



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

COURT (CHAMBER)

CASE OF ROLF GUSTAFSON v. SWEDEN

(Application no. 23196/94)

JUDGMENT

STRASBOURG

1 July 1997

In the case of Rolf Gustafson v. Sweden¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. RYSSDAL, President,

Mr F. MATSCHER,

Mr B. WALSH,

Mr C. RUSSO,

Mr J. DE MEYER,

Mrs E. PALM,

Mr J.M. MORENILLA,

Mr B. REPIK,

Mr P. JAMBREK,

and also of Mr H. PETZOLD, Registrar, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 21 February and 27 May 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 18 December 1995 by the applicant, Mr Rolf Gustafson, a Swedish national, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 23196/94) against the Kingdom of Sweden lodged by the applicant with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) on 5 November 1993.

The applicant's application bringing the case before the Court referred to Article 48 of the Convention (art. 48), as amended by Protocol No. 9 (P9), which has been ratified by Sweden. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1).

¹ The case is numbered 113/1995/619/709. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

2. On 29 March 1996 the Court's Screening Panel decided not to decline consideration of the case and to submit it to the Court (Article 48 para. 2 of the Convention) (art. 48-2).

3. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant designated the lawyer who would represent him (Rule 31).

4. The Chamber to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 27 April 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr J. De Meyer, Mr J.M. Morenilla, Mr B. Repik and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

5. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 25 October 1996 and the Government's memorial on 6 November 1996.

6. On 15 January and 3 February 1997 the Commission produced various documents from the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. On 20 January 1997 the Chamber, having regard to the views expressed by the applicant, the Agent of the Government and the Delegate of the Commission, decided to dispense with a hearing in the case, having satisfied itself that the condition for this derogation from its usual procedure had been met (Rules 27 and 40). On 22 and 30 January 1997 the Registrar received supplementary memorials from the applicant and the Government. On 3 February 1997 the Delegate informed the Registrar that he did not wish to submit written observations in reply to these memorials.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. The applicant is a Swedish citizen resident in Stockholm. Since 1973 he has spent a total of eight years in prison for the commission of serious economic offences. Most recently, in October 1996 he was sentenced to a one-year term of imprisonment for a serious forgery offence.

9. The applicant claims that on two occasions, in April-June and June-July 1991, he was the victim of kidnapping and extortion perpetrated by three persons. According to the applicant, one of the alleged perpetrators, a certain Mr L., had wanted to be paid for the part he played with him in the commission of certain economic crimes.

10. On 25 March 1993 the public prosecutor charged L. with one count of kidnapping on 17 April 1991, one count of aggravated extortion committed between 17 April 1991 and June 1991 and one count of kidnapping and aggravated extortion committed between 27 June and 3 July 1991. No proceedings were instituted against the other two persons, one of whom had been named by the applicant as a certain Mr P. (see paragraph 17 below).

A. Proceedings before the Stockholm District Court

11. In the criminal proceedings instituted against L. before the Stockholm District Court (tingsrätt), the applicant requested the court, pursuant to the provisions of chapter 22 of the Code of Judicial Procedure (Rättegångsbalken: see paragraph 20 below), to order L. to pay him a total of 169,350 Swedish kronor (SEK) in compensation in respect of the following items:

- (a) SEK 9,350 in material damages to his clothes;
- (b) SEK 10,000 in non-pecuniary damages for injury caused to his head;
- (c) SEK 50,000 for suffering resulting from an eye injury;
- (d) SEK 100,000 in non-pecuniary damages for the mental suffering caused by the two alleged kidnappings (see paragraph 9 above).

The applicant reserved his right to present further claims in respect of any such damage as he might suffer in the future.

B. The applicant's claim for compensation before the Criminal Damage Compensation Board

12. On 15 April 1993 the applicant applied for compensation to the Criminal Damage Compensation Board (Brottsskadenämnden - hereinafter "the Board") under the Criminal Damage Act 1978 (brottsskadelagen 1978:413 - hereinafter "the 1978 Act"; see paragraphs 20-29 below). In his application he stated that he had sought compensation for personal injury in the amount of SEK 160,000 in the proceedings against L. and that he had reserved his right to make any further claims with regard to future damage. In view of the rules on prescription of compensation claims, he submitted to the Board at that stage a claim for compensation of SEK 160,000 along the lines stated above. He enclosed a copy of the indictment against L.

C. The decision of the Stockholm District Court

13. On 28 April 1993 the Stockholm District Court convicted L., sentenced him to six years' imprisonment and ordered him to pay SEK 144,350 in damages to the applicant. The District Court found, *inter alia*, that, on the whole, the applicant could not be considered a particularly trustworthy person in view of the fact that he had been convicted of several economic offences (see paragraph 8 above). It stated, however, that this fact did not in itself mean that his allegations concerning his kidnapping and extortion were untrue and it found the evidence to be such that the prosecution's case against L. had been partially proven.

D. The decision of the Svea Court of Appeal

14. On 2 July 1993 the Svea Court of Appeal (Svea hovrätt) reversed the District Court's decision on the ground that the charges against L. had not been proven, acquitted L. and rejected the applicant's claim for compensation. The Court of Appeal found that the applicant, in view of his criminal background, could not be deemed a trustworthy person. It followed that the information he had provided on the events which had given rise to the charges against L. (*åtalade händelserna*) could not, in the absence of strong supporting evidence, ground L.'s conviction, even though the applicant's evidence had been corroborated by others whom he had told about the incidents.

The applicant did not seek leave to appeal to the Supreme Court (*Högsta domstolen*) against the decision.

E. The Board's examination of the applicant's claim

15. On 12 August 1993 the applicant, referring to his application for compensation of 15 April 1993 (see paragraph 12 above), asked the Board to proceed with its examination of his claim, stating that he had no insurance which would cover the damage in question. He supplied the Board with copies of the judgments of the District Court and the Court of Appeal.

16. On 26 August 1993 the Board rejected the applicant's compensation claim, stating as follows:

"A condition for a grant of compensation is that damage has in fact been caused by crime. The Board ... cannot find it established that [the applicant] has suffered damage as a result of crime. Consequently, compensation for damage caused by crime cannot be awarded."

F. The Board's reconsideration of the claim

17. On 11 November 1993 the applicant requested the Board to reconsider its decision. He argued that it was clear from the judgments of the District Court and the Court of Appeal that he had been the victim of a crime and that he had suffered the damage for which he requested compensation. He had identified two of the three persons who were allegedly involved in the offences; the fact that the Court of Appeal had not found it proven that the only one to be charged, L., was guilty was not a reason to doubt that he had been the victim of crime.

In support of his request for reconsideration of the decision the applicant submitted a copy of the investigation report concerning the alleged kidnappings and extortions, including a medical report drawn up on 25 February 1993 by Dr Lennart Berglin, a Deputy Senior Physician. According to this report, on 4 July 1991 the applicant had sought emergency care for his right eye, which he stated had been punched. He had been operated on by Dr Berglin on 5 July 1991 and had remained hospitalised until 15 July 1991. On 26 February 1992 he underwent a further operation. Dr Berglin concluded in his report that the applicant's eye injury could have been caused by a punch.

The applicant also submitted a transcript of the testimony given by Crime Inspector S. at the District Court's oral hearing in the criminal proceedings against L. Inspector S. had been the principal investigator into the economic offences of which the applicant had previously been convicted. He had interrogated both the applicant and L. on a number of occasions. Inspector S. had told the District Court, *inter alia*:

"I was, probably on 4 July 1991, informed [about the alleged kidnapping of the applicant]. A colleague ... telephoned me to say that he had been informed that [the applicant] had been kidnapped ..., that the kidnapping had been staged by [L.] with the help of two 'gorillas', ... and that the kidnapping had been combined with an extortion threat against [the applicant] in the amount of SEK 5 million. ... I then ... telephoned [the applicant], who ... denied that he had been kidnapped ...

... I saw [the applicant] in August [1991] in connection with ... criminal proceedings brought against him ... and noted that he had a bruise at [one of] his eye[s]. I asked him what had happened and he stated that he had been the victim of a robbery committed by some persons ...

... Probably in May 1992 [the applicant] mentioned the kidnappings when he was being interrogated as a suspect in another case ... He stated that [they had been carried out] by two black men and a third one, whom he did not wish to name ... He repeated several times that one kidnapping had taken place in April [1991] and [the other] towards the end of June [1991], lasting until the beginning of July [1991] ... We took [the applicant's statements] seriously ... I have come to know [the applicant] so well that I can somehow see when he is lying or when he is telling the truth ... Having been asked on a number of occasions to name the perpetrators, [the applicant] stated that he would do so, but not right away ... In the autumn [of 1991] he named one of the

assistants [during the kidnappings], [P.] ... [The applicant's description of the environment and premises where he had been kept during the kidnappings] was very accurate as regards many details ..."

18. Both Dr Berglin's report and Crime Inspector S.'s testimony had in essence been reproduced in the District Court's judgment. Inspector S. had also been heard orally before the Court of Appeal, where he had more or less repeated the same evidence he gave to the District Court.

19. On 1 June 1994 the Board rejected the applicant's request, for the following reasons:

"The submissions in this case in support of the request for reconsideration are not such as to be a reason for the Board to change its previous decision. Nor is there any other reason for changing the decision."

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Under chapter 22, section 1, of the Code of Judicial Procedure, a private claim arising from a crime may be lodged against the suspect or a third party in connection with the prosecution of the offence. If it concerns an offence forming the object of public charges, the prosecutor is under an obligation to prepare and present any such claim as the victim may wish to make, provided that it is not seriously inconvenient to do so and that the claim is not manifestly unfounded (section 2). In that event, the trial court will in principle determine the claim for compensation as well as the questions of guilt and sentencing. This is the most frequently used course of action for obtaining compensation for criminal damages.

A private claim against the suspect may in the alternative be made by way of a civil action under the general rules on tort liability contained in the Tort Liability Act 1972.

Otherwise, and at the relevant time, compensation could have been sought from the State under the rules of the 1978 Act, which was amended as of 1 July 1994. The 1978 Act was enacted in order to afford crime victims a means of obtaining reparation where the identity of the offender was unknown or where the latter had insufficient means to compensate the victim or where insurance coverage was inadequate.

21. Section 1 of the 1978 Act read, in so far as is relevant:

"This Act regulates compensation to be paid by the State for damage caused by crime. The Act is applicable if the crime has been committed in Sweden ..."

22. Section 2 of the Ordinance on Damage Caused by Crime (brottsskadeförordningen 1978:653) read, at the time in question and in so far as is relevant:

"... The claim [for compensation for damage caused by crime] shall be lodged with the Criminal Damage Compensation Board. The claim shall be supported by a police record, a medical statement and other documents of relevance to the [Board's]

examination. If someone has been convicted of the crime referred to in the request or if someone has been ordered to pay damages, a copy of the judgment [to this effect] shall also be enclosed. If no police investigation has been carried out, other material concerning the cause of the damage shall be submitted."

23. Section 14 of the 1978 Act provided:

"A claim for compensation for damage caused by crime shall be filed within two years from the date of the offence. If there are special reasons, a claim may be examined even if it has been lodged out of time. A claim will only be examined if the offence has been reported to the public prosecutor or the police or if the applicant shows a valid reason why such a report has not been made."

24. Although it was not a condition for compensation under the 1978 Act that the offender had been convicted, it was a condition that the damage had been caused by criminal conduct and that both the subjective and objective conditions for the offence in question had been fulfilled.

The Board decided independently whether the conditions for compensation under the 1978 Act had been fulfilled, including whether a crime had been committed. Thus, in some cases the Board had been satisfied that the conditions for compensation had been met, despite a decision by the public prosecutor not to bring charges on the ground of lack of evidence. In rare instances, the Board had granted compensation even though the trial court, because of insufficient evidence, had acquitted the accused or had dismissed the compensation claim. Generally speaking, the standard of proof applied by the Board was less strict than that applied by a trial court.

25. Compensation could be granted under the 1978 Act for physical injury suffered by the victim but could, on certain conditions, also cover damage to property. Other damage could be compensated to a limited extent (sections 2-5 of the 1978 Act).

26. No appeal lay against a decision of the Board (section 12 of the 1978 Act). Nor was it possible to request judicial review of the decision pursuant to the 1988 Act on Judicial Review of Certain Administrative Decisions (Rättsprövningslagen 1988:205).

27. The Board set up under the 1978 Act was composed of a chairperson, two vice-chairpersons and three other members, all of whom were appointed by the Government for a limited period (section 15 of the Ordinance with Instructions for the Board (Förordningen 1988:984 med instruktion för brottsskadenämnden)). It was a requirement that the chairperson, the vice-chairpersons and their substitutes be lawyers ("vara lagfarna") and have experience as judges (section 13 of the 1978 Act). The remaining three members did not need to be lawyers, but one of them had to be a representative of the insurance business.

The Board's independence was guaranteed by chapter 11, Article 7, of the Instrument of Government (Regeringsformen), which provision implies

that neither the Government nor Parliament could intervene or influence the manner in which the Board dealt with an individual case.

28. The rules governing the procedure before the Board were similar to those found in the Code of Judicial Procedure (Rättegångsbalken) and the Administrative Procedure Act 1971 (Förvaltningsprocesslagen 1971:291). Thus, for instance, the rules on disqualification of members of the Board from dealing with a case (sections 11-12 of the Administrative Act 1986 (Förvaltningslagen 1986:223) were similar to those applying to members of the ordinary courts (chapter 4, section 13, of the Code of Judicial Procedure) and the administrative courts (section 41 of the Administrative Procedure Act). Although the Board in principle determined cases on the basis of the case file, a party to the proceedings had the possibility to make oral arguments before the Board, if the latter considered it expedient (Section 14 of the Administrative Act 1986). A party was entitled to have access to all written documents in a case, unless non-disclosure was required by a strong public or private interest under the Secrecy Act 1980 (Sekretesslagen 1980:100). In such a case the party concerned should be informed of the contents of such facts in order to enable him to protect his rights, provided this could be done without serious harm to those interests which are protected by secrecy. No case could be decided on before the parties had been informed of all the evidence adduced and had been given an opportunity to submit observations in reply.

Subject to the provisions in the Secrecy Act 1980, all documents submitted to the Board were accessible to the public.

29. Under the new legislation adopted on 1 July 1994 (see paragraph 20 above), a new public body has been established for the examination of compensation requests, i.e. the Authority for Victims of Crime (Brottsoffermyndigheten). Within that authority a board examines cases of particular interest or cases that are otherwise of particular importance.

PROCEEDINGS BEFORE THE COMMISSION

30. In his application to the Commission dated 5 November 1993 (no. 23196/94), the applicant complained of a violation of Article 6 para. 1 of the Convention (art. 6-1) in that he could not have a civil right to compensation pursuant to the Criminal Damage Act 1978 determined by a court.

31. The Commission (Second Chamber) unanimously declared the application admissible on 22 February 1995. In its report of 18 October 1995 (Article 31) (art. 31) the Commission expressed the opinion (unanimously) that there had been no violation of Article 6 para. 1 (art. 6-1).

The full text of the Commission's opinion is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT

32. In their memorials to the Court, the Government invited the Court to conclude that Article 6 of the Convention (art. 6) was not applicable and, in any event, that there had been no violation thereof in the present case.

33. The applicant, for his part, requested the Court to find that Article 6 para. 1 (art. 6-1) was applicable and that there had been a violation of this provision (art. 6-1) and to award him just satisfaction under Article 50 of the Convention (art. 50).

AS TO THE LAW ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

34. The applicant complained that under Swedish law he did not have the possibility of having his claim for compensation under the 1978 Act determined by a court. He alleged that there had therefore been a violation of Article 6 para. 1 of the Convention (art. 6-1) which, in so far as is relevant, reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law ..."

A. Applicability of Article 6 para. 1 (art. 6-1)

35. The applicant maintained that a right to compensation devolved on victims of a crime under the Criminal Damage Act 1978 (see paragraph 12 above) and that this right should be construed as a civil right within the meaning of Article 6 para. 1 of the Convention (art. 6-1) having regard to the case-law of the Court. He contended that the evidence of Dr Berglin and Crime Inspector S. was sufficient to prove that he had been the victim of a crime. The Board had rejected his claim on the basis of the Court of Appeal's decision to acquit L. However, this decision did not amount to a finding that he had not been the victim of a criminal act; nor did it exclude the fact that the two other suspects whom he had mentioned to the police had also been involved.

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-IV), but a copy of the Commission's report is obtainable from the registry.

36. The Government contended that the 1978 Act did not give claimants a right to compensation. Even if it could be construed in this sense any such right could not be considered to be of a civil nature within the meaning of Article 6 para. 1 of the Convention (art. 6-1) having regard to the aim of the legislation. More importantly, there could not be said to be any genuine and serious dispute over the applicant's alleged right to compensation since he had not presented any new evidence to the Board which proved he had been the victim of a crime.

37. The Commission for its part concluded that the 1978 Act was sufficiently precise in its wording to give claimants satisfying the conditions therein a right to criminal injuries compensation and that this right was of a civil character having regard to its individual and pecuniary nature. On the other hand and for the reasons stated by the Government, the Commission found that there was no serious and genuine dispute over the applicant's civil right to compensation.

38. The Court recalls that the applicability of Article 6 para. 1 (art. 6-1) under its "civil head" requires the existence of a dispute ("contestation" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. That dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and to the manner of its exercise. Furthermore the outcome of the proceedings must be directly decisive for the right in question (see the *Masson and Van Zon v. the Netherlands* judgment of 28 September 1995, Series A no. 327-A, p. 17, para. 44; the *Acquaviva v. France* judgment of 21 November 1995, Series A no. 333-A, p. 14, para. 46).

39. Having regard to these principles, the Court considers in the first place that there was a dispute over the applicant's alleged right to compensation under the 1978 Act. He lodged a claim with the Board and that claim was rejected on the grounds that he did not satisfy the essential condition defined in the Act for an award of compensation, namely, that he had suffered damage as a result of a crime (see paragraph 16 above). His eligibility under the Act was accordingly in dispute.

Nor can it be said with certainty that the dispute over his entitlement to compensation was not a genuine and serious one having regard to the respective functions of the Board and of the domestic courts. The fact that the Court of Appeal acquitted L. for lack of evidence was not conclusive as to whether or not the applicant had in fact been the victim of a criminal act. It was for the Board to adjudicate on that quite separate issue having regard to the specific functions assigned to it under the 1978 Act, to the standard of proof which it required claimants to satisfy and to the information which the applicant had placed before it.

In the Court's view a claim submitted to a tribunal for determination must be presumed to be genuine and serious unless there are clear indications to the contrary. Although the applicant may not have adduced

any new evidence before the Board to substantiate his allegation that he had suffered personal injury as a result of a crime, this in itself is not sufficient to rebut such a presumption. In particular, it could not be said that the applicant's claim was frivolous or vexatious or otherwise lacking in foundation.

40. The Court also notes that the question whether a right to criminal injuries compensation existed under the 1978 Act or whether the Act simply gave rise to a claim to an *ex gratia* discretionary payment must be answered with reference to the provisions of that Act. It is to be noted that the Act defined in clear, regulatory terms the conditions and procedures which a claimant had to comply with before compensation could be awarded by the Board. Accordingly, a claimant who complied with those conditions and procedures had a right to be awarded compensation under the Act.

41. The Court, like the Commission, is also of the opinion that the right asserted by the applicant can be categorised as a "civil" right within the meaning of Article 6 para. 1 of the Convention (art. 6-1). It is to be noted in this respect that the right invoked by the applicant was intended to confer on him a pecuniary benefit in the form of compensation.

42. For the above reasons the Court finds that Article 6 para. 1 of the Convention (art. 6-1) is applicable in the instant case. It remains to be considered whether the Board which adjudicated on the applicant's claim satisfied the requirements of a tribunal as laid down in that Article (art. 6-1).

B. Compliance with Article 6 para. 1 (art. 6-1)

43. The applicant emphasised that the Board's decision-making procedures fell short of those required of a court or tribunal within the meaning of Article 6 para. 1 of the Convention (art. 6-1). He complained that oral proceedings were in fact a rare occurrence and that hearings were not open to the public. Furthermore, the Board only gave routine and cursory consideration to the claims before it and the minutes of the Board's sessions indicated that his own claim suffered from such treatment. Finally, the decisions of the Board were not properly reasoned and there was no opportunity to appeal against them.

44. The Government stressed that the Board exercised its powers in an independent and impartial manner on the basis of legal rules and established procedures including the procedural requirements of the Administrative Act 1986. The applicant was entitled under that Act to present his claim orally before the Board but since he never requested this he should be considered to have waived his right. The procedure used was fair and in many respects very similar to that followed by a Court of Appeal or by an Administrative Court of Appeal when deciding cases on the basis of the case file alone. Case files were carefully prepared by the secretariat prior to their submission to the Board for formal consideration; nor was it possible to

draw any conclusions from the minutes of the Board's sessions as to the precise amount of time devoted to a case file.

45. The Court recalls that for the purposes of Article 6 para. 1 (art. 6-1) a tribunal need not be a court of law integrated within the standard judicial machinery. It may, like the Board at issue, be set up to deal with a specific subject matter which can be appropriately administered outside the ordinary court system. What is important to ensure compliance with Article 6 para. 1 (art. 6-1) are the guarantees, both substantive and procedural, which are in place (see the *Lithgow and Others v. the United Kingdom* judgment of 8 July 1986, Series A no. 102, pp. 72-73, para. 201).

46. The applicant has not disputed that the Board in its composition and operation satisfied the requirements of independence and impartiality, nor that it had jurisdiction to examine and decide with binding effect on all questions of fact and law relevant to the applicant's claim for criminal injuries compensation (see, among many other authorities, the *Belilos v. Switzerland* judgment of 29 April 1988, Series A no. 132, p. 29, para. 64).

47. As to the applicant's complaint about the decision-making procedures of the Board, it is to be noted that section 14 of the Administrative Act 1986 expressly provided for the possibility of an oral hearing (see paragraph 28 above). It is significant that the applicant was aware of the fact that the Board seldom had recourse to oral hearings and for this reason he could have been expected to request a hearing if he considered it important that one be held either when lodging his claim or when requesting the Board to reconsider its decision to reject it. He did not do so. It may thus reasonably be considered that he waived his right to a hearing before the Board (see the *Håkansson and Stureson v. Sweden* judgment of 21 February 1990, Series A no. 171-A, p. 21, para. 67; and the *Schuler-Zgraggen v. Switzerland* judgment of 24 June 1993, Series A no. 263, pp. 19-20, para. 58). Furthermore, it does not appear that there were any reasons of expediency which would have required the Board itself to convene the applicant since it had before it his complete case file. The Board could properly determine in the absence of a hearing whether or not the elements in the file established that the applicant had been the victim of a criminal act either at the hands of L. or of the two other suspects whom he mentioned to the police. For the same reason the Court cannot accept either the applicant's arguments that his claim was only given scant and routine consideration. Furthermore, the reasons given by the Board were sufficient in the circumstances to justify its rejection of the applicant's claim and its subsequent confirmation of that rejection.

48. While it is true that the decisions reached by the Board were final and not subject to appeal either to a higher administrative authority or to a court of law, it is to be noted from the above considerations that the Board complied for the purposes at hand with the requirements which Article 6

para. 1 (art. 6-1) prescribes in respect of a tribunal. This in itself is sufficient in the particular circumstances of this case for the Court to conclude that Article 6 para. 1 (art. 6-1) was complied with, it being recalled that this Article (art. 6-1) does not guarantee a right of appeal (see the Tolstoy Miloslavsky v. the United Kingdom judgment of 13 July 1995, Series A no. 316-B, pp. 78-79, para. 59).

C. Conclusion

49. The Court concludes that the applicant had access to a tribunal for the determination of his civil right to compensation under the 1978 Act. Accordingly there has been no breach of Article 6 para. 1 of the Convention (art. 6-1).

FOR THESE REASONS, THE COURT

1. Holds by seven votes to two that Article 6 para. 1 of the Convention (art. 6-1) was applicable in the present case;
2. Holds unanimously that there has been no violation of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 1 July 1997.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Walsh;
- (b) concurring opinion of Mr De Meyer;
- (c) partly concurring and partly dissenting opinion of Mr Ryssdal and Mrs Palm.

R. R.
H. P.

CONCURRING OPINION OF JUDGE WALSH

The Swedish legislation in question does not exclude the possibility of public hearings. A public hearing was not refused as it was never asked for. In fact every oral hearing is in practice a public hearing. The applicant had waived an oral hearing in addition to not asking for a public hearing. In my view he had in effect waived a public hearing. Additionally it is to be noted that under Swedish law all such case files and the decisions thereon are available to the public (see the Sutter v. Switzerland judgment of 22 February 1984, Series A no. 74, p. 6).

CONCURRING OPINION OF JUDGE DE MEYER

(Translation)

1. With much regret I have to dissociate myself from the Court's reasoning concerning the applicability of Article 6 para. 1 (art. 6-1).

The Court once again puts the cart before the horse in stating that the "right" at issue must be one "which can be said, at least on arguable grounds, to be recognised under domestic law", that the "dispute must be genuine and serious", and that "the outcome of the proceedings must be directly decisive for the right in question"¹.

These points are among the ones that fall to be decided by the domestic courts. In the present case this was done, as described in the judgment, by the Criminal Damage Compensation Board.

Every person asserting a right is entitled to have that right determined in the domestic legal order by a tribunal satisfying the requirements associated with the proper administration of justice. For the purposes of Article 6 para. 1 of the Convention (art. 6-1), it is for that tribunal, not for our Court, to consider whether or not the right in question is "arguable", whether or not the dispute is "serious and genuine" and whether or not the outcome of the proceedings is "directly decisive for the right in question". The only task for our Court is to check whether or not the person concerned had access to such a tribunal and whether or not that tribunal did comply with the said requirements².

In so far as the judgment requires that the right in question be one "recognised under domestic law", I would, as Mr Lagergren did twelve years ago, observe that the applicability of Article 6 para. 1 (art. 6-1) does not depend on whether or not an asserted "privilege or interest" is classified or described in the domestic legal system as a "civil right" or a "right" at all, and that it is indeed not acceptable that, in relation to one and the same factual situation, the issue be determined differently in different States, or at different times within the same State³. The fact that an asserted "right" does not appear to be recognised under domestic law does not deprive the person asserting it of his or her right to have his or her case heard in accordance with the principles laid down in Article 6 para. 1 (art. 6-1).

There can, of course, be no doubt that in the present case the "right" asserted was a "civil" right.

¹ Paragraph 38 of the judgment.

² See also my separate opinion in the *Pudas v. Sweden* case, 27 October 1987, Series A no. 125-A, p. 21, and in the *Allan Jacobsson v. Sweden* case, 25 October 1989, Series A no. 163, p. 24.

³ See his separate opinion in the *Ashingdane v. the United Kingdom* case, 28 May 1985, Series A no. 93, p. 27, and also his separate opinion, joined by Mr Macdonald, in the case of *Lithgow and Others v. the United Kingdom*, 8 July 1986, Series A no. 102, p. 80.

Any right which a citizen (*civis*) may feel entitled to assert, either under national law or under supranational or international law, has indeed to be considered as a "civil" right within the meaning of Article 6 para. 1 of the Convention (art. 6-1), which enshrines a right which is so prominent that "there can be no justification for interpreting [it] restrictively"⁴.

These are my reasons for finding that Article 6 para. 1 (art. 6-1) was applicable in the present case.

2. The Court reiterates in the present judgment that Article 6 para. 1 (art. 6-1) "does not guarantee a right of appeal"⁵.

I can accept that "in the particular circumstances of this case" there was no need for an appeal.

There may, however, be other "circumstances", in which, in view of the seriousness of what was at stake, or for some other reason, the right to a fair trial must be deemed to imply a right of appeal.

In the present case what was at stake was of some importance.

However, the decisions of the Criminal Damage Compensation Board concerning the applicant's claim themselves came after those taken by the District Court and by the Court of Appeal in respect of the same claim and the same questions of law and fact⁶. Before the Board the applicant had sought to obtain from the State what he had not obtained from L. in the ordinary courts. Moreover, the Board, after its initial decision to reject the claim, had reconsidered it at the applicant's request⁷.

The applicant's claim for compensation was thus examined by three different tribunals and even twice by one of them. There was no need for a further appeal.

⁴ *Moreira de Azevedo v. Portugal* judgment of 23 October 1990, Series A no. 189, p. 16, para. 66. See also my concurring opinion in the *Kraska v. Switzerland* case, 19 April 1993, Series A no. 254-B, p. 54.

⁵ Paragraph 48 of the judgment.

⁶ Paragraphs 11, 13 and 14 of the judgment.

⁷ Paragraphs 16, 17 and 19 of the judgment.

**PARTLY CONCURRING AND PARTLY DISSENTING
OPINION OF JUDGES RYSSDAL AND PALM**

1. We have voted with our colleagues in finding no violation of Article 6 para. 1 of the Convention (art. 6-1) in the present case but have based ourselves on a different reasoning. We do not agree that the provision (art. 6-1) was applicable to the proceedings under consideration.

2. The Criminal Damage Act 1978 lays down the conditions on which compensation may be paid by the State for damage caused by crime. It is undisputed that, under this Act, compensation may be granted even if the perpetrator has not been convicted or identified. However, it is a condition that it be established that a crime has been committed.

3. It is important to note that Mr Gustafson's claim to the Criminal Damage Compensation Board concerned the same personal injury in respect of which he had previously sought compensation in the criminal proceedings against L. (see paragraphs 11-15 of the judgment).

Furthermore, in acquitting L. and rejecting the applicant's compensation claim, the Court of Appeal laid stress on its finding that the applicant could not be regarded as a trustworthy person and that it followed from this that the information provided by him as to the events which had given rise to the charges against L. could not, in the absence of strong supporting evidence, ground his conviction (see paragraph 14 of the judgment). Thus, it transpires from the Court of Appeal's judgment that that court did not find it established that the applicant was a victim of criminal offences, which was also the conclusion subsequently reached by the Board in two successive decisions (see paragraphs 16 and 19 of the judgment).

4. In our view, the above findings clearly suggest that the applicant's attempt to pursue his application before the Board, without invoking any relevant evidence which had not been adduced before the District Court or the Court of Appeal, could not be regarded as involving the determination of a serious and genuine dispute for the purposes of Article 6 para. 1 (art. 6-1). Accordingly, Article 6 para. 1 (art. 6-1) was not applicable in the applicant's case and has therefore not been violated.