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. 20586/02
by Esko PASSILA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 3 November 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 3 May 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr. Esko Passila, is a Finnish national who was born in 1941 and lives in Lahti.

A. The circumstances of the case

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

On 5 January 2001 the Social Insurance Institution (*kansaneläkelaitos, folkpensionsanstalten*) of Lahti decided that as of December 1999 the Finnish social security legislation did not apply to the applicant as he was not considered to be permanently resident in Finland.

The applicant appealed to the Appellate Board for Social Insurance (*tarkastuslautakunta, prövningsnämnden*) which rejected the appeal on 12 October 2001. The decision of the Appellate Board was sent to the applicant's address in Estonia, but allegedly the applicant never received it. He had allegedly requested the authorities to send the decision to his address in Finland.

The applicant alleged that he became aware of the decision of the Appellate Board in February 2002 when the Social Insurance Institution asked him to return some wrongly paid social benefits. By that time the decision of the Appellate Board had already gained legal force and he was not able to appeal against it to the Insurance Court (*vakuutusoikeus, försäkringsdomstolen*). At that time he allegedly asked advice from the Appellate Board and the Insurance Court, without any helpful response.

B. Relevant domestic law and practice

Under section 61 of the Administrative Judicial Procedure Act (*hallintolainkäyttölaki, förvaltningsprocesslagen 586/1996*) an expired time-limit may be restored to a person who has a legal excuse or who for another strong reason was unable to observe a prescribed time-limit in lodging an appeal against a decision.

Under section 62 of the said Act an application for the restoration of an expired time-limit shall be lodged with the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) within one year of the expiry of the original time-limit, at the latest. For a very strong reason the time-limit may be restored even after that period.

In a decision of 16 November 2001 (no 2862) the Supreme Administrative Court decided to restore an expired time-limit for A in order to lodge an appeal to the Administrative Court against a decision of the Environmental Board in a case where the decision of the Environmental

Board was not given to him as required by section 54, subsection 1 of the Environmental Protection Act (*ympäristönsuojelulaki, miljöskyddslagen*).

COMPLAINT

The applicant complained under Article 6 and 13 of the Convention that the decision of the Appellate Board for Social Insurance was never sent to him and thus he was denied the right to appeal against it.

THE LAW

The applicant complained that he was not able to appeal against the decision as the authority in question had allegedly sent it to an erroneous address and he never received it.

The applicant invoked Article 6 which reads, as far as relevant to the present case, as follows:

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

He also invoked Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court recalls in the outset that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, *inter alia*, *Akdivar and Others v. Turkey* judgment of 16 December 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 65).

The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant to have normal recourse to remedies within the national legal system which are

available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see, *inter alia*, the *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2097, § 159).

As to the present case, the Court notes that the applicant allegedly did not receive a decision of the Appellate Board for Social Insurance of 12 October 2001 but became aware of the said decision in February 2002, when the time-limit to appeal against it had already expired.

In the circumstances of this case, an application to the Supreme Administrative Court under section 61 of the Administrative Judicial Procedure Act for restoration of the expired time-limit was the means by which the respondent State provided an opportunity to put matters right through their own legal system. In view of the fact that according to the Supreme Administrative Court's established practice an expired time-limit can be restored to allow the lodging of an appeal if the authority in question has failed to communicate its decision in accordance with the domestic legislation, the remedy may be regarded as capable of providing effective redress. Although Article 35 § 1 of the Convention does not normally require resort to extraordinary remedies, the Court concludes that in the circumstances of this case the applicant was obliged to exhaust the remedy in question.

Therefore, the Court rejects the application for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President