AS TO THE ADMISSIBILITY OF

Application No. 21357/93
by Tauno YLIPÄÄ
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 29 November 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 21 December 1992 by Tauno YLIPÄÄ against Finland and registered on 9 February 1993 under file No. 21357/93;

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

THE FACTS

The applicant was a Finnish citizen, born in 1921. He was a war veteran. He died in 1995. On 29 September 1995 his daughter as the administrator of his estate informed the Commission that the estate wanted to pursue the application pending before the Commission.

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

I

In 1969 the State Office for Accident Compensation (tapaturmavirasto), hereinafter "the Compensation Office", granted the applicant a life annuity (elinkorko) under the 1948 Military Injuries Act on the basis of an established ten per cent disability caused by a wartime shrapnel wound in his left cheek and impairment of hearing.

In 1987 the applicant requested the Compensation Office to raise this life annuity as he considered that the degree of his disability now exceeded ten per cent. He furthermore now submitted a request for compensation for certain other injuries which he claimed resulted from his service in the 1941-44 war.

On 10 May 1990 the Compensation Office found in favour of the applicant raising his degree of disability to fifteen per cent. The existing life annuity was accordingly also raised and given retroactive effect as from 1 April 1987. However, the Compensation Office rejected

the applicant's request for compensation in respect of the new claims made.

The applicant appealed against this decision to the Insurance Court (vakuutusoikeus) maintaining that the degree of his disability should be raised even further. Secondly, he upheld his request for compensation and thirdly, he presented two new issues: that the degree of his disability should take effect retroactively as from 1972 instead of 1987 and that he was entitled to compensation for certain additional conditions not mentioned previously.

On 21 March 1991 the Insurance Court rejected the applicant's appeal. As regards the two new issues raised in the appeal the Court did not examine them as they had not previously been brought before the Compensation Office, this being the competent authority.

The applicant's appeal against the above decision was rejected by the Supreme Court (korkein oikeus) on 3 January 1992.

In the meantime the applicant had submitted a new application to the Compensation Office in which he first requested that the increase of the degree of his disability, which apparently in the meantime had been raised to twenty per cent with effect from 1987, should take effect retroactively as from 1972 instead of 1987. Secondly, he claimed compensation for certain alleged other war injuries to his shoulder and ankle, these being the two issues which the Insurance Court had previously excluded from its examination (cf. above).

On 30 June 1991 the applicant requested the Military Medical Archives at the Compensation Office (tapaturmaviraston sotilas-lääkintäarkisto) to send him copies of his medical file kept in the relevant archives. On 16 July 1991 these copies were sent to him.On 21 January 1992 the Compensation Office refused to give retroactive effect to the degree of disability already as from 1972. Furthermore, the applicant's new claims for compensation for the alleged injuries to his shoulder and ankle were rejected. The Compensation Office took into account the applicant's military file as well as the medical file kept in its Military Medical Archives.

The applicant appealed against this decision to the Insurance Court maintaining his claims as submitted to the Compensation Office which, upon request from the Court, submitted without any further reasoning that the appeal ought to be rejected. It appears that a copy of this statement was not transmitted to the applicant. It also appears that the Insurance Court had at its disposal a document of 7 April 1992, unknown to the applicant, in which the question was raised whether further examinations were necessary in respect of a possible operation on the applicant's jaw.

On 4 June 1992 the Insurance Court rejected the applicant's appeal referring to the reasons set out in the Compensation Office's decision. The Insurance Court did not in any way refer to the document concerning the applicant's jaw in its reasoning. The Court's decision was dispatched to the applicant on 2 July 1992.

A further appeal to the Supreme Court lay open to the applicant in so far as the Insurance Court's decision concerned his right to compensation on the grounds of alleged injuries to his shoulder and ankle, but he did not avail himself of this remedy. No further appeal lay open in so far as the decision concerned the question of giving retroactive effect earlier than 1987.

II

On 20 May 1990 the applicant requested that he be granted a supplementary life annuity pursuant to section 18 of the Military Injuries Act, which reads in so far as relevant as follows:

(translation)

> "A wounded or ill person whose degree of disability has by virtue of section 8 been established to be at least twenty per cent, may on application be granted a supplementary life annuity for a specified period, or if the wounded or ill person has reached the age of 65, until further notice."

On 4 March 1991 the Compensation Office found for the applicant and granted him a supplementary life annuity (täydennyskorko) as from 1 July 1987, the day on which a twenty per cent disability had been established in respect of the applicant.

The applicant appealed, requesting that he be granted a supplementary life annuity as from 3 October 1972.

The Insurance Court obtained an opinion from the Compensation Office to the effect that the appeal should be rejected. The opinion did not contain any further information. The Compensation Office's file concerning the applicant's request was appended to the opinion. On 4 June 1992 the Insurance Court rejected the applicant's appeal. The Insurance Court stated that under section 18 of the Military Injuries Act supplementary annuity could not be granted in respect of a period prior to the date when the disability degree of twenty per cent had been established.

No further appeal lay against this decision which was dispatched to the applicant on 2 July 1992.

III

It appears that on 31 June 1991 the applicant was taken against his will to a health care institution, where he stayed until 3 August 1991.

COMPLAINTS

1. The applicant complains that he was wrongly denied further compensation for his injuries allegedly caused by the war.

2. He also complains that the Compensation Office is not a "tribunal" within the meaning of Article 6 para. 1 of the Convention.

3. As regards the first set of proceedings before the Compensation Office, the Insurance Court and the Supreme Court (cf. section I of THE FACTS) the applicant complains, under Article 6 of the Convention, that he was denied a right to consult documents which the Insurance Court had obtained. He submits that neither his medical file nor the Compensation Office's opinion on his appeal was communicated to him for comments. He submits that the Supreme Court was obliged to cure defects in proceedings before the Insurance Court. He complains further that the Supreme Court's decision of 3 January 1992 contained no reasoning.

4. As regards the second set of proceedings (cf. section I of THE FACTS) the applicant complains that he was likewise denied a right to consult the documents which the Compensation Office obtained from its Military Medical Archives. He further complains that this material was not communicated to him for comments prior to the Compensation Office's decision. The applicant also alleges as regards the proceedings in the Insurance Court that the document of 7 April 1992 concerning his jaw had been submitted to the Insurance Court by a dentist without his knowledge. He maintains that the Insurance Court did not communicate this document to him, nor did it communicate to him the Compensation Office's opinion on his appeal.

5. As regards the proceedings concerning the supplementary life annuity (section II of THE FACTS) the applicant complains that his right to a fair hearing was violated inter alia since the Insurance Court and the Compensation Office did not communicate to him for comments documents obtained by them.

6. The applicant further maintains that he has been discriminated against in connection with the examination of his different requests and appeals.

7. Finally, the applicant complains (cf. section III of THE FACTS) that he was unlawfully detained against his will in a health care institution from 30 July to 3 August 1991. In this respect he invokes no express provision of the Convention or its Protocols.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 21 December 1992 and registered on 9 February 1993.

On 5 April 1995 the Commission (First Chamber) decided to adjourn the application pending the judgment of the European Court of Human Rights in the case of Kerojärvi v. Finland. The Court gave its judgment on 19 July 1995 (Eur. Court H.R., Kerojärvi judgment of 19 July 1995, Series A, no. 322).

THE LAW

The Commission first notes that the applicant has died in the course of the proceedings. The Commission recalls that in such event the applicant's heirs, especially his parents, spouse or children, are in principle entitled to take his place in the proceedings (see Eur. Court H.R., Scherer judgment of 25 March 1994, Series A, no. 287, p. 15 para. 31 and the other cases mentioned therein)

In the present case the applicant's estate has expressed the wish to continue the proceedings. The Commission notes that the estate, administered by the applicant's daughter, includes close relatives of the applicant. The Commission therefore concludes that the applicant's estate may take over and continue the proceedings instituted by the applicant before the Commission.

1. In respect of the different requests for compensation and other matters the applicant complains that he was wrongly denied further compensation.

In this respect the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or 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. The Commission refers, on this point, to its constant case-law (cf., e.g., No. 21283/93, Dec. 5.4.94, D.R. 77-A p. 88).

2. It is true, however, that the applicant has also raised a number of points under the Convention in respect of the domestic proceedings and his right to a fair hearing as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention which reads as far as relevant as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by (a) tribunal ..."

The applicant first complains that the Compensation Office is not

a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls that whilst Article 6 para. 1 (Art. 6-1) embodies the "right to a court", it nevertheless does not oblige the Contracting States to submit disputes over "civil rights and obligations" to a procedure conducted at each of its stages before "tribunals" meeting the Article's various requirements. Demands of flexibility and efficiency, which are fully compatible with the protection of human rights, may justify the prior intervention of administrative bodies which do not satisfy the said requirements in every respect (cf., Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 10 October 1980, Series A, no. 43, p. 23, para. 51)

The Commission recalls that in Finland questions concerning a life annuity and compensation for war injuries are under the Military Injuries Act first considered by the Compensation Office. Although this body may not be a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention the Commission notes that its decisions may be brought before the Insurance Court and in certain cases even further to the Supreme Court. In these circumstances the Commission finds that Finnish law secures a right to a tribunal within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention in the dispute over "civil rights".

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 6 (Art. 6) of the Convention that during the first set of proceedings, which ended with the decision of the Supreme Court on 3 January 1992, his right to a fair hearing was violated on the grounds of non-communication of certain documents obtained by the Insurance Court. He complains that the Supreme Court did not cure the defects in the proceedings before the Insurance Court. He further complains that the Supreme Court's decision did not contain any reasoning.

The Commission is not, however, required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 (Art. 6) as invoked by the applicant, as Article 26 of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the decision of the Supreme Court, which was the final decision regarding the subject of this particular complaint, was given on 3 January 1992, whereas the application was submitted to the Commission on 21 December 1992, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

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

4. As regards the second set of proceedings, which concerned the compensation for the alleged injuries to the applicant's shoulder and ankle and the question from which date the degree of disability was to be considered, the applicant complains that he was denied a right to consult the documents obtained by the Compensation Office from its Military Medical Archives and that this material was not communicated to him for comments. He also complains that the Insurance Court did not communicate the document of 7 April 1992 concerning his jaw and the Compensation Office's opinion to him prior to its decision.

In respect of these complaints the Commission finds it can leave the question open whether all the issues raised concern a dispute over a "right" and whether the applicant has in all respects exhausted domestic remedies since it considers that this part of the application is in any event manifestly ill-founded for the following reasons.

As regards the proceedings in the Compensation Office the Commission recalls that on 16 July 1991 the Military Medical Archives at the Compensation Office sent copies of the applicant's medical file to him. Therefore, as regards the alleged denial of access to this file, or that it was not communicated to him, the Commission finds that these allegations are unfounded.

As regards the proceedings in the Insurance Court the Commission recalls that the Court obtained an opinion from the Compensation Office which contained nothing but a recommendation to reject the appeal. It also received a document dated 7 April which apparently related to the need for an operation to the applicant's jaw. These documents were not communicated to the applicant.

However, the Commission further recalls that the Insurance Court was faced with the question as to whether or not the applicant was entitled to compensation on the ground of injuries to his shoulder and ankle, and whether an existing life annuity should be calculated as from 1972 or 1987. It is true that where a court determines such issues without an appellant having had the possibility to acquaint himself with and, if necessary, comment upon relevant documents this may raise an issue under Article 6 (Art. 6) of the Convention (cf. the Kerojärvi judgment mentioned above, para. 42). However, the Commission finds that in the circumstances of the present case the applicant in fact had access to all relevant documents of his file and that the two remaining documents to which he has referred did not adversely affect his capability of challenging the Compensation Office's decision in respect of the two issues he had raised. The Commission also notes that the applicant had requested, and received, copies of the documents material to his requests and that therefore the procedure, seen as a whole, was such as to allow him a proper participation in the proceedings.

Thus, taking into account the entirety of the proceedings the Commission considers that they do not disclose any appearance of a violation of the right to a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. As regards the proceedings concerning the supplementary life annuity (section II of THE FACTS) the applicant complains that his right to a fair hearing was violated since the Insurance Court did not communicate certain documents to him prior to its decision in the case.

The Commission recalls that in order for Article 6 (Art. 6) of the Convention to apply to the proceedings in question it must first ascertain whether there was a dispute over a right which can be said, at least on arguable grounds, to be recognised under domestic law (cf. for example Eur. Court H.R. Skärby judgment of 28 June 1990, Series A no. 180-B, p. 36, para. 27). In the present case there was no dispute as to whether the applicant was entitled to the supplementary life annuity as his request in this respect was complied with. The dispute concerned the possibility of obtaining this annuity retroactively as from 1972. This was, however, a right which, as stated by the Insurance Court, the applicant did not have since supplementary life annuity could not be granted in respect of a period prior to the date when the disability degree of twenty per cent had been established. Thus he cannot claim any arguable ground that he had a right under domestic law and Article 6 (Art. 6) therefore does not

apply to these proceedings. This complaint is accordingly incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

6. In respect of all of the above proceedings the applicant complains, under Article 14 (Art. 14) of the Convention, that he has been discriminated against. However, after an examination of this complaint as submitted by the applicant, the Commission finds that it does not disclose any appearance of a violation of Article 14 (Art. 14) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. The applicant has finally complained (cf. section III of THE FACTS) that he was unlawfully deprived of liberty from 30 July to 3 August 1991. In this respect he has not invoked any provision of the Convention or its Protocols.

The Commission is not required, however, to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Convention or its Protocols, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the alleged deprivation of liberty took place from 30 July to 3 August 1991, whereas the application was submitted to the Commission on 21 December 1992, that is, more than six months after the date on which the alleged deprivation of liberty ended. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)