COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF DÖRY v. SWEDEN

(Application no. 28394/95)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Döry v. Sweden,

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

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 October 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28394/95) against the Kingdom of Sweden lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Marta Döry ("the applicant"), on 21 May 1995.

2. The applicant, who had been granted legal aid, was until 23 June 2000 represented by Mr G. Antal and thereafter by Mr U. Jacobson, both lawyers practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms E. Jagander, Ministry for Foreign Affairs.

3. The applicant alleged that her rights under Article 6 of the Convention had been violated on account of the lack of an oral hearing in judicial proceedings concerning social security benefits.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 23 May 2000 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Case concerning industrial injury benefits as from 28 April 1990

8. By a provisional decision of 25 April 1990 the Social Insurance Office (*försäkringskassan*; hereinafter "the Office") of the County of Stockholm decided that payments of industrial injury benefits to the applicant, who was born in 1954, should be discontinued as from 1 March 1990. This decision was confirmed by a final decision of 2 July 1990. The Office considered that the applicant's ability to work was not reduced due to her back problems to such an extent that she was entitled to the benefits in question under the applicable rules of the Act on Industrial Injury Insurance (*Lagen om arbetsskadeförsäkring*, 1976:380; hereinafter "the 1976 Act")

9. The applicant later requested the Office to review its decision, which it did on 20 November 1991. Save for the grant of benefits for the period 1 March – 27 April 1990, the Office upheld its previous decision and also found that the applicant was not entitled to a life annuity.

10. The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm, claiming that she was entitled to continued benefits after 27 April 1990. She maintained that the medical evidence, on which the Office's decision was based, in fact showed that she was entitled to the benefits sought.

11. By a judgment of 8 April 1992 the County Administrative Court upheld the Office's decision. The court's assessment was based on medical certificates from three different physicians who all stated that the applicant was able to work and thus was not entitled to the benefits in question. It did not hold an oral hearing, nor did the applicant request one.

12. The applicant then appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm. In support of her appeal she invoked medical certificates issued by three other physicians. Furthermore, without stating any reasons for her request, she asked the court to hold an oral hearing.

13. On 5 November 1992 the appellate court rejected the request for an oral hearing. After having restated section 9 of the Administrative Court Procedure Act (*Förvaltningsprocesslagen*, 1971:291; hereinafter "the 1971 Act"; see further paragraph 28 below), it gave the following reasons:

> "Having regard to the subject-matter at issue and the information that has so far come to hand in the case, [the court] finds that an oral hearing is at present unnecessary. [The applicant] is invited to submit her final written observations in the case within two weeks after having been notified of this decision.

> The case can be determined notwithstanding a failure to submit such written observations.”

14. On 25 February 1994 the Administrative Court of Appeal, relying on the medical evidence submitted in the case, rejected the applicant’s appeal. It also rejected her renewed request for an oral hearing.

15. The applicant appealed against the judgment to the Supreme Social Insurance Court (*Försäkringsöverdomstolen*). She complained about the lack of oral hearings in the lower courts. In that respect, she maintained that the case had not been adequately investigated and that an oral hearing had been necessary for her to explain matters of importance to the courts’ assessment.

16. By a letter of 9 February 1995 the Supreme Social Insurance Court informed the applicant that an oral hearing in the case appeared to be unnecessary. She was given the opportunity to submit further observations on the question of leave to appeal.

17. On 8 June 1995 the Supreme Social Insurance Court refused the applicant leave to appeal.

B. Case concerning sickness benefits as from 1 July 1991

18. The applicant was on sick-leave between 1 May and 30 June 1991, during which period she received *per diem* sickness benefits under the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381; hereinafter “the 1962 Act”). However, by a decision of 7 August 1991 the Office found that she was no longer entitled to such benefits. At the applicant’s request, the Office reviewed its decision on 10 June 1992 but did not change it.

19. On 15 September 1993 the County Administrative Court, upon the applicant’s appeal, found that the available medical evidence did not show that she was entitled to benefits as from 1 July 1991. The appeal was thus rejected. It does not appear that the applicant asked for an oral hearing before this instance.

20. The applicant appealed to the Administrative Court of Appeal. She requested also in this case that the appellate court hold an oral hearing and, moreover, asked it to obtain further medical evidence. On 2 December 1993 the court rejected the requests, giving the same reasons on the issue of an oral hearing as in its decision of 5 November 1992 (see paragraph 13 above).

21. On 25 February 1994 the Administrative Court of Appeal rejected the applicant’s appeal and her renewed request for an oral hearing.

22. The applicant appealed against the judgment to the Supreme Social Insurance Court. She requested again that an oral hearing be held in the case. She also complained about the lack of oral hearings in the lower courts.

23. By a letter of 9 February 1995 the Supreme Social Insurance Court informed the applicant that an oral hearing in the case appeared to be unnecessary. She was given the opportunity to submit further observations on the question of leave to appeal.

24. On 8 June 1995 the Supreme Social Insurance Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

A. Industrial injury insurance

25. All gainfully employed persons working in Sweden are insured against industrial injuries in accordance with the 1976 Act. Anyone who is put on the sick-list as a result of an industrial injury and who is insured under the 1962 Act is entitled to the same *per diem* benefit from the ordinary sickness insurance (social insurance) during the first 90 days as if he or she had been sick for a reason other than an industrial injury. When 90 days have passed, the insured person is entitled to a *per diem* sickness benefit in accordance with the 1976 Act (industrial injury insurance), if his or her ability to carry on with gainful employment is reduced by at least 25% (50% prior to 1 July 1990). After the period of sickness has come to an end and the insured person is no longer on the sick-list, he or she is entitled to a life annuity if the capacity for gainful employment is reduced by at least one fifteenth.

B. Social insurance

26. All Swedish nationals and other residents in Sweden are insured in accordance with the 1962 Act. Anyone who is registered with the Social Insurance Office and has an annual income of at least 6,000 Swedish kronor (SEK) has the right to a *per diem* sickness benefit, if his or her sickness reduces the ability to work by at least 25%.

C. Procedure

27. A decision by the Social Insurance Office under the 1962 and 1976 Acts may be appealed against to the County Administrative Court and from there on to the Administrative Court of Appeal and, at the relevant time, subject to leave to appeal being granted, to the Supreme Social Insurance Court. The latter court was the final instance in social insurance matters until 1 July 1995, when it was abolished and its tasks taken over by the Supreme Administrative Court (*Regeringsrätten*).

28. The procedure in the administrative courts is governed by the provisions of the 1971 Act. It also regulated the proceedings before the Supreme Social Insurance Court. Section 9 provides:

> "The proceedings are in writing.
>
> An oral hearing may be held in regard to a certain issue, when there is reason to assume that that would be to the benefit of the proceedings or the speedy determination of the case.
>
> In the Administrative Court of Appeal and the County Administrative Court an oral hearing shall be held if requested by an individual party to the proceedings, unless it is unnecessary or there are particular reasons against holding a hearing."

The possibility for an individual party to obtain an oral hearing on request under those circumstances was not available in the proceedings before the Supreme Social Insurance Court.

29. According to the preparatory documents to the 1971 Act, an oral hearing can be a valuable complement to the written proceedings and may benefit the examination of a case in two situations in particular: firstly, when it is necessary to hear a witness, an expert or a party or when it is difficult for a party to present the case in writing and, secondly, when different positions in the case need to be sorted out in order to eliminate unnecessary or pointless issues of dispute. In the latter case, the oral hearing takes on a preparatory character. It was stressed, however, that an oral hearing should not to be seen as an alternative to the written procedure but as a complement to it (see Government Bill 1971:30, p. 535).

30. It was further stated, in respect of the third paragraph of section 9, that a party's request for an oral hearing should be given great consideration. However, such a request should not have a decisive influence on the matter, as the question whether an oral hearing is necessary is to be determined primarily on the basis of the available information in the case. Still, other circumstances may be of relevance, for instance the importance for the party of the matter at stake or the possibility that an oral hearing could enhance the party's understanding of a future decision in the case. Nevertheless, if the case is of a trivial character or the costs of an oral hearing would be disproportionate to the values at stake in the case, there could be reason not to hold an oral hearing (p. 537).

THE LAW

31. The applicant complained that the lack of an oral hearing before the courts had constituted a violation of her rights under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

A. The submissions of the parties

1. The Government

32. The Government questioned whether it had not been justified to dispense with oral hearings in the applicant's cases. They contended that such hearings would not have added anything to the proceedings and that the issues involved had been adequately resolved on the basis of the case files and the applicant's written observations. In this respect, they pointed out that the applicant had not invoked any oral evidence and that the judges, possessing no medical expertise, could not have made their own assessment of the applicant's capacity to work by meeting her in person but had had to rely on written medical evidence. Moreover, the applicant had been assisted by counsel apparently familiar with the subject-matter and thus could not be considered to have had difficulties in arguing her cases in writing. Also, as the cases had concerned the applicant's entitlement to benefits under certain social-insurance schemes, no questions of public interest had been involved. In any event, considering the issues involved and the personal nature of the cases, an oral hearing would have been held *in camera*.

33. The Government also pointed out that the Administrative Court of Appeal had found it unnecessary to hold oral hearings and that its decisions on this matter had been fully in line with domestic law. Furthermore, they maintained that, as the applicant had not requested the County Administrative Court to hold oral hearings, she had, at least tacitly, waived her right to have her cases heard in public before that judicial instance. In addition, some of the applicant's requests for oral hearings had been made without stating any reasons.

2. The applicant

34. The applicant submitted that an oral hearing could be dispensed with only if the person concerned had explicitly waived the right thereto and there were exceptional circumstances which justified not holding a hearing. She claimed that an oral hearing had been indispensable in her cases, as the investigation made by the Office had been inadequate and had led to erroneous assessments and the information available to the courts thus had been insufficient. It is true that she did not propose that any witnesses or experts be heard. However, an oral hearing would have given her the opportunity to describe her medical problems and resulting difficulties in resuming her work. Also, she would have been able to show, for example, how much her income had decreased due to her industrial injury.

35. The applicant further claimed that, due to the Office's insufficient investigation, the courts had been obliged to hold hearings of their own motion in order to acquire sufficient information on which to base their decisions. Accordingly, the lack of a specific request for a hearing in the County Administrative Court had been of no relevance. Referring to the conditions for a hearing as set out in section 9 of the 1971 Act, the applicant also stated that, although she had not given reasons for all her requests for hearings, they had obviously been made in order to further the investigation in the case.

B. The Court's assessment

1. Applicability of Article 6 § 1

36. Noting that the Government have not disputed the applicability of Article 6 § 1 to the case at hand, the Court observes that the proceedings at issue concerned the applicant's claim to benefits under social-security schemes. The purpose of the proceedings was to obtain decisions in disputes over "civil rights and obligations", and they accordingly fall within the scope of Article 6 § 1 (see, among other authorities, *Duclos v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2179-80, § 53).

2. Compliance with Article 6 § 1

37. The Court first finds that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be done explicitly or tacitly, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66; and *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58).

Furthermore, a hearing may not be necessary due to exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations (see, *mutatis mutandis*, *Fredin v Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22; and *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44).

38. In the present case, the Court notes that the applicant did not request a hearing before the County Administrative Court in either of her cases. As

Section 9 of the 1971 Act provided that the proceedings before the administrative courts were normally in writing, the applicant could have been expected to request a hearing before that court if she attached importance to it. She did not do so, however, and the Court therefore finds that she can reasonably be considered to have waived her right to a hearing before the County Administrative Court.

Moreover, the Supreme Social Insurance Court only determined whether or not leave to appeal should be granted and, as a consequence of its refusal to grant leave, did not make a full examination of the applicant's case. Even assuming that Article 6 § 1 applies to the determination of this question, the Court finds that it could be adequately resolved on the basis of the case file and the written submissions and that, accordingly, the absence of an oral hearing before the Supreme Social Insurance Court was justified.

39. It remains to be determined whether the lack of an oral hearing before the Administrative Court of Appeal involved a breach of the applicant's rights under Article 6 § 1. In this connection, the Court reiterates that in proceedings before a court of first and only instance there is normally a right to a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment cited above, p. 20, § 64). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see, for instance, *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36). Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance.

40. The Court notes that no hearing was held at first instance since the applicant did not request the County Administrative Court to hold one. It acknowledges that, in the interests of the proper administration of justice, it is normally more expedient that a hearing is held already at first instance rather than only before the appellate court. Depending on the circumstances of the case, it might therefore be acceptable to reject a request for a hearing upon appeal, although no such hearing has been held at first instance.

41. The Court further recognises that disputes concerning benefits under social-security schemes are generally rather technical and their outcome usually depends on the written opinions given by medical doctors. Many such disputes may accordingly be better dealt with in writing than in oral argument. Moreover, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security cases (see *Schuler-Zgraggen v. Switzerland*, judgment cited above, pp. 19-20, § 58).

42. In the applicant's cases, the Court observes that the jurisdiction of the Administrative Court of Appeal was not limited to matters of law but

also extended to factual issues. The issue in both cases was whether the applicant's ability to work was reduced in a way which would have made her entitled to benefits under the 1962 and 1976 Acts. The Court observes, however, that the courts' assessments were entirely based on the medical evidence in the cases, presented in the form of written opinions issued by different physicians. It does not appear that the physicians' opinions differed. Also the applicant referred to this written evidence; in her appeal against the Office's decision of 20 November 1991, she contended that the medical opinions in fact showed that she was entitled to the benefits sought.

43. In these circumstances, it must be concluded that the dispute in the cases, as presented by the applicant to the Administrative Court of Appeal, concerned the correct interpretation of written medical evidence. The Court considers that the appellate court could adequately resolve this issue on the basis of the medical certificates in question and the applicant's written submissions. It notes, in this connection, that the applicant, in the decisions rejecting her requests for oral hearings, was invited by the appellate court to submit final observations in writing.

44. The Court further takes into account that the applicant did not request the Administrative Court of Appeal to call any witnesses and did not rely on any other oral evidence. In fact, she did not state any reasons for her requests that the appellate court hold hearings in the cases.

45. Having regard to the foregoing, the Court finds that there were exceptional circumstances which justified dispensing with a hearing in the applicant's cases.

There has accordingly been no breach of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

N.B.
M.O'B.