CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57793/00
by Hannu KUKKONEN
against Finland

The European Court of Human Rights (Fourth Section), sitting on 4 May 2004 as a Chamber composed of:

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

Having regard to the above application lodged on 27 March 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Hannu Kukkonen, is a Finnish national, who was born in 1967 and lives in Kuopio.

A. The circumstances of the case

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

The applicant, a carpenter, sustained injuries in an accident at his working place on 31 January 1994. The fall caused a splinter fracture in his left elbow which later developed into degenerative arthritis. The applicant received a disability pension (*tapaturmaeläke, olycksfallspension*) until 31 May 1996 from an insurance company.

After the expiry of the disability pension the applicant applied for a continued pension from 1 June 1996. On 8 May 1996 the insurance company dismissed his application maintaining that the applicant's working capacity was now reduced by less than 10%. It further held that the applicant's inability to return to his previous profession as a carpenter was not based on the injury to his left arm, but on his neck and shoulder pains, which were not caused by the accident on 30 January 1994.

The applicant appealed to the Accident Board (*tapaturmalautakunta, olycksfallsnämnden*) repeating his requests. He relied on a medical opinion dated 13 May 1996 in which he was found to be unfit for carpentry work and another medical opinion dated 4 June 1996. He submitted two further medical opinions dated 28 June 1996 and 19 January 1996 respectively.

The Accident Board rejected the appeal on 13 March 1997. It based its decision on section 18, subsection 2 of the Act on Accident Insurance (*tapaturmavakuutuslaki, lag om olycksfallsförsäkring*; 608/1948). It held that the medical opinions at its disposal showed that the strain tolerance of the applicant's left elbow was reduced and that he was incapable of full-time carpentry work. The applicant was however regarded as fit to work, for example as an electrician, which could after some training give him an equivalent income. It was further stated that the applicant's neck and head pains were not caused by the accident on 30 January 1994 and that his working capacity on grounds of his elbow was reduced by less than 10% due to the said accident.

The applicant appealed to the Insurance Court repeating his previous requests. He submitted some further evidence regarding the content and requirements of an electrician's work and requested on oral hearing, wishing to make submissions about his health condition and about the reliability of the evidence. The Insurance Court received several other documents, for example medical opinions, case histories of the applicant, x-rays and several statements from different quarters. Both parties submitted further opinions.

The Insurance Court rejected the applicant's request for an oral hearing and dismissed most of the applicant's appeal on 17 November 1998. It however changed the Accident Board's decision so as to grant the applicant a 100% disability pension for the period of 20 May to 19 June 1997. The Insurance Court held that proceedings before it were usually written and that taking into consideration the written evidence, there were no exceptional circumstances that would have required an oral hearing. It accepted the reasons given by the Accident Board and held that the new evidence did not call for a different conclusion.

The applicant sought leave to appeal to the Supreme Court. The Supreme Court refused the applicant leave to appeal on 21 October 1999.

B. Relevant domestic law

1. Procedure

Section 53, subsection 1 of the Act on Accident Insurance (*tapaturmavakuutuslaki, lag om olycksfallsförsäkring*; 608/1948) provides that appellate bodies in accident insurance matters are the Accident Board, the Insurance Court and the Supreme Court. Section 1 of the Decree on the Accident Board (*asetus tapaturmalautakunnasta, förordning om olycksfallsnämnden*; 839/1981) provides that the Accident Board functions as the first appeal instance in matters concerning obligatory accident insurances.

Section 53 of the Act on Accident Insurance provides, *inter alia*, that on the Accident Board there are a full-time president, at least two vice-presidents and at least three lawyer and medical doctor members as well as at least six members representing labour unions. The president, vice-presidents and other members bear the responsibility of a judge.

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

Section 9, subsections 2 and 3 of the Insurance Court Act (as in force at the relevant time) contains provisions concerning, for example, witness examination before the Insurance Court. Subsection 4 provides that in other respects proceedings in the Insurance Court shall be governed by provisions applicable to district courts.

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

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

2. Reservation

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

COMPLAINTS

The applicant complains under Article 6 § 1 that:

1. the Accident Board did not properly reason its decision, as it did not indicate the evidence and findings of fact which led to rejection of the appeal. He claims that the decision was illogical as the Accident Board first held that he was not fit to work as a carpenter but then concluded that his working capacity was reduced by less than 10% after 31 May 1996. He also complains about the lack of reasoning in the decision of the Insurance Court on the merits of the appeal claiming that he could not effectively appeal against the decision due to the inadequate reasoning and that the Insurance Court failed to communicate to him several relevant documents, including a memorandum, which had been submitted to it;

2. the Accident Board, the Insurance Court and the Supreme Court refused to hold an oral hearing;

3. the Supreme Court did not reason its decision not to grant leave to appeal;

4. the length of the proceedings exceeded a reasonable time as it took almost four years for the domestic authorities to issue a final decision in the matter, which was of utmost importance to him.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the Accident Board and the Insurance Court did not give reasoned decisions and that the Insurance Court failed to communicate to him several relevant

documents, including a memorandum, which were submitted to the Insurance Court. Article 6 of the Convention, in so far as relevant, reads as follows:

> "1. 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."

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

2. The applicant complains under Article 6 § 1 of the Convention (see above) that the Accident Board, the Insurance Court and the Supreme Court did not hold oral hearings.

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

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

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

3. As regards the alleged lack of reasoning of the Supreme Court's decision refusing leave to appeal, the Court notes that an examination under Finnish law as to whether leave to appeal to the Supreme Court shall be granted only amounts to an examination as to whether the conditions under Chapter 30, section 3, paragraph 1 of the Code of Judicial Procedure are fulfilled. It does not amount to an examination of the merits of the appeal. The leave to appeal examination by the Finnish Supreme Court did not, therefore, involve a determination of the applicant's civil rights within the

meaning of Article 6 § 1 of the Convention (see *T.H. and S.H. v. Finland*, no. 19823/92, Commission decision of 9 February 1993, unreported). It follows that this aspect of the complaint must be rejected as incompatible *ratione materiae* pursuant to Article 35 §§ 3 and 4 of the Convention.

4. As regards the applicant's complaint that the length of the proceedings exceeded a reasonable time, the Court observes that the Accident Board issued its decision on 13 March 1997, the Insurance Court on 17 November 1998 and the Supreme Court on 21 October 1999. The case-file does not indicate when the case became pending before the Accident Board; however, the contested decision of the insurance company was dated 8 May 1996. In these circumstances the Court finds that there is no appearance of any violation of the reasonable time requirement in Article 6 § 1 of the Convention and it consequently rejects this part of the application as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

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

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President