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. 37730/02
by Risto NIVA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 16 March 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 15 October 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Risto Niva, is a Finnish national, who was born in 1957 and lives in Alapitkä. He is represented before the Court by Mr Jarmo Kinnunen, a lawyer practising in Helsinki.

A. The circumstances of the case

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

The applicant sustained injuries in a nerve fibre operation on 5 October 1994 in Kuopio. The applicant's condition improved after a fresh operation conducted in Helsinki on 14 December 1994. On 14 March 1997 he issued a summons claiming pecuniary and non-pecuniary damage and compensation for costs from the Patient Insurance Association (*potilasvakuutusyhdistys*, *patientförsäkringsförening*; which was later renamed as the Patient Insurance Board (*potilasvakuutuskeskus*, *patientförsäkringscentral*).

The District Court of Helsinki held an oral hearing in which, *inter alia*, five witnesses and experts were heard. In its judgment on 18 June 1998 it found the medical treatment in Kuopio inadequate and ordered the defendant to pay the applicant 20,000 Finnish marks (FIM) as non-pecuniary damage for pain and suffering and to reimburse medical expenses of FIM 24,001.15 as well as his legal expenses of FIM 38,367.54, with interest. It dismissed the applicant's claims that he was suffering from permanent damage.

Both parties appealed to the Court of Appeal of Helsinki. The applicant claimed non-pecuniary damages for permanent damage and a higher amount of damages for pain and suffering.

On 11 March 1999 the Court of Appeal invited the National Board of Medico-legal Affairs (*terveydenhuollon oikeusturvakeskus, rättskyddscentralen för hälsovården*) to submit its report in the matter. The Court of Appeal received the required report on 17 January 2001. The statement included medical opinions of three doctors. These medical opinions were issued by and dated as follows: N. on 21 May 1999, M. on 20 October 1999 and professor A. on 17 December 2000.

The Patient Insurance Board and the applicant submitted their observations on the report on 1 February 2001 and 15 February 2001 respectively. The applicant complained, *inter alia*, about the delay of the National Board of Medico-legal Affairs in submitting its statement to the Court of Appeal, and invoked Article 6 § 1 of the Convention.

The Court of Appeal held an oral hearing on 13 June 2001 in which it heard three expert witnesses appointed by the applicant and one expert witness appointed by the Patient Insurance Board. The Board decided not to

call professor A. as an additional witness at the hearing. On 17 October 2001 the Court of Appeal dismissed the applicant's claims and quashed the District Court's judgment. It ordered the applicant to reimburse the other party's legal expenses of FIM 11,130. The Supreme Court refused the applicant leave to appeal on 6 June 2002.

On 31 October 2000 the applicant had meanwhile issued a petition to the Parliamentary Ombudsman (*oikeusasiamies, ombudsman*) complaining about the length of the proceedings before the National Board of Medico-legal Affairs. On 2 January 2002 the Deputy Ombudsman criticized the National Board of Medico-legal Affairs for unreasonable delay in issuing the requested statement. She maintained, however, that the case did not disclose any unlawfulness in violation of section 21 of the Constitution of Finland. The Deputy Ombudsman did not examine the Court of Appeal's proceedings as the case was at the time still pending before the Supreme Court.

B. Relevant domestic law

Under section 21 of the Constitution of Finland (*perustuslaki, grundlag*; 731/1999) – corresponding to section 16 of the prior Constitution (*hallitusmuoto, regeringsformen*) –, everyone is entitled to have his/her case examined before a public authority without undue delay.

According to section 2, subsection 2, point 1 of the Patient Injuries Act (*potilasvahinkolaki, patientskadelag*; 585/1986, as in force at the relevant time) a person is entitled to compensation for personal injuries and damages caused by his/her examination, treatment or other similar measure, or the lack of these.

Chapter 5, section 2 of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslag*; 412/1974) provides that a person who has been subjected to bodily injury or other type of personal injury is entitled to compensation for medical expenses and other expenses caused by the accident, as well as for diminished income and maintenance, pain and suffering, handicap and permanent damage.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the length of civil proceedings exceeded a reasonable time and that the length of the proceedings before the National Board of Medico-legal Affairs was excessive.

2. The applicant also complains under Article 6 § 1 of the Convention that the National Board of Medico-legal Affairs was biased as it invited two

opposing medical opinions after the receipt of the first opinion which was favourable to the applicant, and that the National Board of Medico-legal Affairs had a preconceived attitude against the applicant's case.

3. The applicant further complains under Article 6 § 1 about the Court of Appeal's evaluation of evidence and, under Article 6 § 3 (d), about that court's failure to hear in person professor A. who had submitted his written medical opinion to the Court of Appeal.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the length of civil proceedings as well as the proceedings before the National Board of Medico-legal Affairs exceeded a reasonable time. Article 6 § 1 of the Convention reads, 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 Court observes that Article 6 § 1 of the Convention concerns procedures before a "tribunal established by law". The National Board of Medico-legal Affairs can not be regarded as such a tribunal. However, the Court's task is to examine whether the length of the proceedings in their entirety was reasonable and notes that the procedure before the National Board of Medico-legal Affairs has to be taken into account as one aspect contributing to the overall length of those proceedings.

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 that the National Board of Medico-legal Affairs was biased and that it had a preconceived attitude against him. The Court reiterates its finding above (1.) concerning the applicability of Article 6 § 1 of the Convention to proceedings before the National Board of Medico-legal Affairs. It accordingly rejects this part of the complaint as incompatible *ratione materiae* pursuant to Article 35 § 3 and 4 of the Convention.

3. As regards the complaint about the Court of Appeal's evaluation of evidence, it is not within the province of the Court to substitute its own assessment of the facts for that of the national courts. As a general rule it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety, including the way in

which evidence was permitted, were "fair" within the meaning of Article 6 § 1 of the Convention (see *Lucà v. Italy*, no. 33354/96, § 38, ECHR 2001-II, and *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, § 31). In the present case there is no indication of any appearance of a violation of the principle of fair trial in the Court of Appeal's approach to the evidence.

The applicant further complains about the failure to hear professor A. in person before the Court of Appeal, invoking Article 6 § 3 (d) which provides for the examination and cross-examination of witnesses. The Court notes however that Article 6 § 3 (d) does not directly apply to civil proceedings but concerns procedures where a criminal charge is being determined. In the present case the applicant was not subject to any criminal charge. The Court has however examined the complaint as an aspect of fairness under Article 6 § 1 of the Convention (cited above).

The Court observes that the Court of Appeal held an oral hearing in which all three of the applicant's witnesses were heard as well as one witness appointed by the opposing party, which had chosen not to call professor A. as an additional witness. The applicant had the opportunity, which he took, to submit written observations regarding the medical opinion of professor A. before the principal hearing. The applicant also had ample opportunity to present his case at the principal hearing before the Court of Appeal. In these circumstances the Court finds no indication of unfairness contrary to Article 6 § 1 of the Convention in this respect either.

It follows that this part of the complaint must be rejected 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 excessive length of the proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President