



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

FIFTH SECTION

CASE OF ERIKSSON v. SWEDEN

(Application no. 60437/08)

JUDGMENT

STRASBOURG

12 April 2012

FINAL

12/07/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Eriksson v. Sweden,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 60437/08) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Swedish national, Mr Mats Eriksson (“the applicant”), on 13 November 2008.

2. The applicant was represented by Mr R. Helenius, a lawyer practising in Jönköping. The Swedish Government (“the Government”) were represented by their Agent, Ms G. Isaksson, of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the administrative courts had failed to hold an oral hearing in proceedings relating to his request for life annuity.

4. On 2 February 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Trosa.

6. In 1989 the applicant was diagnosed with type II diabetes and vascular spasms. While riding a bicycle on work-related business on 21 January 2000, the applicant suffered a heart attack which caused him to fall. About two weeks later, he also suffered a cerebral stroke. On 2 April

2001 he reported the accident to the Social Insurance Office (*Försäkringskassan*) of the County of Södermanland which granted him early retirement pension as from 1 December 2001.

7. The applicant also requested the Social Insurance Office to grant him life annuity (*livränta*) but, on 28 April 2003, the Social Insurance Office rejected the request. It found that the applicant's medical problems could not be regarded as work-related and that his ability to support himself by working was not sufficiently reduced as a result of the accident. According to medical opinions given on 6 August and 17 September 2002 by Dr B.M., the Social Insurance Office's own medical doctor (*försäkringsläkare*), the main reason for the applicant's inability to work was diabetes, from which he had suffered for 16 years at the time of the accident, and some other medical conditions from which he suffered and which together had caused the heart attack and the cerebral stroke. According to him, it was not probable that work-related factors, such as stress, had contributed to the deterioration of the applicant's physical condition.

8. By letter dated 6 May 2003 the applicant's legal counsel appealed to the County Administrative Court (*länsrätten*) of the County of Södermanland, claiming that the applicant had a right to a life annuity since his illnesses had been work-related. At times he had had up to three different jobs, each one of which, had been hectic and thereby created a difficult and very stressful situation. He produced a medical opinion by Dr. C-G.E., dated 5 February 2003, which stated that known risk factors for arteriosclerosis and heart attack were, among other factors, diabetes, smoking and high blood pressure. Recently, the feeling of severe stress, especially over a long period of time, had been shown to be an element that increased the risk of developing heart and vascular disorders as well. The interaction between various risk factors was complex but, in general, the more risk factors were present, the higher the risk of suffering a heart attack or developing vascular disorders. In the applicant's case, the physician considered that few risk factors were present and that it was highly probable that his stressful work situation had contributed to the heart attack and cerebral stroke.

9. On 18 March 2004 the County Administrative Court rejected the applicant's appeal. In reaching its decision, the court had regard to the medical certificates by Dr B.M., which established no link between the work situation and the applicant's illness, as well as to the medical opinion by Dr. C-G.E. which suggested that there existed such a link. On the basis of these and the parties' submissions, the court found that the applicant had been exposed to stress in his work but that the causal link between this fact and the applicant's medical condition could not be established with a sufficiently high degree of probability.

10. By letter dated 14 April 2004 the applicant, represented by the same legal counsel, appealed to the Administrative Court of Appeal

(*kammarrätten*) in Stockholm, maintaining his claims. By letter dated 3 February 2005 the applicant submitted to the court a further medical opinion given by Dr E.H. on 23 December 2004 which supported the opinion given by Dr C-G.E.

11. By letter dated 28 April 2005 the applicant requested that the Administrative Court of Appeal hold an oral hearing in the case without, however, giving any reasons for his request. He repeated the request on 14 June 2005 and specified that he wanted Dr C-G.E., Dr E.H., Dr V.B. and Dr B.M. to be heard before the court about the existence of a causal link between his work and his injury. In another letter, dated 13 September 2005, he invoked Article 6 of the Convention in relation to his right to an oral hearing and clarified that he wanted an oral hearing to deal with his case as a whole, including the question of leave to appeal.

12. On 23 November 2005 the Administrative Court of Appeal rejected the request for an oral hearing, finding that there was no reason to hold one to decide on the question of leave to appeal. The court asked the applicant to complete his written submissions.

13. On 31 August 2006 the applicant submitted to the Administrative Court of Appeal a new medical opinion, dated the same day, by Dr P.S. and Dr B.C-D. This medical opinion also supported the opinion given by Dr C-G.E that there was a causal link between the applicant's work and his injury. On 12 October 2006 the applicant requested again that an oral hearing be held in the case and that all the medical doctors who had submitted opinions be heard to prove that there was a causal link between his work and his injury. He also wanted to be heard himself about his work situation and the stressful environment.

14. On 7 February 2007 the Administrative Court of Appeal refused the applicant leave to appeal. It noted that leave to appeal should be granted if it was important for the guidance of the application of law that an appellate court consider the appeal, if reasons existed to amend the lower court's conclusion, or if there were otherwise extraordinary reasons to entertain the appeal. As the court found that no such grounds were at hand, it refused leave to appeal.

15. By letter dated 4 April 2007 the applicant appealed to the Supreme Administrative Court (*Regeringsrätten*), reiterating the grounds of appeal already presented before the lower instances and requesting the court either to refer the case back to the Administrative Court of Appeal for an oral hearing or to hold an oral hearing itself. He reiterated that he wanted to be heard himself and also to hear as witnesses the medical doctors whose opinions he had submitted to the court. Having been asked by the court, the applicant specified in his letter dated 10 June 2007 that he wanted the court to hold an oral hearing even if it was for the purpose of deciding whether or not to grant him leave to appeal. He again invoked Article 6 of the Convention.

16. On 29 October 2007 the Supreme Administrative Court rejected the request for an oral hearing as it found no reason to hold one in order to decide on the question of leave to appeal. The applicant was requested to complete his written submissions.

17. On 27 May 2008 the Supreme Administrative Court refused the applicant leave to appeal. It noted that leave to appeal was granted if the case was a precedent case or if serious material or procedural mistakes were involved. As this was not so in the present case, the court found no reason to try the case on its merits.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Work Injury Insurance

18. According to the Work Injury Insurance Act (*lagen om arbetsskadeförsäkring*, 1976:380, hereinafter the “1976 Act”), as in force at the relevant time, the term “work injury” mainly refers to injuries resulting from accidents or other harmful factors at a person’s work place (Chapter 2, Section 1 of the 1976 Act). Under the 1976 Act, all gainfully employed persons working in Sweden are insured against work injuries. The insurance scheme is mainly administered by the Social Insurance Office and includes, among other things, compensation for loss of earnings such as life annuity. The Office must obtain a medical opinion concerning the injury and has physicians with different areas of medical expertise attached to it to assist in this exercise. The assessment of whether an injury qualifies as a work injury, as well as of the degree of reduction of a person’s ability to engage in gainful employment, shall be made on the basis of the available medical opinions, the insurance office doctor’s assessment of these opinions and all other relevant information.

19. For an injury to qualify as a work injury, a causal link must be established between the accident or harmful effect in the workplace and the insured person’s health problems. By “harmful effect” was meant the influence of a factor that is very likely to cause an injury or illness such as that suffered by the insured person (Chapter 2, Section 1 of the 1976 Act).

20. Under the amendments entering into force on 1 January 1993, which applied to the applicant’s case, it had to be shown that it was “highly probable”, and not merely “probable” as prior to the amendment, that a certain factor in the working environment could cause a person’s injuries and, thereby, be considered as having harmful effects (Chapter 2, Section 1-2 of the 1976 Act). The *travaux préparatoires* (Government Bill 1992/93:30, p. 20 and p. 36) state that this implies that the responsible authorities have to consider more extensively than previously whether the exposure to a harmful effect at work has been of such a degree, intensity

and duration that, from this, it can be concluded that the existence of harmfulness is highly probable. Furthermore, the collected knowledge must indicate with a considerable degree of probability that a factor in the environment is harmful. The view that a certain factor is very likely to cause an injury has to be relatively generally accepted. This is the case where substantial knowledge exists, within medical or other science, that a certain factor has such harmful effects. If there is a lack of support, as when, for example, there are profound differences in expert opinions, this requirement cannot be considered fulfilled. Thus, the opinion of a specific researcher or medical doctor should not constitute sufficient basis for a positive decision on the issue of harmful effects. The *travaux préparatoires* also state that the more rigid requirement of harmfulness in many cases presupposes more careful investigations at workplaces regarding the harmful factors invoked and that the question of causes of certain diseases has to be discussed more thoroughly. This, in turn, will result in the authorities basing their decisions more extensively on different assessments of harmfulness within medical science.

B. Procedure before the administrative courts

21. A decision rendered by the Social Insurance Office regarding work injuries may be appealed against to the administrative courts. However, in these cases leave to appeal is required for the Administrative Court of Appeal to consider an appeal on the merits against a decision or judgment delivered by the County Administrative Court (Section 34 a of the Administrative Court Procedure Act (*Förvaltningsprocesslagen*, 1971:291, hereinafter “the 1971 Act”, compared with Chapter 8, Section 12 of the 1976 Act). Likewise, leave to appeal is required for the Supreme Administrative Court to consider on the merits an appeal against a decision or judgment delivered by the Administrative Court of Appeal (Section 35 of the 1971 Act).

22. Section 9 of the 1971 Act was worded as follows:

“The procedure shall be in writing.

Where it may be assumed to be advantageous for the investigation or promote the expeditious determination of the case, the processing may include an oral hearing regarding certain issues.

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.”

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

24. The *travaux préparatoires* to the Administrative Court Procedure Act emphasise that an oral procedure can be advantageous for the investigation of a case in two respects in particular. Firstly, such a hearing may be needed in order to examine a witness, expert or party or in cases where a party has difficulty expounding his or her claim in writing. Secondly, an oral hearing may be needed to clarify the positions taken by the parties in the case and perhaps eliminate unnecessary or meaningless points of dispute. In the latter case, the procedure is typically of a preparatory nature. Moreover, the oral form of procedure envisaged in the 1971 Act is not to be seen as an alternative to the written form, but rather as a complement to that form (see the Government Bill 1971:30, p. 535).

25. Furthermore, the *travaux préparatoires* to the 1971 Act underlined, in connection with the provision in section 9 of the Act concerning the right of a party to an oral hearing in certain cases, that while serious consideration should be given to the wishes of a party for such a hearing, the party could hardly be allowed to have a decisive influence in the matter. The question of whether a hearing is necessary should primarily be assessed in the light of the existing investigation of the case, but it should also be possible to accord significance to other factors, for example, if the case is very important for the party and a hearing would give him a better understanding of the import of the decision to be given in the case. One particular reason not to arrange an oral hearing could be that the case is of a trivial nature or that the costs of the hearing are high compared to the value of the object of dispute (see Government Bill 1971:30, p. 537).

26. In recent years the Supreme Administrative Court has set aside a number of decisions on appeal and referred cases back to the administrative courts of appeal because of the lack of an oral hearing in the lower courts (see, for example, RÅ 2002 ref. 23, RÅ 2003 note 68, RÅ 2004 note 65, RÅ 2007 note 171 and RÅ 2009 note 73; as more specifically regards work injuries, see RÅ 2004 note 66 and RÅ 2006 note 207). In the last mentioned case, an administrative court of appeal had changed the lower court's judgment to the applicant's disadvantage without holding an oral hearing. Furthermore, the applicant had requested that a medical doctor be heard as a witness.

C. Compensation for violations of the Convention

1. Civil liability of the State

27. Chapter 3 of the Tort Liability Act (*Skadeståndslagen*, 1972:207) deals with the civil liability of the State. According to Section 2 of that chapter, acts or omissions by a public authority may give rise to an entitlement to compensation in the event of fault of negligence.

28. An individual who wants to claim compensation from the State may proceed in either of two different ways: He or she may either petition the Chancellor of Justice (*Justitiekanslern*) in accordance with Section 3 of the Ordinance on the Administration of Claims for Damages against the State (*Förordningen om handläggning av skadeståndsanspråk mot staten*, 1995:1301), or bring a civil action against the State before a district court, with the possibility to appeal to a court of appeal and the Supreme Court. No appeal lies against a decision of the Chancellor of Justice. However, if the claim is rejected, the claimant still has the possibility to institute civil proceedings before the courts. In such proceedings, the State is represented by the Chancellor of Justice (section 2 of the Ordinance with Instructions for the Chancellor of Justice [*Förordning med instruktion för Justitiekanslern*, 1975:1345]).

2. Compensation for violations of the Convention

(a) Case-law developments

29. In a judgment of 9 June 2005 (NJA 2005 p. 462) the Supreme Court dealt with a claim for damages brought by an individual against the Swedish State, *inter alia*, on the basis of an alleged violation of Article 6 of the Convention. The case concerned the excessive length of criminal proceedings and the Supreme Court held that the plaintiff's right under Article 6 of the Convention to have the criminal charges against him determined within a reasonable time had been violated. Based on this finding and with reference, *inter alia*, to Articles 6 and 13 of the Convention and the Court's case-law under these provisions, in particular the case of *Kudla v. Poland* ([GC], no. 30210/96, ECHR 2000-XI), the Supreme Court concluded that the plaintiff was entitled to compensation under Swedish law for both pecuniary and non-pecuniary damage. With respect to the level of compensation for non-pecuniary damage, the Supreme Court took note of the criteria established in the Court's case-law stating that the Court's practice constituted a natural point of departure in this regard.

30. In a decision of 4 May 2007 (NJA 2007 p. 295), the Supreme Court held that the principle concerning a right to damages established in the above-mentioned case of 9 June 2005 also applied with regard to the rights contained in Article 5 of the Convention. The Supreme Court stated that the plaintiff's right to damages on account of a violation of Article 5 should be assessed in the first place under the Tort Liability Act and the Act on Compensation for Deprivation of Liberty and Other Coercive Measures (*Lagen om ersättning vid frihetsberövanden och andra tvångsåtgärder*, 1998:714). To the extent necessary, the relevant provisions of domestic law should be interpreted in accordance with the Convention. If Sweden's obligations under Article 5 § 5 could not be met by such an interpretation, the domestic courts should award compensation without the support of

specific legal provisions. As concerned the determination of the level of compensation, the Supreme Court repeated that the Court's case-law was a natural point of departure but also noted that account must be taken of the fact that different national conditions may lead to variations from one country to another in what should be regarded as a reasonable level of compensation.

31. In a judgment of 21 September 2007 (NJA 2007 p. 584), the Supreme Court held that the plaintiffs' right to respect for their private life under Article 8 had been violated on the basis that a police decision on a medical examination of some of them had not been "in accordance with the law". Having found that compensation for the violation could not be awarded directly on the basis of the Tort Liability Act, the Supreme Court held that there was no reason to limit the scope of application of the principle established in the above-mentioned cases of 9 June 2005 and 21 September 2007 to violations of Articles 5 and 6 of the Convention. In view of this and with reference to, *inter alia*, Articles 8 and 13 of the Convention and the Court's case-law under these Articles, the Supreme Court concluded that the plaintiffs should be awarded non-pecuniary damages for the violation of Article 8. With regard to the levels of compensation, the Supreme Court concluded that they should not be too far removed from the levels which applied when awarding damages under the Tort Liability Act. Generally speaking these levels should, however, be compatible with the case-law of the Court. In the same case, Svea Court of Appeal had also concluded, in a judgment dated 12 January 2006, that there had been a violation of Article 8 and that an award for non-pecuniary damage should be made on the basis of the principle established in the case of 9 June 2005.

32. Another Supreme Court judgment of 28 November 2007 (NJA 2007 p. 891) concerned a claim for damages against the Swedish State on the basis of an alleged violation of Article 2 of the Convention relating to the suicide of the plaintiffs' father while in detention. The Supreme Court concluded that the case revealed no violation of Article 2. However, in its reasoning leading to this conclusion, the Supreme Court noted, *inter alia*, that according to the Court's case-law there was a right to an effective remedy under Article 13 connected to the State's duty under the Convention to take measures to protect the lives of individuals in custody or who were otherwise deprived of their liberty, which should, in principle, include a possibility of obtaining compensation for damage. The Supreme Court referred in particular to the judgment in *Keenan v. the United Kingdom* (no. 27229/95, § 130, ECHR 2001-III).

33. In a judgment of 3 December 2009 (NJA 2009 N 70), the Supreme Court confirmed its previous case-law in a case concerning claims for damages against the Swedish State on account of excessive length of tax proceedings. The court affirmed that it is now a general principle of law that to the extent that Sweden has a duty to provide redress to victims of

Convention violations through a right to compensation for damages, and that this duty cannot be fulfilled even by interpreting national tort law in accordance with the Convention (*fördagskonform tolkning*), compensation for damages may be ordered without direct support in law.

34. Lastly, on 16 June 2010 the Supreme Court ordered compensation for non-pecuniary damage to be paid to an applicant for proceedings which had complied neither with the “reasonable length” requirement in Article 6 nor the right to an effective remedy in Article 13. The proceedings in question had concerned a claim for damages against the State.

(b) Other developments

35. In May 2009 the Government decided to set up a working group on tort liability and the Convention to study the current legal situation. In December 2010 the working group submitted its report (*Skadestånd och Europakonventionen*, SOU 2010:87) to the Government. In the report it is proposed that the Tort Liability Act be amended in order to allow natural and legal persons to obtain damages from the State or a municipality for violations of the Convention. Such an action against public authorities would be examined by a general court which would need first to establish that a right provided by the Convention has been violated. The aim of the proposal is to provide a legal basis for granting non-pecuniary damages arising from disregard of the Convention and to fulfil, together with the other already existing legal remedies, Sweden’s obligations under Article 13 of the Convention.

36. In its comments on the above report the Office of the Chancellor of Justice, on 7 July 2011, stated that, since the autumn of 2007 following the Supreme Court’s case-law developments (as set out above), it had dealt with a large number of requests from individuals for compensation on the basis of violations of the Convention. It estimated that it had dealt with roughly 1000 cases over the previous three years. During this time the Chancellor of Justice had also represented the Swedish State in a number of cases before the civil courts concerning alleged violations of the Convention. A majority of the cases that the Office had dealt with had concerned non-pecuniary damages for excessive length of proceedings under Article 6 § 1 of the Convention. Since November 2009, it had received more than 400 such complaints and in more than half of them, the Chancellor of Justice had found a violation and granted compensation. The level of compensation for non-pecuniary damage had been determined with reference to the Court’s case-law and varied between SEK 10,000 and SEK 30,000 (approximately EUR 1,100 and EUR 3,300). Furthermore, the Chancellor of Justice had dealt with a substantial number of cases (around 160) concerning the registration of individuals in the Security Police register. These cases had concerned one or more of Articles 8, 10, 11 and 13 of the Convention.

There had also been other individual cases relating to alleged violations of Articles 5 and 7 of the Convention, among others.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LACK OF AN ORAL HEARING

37. The applicant complained that he had not been granted an oral hearing before the appellate courts in breach of Article 6 § 1 of the Convention which, in relevant parts, read:

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

38. The Government contested that argument.

A. Admissibility

39. The Government submitted that the complaint was inadmissible on the ground that the applicant had not exhausted domestic remedies. In this respect, they referred to all of the Swedish Supreme Court's judgments mentioned above (§§ 29-34) in which the court had awarded individual compensation for pecuniary and non-pecuniary damage concerning the violation of different Articles of the Convention. In the Government's opinion, these showed that Swedish law now provided a remedy in the form of compensation for both pecuniary and non-pecuniary damage in respect of any violation of the Convention, including violations under Article 6 § 1 of the Convention. Although the Government acknowledged that the legal position on this matter under domestic law had been less clear prior to the Supreme Court's judgments in 2005 and 2007, they submitted that following these judgments the legal position must have been considered sufficiently clear. Therefore, since the applicant lodged his application with the Court on 13 November 2008, he should have been aware of the Supreme Court judgments and that there was an effective domestic remedy available to him. They pointed out that the existence of mere doubts as to the prospects of success of a particular remedy, which was not obviously futile, was not a valid reason for failing to exhaust domestic remedies. Therefore, the Government held that compensation proceedings against the Swedish State constituted a domestic remedy which the applicant should have been obliged to exhaust prior to examination of the case by the Court.

40. In any event, they noted that the limitation period in respect of compensation claims against the State is ten years from the point in time

when the damage occurred (Section 2 of the Limitation Act, *preskriptionslagen*, 1981:130), for which reason he could still file a claim against the State in Sweden and should do so before the Court examines his case.

41. The applicant disagreed and maintained that he had exhausted all domestic remedies required of him.

42. The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach. 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. Thus the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references).

43. However, the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, among many other authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII; *Leandro Da Silva v. Luxembourg*, no. 30273/07, §§ 40 and 42, 11 February 2010; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

44. In the present case, the applicant relied before the Administrative Court of Appeal and the Supreme Administrative Court among other things on the Convention and argued that he had a right to an oral hearing in accordance with Article 6 § 1 of the Convention. He thus did what was required of him in order to afford the national authorities the opportunity to remedy the violation alleged by him.

45. The Government claimed, however, that the applicant had failed to avail himself of available remedies capable of affording him sufficient redress in the form of compensation for the alleged violation. In this respect, the Court notes that, of the final domestic judgments and the decision referred to by the Government, four of them were delivered before the

introduction of the present application, in cases relating to length of criminal proceedings, deprivation of liberty, private life, and the right to life whereas the present case concerns the lack of an oral hearing. In these circumstances, in the Court's view, it has not been shown that, at the time of introduction of the present application before the Court on 13 November 2008, there existed a remedy in Sweden which was able to afford redress in respect of the violation alleged by the applicant (see, *Bladh v. Sweden* (dec.), no. 46125/06, 10 November 2009, §§ 23-27, and *Fexler v. Sweden*, no. 36801/06, § 43, 13 October 2011).

46. The Government further claimed that, in any event, the applicant had had the opportunity to claim compensation before the Swedish courts after the introduction of the present application and, indeed, still had that possibility and should be obliged to use it.

47. In this respect, the Court observes that the administrative proceedings about which the applicant is complaining were terminated on 27 May 2008 and that the alleged violation of a lack of an oral hearing thus must be considered to have occurred at this point in time. Consequently, in accordance with Section 2 of the Limitation Act, the applicant has the possibility to claim compensation from the Swedish State in relation to this alleged damage until 27 May 2018.

48. The Court would like to reiterate that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see, for example, *Baumann v. France*, no. 33592/96, § 47, 22 May 2001, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 78, 26 July 2007).

49. In the case before it, the Court observes that the Supreme Court has not yet adjudicated a case relating to compensation for the lack of an oral hearing before the administrative courts and it would appear that the Chancellor of Justice has not dealt with any such case either.

50. However, as described above (§§ 29-34), the Court recognises that, over recent years, the Supreme Court has developed case-law concerning the possibility to claim compensation on the basis of alleged violations of the Convention which is welcomed. In particular, the Court wishes to highlight the Supreme Court judgment of December 2009 (NJA 2009 N 70) which affirmed that it was now a general principle of law that compensation for Convention violations could be ordered without direct support in Swedish law, to the extent that Sweden has a duty to provide redress to victims of Convention violations through a right to compensation for damages. In the Court's view, this judgment shifts the Supreme Court's case-law from establishing precedent in specific matters to establishing a general principle for the domestic courts and the Chancellor of Justice to

follow in cases relating to all claims for compensation for alleged violations of the Convention. This view is also supported by the Supreme Court's judgment in June 2010 in which it clarified that the State must provide an effective remedy in accordance with Article 13 of the Convention for alleged breaches of the Convention.

51. Moreover, the Court notes that this case-law development has been going hand-in-hand with an increase in applications to the Chancellor of Justice requesting compensation for alleged violations under the Convention. Thus, over the last three years, the Chancellor of Justice has dealt with more than 1,000 requests by individuals claiming compensation for alleged breaches of the Convention, including under Articles 2, 5, 6, 7, 8, 10, 11 and 13 of the Convention (see above, § 36). In this respect, the Court observes that both the Supreme Court and the Chancellor of Justice have made frequent use of the Court's case-law when considering the cases before them. Thus, for example, the level of compensation for non-pecuniary damage has been determined, *inter alia*, with reference to the Court's case-law.

52. Against this background, the Court considers that the case-law established over the last seven years by the Supreme Court, together with the Chancellor of Justice's more recent practice, must be regarded as sufficiently certain to find that there now exists an accessible and effective remedy in Sweden that is capable of affording redress in respect of alleged violations of the Convention. Potential applicants may therefore be expected to lodge a domestic claim to seek compensation for alleged breaches of the Convention before applying to the Court.

53. In so far as concerns the present case, the Court notes that the applicant lodged his application with the Court already in November 2008 at a time when, as established above, there was no effective remedy in Sweden for his complaint. It further considers that there are no particular circumstances in this case to justify departing from the general rule that the assessment of whether domestic remedies have been exhausted is carried out with reference to the date on which the application was lodged with the Court. Consequently, the Court finds that, in the instant case, it could not be required of the applicant to pursue the remedy invoked by the Government. The Government's objection as to the exhaustion of domestic remedies must therefore be dismissed.

54. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

55. The applicant maintained that the lack of an oral hearing before the Administrative Court of Appeal and the Supreme Administrative Court had violated his rights under Article 6 § 1 of the Convention.

56. He stressed that, after the County Administrative Court's judgment, he had been examined by specialists who had assessed his case and had concluded that there was a high degree of probability that he had been exposed to harm at work and that overwhelming reasons supported that his health problems had been caused by his work situation. He had submitted these medical opinions to the Administrative Court of Appeal and requested an oral hearing in order for the medical doctors' opinions to be heard but also for himself to be able to tell about his work situation. Moreover, he had wanted to cross-examine the insurance doctor since he had claimed that the applicant's health problems did not emanate from his work. The applicant was convinced that an oral hearing would have resulted in the outcome of the proceedings being in his favour.

57. The applicant further argued that the Supreme Administrative Court should have granted him a hearing since the Administrative Court of Appeal had refused him one and it was in the interest of the fairness of the proceedings that he be granted one. In his view, an oral hearing would not have been unnecessary and there had been no particular reasons against holding a hearing in his case. Furthermore, the appellate courts had in several other cases granted a hearing to determine whether or not to grant leave to appeal and so, by rejecting his request for a hearing, they had deprived him of his right to a fair procedure, in breach of Article 6 of the Convention.

(b) The Government

58. The Government submitted that the lack of an oral hearing before the appellate courts had not violated the applicant's right to a fair and public hearing within the meaning of Article 6 § 1 of the Convention.

59. They reiterated that the obligation to hold a hearing was not absolute and that it could be dispensed with in certain circumstances, such as through waiver or due to the nature of the issue to be determined. Moreover, the administrative courts had to have regard to the demands of efficiency and economy. The Government then observed that the present case concerned social insurance benefits which, generally, are rather technical and where the outcome usually depends on written opinions provided by medical doctors. Many such cases could therefore be better dealt with in writing than

in oral arguments (see, among others, *Lundevall v. Sweden*, no. 38629/97, § 38, 12 November 2002, and the sources quoted therein).

60. The Government considered that the applicant had waived his right to an oral hearing before the County Administrative Court since he had not requested one before that instant. Moreover, they noted that the Supreme Administrative Court only determined whether or not to grant leave to appeal and, as a consequence of its refusal to do so, did not make a full examination of the applicant's case. The applicant did, however, have an opportunity to finalise his submissions. Therefore, the Government contended that the matter 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 Administrative Court had been justified.

61. Turning to the proceedings before the Administrative Court of Appeal, the Government noted that in the interest of the proper administration of justice, it was normally more expedient to hold an oral hearing before the first instance than before the appellate court. They further stressed that the applicant had been given ample time to supplement the appeal, which he had done, after the appellate court had rejected the request to hold a hearing but before it refused leave to appeal. Moreover, the court's assessment was largely based on written medical evidence which, in the Government's view, was rather technical in nature and therefore could be adequately resolved on the basis of the case-file. In this regard, they noted that the case-file contained all the material which had accumulated during the proceedings, including from the Social Insurance Office and the lower court as well before the Administrative Court of Appeal itself. Thus, the Government contended that it was obvious that the appellate court's consideration of the limited question of whether or not to grant leave to appeal could be adequately resolved on the basis of the extensive written material to which it had access.

62. The Government added that it was not reasonable to require that, in circumstances such as those in the present case, the higher courts had to hold an oral hearing on the specific question of whether leave to appeal should be granted in order to comply with the requirement of fairness in Article 6 of the Convention. This might result in an individual intentionally refraining from requesting an oral hearing at the first instance in order to request one on appeal, thereby circumventing the system of leave to appeal. As concerned the present case, they observed that the applicant had been represented by legal counsel during the entire process, including before the Social Insurance Office, for which reason it could not have been difficult for him to submit in writing his arguments and the written evidence that he wished to invoke. Consequently, the Government concluded that it had been justified for the Administrative Court of Appeal not to hold an oral hearing.

2. *The Court's assessment*

63. It has not been argued, nor is there anything to suggest, that this case relating to the applicant's claim for life annuity under the national social security scheme did not concern a dispute (*contestation*) over a "right" which could be said, on arguable grounds, to be recognised under domestic law. In particular, it could not be said that the applicant's claim was frivolous or vexatious or otherwise lacking in foundation (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 39 *in fine*, *Reports of Judgments and Decisions* 1997-IV). Nor is it disputed, and the Court is satisfied, that the right in question was "civil" in character in the autonomous sense of Article 6 § 1 of the Convention (see, for example, *Duclos v. France*, 17 December 1996, § 53, *Reports of Judgments and Decisions* 1996-VI). This provision is accordingly applicable; the only issue is whether there was a failure to comply with it on account of the refusal to hold an oral hearing in the case.

64. The Court reiterates that in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see, for instance, *Fredin v. Sweden* (no. 2), 23 February 1994, §§ 21–22, Series A no. 283-A; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; *Allan Jacobsson v. Sweden* (no. 2), 19 February 1998, § 46, *Reports of Judgments and Decisions* 1998-I; *Salomonsson v. Sweden*, no. 38978/97, § 34, 12 November 2002; *Lundevall*, cited above; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Göç v. Turkey* [GC], no. 36590/97, §§ 47–52, ECHR 2002-V; and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 73, ECHR 2007-IV).

65. The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases. For example, the Court has recognised that disputes concerning benefits under social security schemes are generally rather technical, often involving numerous figures, 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*, 24 June 1993, § 58, Series A no. 263; *Salomonsson*, cited above, § 38; *Lundevall*, cited above, § 38; *Döry*, cited above, § 41; and *Fexler*, cited above, § 57).

66. The Court further reiterates that, provided a public hearing has been held at first instance, a less strict standard applies to the appellate level, at which the absence of such a hearing may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given the opportunity to be heard in person by the appeal or cassation court. Regard must be had to the nature of the national appeal system, to the scope of the appellate court's powers and to the manner in which the applicant's interests are actually presented and protected in the appeal, particularly in the light of the nature of the issues to be decided by it, and whether these raise any questions of fact or questions of law which cannot be adequately resolved on the basis of the case file (see for instance *Helmers v. Sweden*, 29 October 1991, § 36, Series A no. 212-A, and *Fexler*, cited above, § 58).

67. Turning to the particular circumstances of the present case, the Court observes from the outset that no oral hearing was held at any stage of the domestic proceedings. It further notes that the applicant did not request an oral hearing before the County Administrative Court. As Section 9 of the 1971 Act provided that the proceedings before the administrative courts were normally in writing the applicant, who was represented by legal counsel, could have been expected to request an oral hearing before that court if he attached importance to it. However, he did not do so and the Court therefore finds that he can reasonably be considered to have waived his right to an oral hearing before the County Administrative Court.

68. As concerns the proceedings before the appellate courts, the Court notes that the applicant did request an oral hearing before the Administrative Court of Appeal, that he gave reasons for the request and that he maintained this request, and the reasons, before the Supreme Administrative Court. Still, both courts refused his request. The Court therefore has to examine whether the refusal by the appellate courts to hold a hearing was justified or not.

69. In this respect, the Court repeats that, provided a public hearing has been held at first instance, a less strict standard applies to the appellate level. According to the Court's case-law, this less strict standard should also apply if an oral hearing has been waived at first instance and requested only on appeal. In the interests of the proper administration of justice, it is normally more expedient that a hearing be held at first instance rather than only before the appellate court (see, among others, *Miller v. Sweden*, no. 55853/00, §§ 29-30, 8 February 2005, and *Sali v. Sweden* (dec.), no. 67070/01, 10 January 2006).

70. The Court further notes that in proceedings relating to social security benefits, such as life annuity, the 1971 Act, compared to the 1976 Act provided that the appellate courts could only try an appeal on its merits if

they found reason to grant leave to appeal (see above § 21). Moreover, as noted by the Administrative Court of Appeal in its decision of 7 February 2007 (see above, § 14) and by the Supreme Administrative Court in its decision of 27 May 2008 (see above, § 17), leave to appeal could only be granted on certain specific grounds. As both courts found that no such specific grounds were at hand in the applicant's case, they refused leave to appeal. Consequently, they did not make a full examination of his case but limited their consideration to the question of law of whether to grant leave to appeal.

71. The Court also considers that it may well be expected that the applicant's legal counsel, who represented him throughout the proceedings, was familiar with the provisions of the 1971 Act concerning oral hearings and the requirement for leave to appeal before the appellate courts, as well as with the practice of the administrative courts in this regard.

72. Having regard to all of the above, the Court is satisfied that the question of whether or not to grant leave to appeal 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 Administrative Court of Appeal and the Supreme Administrative Court was justified and did not therefore amount to a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

73. The applicant also complained that the length of the proceedings had been in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. It reads, in the relevant parts, as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

74. The Government rejected the allegation.

75. The administrative proceedings began on 6 May 2003 when the applicant appealed against the Social Insurance Office's decision to the County Administrative Court and ended on 27 May 2007 with the decision of the Supreme Administrative Court. They therefore lasted just over five years for three levels of jurisdiction.

Admissibility

76. The Court observes from the outset that in relation to this complaint the applicant has not requested compensation from the Chancellor of Justice or sued the State for damages before the civil courts (see, *Eskilsson v. Sweden* (dec.), no. 14628/08, 24 January 2012). Still, in any event, the Court finds that this complaint must be rejected for the following reasons. It

first notes that the County Administrative Court gave judgment within a year from the time when the applicant lodged his appeal and that it took just over a year before the Supreme Administrative Court. These periods cannot be considered excessive. As concerns the period before the Administrative Court of Appeal, this lasted for almost three years. However, there appear to have been no prolonged periods of inactivity as the applicant submitted new medical certificates twice and also requested an oral hearing and reiterated this request after it had been rejected by the court. The Social Insurance Office was each time given the opportunity to submit comments in reply to the applicant's submissions. Moreover, having regard to the fact that the life annuity applied for was not the applicant's sole income as he had received early retirement pension since December 2001, the Court finds that there is no due diligence requirement involved. In these circumstances the length of just over five years for three levels of jurisdiction cannot be considered as unreasonable.

77. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of an oral hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President