



Keroj arvi v. Finland

App. No. 17506/90, 32 Eur. H.R. Rep. 8 (2001).

Country: Finland

Region: Europe

Year: 1995

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Disabilities, Health systems and financing, Occupational health

Human Rights: Right of access to information, Right to due process/fair trial

Facts

The applicant was a Finnish national who had retired from the military after receiving a shrapnel wound in his back during his service in the wars between Finland and the Soviet Union. Although the State Office for Accident Compensation (Compensation Office) acknowledged that the shrapnel wound was a "military injury" for purposes of compensation under the 1948 Military Injuries Act (Act), the Office rejected the applicant's claim for life annuity under section 8 of the Act because the degree of his disability from the that injury, as well as several other allegedly related illnesses, was less than the minimum required percentage under that section of the Act. His appeals to the relevant domestic courts were rejected and so was his request for an adjustment of the degree of his disability by both the Insurance Court and the Supreme Court. The applicant subsequently discovered that the Insurance Court had obtained documents from the Compensation Office containing expert opinion, upon which it had rejected the application, and which the Insurance Court did not communicate to applicant for comments.

The Government defended this action on the grounds that it was common practice not to share such documents. The applicant also did not have an opportunity to comment on the documents in the case file prior to the Supreme Court upholding the ruling against him. The applicant was also not legally represented at any stage of the proceedings. The applicant therefore alleged that the non-communication of documents in the proceedings before the Supreme Court gave rise to a violation of his right to a fair trial as guaranteed by Article 6, paragraph 1 of the European Convention of Human Rights (Convention).

Decision and Reasoning

The Court found a violation of the applicant's right to a fair trial Article 6, paragraph 1 of the Convention. The Court's review was limited to the actions of the Supreme Court because the prior proceedings took place before Finland became a State party to the Convention. In its reasoning, the Court deduced that insofar as the practice by the Insurance Court of not communicating documents to the Supreme Court was "constant," the Supreme Court could have assumed that the Insurance Court had not transmitted the Compensation Office's documents to the applicant and that his capability of challenging the contested decision was adversely affected in the Supreme Court Proceedings.

Additionally, the Supreme Court could have assumed that the applicant would not have been aware of that practice without the assistance of a lawyer. The applicant therefore did not receive a fair trial in the Supreme Court proceedings, in violation of Article 6, paragraph 1 of the Convention.

Decision Excerpts

"36. The disagreement between the applicant and the Finnish authorities concerned the question whether he was entitled to compensation under the 1948 Act for conditions contracted as a result of military service. Admittedly, the entitlement in question had certain public-law features in that it related to a compensation-scheme established by law, administered by public authorities and funded entirely by the Finnish State. However, the private-law features were predominant. A life annuity granted under the 1948 Act was individual and pecuniary in nature and was aimed at compensating for loss of means of subsistence resulting from disability (see paragraph 18 above). Having regard to the foregoing, the Court sees no reason to distinguish this case from previous cases in which it has found that disputes over benefits under a social-security scheme concern "civil rights" (see, in particular, the *Feldbrugge v. the Netherlands* judgment of 29 May 1986, Series A no. 99, pp. 12-16, paras. 26-40; *Salesi v. Italy* judgment of 26 February 1993, Series A no. 257-E, pp. 59-60, para. 19; and *Schuler-Zraggen v. Switzerland* judgment of 24 June 1993, Series A no. 263, p. 17,

para. 46). Accordingly, as the Government conceded before the Court, the entitlement in issue was a "civil right".

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