AS TO THE ADMISSIBILITY OF

Application No. 17506/90
by Erkki KEROJÄRVI
against Finland

The European Commission of Human Rights sitting in private on 7 April 1993, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 25 August 1990 by Erkki Kerojärvi against Finland and registered on 29 November 1990 under file No. 17506/90;

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

Having regard to the observations submitted by the respondent Government on 11 June 1992 and the applicant's observations in reply submitted on 29 June and 29 July 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Finnish citizen, was born in 1924. He is retired and resident in Helsinki. Before the Commission he is represented by Mr. Markku Fredman, a lawyer practising in Helsinki.

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

Particular circumstances of the case

From 1939 to 1940 the applicant served in the Home Guard during

the Winter War against the Soviet Union. On 12 March 1940 he was wounded in action. From 1941 to 1945 - inter alia during the Continuation War - he served as a soldier in the Armed Forces. On 6 July 1944 he was again wounded in action. The applicant receives compensation under the 1948 Military Injuries Act (sotilasvammalaki 404/48, lag 404/48 om skada, ådragen i militärtjänst; hereinafter "the 1948 Act").

On 5 September 1985 the State Office for Accident Compensation (tapaturmavirasto, olycksfallsverket; hereinafter "the Compensation Office") rejected the applicant's request for a life annuity, considering the degree of his disability (due to a back injury caused by splinter) to be less than 10 per cent as from 1 January 1984. The Compensation Office further rejected the applicant's request for compensation for shrapnel injuries, as it had not been established that, in 1941 or at any other time, he had suffered from such injuries.

The Compensation Office further refused the applicant compensation for inter alia inguinal hernia and chronic prostatitis, considering that the particular circumstances of his service could not, on any probable grounds, be considered to have caused those illnesses or in any essential way have affected their appearance or aggravation. Furthermore, they had no obvious connection with any extreme susceptibility or predisposition caused by the injury for which the applicant had been granted compensation.

Following the applicant's appeal the Insurance Court (vakuutus-oikeus, försäkringsdomstolen) on 4 September 1986 considered that one of the illnesses for which the applicant was claiming compensation, i.e. his acute tonsillitis, should be taken into account. The applicant's total disability degree was still, however, considered to be less than 10 per cent. The remainder of the Compensation Office's decision was upheld.

The applicant appealed, enclosing a certificate showing that while serving in the Home Guard he had been operated on for inguinal hernia in a military hospital.

On 15 December 1987 the Supreme Court (korkein oikeus, högsta domstolen) upheld the Insurance Court's decision.

In January 1988 the applicant requested that a higher degree of disability be established, referring to a medical report of 3 June 1987. In May 1988 he submitted a further medical report by another doctor.

On 23 August 1988 the request was rejected by the Compensation Office, which found that the applicant's disability degree was still less than 10 per cent. It was found that it had not been established that there had been an essential change in the circumstances upon which his disability degree was based.

The applicant appealed to the Insurance Court, submitting further evidence such as results of an X-ray examination and laboratory tests of 17 April 1989. He further renewed his request for compensation for certain injuries such as his inguinal hernia and chronic prostatitis.

The Insurance Court requested an opinion from the Compensation Office and obtained copies from the Staff of the Military District of Western Uusimaa (Länsi-Uudenmaan sotilaspiirin esikunta, staben för västra Nylands militärdistrikt) of the master file on the applicant and the file pertaining to his medical examinations. The documents, which were not communicated to the applicant for comments, showed that from 28 March to 17 April 1940, i.e. during the Winter War, the applicant had been treated in a military hospital for inguinal hernia. They further showed that he had been operated on for his inguinal hernia in another hospital where he had been staying from 2 to 4 August 1943,

i.e. during the Continuation War.

In its submission of 24 October 1988 to the Insurance Court the Compensation Office proposed that the applicant's appeal be rejected. This submission was not communicated to the applicant for comments.

On 19 October 1989 the Insurance Court dismissed the applicant's request for compensation, considering that the matter had been finally decided by the Supreme Court on 15 December 1987. His request for a higher degree of disability was rejected, as his shrapnel injuries and acute tonsillitis were still considered to constitute a disability of less than 10 per cent.

On the applicant's appeal the Supreme Court on 7 June 1990 upheld the decision of the Insurance Court.

On 3 July 1990 the applicant requested, for his application to the Commission, copies of the documents pertaining to his army service kept in the archives of the General Staff of the Armed Forces (pääesikunta, huvudstaben). This was refused by an officer, who, however, orally informed the applicant that the applicant's service in the Home Guard was not noted in the file.

On 24 October 1990 the applicant requested access to his file at the Compensation Office. This was refused.

On 22 November 1990 the applicant was allowed to consult part of his files at the Staff of the Military District of Western Uusimaa.

Relevant domestic law

Under the 1948 Act and the 1956 Act on Extended Application of the 1948 Act (laki 390/56 sotilasvammalain soveltamisalan laajentamisesta, lag 390/56 angående utvidgad tillämpning av lagen om skada, ådragen i militärtjänst) benefits such as medical care, daily subsistence allowance, life and supplementary annuity shall be granted inter alia to soldiers wounded in action.

A soldier shall be regarded as wounded in action inter alia if his illness may, on probable grounds, be regarded as caused by the particular circumstances of his service or provided that those have, in an essential way, affected the appearance or the aggravation of his illness. An illness appearing more than a year after the termination of his service shall not be considered as caused by that service provided it is not to be regarded as a consequence of a wound or an illness caused by the service and which has appeared during that period (Section 2 para. 2 of the 1948 Act, as amended by Act no. 122/67).

An injury or an illness which has an obvious connection with an extreme susceptibility or predisposition caused by an injury or an illness to be compensated under inter alia para. 2 or by particular circumstances of captivity shall, with regard to the circumstances, be compensated either fully or partly (Section 2, para. 3, as amended by Act no. 180/71).

Compensation may be refused under certain conditions none of which are relevant to the present case (Section 3).

A person with a disability degree of at least 30 per cent shall be entitled to compensation for inter alia equipment used in his home, for modifications of his home and home help (Section 6, as amended inter alia by Act no. 622/65).

A person with a disability degree of at least 10 per cent shall be entitled to a life annuity (Section 8, para. 1, as amended by Act no. 622/65).

An appeal against a decision by the Insurance Court in a matter such as that in question in the present case may be lodged with the Supreme Court within sixty days from the notification of the decision (Section 29, para. 2, as amended by Act no. 304/75).

Under Section 2, para. 1 of the 1951 Act on Publicity of Public Documents (laki 83/51 yleisten asiakirjain julkisuudesta; lag 83/51 om allmänna handlingars offentlighet, "the 1951 Act") documents drawn up and issued by an authority, or which have been submitted to an authority and are still in that authority's possession, are public.

If an official refuses access to such a document, that decision may be submitted for reconsideration by the same authority, following which there lies an appeal under the general rules for appeals against a decision of that authority. If no right of appeal exists, an appeal may be lodged with the authority to which the first-mentioned authority is subordinated. If no such authority exists, an appeal against a state authority's decision may be lodged with the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen) and an appeal against a decision by another authority with a County Administrative Court (lääninoikeus, länsrätten) (Section 8, para. 1 of the 1951 Act, as amended by Act no. 472/87).

COMPLAINTS

1. The applicant complains that his service in the Home Guard during which he was wounded for the first time was never recorded in the file concerning his army service and accepted as part of that service, as a result of which he has been refused "class A veteran status", which would enable him to receive full invalidity pension and certain other benefits.

2. The applicant complains that the courts were partial when examining his request for a higher disability degree. The courts allegedly only obtained and accepted evidence submitted on behalf of the Armed Forces and disregarded evidence submitted by himself and based on other sources, including the Home Guard. Moreover, the documents obtained by the Insurance Court were never communicated to him for comments. The partiality was allegedly caused by a reluctance to grant benefits under the 1948 Act to soldiers of the Home Guard, as these had not reached the age of majority at the time of their service.

The applicant also complains that the Supreme Court's decision of 7 June 1990 contained no reasons.

In his observations of 29 July 1992 the applicant further alleges that the proceedings as a whole were not public.

3. The applicant complains that he was refused access to his files at the Compensation Office, the General Staff of the Armed Forces and the Staff of the Military District of Western Uusimaa, respectively. He contends that no remedy exists against those refusals.

He further alleges that documents have disappeared from the file at the Compensation Office and that a medical report of 24 January 1941 has been forged.

4. The applicant finally complains that he has been discriminated against, as war veterans with much less serious injuries have received physical rehabilitation.

The applicant invokes Article 14 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 25 August 1990 and registered on 29 November 1990.

On 7 April 1992 the Commission decided to invite the respondent Government to submit written observations on the admissibility and merits of the application limited to the applicant's second complaint.

The Government's observations were submitted on 11 June 1992 and the applicant's observations in reply on 29 June and 29 July 1992.

On 10 July 1992 the applicant was granted legal aid.

THE LAW

1. The applicant complains that his service in the Home Guard was never recorded in the file concerning his army service and accepted as part of that service, as a result of which he has been refused "class A veteran status".

The Commission considers that the fact complained of relates to a period prior to 10 May 1990, which is the date of the entry into force of the Convention with respect to Finland. However, in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party (see e.g. No. 220/56, Dec. 15.7.57, Yearbook 1 pp. 157, 159; No. 9453/81, Dec. 13.12.82, D.R. 31 pp. 204, 208 and, with respect to Finland, No. 17925/91, Dec. 8.10.91, unpublished).

It follows that this complaint is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains that the courts were partial when examining his request for a higher disability degree. He alleges that the courts only obtained and accepted evidence submitted on behalf of the Armed Forces and disregarded evidence submitted by himself and based on other sources, including the Home Guard. Moreover, the documents obtained by the Insurance Court were never communicated to him for comments. The partiality was caused by a reluctance to grant benefits under the 1948 Act to soldiers of the Home Guard, as these had not reached the age of majority at the time of their service.

The applicant also complains that the Supreme Court's decision of 7 June 1990 contained no reasons.

In his observations of 29 July 1992 the applicant further alleges that the proceedings as a whole were not public.

The Commission considers that these complaints fall to be considered under Article 6 para. 1 (Art. 6-1) of the Convention, which reads, insofar as it is relevant:

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

a) The non-communication of certain documents to the applicant

The Government concede that this complaint is compatible ratione temporis with the Convention, as the Supreme Court was competent to review the applicant's appeal in toto and was obliged to take into account the entry into force of the Convention. In the Government's opinion, the complaint is, however, incompatible ratione materiae with the Convention, as Article 6 para. 1 (Art. 6-1) is not applicable to

the dispute at issue. Although it did involve features of private law in the sense that the right claimed by the applicant was a personal, economic and individual right, the public law features were numerous. The social protection under the 1948 Act is a unilateral initiative by the State and has few affinities with ordinary insurance schemes. It is financed exclusively by the State. Thus, the dispute did not concern a "civil right" of the applicant.

Should the Commission consider Article 6 para. 1 (Art. 6-1) applicable, the Government argue that the complaint is inadmissible for non-exhaustion of domestic remedies, as the applicant did not appeal against the decisions refusing him access to his files kept by the General Staff of the Armed Forces and the Compensation Office. In any case, the complaint is manifestly ill-founded. Although it cannot be excluded that the documents, which were not communicated to the applicant, contained additional information of relevance to the outcome of his request, this seems unlikely. The documents were of no conclusive significance to the applicant's request for a higher compensation degree.

The applicant submits that the Commission is competent ratione temporis to review the proceedings instituted by him under the 1948 Act as a whole. He contends that the dispute at issue concerned the determination of his "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention for the following reasons. The 1948 Act sets out the criteria to be strictly adhered to by the authorities. Section 3, prescribing the grounds for refusing compensation, is exhaustive. Thus, the examination of requests lodged under this Act is a judicial one and not one based on discretion afforded to the authorities. Moreover, the system for compensating injuries suffered during military service cannot be considered as a totally unilateral initiative by the State, military service in Finland being compulsory, as was part of the applicant's service. Whilst the applicant's contribution to the system set up by the 1948 Act was not of a pecuniary nature, it was his and other fellow soldiers' army service which made the creation of such a scheme at all possible.

The applicant recalls that the burden of proving the conditions of his army service and the treatment he received during that service was placed on him, despite the fact that a large number of files pertaining inter alia to his service can no longer be found. However, not even after he had received the Insurance Court's decision, indicating that it was based partly on documents which he had not been able to comment upon, was he allowed access to those documents. In the proceedings before the Supreme Court it was thus impossible for him to know whether certain information pertaining to his military service was missing from the files.

In the applicant's view the Supreme Court, for its part, was under an obligation to correct, by communicating the documents to him ex officio, the procedural fault which occurred before the Insurance Court. The existence of any remedy under the 1951 Act is therefore of no relevance to the complaint of unfair proceedings. It must follow from Finland's reservation to Article 6 para. 1 (Art. 6-1) of the Convention as to the right to an oral hearing before inter alia the Insurance Court and the Supreme Court that these courts should instead resort to other procedural safeguards such as communicating documents for comments in writing.

(i) The Commission first has to ascertain whether, and to what extent, it is competent ratione temporis to deal with the complaint. In its case-law the Commission has held that, where the facts consist of a series of legal proceedings, the date of entry into force of the Convention in respect of the Contracting State in question has the effect of dividing the period into two, the earlier part escaping the Commission's jurisdiction ratione temporis, whereas a complaint relating to the later part cannot be rejected on this ground. On the

other hand, where a court gives judgment after the entry into force of the Convention, the Commission is competent to ensure that the proceedings leading up to this judgment were in conformity with the Convention, as the proceedings before a court are embodied in its final decision which thus incorporates any defect by which they may have been affected (cf. No. 8261/78, Dec. 11.10.79, D.R. 18 p. 150, confirmed in No. 11306/84, Dec. 16.10.86, D.R. 50 pp. 162-163).

In the present case, the proceedings before the Insurance Court terminated with the judgment of 19 October 1989, i.e. prior to 10 May 1990, which is the date of the entry into force of the Convention with respect to Finland. These proceedings are therefore, as such, outside the Commission's competence ratione temporis.

It follows that the complaint in this respect is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

(ii) It follows from the above-cited case-law that the proceedings before the Supreme Court ending with its decision of 7 June 1990 fall within the Commission's competence ratione temporis.

The Commission has carried out a preliminary examination of this complaint under Article 6 para. 1 (Art. 6-1) of the Convention. It considers that it raises questions of fact and law of such a complex nature that their determination requires an examination of the merits. This complaint cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other reason for declaring the complaint inadmissible has been established.

b) The alleged partiality of the Supreme Court

The Commission has found above that the proceedings before the Supreme Court fall within its competence ratione temporis. However, insofar as the applicant's complaint that evidence had been obtained and accepted by the courts in a selective manner pertains to that court, the Commission, assuming that Article 6 para. 1 (Art. 6-1) of the Convention applies, recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Contracting Parties in the Convention. It is not competent to deal with a complaint alleging that errors of law and fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention or one of its Protocols (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

In the present case the Commission cannot find any indication that the Supreme Court arbitrarily disregarded evidence presented by the applicant.

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.

c) The lack of reasoning in the Supreme Court's decision

The Government submit that this aspect of the complaint is also manifestly ill-founded. All authorities which ruled on the applicant's request gave reasons for their decisions. In any case, Article 6 (Art. 6) of the Convention does not oblige a superior court which is in agreement with the decision of a lower court to repeat the reasoning of that court. Only in exceptional circumstances would a lack of reasoning raise an issue under this provision.

The Commission recalls that an appellate court does not have to re-state the reasons given by a lower court if it agrees with those reasons (No. 10773/84, Dec. 2.10.84, unpublished).

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.

d) The lack of publicity of the proceedings

The Commission has found above that the proceedings before the Supreme Court fall within its competence ratione temporis. As regards the proceedings before that court the Commission is, however, not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of that provision, as it follows from Article 26 (Art. 26) of the Convention that the Commission may only deal with a matter which has been brought to the Commission's attention within six months from the decision or incident constituting the subject-matter of the complaint.

In the present case the proceedings before the Supreme Court terminated on 7 June 1990, whilst the complaint was lodged on 29 July 1992, that is more than six months later. An examination of the complaint does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this complaint has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant also complains of the refused access as such to his files at the Compensation Office, the General Staff of Armed Forces and the Staff of the Military District of Western Uusimaa, respectively. He further alleges that documents have disappeared from his file at the Compensation Office and that a medical report of 24 January 1941 has been forged.

a) The refused access to the applicant's files

(i) As regards the applicant's complaint of refused access to his file at the Compensation Office and the General Staff of the Armed Forces, respectively, the Commission, assuming that either Article 8 or Article 10 (Art. 8, 10) of the Convention is applicable, reiterates its above-stated consideration concerning the applicant's obligation to exhaust effective remedies at his disposal.

The Commission finds that the applicant has not shown that he asked for a reconsideration under Section 8 of the 1951 Act of the decisions to refuse him access to his files, or that he appealed against any such decision. He can therefore not be considered to have exhausted the remedies available to him under Finnish law. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and that this aspect of the complaint must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

(ii) As regards the alleged refusal of access to the applicant's file at the Military District of Western Uusimaa the Commission finds nothing in the file in support of that allegation. It observes, on the contrary, that on 22 November 1990 the applicant was allowed to consult

his file.

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) The alleged disappearance and forgery of documents

Even assuming that the complaint of the alleged disappearance of documents from the applicant's file at the Compensation Office and the alleged forgery of the medical report of 24 January 1941 falls within the Commission's competence ratione temporis, the Commission is not required to decide whether or not the facts alleged by him disclose any appearance of a violation of the Convention or its Protocols as, under Article 26 (Art. 26) 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.

In the present case the applicant has not shown that he raised these complaints, either in form or in substance, in the proceedings before the Compensation Office and the domestic courts. He has, therefore, not exhausted the remedies available to him under Finnish law (cf. Eur. Court H.R., Cardot judgment of 19 March 1991, Series A no. 200, p. 18, para. 34). Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising this complaint in the proceedings referred to.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this complaint must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant finally contends that he has been discriminated against, as war veterans with much less serious injuries have received physical rehabilitation.

The Commission has considered this complaint under Article 14 (Art. 14) of the Convention, which reads:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government submit that this complaint is also incompatible ratione materiae with the Convention or, in the alternative, manifestly ill-founded. They point out that the 1948 Act is applicable also to the applicant despite his having been a minor while serving in the Home Guard. The inguinal hernia and chronic prostatitis suffered by him were not considered as illnesses caused or aggravated by that service. Whilst it would have been possible to reach a different conclusion, the assessment of facts and the application of domestic law carried out by the Finnish authorities cannot be regarded as arbitrary.

The Commission refers to its finding under 2 (b) that the applicant's complaint that the Supreme Court disregarded, to his detriment, certain evidence presented by him, is manifestly ill-founded.

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

For these reasons, the Commission,

by a majority,
DECLARES ADMISSIBLE, without prejudging the merits, the complaint under Article 6 para. 1 (Art. 6-1) of the Convention relating to the non-communication of documents in the proceedings before the Supreme Court; and

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)