disability and medical expenses subsequent to 31 August 1991 were due to illnesses from which she had been suffering already before the accident, namely muscular pain, symptoms caused by a gastric ulcer operation and a tense neck.

The applicant's further appeal to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) was rejected on 3 November 1992 after it had obtained an opinion from the insurance company. This opinion was again not communicated to the applicant, nor was it reproduced or summarised in the Insurance Court's decision. In addition to the reasons relied on by the Board for Accident Compensation, the Insurance Court found that the applicant's headaches and depression could not be considered a result of the traffic accident either. The Supreme Court (*korkein oikeus, högsta domstolen*) refused leave to appeal on 12 March 1993.

Subsequently the applicant again applied to her insurance company for a disability allowance, now relying on a medical report of 25 December 1993 which considered that she remained unable to work. This request was rejected on 3 March 1994, the insurance company essentially having found that her medical condition had remained unchanged since the Insurance Court's decision of 3 November 1992. The applicant's appeal was rejected by the Board for Accident Compensation on 11 October 1994 after it had requested an opinion from the insurance company. This opinion was not communicated to the applicant but was reproduced as follows in the decision:

> "The insurance company is of the opinion that [the applicant's whiplash injury] as caused by the traffic accident on 22 February 1991 has not resulted in a disability degree of at least 10 per cent after 31 August 1991. [The applicant's] disability and medical costs incurred after that date are due to illness-related factors independent of the accident."

The applicant's further appeal was rejected by the Insurance Court on 20 October 1995 after it had obtained an opinion from the insurance company. This opinion was not

communicated to the applicant nor was it reproduced or summarised in the Insurance Court's decision. The opinion dated 27 January 1995 read as follows:

> "Please find enclosed, in return, your request [for an opinion] in case no. …We attach the documents and state as our opinion that [the applicant's] appeal does not warrant any change of the challenged decision.
>
> The whiplash injury caused by the accident on 22 February 1991 has entitled [the applicant] to compensation. The decrease in [her] ability to work is below 10 per cent after 31 August 1991.
>
> The [applicant's] disability and the medical expenses [incurred] after the said date are caused by illness-related factors not related to the accident. [The applicant] is not entitled to compensation under the Accident Insurance Act [*tapaturmavakuutuslaki, lagen om olycksfallsförsäkring* 608/1948] for muscular pain, symptoms caused by a gastric ulcer operation and a tense neck.
>
> We request that the Insurance Court reject the appeal."

No further ordinary appeal lay open to the applicant.

2. Proceedings under the pension legislation

(a) The requests under the employment-based pension scheme

The applicant's insurance company I rejected her request for a disability pension on 3 March 1992, having found that she was not disabled within the meaning of the legislation on employment-based pensions. After recalling the domestic law the insurance company reasoned as follows:

> "You have been working as a laboratory assistant for 21 years, performing such tasks as the handling and sterilisation of instruments, the organising of the reception areas, the mailing of samples and assisting, among others, the physicians. According to your own statement, *fibromyositis* has been hampering your work for a long time. In addition, you have been suffering from symptoms caused by your neck injury as well as from continuous headaches, nausea, balance disturbances and depression.
>
> According to the evidence before us in respect of your state of health, you have been experiencing headaches and other symptoms after suffering a whiplash injury. You are also depressed but do not suffer from any mental illness of significance to your ability to work.
>
> On the basis of our assessment your illnesses are of minor nature and you are sufficiently capable of performing remunerated tasks corresponding to your previous work. Accordingly, you cannot be considered disabled within the meaning of the laws on employment-based pensions. Accordingly, your request is rejected."

The applicant's further appeal to the Pension Board (*eläkelautakunta, pensionsnämnden*) was rejected on 1 September 1992 after it had obtained an opinion from the insurance company. This opinion was not communicated to the applicant, nor was it

reproduced or summarised in the Pension Board's decision. The Pension Board upheld the insurance company's decision, referring to the reasons therein and finding that the further evidence on the applicant's state of health warranted no change in the assessment of her ability to work.

The applicant appealed further to the Insurance Court, adducing fresh medical reports. The Insurance Court obtained an opinion from the insurance company. This opinion was not communicated to the applicant nor was it reproduced or summarised in the Insurance Court's decision of 6 May 1993 rejecting the appeal.

The applicant's insurance company rejected her renewed pension request on 3 March 1994, referring to its previous decision and finding that the new evidence adduced did not warrant any change in the insurance company's position.

The applicant's appeal to the Pension Board was rejected on 29 June 1994 after it had obtained an opinion from the insurance company. Its opinion of 11 April 1994 read as follows:

> "[The applicant] has appealed against the decision of 3 March 1994 to reject her request for a disability pension.
>
> In our opinion [the applicant] cannot, for the reasons stated in detail in [our decision] be considered unable to work within the meaning of the legislation on [employment-based] disability pension.
>
> Neither has any such new evidence been adduced in support of the appeal which would change our position in respect of her ability to work.
>
> In our view [the applicant 's] appeal should be rejected."

This opinion was not communicated to the applicant, nor was it reproduced or summarised in the Pension Board's decision. In its decision the Pension Board referred to the reasons invoked in the insurance company's decision and found that the further evidence on the applicant's state of health warranted no change in the assessment of her ability to work.

The applicant appealed further to the Insurance Court which also requested an opinion from the insurance company. Its opinion dated 17 August 1994 read as follows:

> "Please find enclosed the applicant's appeal to the Insurance Court with the documents on file.
>
> As for the earlier material we refer to our rejoinder to the Pension Board.
>
> As no relevant further evidence affecting the matter has been adduced in support of the appeal, [it] should in our view be rejected."

The opinion was not communicated to the applicant nor was it reproduced or summarised in the Insurance Court's decision of 14 September 1995 by which the applicant's appeal was rejected. The Insurance Court considered, in light of the evidence adduced, that the applicant's ability to work was not so reduced as to render her eligible for an

employment-based disability pension. No further appeal lay open.

(b) The requests under the national pension scheme

The applicant's request for a national disability pension was rejected by the Social Security Institution (*kansaneläkelaitos, folkpensionsanstalten*) on 25 March 1992. The Social Security Institution recalled, *inter alia*, that under the National Pension Act (*kansaneläkelaki, folkpensionslagen* 347/1956) a person who was incapable of continuing his or her work or of taking up similar tasks was entitled to a national disability pension. Regard was to be had to the person's age, professional skills and his or her ability to perform adequate professional tasks guaranteeing a reasonable subsistence. The Social Security Institution found that, although the applicant was still suffering from symptoms caused by her neck injury, her headaches and other symptoms as well as her depression, they were not causing her such inconvenience as to render her incapable of continuing her work as a laboratory assistant when no longer eligible for a daily allowance under the National Health Insurance Act.

The applicant's appeal to the Appellate Board for Social Insurance (*tarkastuslautakunta, prövningsnämnden*; "the Appellate Board") was rejected on 7 August 1992 after it had requested an opinion from the Social Security Institution. This opinion was not communicated to the applicant, nor was it reproduced or summarised in the Appellate Board's decision.

The applicant appealed further to the Insurance Court which obtained a further opinion from the Social Security Institution. The latter noted that no further evidence had been adduced which would warrant a change of its decision. This opinion was not communicated to the applicant, nor was it reproduced or summarised in the Insurance Court's decision of 24 May 1993 rejecting the appeal. The Insurance Court referred to the reasons invoked in the Appellate Board's decision and found that the fresh evidence submitted did not call for any change in the assessment of the applicant's ability to work.

The applicant's renewed request for a national disability pension was rejected by the Social Security Institution on 18 April 1994. The Social Security Institution found that the applicant was suffering from neck and shoulder pain, stiffness, aches, depression and insomnia. Her ability to function physically was nonetheless satisfactory. Given her overall state of health, she was able to continue working as a laboratory assistant or performing similar tasks. Accordingly, she could not be regarded as disabled within the meaning of the National Pension Act.

The applicant's appeal to the Appellate Board was rejected on 15 December 1994 after it had requested an opinion from the Social Security Institution. This opinion was not communicated to the applicant nor was it reproduced or summarised in the Appellate Board's decision. The Appellate Board considered, in light of all medical and other evidence, that the applicant was not to be regarded as disabled within the meaning of the National Pension Act.

The applicant appealed further to the Insurance Court, adducing further medical reports. The Insurance Court obtained an opinion from the Social Security Institution which was dated 27 March 1995 and read as follows:

> "Please find enclosed the documents sent together with your request [for an opinion] as well as [our] case-file concerning the applicant.

> The Social Security Institution is of the opinion that no such further evidence has been adduced after [the Appellate Board's] decision which would warrant a change of [the challenged] decision.
>
> The appeal should be rejected."

The opinion was not communicated to the applicant, nor was it reproduced or summarised in the Insurance Court's decision of 18 September 1995 by which the applicant's appeal was rejected. The Insurance Court referred to the reasons invoked in the Appellate Board's decision and found that the fresh evidence submitted did not call for any change in the assessment of the applicant's ability to work. No further appeal lay open.

B. Relevant domestic law

At the relevant time the Insurance Court applied mainly the principles derived from the rules of procedure of the courts of appeal. Insofar as relevant, the Code of Judicial Procedure provided as follows. According to Chapter 25, sections 17 to 20, the opposing party was to be heard in proceedings before appellate courts. According to Chapter 25, section 19, subsection 1, a copy of the observations of the opposing party was to be forwarded to the appellant on request. According to Chapter 26, section 6, the court of appeal was to request written observations from the parties when it obtained evidence on its own initiative and such evidence could affect the decision in the case, unless such hearing of the parties was manifestly unnecessary. As from 1 April 1999 the Insurance Court is applying the Act on Administrative Judicial Procedure (*hallintolainkäyttölaki, förvaltningsprocesslagen* 586/1996) except with regard to extraordinary proceedings, in respect of which special rules apply (section 9 of the Act on the Insurance Court, as amended by Act no. 278/1999).

Under the Act on Publicity of Public Documents as in force at the relevant time (*laki yleisten asiakirjain julkisuudesta, lagen om allmänna handlingars offentlighet* 83/1951) documents drawn up and issued by an authority, or which had been submitted to an authority and were still in that authority's possession, were public (section 2, subsection 1). An exception to the rule of full publicity was made, *inter alia*, for medical and similar reports, which were accessible to the public only with the consent of the person they related to (section 17). The refusal of access to a document could be submitted for reconsideration by the authority refusing such access, following which there lay an appeal under the general rules for appeals against a decision of that authority. If no right of appeal existed under such general rules, an appeal could be lodged with the superior authority. If no such authority existed, an appeal against a state authority's decision could be lodged with the Supreme Administrative Court. An appeal against a decision by another authority could be lodged with a county administrative court (*lääninoikeus, länsrätt*) (section 8, subsection 1). As of 1 December 1999 the Act on Publicity of Public Documents has been replaced by the Act on Publicity of the Activities of Public Authorities (*laki viranomaisten toiminnan julkisuudesta, lagen om offentlighet i myndigheternas verksamhet* 621/1999).

COMPLAINTS

The applicant complains about the refusals of her requests for a continued disability allowance and pension. The Insurance Court did not communicate to her the opinions it had obtained from the insurance companies and the Social Security Institution. Moreover, the

Insurance Court failed to take into account the medical opinions given by her own physicians, who had estimated the level of her disability at 30 per cent. Instead the Insurance Court relied on the insurance companies' and its own physicians, who had never examined the applicant in person but nonetheless estimated her disability at less than 10 per cent. The applicant does not invoke any particular Convention provision.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 24 January 1996 and registered on 6 June 1996.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 17 November 1998 the Court decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 9 January 1999. The applicant replied on 17 March 1999.

THE LAW

The applicant complains about the refusals of her requests for a continued disability allowance and pension. The Insurance Court did not communicate to her the opinions it had obtained from the insurance companies and the Social Security Institution. Moreover, the Insurance Court allegedly failed to take into account the medical opinions given by her own physicians, relying instead on the insurance companies' and the Insurance Court's own physicians, who had never examined her in person .

The Government submit that the application is manifestly ill-founded in so far as relating to the proceedings ending on 14 September, 18 September and 20 October 1995, respectively. They concede that the Insurance Court did not communicate the insurance companies' and the Social Security Institution's opinions to the applicant prior to deciding on her appeals. Nonetheless, the applicant's entitlement to compensation under the Accident Insurance Act had been examined twice by her insurance company P, the Board for Accident Compensation as well as the Insurance Court, and once by the Supreme Court. The applicant was thus able to challenge the position of that insurance company and the Board for Accident Compensation both in the first set of proceedings ending on 12 March 1993 and in the second set of proceedings ending with the Insurance Court's decision of 20 October 1995. The opinion obtained by the Insurance Court in the second set of proceedings did not contain such further evidence which would have affected the outcome of the applicant's appeal. The non-communication of that opinion did not therefore affect adversely the applicant's ability to challenge the decision of the Board for Accident Compensation of 11 October 1994.

With reference to the proceedings concerning the applicant's entitlement to an employment-based disability pension, the Government submit that the opinion of the insurance company I which the Insurance Court did not communicate to the applicant merely referred to the insurance company's earlier opinion to the Pension Board which the applicant had been able to challenge.

As regards the proceedings concerning the applicant's entitlement to a national disability pension, the Government submit that the non-communicated opinion of the Social Security Institution merely expressed the view that the applicant had not adduced any such new evidence which would affect the outcome of the case. The Government question whether such a statement constituted "a reasoned opinion on the merits of the appeal", as in the Nideröst-Huber case (judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I). In any case the applicant was able to challenge, in her appeal to the Insurance Court, the Social Security Institution's position as stated already to the Appellate Board.

Summing up, the Government argue that the position of the insurance companies and others involved in the proceedings before the Insurance Court ending in September and October 1995 had already become known to the applicant. The non-communicated opinions did not include any information which was new to her or which could not have been obtained by consulting the case-files of the relevant authorities. Considering the proceedings as a whole, the applicant was therefore not denied a fair hearing within the meaning of Article 6 § 1 of the Convention.

The applicant maintains her arguments.

(i) The Court recalls that 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, and within a period of six months from the date on which the final decision was taken. The present application was lodged on 24 January 1996. Accordingly, in so far as the applicant's grievances may be interpreted as referring to the three sets of proceedings ending in 1993, they are out of time.

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

(ii) The Court has examined the remainder of the application under Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

The applicant has complained that the Insurance Court failed to communicate to her the opinions it had obtained from the insurance companies and the Social Security Institution in the course of the proceedings ending in 1995. This complaint raises the question of whether the proceedings in question were fair within the meaning of Article 6 § 1.

The Court considers, in the light of the parties' submissions, that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It follows that this part of the application should be declared admissible.

(iii) As regards the material outcome of the various proceedings ending in 1995 and the alleged failure of the Insurance Court to consider all the evidence objectively, the Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance

of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except when they consider that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Court refers, on this point, to the Convention organs' established case-law (see e.g. no. 25062/94, Dec. 18.10.95, D.R. 83, p. 77). Further, the admissibility of evidence is primarily a matter for regulation by national law. As a rule, it is for the national courts to assess the evidence before them, whereas it is the Court's task to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see, e.g., Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, § 26).

The Court finds no indication that the Insurance Court considered the evidence before it in a biased or arbitrary manner violating the requirements of Article 6 § 1 of the Convention. Nor does the outcome of the proceedings raise any issue under that provision. Accordingly, there is no appearance of a violation of Article 6 in these respects.

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

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint under Article 6 § 1 of the Convention that she was denied a fair hearing due to the non-communication of the opinions obtained *ex officio* during the proceedings ending in 1995;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Georg Ress
President