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. 29346/95
by K.S.
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 10 April 1995 and registered on 22 November 1995,

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 is a Finnish citizen, born in 1946 and resident in Vaasa.

A. Particular circumstances of the case

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

On 23 May 1991 the applicant was dismissed, with six months' notice, from his post as tax inspector, and immediately suspended from office. The applicant was deemed unable to perform adequately his duties and found to have continuously failed to comply with or neglected his obligations as a civil servant. His appeals were refused, in the last resort by the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) on 16 October 1991. On 27 August 1992 the Supreme Administrative Court declined to reopen the proceedings.

In response to the applicant's requests of December 1991 and January 1992 the Unemployment Fund (*työttömyyskassa, arbetslöshetskassan*) for Lawyers and Legal Associates on 4 February 1992 refused to pay him a salary-related unemployment benefit for the period from 28 November 1991 to 8 January 1992. The Fund had regard to an opinion from the Employment Commission (*työvoimatoimikunta, arbetskraftskommissionen*) of Vaasa according to which the applicant had himself caused his dismissal. Under domestic law the Unemployment Fund was bound by the Employment Commission's opinion. The applicant had received a copy thereof in the beginning of December 1991. On 9 March 1992 he appealed to the Board for Unemployment Benefits (*työttömyysturvalautakunta, arbetslöshetsnämnden*), essentially contesting the Employment Commission's opinion as adhered to by the Unemployment Fund in an unsigned computer-printed decision.

The appeal was first processed by the Unemployment Fund which, on 16 March 1992, requested the Employment Commission to comment on it. This request was renewed on 11 February 1993. Having received the Employment Commission's opinion, the Unemployment Fund on 5 March 1993 forwarded it to the Board for Unemployment Benefits together with the appeal itself and the Unemployment Fund's own opinion.

The Employment Commission's opinion referred to the Supreme Administrative Court's decision upholding the applicant's dismissal. The opinion further stated that no such evidence had been presented which would have warranted a change of the Employment Commission's earlier opinion. The Unemployment Fund's opinion referred to the earlier stages of the proceedings and noted that unemployment funds were authorised to dispatch electronically signed decisions. The opinion further stated that no evidence had been presented which could be considered by the Unemployment Fund and that, accordingly, its decision should stand.

None of the above opinions were communicated to the applicant in the proceedings before the Board for Unemployment Benefits. In its decision of 31 January 1994 the Board for Unemployment Benefits summarised the facts, the applicant's appeal and the opinions of the Employment Commission and the Unemployment Fund. The Board for Unemployment Benefits then dismissed the appeal, considering that a person who had himself caused the termination of his employment was not entitled to unemployment benefits for a period of six weeks. As the applicant's suspension from office had resulted in his dismissal, he was

deemed to have caused the termination of his employment himself. He was therefore not entitled to unemployment benefits for the period in question. The Board for Unemployment Benefits relied on section 9 of the Act on Unemployment Benefits (*työttömyysturvalaki, lag om utkomstskydd för arbetslösa* 602/1984).

The applicant appealed further to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*). In an opinion requested by the Insurance Court the Unemployment Fund considered that no evidence had been presented of which it had been unaware when making its decision of 1992. Accordingly, that decision should be upheld. The Unemployment Fund's opinion was not communicated to the applicant in the course of the proceedings. The Insurance Court also obtained from the Supreme Administrative Court the latter's decision of 1991.

In its decision of 9 March 1995 the Insurance Court upheld the decision of the Board for Unemployment Benefits, referring to the reasons stated therein. The Insurance Court indicated that there had been a vote but only the legal secretary's name appeared in the decision. No further appeal lay open to the applicant.

B. Relevant domestic law

Section 9, subsection 1, of the Act on Unemployment Benefits stipulates that a person who causes the termination of his or her employment shall not be entitled to an unemployment benefit for a period of eight weeks. According to established practice, the period is shortened to six weeks in certain circumstances. If a dismissal has been challenged the withdrawal of unemployment benefits should normally be based on a decision which has acquired legal force (section 9, subsection 2). The competent employment commission shall issue an opinion in respect of someone's entitlement to unemployment benefits. Such an opinion is binding on the competent unemployment fund (section 3, subsection 2).

According to Section 39, subsection 4, and section 42, subsection 4, an appellant shall be given an opportunity to be heard in a matter before the Board for Unemployment Benefits or the Insurance Court, if such new evidence is presented of which the appellant is not aware.

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).

According to the Act on Unemployment Funds (*laki työttömyyskassoista, lag om arbetslöshetskassor* 1984/603) the State shall contribute up to 54,5 per cent of the payments out of such a fund (section 25).

COMPLAINTS

1. The applicant complains that in the proceedings regarding his entitlement to unemployment benefits for a certain period he was denied a fair and oral hearing within a reasonable time before an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. In particular, he was not afforded an opportunity to comment on the opinions obtained by the Board for Unemployment Benefits and the Insurance Court. Moreover, the Insurance Court did not provide sufficient reasons for its decision and the members who examined his appeal were not made known. He also alleges that the Employment Commission's opinion retained its binding effect throughout the proceedings.

2. The applicant also complains that the Unemployment Fund's refusal to pay him the unemployment benefits in question amounted to an unjustified confiscation of property effectively belonging to him. He invokes Article 1 of Protocol No. 1.

PROCEDURE

The application was introduced on 10 April 1995 before the European Commission of Human Rights and registered on 22 November 1995.

On 23 October 1997 the Commission decided to communicate the application except for the complaint concerning the lack of an oral hearing.

The Government’s written observations were submitted on 22 January 1998. The applicant replied on 24 March 1998, after an extension of the time-limit fixed for that purpose.

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.

THE LAW

1. The applicant complains that in the proceedings regarding his entitlement to an unemployment allowance he was denied a fair and oral hearing within a reasonable time before an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. In particular, he was not afforded an opportunity to comment on the opinions obtained by the Board for Unemployment Benefits and the Insurance Court. Moreover, the Insurance Court did not provide sufficient reasons for its decision and the members who examined his appeal were not made known. He also alleges that the Employment Commission's opinion retained its binding effect throughout the proceedings.

Article 6 § 1 of the Convention provides, insofar as relevant, as follows:

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

The Government argue that the applicant failed to exhaust domestic remedies, as he did not explicitly challenge before the Insurance Court the non-communication of the opinions obtained by the Board for Unemployment Benefits. In the alternative, the Government submit that the application is manifestly ill-founded. The opinions in question primarily referred to the applicant's appeal and subsequent observations as well as to the facts of the case. The opinions further included a note stating that no new evidence affecting the outcome of the case had been presented, and a brief recommendation to reject the appeal. The opinions did not reveal any facts which might have affected the outcome of the case, nor was any fresh evidence adduced in relation to such facts. The Board for Unemployment Benefits having reproduced the essence of the opinions, the applicant became aware of their existence and was afforded the possibility of acquainting himself with their contents. In these circumstances the non-communication of the opinions in question did not adversely affect the applicant's capability of challenging the decision of the Board for Unemployment Benefits before the Insurance Court. Nor did the opinion which the Insurance Court obtained from the Unemployment Fund contain any evidence of which the applicant was unaware, that opinion being essentially similar to the one which the Unemployment Fund had previously submitted to the Board for Unemployment Benefits. The only information of which the applicant was unaware when the Insurance Court decided on his appeal was the Unemployment Fund's explanation, in its opinion to the Board for Unemployment Benefits, as to why the Unemployment Fund's decision had not been signed by hand. No comments by the applicant on this point would have affected the substance of the Insurance Court's decision. The Unemployment Fund's position on the merits of the case was already known to the applicant and his possible observations in respect of the opinion obtained by the Insurance Court would not have affected its decision which simply upheld that of the Board for Unemployment Benefits.

As for the composition of the Insurance Court in the applicant's case, the Government submit that it was not confidential and could be communicated to anyone interested.

The Government further consider that the subject-matter was not an especially difficult one and that the proceedings were not excessively lengthy, having lasted approximately three years and three months before three instances. The delay in the

proceedings was caused by the backlog resulting from an increase in the number of cases pending before the Board for Unemployment Benefits. A certain delay is also attributable to the Employment Office when requested to submit its opinion on the applicant's appeal. The manner in which the applicant presented his case may also have required special attention by both appeal bodies. In any case the delay in the proceedings did not as such affect the applicant's general entitlement to unemployment benefits.

The applicant contends that the binding opinion of the Employment Commission and the fact that he was unable to acquaint himself with the complete material on file rendered the proceedings unfair. When assessing whether the length of the proceedings was reasonable they should be deemed to have begun on 27 or 28 May 1991.

(i) With reference to the allegedly limited scope of the review by the Insurance Court, the Court notes that under section 3 of the Act on Unemployment Benefits the Employment Commission's opinion was binding only on the Unemployment Fund. Neither is there any indication that the Insurance Court considered itself bound by the opinion of the Employment Commission. The Court therefore finds no indication that the applicant was denied access to a "tribunal" with full jurisdiction within the meaning of Article 6 § 1 of the Convention.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

(ii) As for the complaint that the identity of the members of the Insurance Court was not made known, the Court recalls that the existence of impartiality for the purposes of Article 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 his respect (see, e.g., Fey v. Austria judgment of 24 February 1993, Series A no. 255-A, p. 12, § 28). Accordingly, the impossibility for a party to know the composition of a tribunal could raise an issue with regard to its independence and impartiality and jeopardise the fairness of subsequent appeal proceedings.

In the present case the Court does not find it established that the applicant has been prevented from gaining knowledge of the identity of the members of the Insurance Court deciding, in the final instance, on his appeal. Neither has he put forward any other reason why the Insurance Court was not "independent and impartial" within the meaning of Article 6 § 1 of the Convention. Accordingly, the Court finds no indication that this provision has been violated in this respect either.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

(iii) As for the absence of an oral hearing before the Insurance Court, the Court notes Finland's reservation to the Convention which, as in force at the material time, read as follows:

> "In accordance with Article 64 of the Convention, the Government of Finland makes the following reservation in respect of the right to a public hearing guaranteed by Article 6, paragraph 1 of the Convention.

For the time being, Finland cannot guarantee a right to an oral hearing in so far as the current Finnish laws do not provide such a right. This applies to:
...
3. proceedings ... before the Insurance Court as the court of final instance, in accordance with section 9 of the Insurance Court Act;
...
The provisions of the Finnish laws referred to above are attached to this reservation as a separate annex."

According to the annex to the reservation, section 9 provided as follows:

"Proceedings before the Insurance Court are conducted in writing. The Court may nevertheless for a specific reason decide to conduct an oral hearing. ..."

The Court finds that this reservation is valid in the light of Article 57 § 1 of the Convention (formerly Article 64 § 1) and that there is no indication that the reservation does not comply with Article 57 § 2 (formerly Article 64 § 2). It follows from the terms of this reservation that Finland was under no Convention obligation to hold an oral hearing in the applicant's case (see also Helle v. Finland judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2925-2926, §§ 44 and 47).

It follows that this aspect of the complaint is incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 § 3.

(iv) The Court has next considered the complaint regarding the unfairness of the proceedings on account of the non-communication to the applicant of certain material taken into account by the appellate bodies. The Court notes that, although the Government's objection to admissibility is framed as concerning the application as a whole, it concerns in substance only the present complaint.

Under Article 35 § 1 the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. In agreement with the Government, the Court does not find it established that the applicant, in his appeal to the Insurance Court, referred to the failure to communicate the opinions submitted to the Board for Unemployment Benefits as an issue affecting the fairness of the proceedings. In the final instance, however, the Insurance Court itself obtained a further opinion from the Unemployment Fund which could not be challenged by the applicant. It follows that this aspect of the complaint cannot be rejected for non-exhaustion of domestic remedies on the grounds referred to by the Government.

The Court considers, in the light of the parties' submissions, that this aspect of the complaint under Article 6 § 1 of the Convention 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.

(v) In so far as unfairness is alleged on the basis that the Insurance Court did not provide sufficient reasons for its decision, the Court recalls that whilst Article 6 § 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument. Nor is the Court called upon to examine whether arguments are adequately met (see, *inter alia*, Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, pp. 19-20, §§ 59-61). Moreover, the only "tribunal" to examine a matter may rely on a lower authority's reasons when upholding the latter's decision (see, e.g., no. 24949/94, Dec. 3.12.96, D.R. 87-A, p. 77).

The Court considers that the reasons stated by the Board for Unemployment Benefits, as upheld in the Insurance Court's judgment, do not give rise to any appearance that the proceedings were unfair.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

(vi) The Court has finally assessed whether the proceedings exceeded the reasonable time required by Article 6 § 1 of the Convention. To this end, the Court must take into account the particular circumstances of the case while having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and the importance of what is at stake for the applicant in the litigation (see, e.g., Duclos v. France judgment of 17 December 1996, *Reports* 1996-VI, pp. 2180-2081, § 55).

The Court considers that the proceedings in the applicant's case began in December 1991 and ended in March 1995, which amounts to a total length of three years and three months. The Court finds that the case was not particularly complex on the facts. As for the conduct of the authorities, the Court notes that the case was pending before the Board for Unemployment Benefits for about two years and before the Insurance Court for about one year. Apart from the Employment Commission's delay in submitting its opinion on the applicant's first appeal the Court cannot detect any significant period of inactivity for which the authorities could be held responsible. As for the applicant's own conduct, the Court discerns no particular element affecting the length of the proceedings. The Court notes, however, that the dispute concerned not the applicant's entitlement as such to unemployment benefits but solely the question whether payment thereof should be interrupted for a period of six weeks. In these circumstances what was at stake for the applicant does not appear to have been of crucial importance to his livelihood. Making an overall assessment, the Court considers that the length of the proceedings was not excessive in the circumstances of this case.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant also complains that the Unemployment Fund's refusal to pay him benefits amounted to an unjustified confiscation of property effectively belonging to him. He invokes Article 1 of Protocol No. 1 to the Convention which 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 do not submit any observations in respect of this complaint.

The Court sees no reason to doubt that the applicant had himself participated to some extent in the financing of his salary-related unemployment benefits. It will therefore assume that he had, in the proceedings in question, a property interest eligible for protection under Article 1 of Protocol No. 1. The Court finds, however, that any deprivation of those possessions was in accordance with the Act on Unemployment Benefits. Given that the State is contributing over 50 per cent to salary-related unemployment benefits, the Court further finds that the deprivation in question served a legitimate public interest, it having been established that the applicant had himself caused the termination of his employment. The interference with the applicant's property rights was furthermore in proportion to the aforementioned legitimate aim.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of 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 he was denied a fair hearing due to the non-communication of the opinions obtained *ex officio* in the proceedings regarding his entitlement to an unemployment allowance;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Georg Ress
President