

28 October 2005

HUMAN RIGHTS COMMITTEE
85th Session
17 October – 3 November 2005

EUGENE LINDER
v.
FINLAND

DECISION

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BEFORE: CHAIRPERSON: Ms. Christine Chanet (France)

VICE-CHAIRPERSONS: Mr. Maurice Glele Ahanhanzo (Benin), Ms. Elisabeth Palm (Sweden), Mr. Hipolito Solari Yrigoyen (Argentina)

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Citation: Linder v. Finland, Comm. 1420/2005, U.N. Doc. A/61/40, Vol. II, at 663 (HRC 2005)

Alt. Style of Cause: Linder v. Finland

Publications: Report of the Human Rights Committee, U.N. GAOR, 61st Sess., Supp. No. 40, U.N. Doc. A/61/40, Vol. II, Annex VI, sect. HH, at 663 (Jan. 1, 2006)

1. The author of the communication (initial submission of 1 April 2005) is Eugene

Linder, a Finnish citizen. Although the author does not invoke any specific provision of the Covenant, the communication appears to raise issues under articles 2, paragraph 3 (b); 7; 14; and 26 of the Covenant. He is not represented by counsel. The Optional Protocol entered into force for Finland on 23 March 1976.

FACTUAL BACKGROUND

2.1 On 11 November 2004, the author, a Finnish citizen, was admitted to the emergency ward of a hospital in Germany (neither the name of the hospital nor the city is provided). While in hospital (exact date not specified), he received a fax from the Social Insurance Institution of Finland (KELA), requesting him to provide confirmation of his residence in Finland. Such information was necessary as Finnish residents are entitled to the coverage by KELA of their medical expenses abroad only when they travel for a short period of time. Finnish nationals resident abroad for longer periods have to contract a health insurance in their country of residence. Allegedly, the author was unable to submit the necessary information from the hospital, and he asked KELA to inform him exactly what information (and in what form) was needed; allegedly, he received no answer. He was discharged from the hospital on 20 November 2004. He explains that he cannot return immediately to Finland because his health condition is not stable enough to allow him a long flight.

2.2 Allegedly, on 25 November 2004, KELA considered his case and found him "not eligible for coverage by the Finnish social security system". According to the author, this decision was, inter alia, based on the ground that no documents were provided to KELA proving his residence in Finland, despite the fact that he had not been informed what documents he had to provide, and that even if he had known, he still would not be able to provide them from the hospital.

2.3 The author claims that since his discharge from hospital, he was left without any medical attention. Allegedly, notwithstanding that he has contacted several Finnish officials by telephone, has explained his problems to them and has indicated that his case constituted a medical emergency, his claims were ignored or he did not receive any reasoned advice as to what action he should undertake. From the documents submitted to the Committee, it transpires that on 23 December 2004, he had appealed to KELA's Appeal Tribunal and that appeal is pending.

2.4 On 27 December 2004, the author complained to the Chancellor of Justice's Office about the "unacceptable behaviour of officials at various bodies and organisations in Finland". The Chancellor of Justice rejected his complaint on 24 January 2005, because of his inability to interfere in cases that are pending before bodies undertaking a review or in cases under appeal, the complaint regarding the author's residence in Finland in connection to his eligibility for social insurance was still under examination by KELA's Appeal Tribunal.

2.5 On 26 February 2005, the author again wrote to the Chancellor of Justice. He reiterated that his case was one of medical emergency, and explained that his repeated

attempts to contact different officials of KELA in Tampere or Helsinki and the Ministry of Health in order to obtain clarifications of their position on his case were unsuccessful. He claimed that the Chancellor's narrow interpretation of his complaint as being only about KELA was incorrect, as it contained a long list of names and institutions that "failed in their duty". In the author's opinion, this constituted sufficient ground for the Chancellor to start an investigation. He expressed his "incomprehension" about the delay (one month, according to the author) needed by the Chancellor to inform the author of his "unwillingness" to deal with his case, while it was clear that this was a case of health emergency and prompt action was needed. The author urged the Chancellor to investigate the actions of Finnish officials, guilty, according to him, of (a) a discrimination based on his ethnic origin, (b) of "criminal negligence" in leaving him without medical assistance, (c) a violation of his human rights and of his rights as a patient. He further explained that he is not an ethnic Finn, speaking Finnish with a foreign accent indicating to any native Finn "that he is a foreigner with a Finnish passport". In his letter to the Chancellor, the author also alleged a breach of procedural obligations of the Appeal Tribunal. He explained that on 27 December 2004, he applied to the KELA Appeal Tribunal in Helsinki, but that he received no confirmation of receipt. On 5 January 2005, he had a phone conversation with the Chairman of the Appeal Tribunal who, notwithstanding that the author had explained that his case was a "medical emergency", insisted that the average time of processing individual complaints by the Appeal Tribunal was about ten months. The author held several subsequent conversations with the Chairman, and received his written confirmation that the Appeal Tribunal was dealing with his case as of 17 January 2005. In the author's opinion, as expressed in his letter to the Chancellor, the alleged negligence by the Appeal Tribunal constituted a disproportionate interference with his right to access to a fair hearing and appeal, while the length of the proceedings are qualified as "unacceptable" given the urgent nature of his case. He claimed that "criminal negligence" on the part of the Finnish authorities, including medical doctors, amounts to a serious violation of his human rights and his rights as a patient in need of medical help. The Chancellor replied to this letter on 23 March 2005 reiterating his previous position that he could not intervene in the case as long as it was pending with the Appeal Tribunal.

2.6 By letter of 22 February 2005, the chairman of the Appeal Tribunal explained to the author that the Finish social security system is based on the residence principle and that EU citizens working abroad enjoy social security in the country of employment. Thus, medical treatment in Germany could only be compensated if the author was a resident of Finland. Because there were no data available showing that this was indeed the case, it was necessary for the author to clarify this issue and show that he was still residing in Finland

THE COMPLAINT

3.1 The author does not invoke specific provisions of the Covenant. In substance, his claims appear to relate to the alleged violation by the Finnish authorities of his right to health and the absence of a fair and expeditious hearing (article 14 of the Covenant).

3.2 He adds that since 20 November 2004, the State party's authorities have failed to provide him with any assistance in his problems while his case constitutes a "medical emergency", and his health is affected. In the author's opinion, the authorities' alleged negligence constitutes a violation of his right to access to a fair hearing and appeal, while the length of the proceedings are qualified as "unacceptable", given the urgent nature of his case (articles 2, paragraph 3 b) and 14, of the Covenant).

3.3 The author claims that the Finnish authorities' disregard for his right to health amounts to inhuman and degrading treatment (article 7 of the Covenant). He asks the Committee to request interim measures of protection from Finland, to prevent irreparable damage to his health.

3.4 Finally, and without further substantiation of this allegation, the author claims that he is a victim of discrimination on the grounds of his ethnic origin and language (article 26 of the Covenant).

ISSUES AND PROCEEDINGS BEFORE THE COMMITTEE

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.

4.3 The Committee notes that the author claims to be a victim of violations by Finland of his right to health, given the State party's failure to provide him with emergency medical assistance, and to cover his medical expenses in Germany, following his hospitalization there. The Committee observes that the right to health, as such, is not protected by the provisions of the Covenant. Accordingly, this part of the communication is inadmissible *ratione materiae*, as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

4.4 In relation to the author's claim that since November 2004, the State party's authorities have failed to provide redress for his situation and that their negligence constituted a violation of his right to access to a fair hearing and appeal, the Committee notes that the author had appealed to different officials and institutions in the State party and that his appeal in relation to his eligibility for Finnish Social Insurance is still pending before the KELA Appeal Tribunal. It has also noted the author's contention that exhaustion of domestic remedies would be "unreasonably prolonged", as the procedures before the Appeal Tribunal last approximately 10 months, and that he considers such length to be "unacceptable", given the urgent nature of his case. The Committee also observes that the author has failed to bring his case before one of the State party's ordinary tribunals to seek redress of his situation. It recalls that the requirement of exhaustion of domestic remedies, which allows the State party to remedy an alleged

violation before the same issue may be raised before the Committee, obliges authors to first raise the substance of their claims submitted to the Committee before domestic courts. As the author has failed first to raise the alleged violations of his rights before domestic courts, the Committee considers that his communication is also inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4.5 The Committee has noted the author's claims that the authorities' disregard for his case amounts to inhuman and degrading treatment, and that he is a victim of discrimination based on his ethnic origin. In support of his latter claim, he explains that he speaks the Finnish language with an accent and that it would be easy for a native Finn to assume that he was a "foreigner with a Finnish passport". The Committee considers that the author has failed sufficiently to substantiate, for purposes of admissibility, these two claims, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2, 3, and 5, paragraph 2 (b), of the Optional Protocol;
- (b) That this decision shall be transmitted to the author and to the State party, for information.

Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report.