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. 36457/97
by Juha LAMU
against Finland

The European Court of Human Rights (Fourth Section), sitting on 17 September 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 7 April 1997 and registered on 12 June 1997,

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 deliberated, decides as follows:

THE FACTS

The applicant is a Finnish national, born in 1941 and living in Kokkola. He is represented before the Court by Ms Riitta Korpijärvi, public legal aid counsel in Kokkola. The respondent Government were represented by Mr Holger Rotkirch, Agent, and Mr Arto Kosonen, Co-Agent, both from the Ministry of Foreign Affairs.

A. The circumstances of the case

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

Having been injured at his work place in 1989, the applicant was granted a daily allowance under the Sickness Insurance Act (*sairasvakuutuslaki, lagen om sjukförsäkring* 364/1963) and subsequently a pension in accordance with the Act on Occupational Injury Insurance (*tapaturmavakuutuslaki, lagen om olycksfallsförsäkring* 608/1948). On 31 January 1991 the applicant's insurance company nonetheless refused to pay out any further pension, since he could no longer be considered incapacitated for work by at least ten per cent.

The applicant appealed to the Board for Accident Compensation (*tapaturmalautakunta, olycksfallsnämnden*), requesting that he be granted a pension up to the end of January 1991, when his sick leave had ended. The Board obtained a written opinion from the insurance company in which it proposed that the appeal be rejected. In its decision of 13 June 1991 the Board accepted the appeal. It also referred back to the insurance company the applicant's request to undergo an additional examination at the Foundation for the Disabled. The insurance company allegedly never issued a written decision in response to this request but refused it orally.

In light of fresh evidence of his continuing symptoms the applicant's insurance company, on 12 March 1993, granted him an occupational injury pension for the period 30 October – 31 December 1992 on account of his being incapacitated by 100 %. It refused his request for a pension for the period 1 February – 17 November 1991, during which period he could not be considered incapacitated for work by at least ten per cent. His request for a pension for the period 18 November 1991 – 29 October 1992 and from 1 January 1993 onwards was likewise refused, since his incapacity for work during those periods had been, and was, due to a back illness and related symptoms which were not the result of his work injury.

On 15 April 1993 the applicant appealed against the refusal to pay the pension for the periods 18 November 1991 – 29 October 1992 and 1 January 1993 onwards. The Board for Accident Compensation dismissed the appeal on 15 December 1993 with the Chairman's casting vote. In its opinion to the Board the insurance company had proposed that the appeal be

rejected. It had also adduced fresh medical reports of 10 March and 5 April 1993. The Board considered, in light of the medical evidence adduced, that the decisive reason for the applicant's incapacity for work during the two periods for which the insurance company had refused his pension request consisted of his back problems which were not causally related to his work injury.

In his further appeal to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*) the applicant adduced further medical reports of 1993 and 1994 and other evidence. The insurance company again submitted a written opinion. The Insurance Court further received two further medical reports of 9 February and 6 July 1994 as well as two reports from further examinations which the applicant had undergone in November 1993 and February 1994. It is not clear from the decision who submitted these reports.

On 29 November 1994 the Insurance Court dismissed the appeal by relying on the reasons given by the Board for Accident Compensation.

In February 1995 the applicant requested leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen)*. In his request the applicant observed that he was to undergo further medical examinations in February and March 1995 and that he would submit the relevant medical reports as soon as they were available. On 8 March and 12 April 1995 the applicant's lawyer submitted further evidence to the Supreme Court.

On 30 June 1995 the applicant's lawyer submitted a request relating to the case to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) which transmitted it to the Supreme Court on 3 July 1995. It was mentioned in the request that the applicant had been given a referral for medical examinations and it was requested that the Supreme Court adjourn its decision-making until it had received those medical reports.

On 9 February 1996 the Supreme Court requested the applicant's lawyer to submit the said further evidence or to inform it of the date of their submission by 15 March 1996. The lawyer was informed that in case of his failure to do so, the matter could be decided without that evidence. On 7 March 1996 the applicant's lawyer submitted further evidence to the Supreme Court and requested an extension of the time-limit for the submission of a medical report until 15 May 1996. The lawyer submitted the medical report probably on 30 May 1996 and further evidence on 8 July 1996 and 27 November 1996.

On 13 December 1996 the Supreme Court refused leave to appeal.

B. Relevant domestic law

It is necessary for the granting of an occupational injury pension under the Act on Occupational Injury Insurance that the worker in question has been incapacitated for work by at least 10 % because of an injury or

illness caused by an accident. When assessing the degree of incapacity for work, attention is paid to the possibility of the worker to continue to earn his or her living by means of such salaried work as may be reasonably required from him or her, considering his or her education, earlier work, age and living conditions as well as other comparable factors (section 18).

According to sections 14 and 19 (471/1985) of the Sickness Insurance Act, as they read at the material time, a daily allowance as a result of incapacity for work was of a subsidiary nature. Under section 27 (595/1985), however, a daily allowance could be paid only to the extent it exceeded the amount of compensation to be paid under another Act for the same period of time due to incapacity for work. Despite their subsidiary nature, the daily allowances could nevertheless be paid in full if there was a delay in the payment of compensation for a reason not depending on the insured person.

Under sections 20 (103/1982) and 22 (697/1964) of the National Pension Act *(kansaneläkelaki, folkpensionslag* 347/1956*)*, a pension as a result of incapacity for work may be granted if the person in question is incapable of carrying out his or her usual work or other comparable activities which may reasonably be considered suitable and as guaranteeing a reasonable standard of living, considering his or her age, professional skills and other factors.

In case the incapacity for work is not considered a result of an accident at work, the person in question is entitled to a pension based on incapacity for work paid under a mandatory pension insurance scheme. According to section 4 subsection 3 (472/1981) of the Employment Pensions Act (*työntekijäin eläkelaki, arbetarnas pensionslag*) a worker whose capacity for work may be considered to have reduced by at least two fifths because of an illness, defect or injury, considering also the lapse of time, is entitled to a pension based on incapacity for work. When the degree of incapacity for work is assessed, attention is paid to the worker's possibility to continue to earn his or her living by means of such salaried work as may be reasonably required from him or her, considering his or her education, earlier work, age and living conditions as well as other comparable factors. Pension may also be paid retroactively for the year preceding the month following the date on which the application for pension is made. The payment of pension based on incapacity for work, paid under the legislation concerning pensions, is co-ordinated with the payment of occupational injury pension. However, the first-mentioned pension may be paid out until the different pensions have been co-ordinated. Thus it is possible to receive a full pension based on incapacity for work for instance for the period of time during which an appeal against a decision concerning an occupational injury pension is pending.

COMPLAINTS

The Court recalls that on 15 March 2001 it rejected part of the application in accordance with Article 35 § 4 of the Convention.

In his remaining grievance the applicant complains under Article 6 § 1 of the Convention that the proceedings were excessively lengthy, having lasted some three years and nine months and involving a most important source for his livelihood.

THE LAW

The applicant complains, under Article 6 of the Convention, that the proceedings were excessively lengthy as the proceedings in the Board for Accident Compensation took nine months, the proceedings in the Insurance Court twelve months and the proceedings in the Supreme Court two years taking also into account that the proceedings had a significant impact on his livelihood. Article 6, insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government submit that the case, although somewhat complicated on domestic level, should be rejected as manifestly ill-founded. The proceedings started when the applicant appealed on 15 April 1993 to the Board for Accident Compensation and ended on 13 December 1996 when the Supreme Court refused leave to appeal. The proceeding lasted altogether three years, seven months and 28 days.

The Government observe that the Board for Accident Compensation, after the Board receives an appeal, submits *ex officio* a request for observations to the insurance company in question. The observations shall usually be submitted within two weeks from the request unless a longer time is necessary for the purpose of obtaining further evidence. In this case the request for observations was submitted to the insurance company in April 1993, whereas the company submitted its observations only in August 1993. The documents do not reveal any specific reason for this delay. It may be concluded from the decision of the Board for Accident Compensation that after the insurance company had issued the decision subject to appeal, it had received new medical reports dated 10 March 1993 and 5 April 1993. Considering the nature of the procedure, a minimum time for the consideration of an appeal by the Board is in practice three months. As the appeals are considered in the order in which they are received, the total length of the proceedings is also affected by the changes in the number

of appeals under consideration. The proceedings may be further delayed if further evidence is submitted to the Board during its consideration of the case and if it is necessary to request opinions from experts other than those working for the Board. In 1993 the average length of proceedings before the Board for Accident Compensation was approximately five months. In the present case the length of the proceedings thus exceeded the average and may only be explained by the time needed by the insurance company for the submission of its observations, i.e. three and a half months. In other respects the length of the proceedings was the average.

The Government note that the total length of the proceedings before the Insurance Court was nearly ten months which cannot be considered unreasonable.

The Government further note that on 20 February 1995 the applicant requested leave to appeal from the Supreme Court stating that he was to undergo further medical examinations in February and March 1995, and would submit the relevant medical reports as soon as they were available. On 8 March and 12 April 1995 his lawyer submitted further evidence and on 30 June 1995 he informed the court that the applicant had been given a referral for medical examinations at the Kuopio University Hospital, and requested that the court adjourn its decision-making until it had received those medical reports. It seems that the lawyer submitted further medical report only on 30 May 1996. He also submitted further evidence on 8 July 1996 and 27 November 1996, whereas the Supreme Court's decision was made on 13 December 1996.

The Government recall that when assessing a request for leave to appeal, the Supreme Court examines not only the questions of law but also the facts of the case. Decisions on requests for leave to appeal are usually made within three or four months from the submission of the request. In the present case, the consideration of the request for leave to appeal took longer than usual. However, this was due to the fact that the applicant repeatedly submitted further evidence concerning the facts of the case and since the Supreme Court needed to take that evidence into account when deciding on the matter. Thus the delay in the proceedings was not caused by the Supreme Court but by the applicant himself.

Under the occupational injury scheme the compensation for loss of income is paid only for the period of time during which the incapacity for work remains the result of an accident at work, whereas, compensation under the sickness insurance, national pension and employment pension schemes is paid irrespective of the reason for such incapacity. After the decision made by the insurance company on 12 March 1993 the applicant did not apply for compensation for his incapacity for work until 4 April 1995 in accordance with the national pension and employment pension schemes. Those requests were refused on the grounds that he did not fulfil the requirements set out in the relevant legislation. These decisions

were upheld on appeal. It can be inferred from those refusals that the income of the applicant was secured at the material time.

Taking all of the aforementioned into account, the Government conclude that the length of the proceedings in the present case was reasonable for the purposes of Article 6 § 1 of the Convention.

The applicant objects to the Government's view that his income was secured while the application was pending during 12 March 1993 and 13 December 1996 as his income, if any, was so low that he could not support himself or his family.

The Court considers that, for the purposes of Article 6, the proceedings concerning the applicant's entitlement to a pension for an occupational injury, following the insurance company's decision of 12 March 1993, began on 15 April 1993, when the applicant appealed against the aforementioned decision to the Board for Accident Compensation. They ended on 13 December 1996 when the Supreme Court refused leave to appeal. The period to be considered is therefore three years, seven months and twenty-eight days.

The Court reiterates that the "reasonableness" of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria; the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in dispute (see, among other authorities, *Comingersoll S.A. v. Portugal [GC], no. 35382/97,* § 19, ECHR 2000-IV).

The Court considers that the case was not a very complex one.

The Court points out that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time". It notes that during the period when the case was pending before the Board for Accident Compensation the applicant submitted new medical reports to the insurance company. The insurance company submitted its observations to the Board for Accident Compensation over three months after it had been requested to do so. As such, however, this delay cannot be considered unreasonable.

The Court also accepts that the length of the proceedings before the Insurance Court, nearly ten months, cannot be considered unreasonable, taking into account that the applicant submitted several medical reports while the case was pending.

The Court finally notes that during the Supreme Court proceedings, which lasted nearly one year and ten months, the applicant requested the court to adjourn the case twice due to new medical examinations. The only period of some concern would appear to be from July 1995, when the applicant for the first time requested an adjournment, until February 1996, when the Supreme Court requested the applicant to submit the promised further medical reports or to inform it of their date of the submission by 15 March 1996. In his answer to the Supreme Court the applicant once

again requested an extension of the time-limit until 15 May. The applicant then submitted medical reports on 30 May, on 8 July and on 27 November. In these circumstances the evidence does not disclose any significant period of inactivity of the Supreme Court, which even set a time-limit for the applicant's submissions so as to expedite the proceedings.

As noted by the Government, the applicant did not apply until 4 April 1995 for compensation under the sickness insurance, national pension and unemployment schemes which is paid irrespective of the reason for the incapacity for work. In light of this the Court accepts that there was no particular reason for exceptional promptness with reference to what was at stake for the applicant.

In conclusion, regard being had to all circumstances of the case, and, more particularly, to the applicant's conduct during the proceedings, the length of the time complained of cannot be regarded as unreasonable.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President