



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

SECOND SECTION

CASE OF MILLER v. SWEDEN

(Application no. 55853/00)

JUDGMENT

STRASBOURG

8 February 2005

FINAL

08/05/2005

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

In the case of Miller v. Sweden,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEŒ,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 55853/00) 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 Robert Edward Miller (“the applicant”), on 9 April 1999.

2. The applicant was represented before the Court by Mr Ulf Jacobson, a *juris candidate* practising in Stockholm. The Swedish Government (“the Government”) were represented by Mrs E. Jagander of the Ministry for Foreign Affairs as their Agent.

3. On 9 December 2003 the Court decided to communicate to the Government the complaint under Article 6 § 1 of the Convention concerning the refusal to hold an oral hearing. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1918 and lives in Stockholm.

Until his retirement in March 1983 he worked as a teacher for 17 hours per week.

5. On 26 August 1996 the applicant applied for disability benefits (*handikappersättning*) under Chapter 9, section 2 of the Social Insurance Act 1962 (*Lagen om allmän försäkring*, 1962:381 - hereinafter “the 1962 Act”). He claimed that, even before his 65th birthday in 1983, he had incurred extra costs due to his illness, Charcot-Marie-Tooth¹, from which he had suffered since the 1970's and which had been diagnosed in September 1982. In support of his claim, he submitted:

- (i) A medical certificate dated 27 August 1996, produced by the applicant's general practitioner, Doctor P. Dekany, at the applicant's request, supporting his application for disability benefits. It stated that the doctor had known and treated the applicant since 1961, and that the Charcot-Marie-Tooth disease had started in the early 1970s involving difficulties in walking, problems of balance, dragging of the feet and the patient tripping over and falling continuously. The muscles in the legs and feet had considerably withered. The illness had attacked even the hands and arms, with withered muscles and reduced strength in the fingers. Because of multiple inconveniences, the patient's functional capacity had been strongly reduced; he needed help for heavier household tasks, the preparation of meals, the purchase of household goods, carrying heavier objects, and for personal hygiene. The patient had incurred extra costs for medical treatment, foot rails, soft shoes, home assistance, and to some extent his food budget because of a limited ability to prepare meals; he also had to pay for the transportation service for disabled persons, and extra travel by personal car, because of his considerably reduced ability to walk.
- (ii) A statement of 21 April 1997 by Doctor P. Dekany, reproducing extracts from the applicant's medical records for the period between 1975 and 1983, with a diagnosis of the Charcot-Marie-Tooth disease in September 1982;
- (iii) A statement dated 23 March 1983 by Mr P.K. Thomas, Professor and Doctor of the Royal Free Hospital School of Medicine, University of London, which concluded:

¹ Charcot-Marie-Tooth (“CMT”) is a disease discovered in 1886. CMT patients slowly lose their normal use of their feet/legs and hands/arms as nerves to the extremities degenerate. The muscles in the extremities become weakened due to the loss of stimulation by the affected nerves. Additionally, there is a loss of sensory nerve function. The degree of severity of the disease can vary greatly from patient to patient. Careful diagnosis of CMT involves, *inter alia*, a thorough review of the patient's medical history. At present there is no cure for CMT, although physical therapy and moderate activity are often recommended to maintain muscle strength and endurance. Custom shoes or shoe inserts will help, as will leg braces. Surgery can help when medically indicated. *Source*: The Charcot-Marie-Tooth Association, “What is CMT”.

“I quite agree that the diagnosis here is Charcot-Marie-Tooth disease. The clinical findings and the nerve conduction studies indicate that it can be classified as type II hereditary motor and sensory neuropathy. He does show some minor pyramidal signs in the legs, which may be associated. I have explained to Mr Miller that although his symptoms may continue slowly to deteriorate, this is unlikely ever to become a very serious incapacity so that he becomes unable to walk.”

6. On 16 July 1997 the Social Insurance Office (*försäkringskassan* - hereinafter “the Office”) of the County of Stockholm rejected the application, finding that the applicant's disability had not reached the level required under Chapter 9, section 2 before he turned 65 years of age. One member reserved his position, considering that the applicant's need for assistance before turning 65 should be investigated.

7. The applicant, represented by a lawyer, appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm and requested that an oral hearing be held in his case because he wished to call as witnesses his personal doctor, the doctor appointed by the Office and all the members of the Office who had participated in the decision of his case.

On 15 January 1998 the County Administrative Court refused the request with reference to section 9 of the Administrative Court Procedure Act (*Förvaltningsprocesslagen* 1971:291 - hereinafter “the 1971 Act”). Its decision contained the following reasoning:

“Written material, which includes *inter alia* medical certificates and extracts from [the applicant's] medical journal, a multitude of submissions and other documents sent by [the applicant] as well as the diary notes made during the processing of the case before [the Office] ..., are available in the case. There are no uncertainties as regards, at least, the basis for the medical assessment. The uncertainty regarding [the applicant's] extra costs due to his disability at the age of 65 can be clarified satisfactorily by [him] in writing. According to the documents, [the applicant's] requests and reasons therefore are clearly defined, as are the submissions by the respondent. Nor has [the applicant] pointed to circumstances which would benefit from being orally presented by him. Thus, there is no reason to assume that an oral hearing could add anything meaningful. The County Administrative Court therefore considers an oral hearing to be unnecessary and rejects the request to that effect. ...”

The County Administrative Court invited the applicant to mention any further circumstances he wished to invoke and to submit his final written observations in the case within two weeks. In response he reiterated his request for an oral hearing, relying on Article 6 of the Convention. He argued that the medical certificates needed to be clarified and that a witness account by his personal doctor would be important in order to establish the exact level of support that he had required at the age of 65. He also submitted that the members of the Office should have been asked to give evidence about their precise reasons for refusing his request.

8. By a judgment of 13 February 1998 the County Administrative Court rejected the applicant's appeal on the grounds that the medical and other evidence in the case showed that, even before he had reached the age of 65,

he had for a considerable time been functionally impaired, but not to such a degree that, on an assessment of the overall need of assistance, he was entitled to disability benefit. The court noted that the applicant had “commented” (*yttrat sig*) on its rejection of his request for an oral hearing, but did not respond to his renewed request or his reasons invoked therein. In reaching this decision the County Administrative Court took note of a breakdown of additional costs allegedly caused by his disability, totalling SEK 18,100, which the applicant had initially submitted to the Social Insurance Office on 16 September 1996.

9. The applicant appealed against the lower court's judgment to the Stockholm Administrative Court of Appeal (*kammarrätten*) requesting it to quash the judgment and refer the case back for fresh examination. In the alternative, he requested the appellate court to find that he was entitled to disability benefits at a level corresponding to 36 % of the basic amount as of July 1994. He further requested that the court hold an oral hearing, on the same grounds as those he had presented to the lower court. He submitted that, by refusing to hold an oral hearing, the latter had breached Article 6 of the Convention.

10. By a decision of 3 July 1998 the Administrative Court of Appeal rejected his request for an oral hearing, finding this unnecessary for determining whether to grant him leave to appeal, and gave him two weeks to complete his submissions in writing. The applicant made further submissions and maintained his request for an oral hearing. On 29 September 1998 the Administrative Court of Appeal rejected his renewed request for an oral hearing and refused him leave to appeal.

11. On 13 October 1998 the Supreme Administrative Court (*Regeringsrätten*), observing that it did not normally hold oral hearings, rejected the applicant's request for a hearing and gave him three weeks within which to submit additional written observations. On 29 February 2000 it refused him leave to appeal.

In this connection the applicant was given a copy of an analysis presented to the Supreme Administrative Court by its legal secretary, which included an opinion to the effect that the County Administrative Court's refusal to hold a hearing was not deemed incompatible with the Convention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Disability benefits

12. According to Chapter 9, section 2 of the 1962 Act (as in force until 1 January 2001, when the 1998 Act on Disability Benefits and Care Allowance - *lagen (1998:703) om handikappersättning och vårdbidrag* – entered into force), a person who was ill or handicapped was entitled to

disability benefits, provided that, before reaching the age of 65, he or she had been functionally impaired for a considerable time and to such a degree that he or she needed time-consuming assistance from another person in everyday life or continuing assistance in order to be gainfully employed or otherwise had considerable extra expenses. The total need for support and assistance determined the eligibility for disability benefits and the amount of compensation. It was thus necessary to look at the whole situation of the person in question and to add together the need for different types of assistance and the extra expenses. According to the guidelines of the National Social Insurance Board (*Riksförsäkringsverket*; hereinafter “the Board”) the total cost of all extra needs due to the disability should attain at least 28.5% of a basic amount geared to the price index (*basbelopp*) in order to make the individual eligible for an allowance. In 1997 the basic amount was SEK 36,300. In 1983, when the applicant turned 65, it was SEK 19,400.

13. According to Chapter 9, section 3 of the 1962 Act (as in force at the material time), such benefits were granted on a yearly basis at a level of 69%, 53% or 36% of the basic amount, depending on the extent to which the insured person was in need of assistance and the amount of extra expenses caused by the disability.

B. Procedure

14. A decision by the Social Insurance Office under the 1962 Act could form the subject of an appeal to the County Administrative Court, to the Administrative Court of Appeal and to the Supreme Administrative Court.

15. The procedure in the administrative courts was governed by the provisions of the 1971 Act. Section 9 provides:

“The proceedings shall be in writing.

An oral hearing may be held in regard to a certain issue, when there is reason to assume that that would assist in the proceedings or be conducive to the speedy determination of the case.

In the Administrative Court of Appeal and the County Administrative Court an oral hearing shall be held if requested by an individual party to the proceedings and if it is not unnecessary and there are no particular reasons against holding a hearing (*I kammarrätt och länsrätt skall muntlig förhandling hållas, om enskild som för talan i målet begär det samt förhandlingen ej är obehövlig och ej heller särskilda skäl talar mot det*”).

Under those circumstances it was not possible for an individual party to obtain an oral hearing on request in the proceedings before the Supreme Administrative Court.

16. From the case-law of the national courts, it appears that the grounds stated in the third paragraph of section 9 for refusing an oral hearing have

been interpreted as being alternative rather than cumulative (see *Regeringsrättens Årsbok 1997 ref 62*).

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

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained that the lack of an oral hearing in his case, including the fact that he was denied an opportunity to have witnesses called to give evidence on his behalf, constituted a violation of Article 6 § 1 of the Convention. Moreover, he complained under this provision that the competent courts had failed to carry out an examination of the merits of his Article 6 § 1 complaint. In so far as is relevant this provision reads:

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

19. The Government disputed the above complaints and invited the Court to declare them inadmissible as being manifestly ill-founded. In any event, they submitted, there had been no violation of the Convention in this case.

A. Admissibility

20. In so far as the applicant complains under Article 6 § 1 about the lack of an oral hearing, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

21. In so far as the applicant alleges a further violation of Article 6 § 1 on account of the alleged failure of the national courts to deal with his above complaint about the lack of an oral hearing, the Court notes that his allegation is not actually borne out by the facts. His claim that the County Administrative Court's refusal to hold an oral hearing had violated Article 6 § 1 was first entertained by the Administrative Court of Appeal, when refusing to hold a hearing and to grant him leave to appeal. Subsequently, the Supreme Administrative Court did consider the matter, as is evident from the information given to him on that occasion. This complaint must therefore be declared inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Merits of the complaint about the lack of an oral hearing

1. The applicant's submissions

22. The applicant maintained that there were no exceptional reasons capable of justifying the refusal to grant him an oral hearing. His appeal against the Social Insurance Office's decision had raised both issues of fact and of law. These could not be determined solely on the basis of the medical records and opinions, since his claim for disability benefits was based not solely on his reduced functional capacity but also on his need for assistance and on the extra costs he had incurred. At an oral hearing the applicant would have been able to supplement the evidence by explaining his medical condition and its consequences in his daily life before he had reached the age of 65. Moreover, it would have enabled the national courts to put supplementary questions on these aspects to the applicant and to the witnesses he had requested be heard.

2. The Government's submissions

23. The Government were of the view that there were exceptional circumstances in this particular case that justified dispensing with an oral hearing. As could be seen from the County Administrative Court's reasoning in its decision of 15 January 1998, it had decided the issue in accordance with domestic law, in the light of the subject-matter to be determined by it

and having regard to all the written material that was already available in the case. The main issue to be determined was whether the applicant's need for assistance and additional costs had reached the level required for a disability allowance under the 1962 Act. However, one prominent feature was that the assessment as to whether the applicant was entitled to a disability allowance had to be made in relation to a particular point in time in the past, namely when he had retired at the age of 65. That was in 1983, 13 years before the matter was brought before the courts. This fact alone indicated that the relevant basis for the assessment was the written material from that time.

24. Although one could infer from the applicant's request to the County Administrative Court for an oral hearing that he wished to have witnesses called, it should be noted that he did not give any particular reasons, nor indicate the subject of the witness evidence or what he sought to demonstrate.

25. From the rather lengthy reasons that the County Administrative Court gave for its refusal to hold an oral hearing, it was evident that it regarded the written evidence on the applicant's condition at the relevant time as sufficient; there were no unclear points as far as the basis for the medical assessment was concerned. The applicant's claim and arguments were also clear. Any remaining uncertainties regarding his additional costs due to his impairment at the age of 65 could be clarified in writing. The principle established in the Court's case-law in the area of criminal proceedings that it was within the domain of the national courts to decide on the admissibility of evidence should also have a bearing in other areas.

26. None of the oral evidence requested by him before the national courts would have provided any information of relevance to the case in addition to that already available in the written evidence, which included the Social Security Office's case-file.

Hearing the persons who had taken part in the Office's decision would not have supported his case.

Nor would it have served the applicant to have the physician appointed by the Office heard. It was not his task to make an independent assessment of the applicant's state of health at the relevant time. He had no personal knowledge of the applicant and had not been involved in the treatment of his medical condition. Instead, his role had been to act as a medical adviser to the Office and his opinion had been available in the case.

Oral evidence from the applicant's own doctor about his state of health 15 years earlier would have been of limited value. It was highly unlikely that the doctor would have been able to add anything to what he had already noted at the time in the medical records presented in the case. It was clear from the medical opinion issued by the doctor in 1996 for the purpose of the applicant's request for disability benefits that the assessment contained therein - that the applicant was in need of some support and had incurred

additional costs - referred to the applicant's situation in 1996. That assessment was irrelevant to the issue whether the applicant would have qualified for disability benefits in 1983. It was hardly likely that the doctor would have been able to recall at an oral hearing the applicant's health status at a particular time in the past; he would have had to rely on the medical records that were already available to the County Administrative Court.

27. There was no indication that the applicant offered to give evidence himself. Even if he had done so, it should be stressed that none of the judges taking part in the case had or were expected to possess any medical expertise of their own, let alone the ability to make an assessment of their own regarding the applicant's medical status 15 years' earlier by meeting him in person.

2. *The Court's assessment*

28. It has not been argued, nor is there anything to suggest, that this case relating to the applicant's claim for benefits 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 Gustafsson v. Sweden, Reports of Judgments and Decisions* 1997-IV, p. 1160, § 39 *in fine*). 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*, judgment of 17 December 1996, *Reports*, 1996-VI, pp. 2179-80, § 53). 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.

29. 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), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22; *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44; *Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports* 1997-II, pp. 679-80, § 51; *Allan Jacobsson v. Sweden* (no. 2) *Reports* 1998-I, pp. 168-169, § 46; *Salomonsson v. Sweden*, no. 38978/97, § 34, 12 November 2002; *Lundevall v. Sweden*, no. 38629/97, § 34, 12 November 2002; and *Döry v. Sweden*, no. 28394/95, 12 November 2002, § 37; *Göç v. Turkey* [GC], no. 36590/97, ECHR 2002-V, §§ 47-52).

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 the following judgments cited above: *Schuler-Zgraggen* pp. 19-20, § 58; *Salomonsson*, § 38; *Lundevall*, § 38; and *Döry*, § 41).

30. 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 an opportunity of being 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*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36).

The Court considers that 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 the above-mentioned *Döry* judgment).

31. Turning to the particular circumstances of the present case, the Court observes from the outset that there can be no question of the applicant having waived any right to a hearing under Article 6 § 1 of the Convention (cf, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, §§ 64 and 66; and *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58). The applicant had already expressly requested an oral hearing at what, in the Court's view, was the most appropriate stage of the proceedings - at first instance before the County Administrative Court. On this account alone the present case is more striking than those of the aforementioned *Salomonsson* and *Lundevall* judgments, where an oral hearing was not requested until the appeal to the Administrative Court of Appeal and where the Court nevertheless found a violation.

The applicant also made a request for an oral hearing to the Administrative Court of Appeal and the Supreme Administrative Court. Since both the Administrative Court of Appeal and the Supreme Administrative Court refused him leave to appeal, the County Administrative Court in fact became the first and only instance to examine the merits of his case. Therefore the only issue to be determined is whether the first instance court's refusal to hold an oral hearing was justified by exceptional circumstances.

32. In this regard the Court notes, by way of general observation, that proceedings before the Swedish administrative courts were in principle in writing. Pursuant to section 9 of the 1971 Administrative Court Procedure Act, before the Administrative Court of Appeal and the County Administrative Court, an oral hearing should be held if so requested by a party and if the competent court found that a hearing would neither be unnecessary nor dispensable for other particular reasons. According to the interpretation made by the Swedish courts, these two grounds for refusing a request to hold an oral hearing were alternative, not cumulative. Thus, in administrative-law cases heard on the merits by one level of jurisdiction only, there is an apparent discrepancy between the Convention case-law, according to which an oral hearing must be held unless there are exceptional reasons, and the lesser standard applied by the national court. The Court considers that the respondent State should take appropriate measures to ensure that it is the Convention standard that applies.

33. It should also be emphasised that the County Administrative Court had full jurisdiction to examine the issue raised in the applicant's appeal, namely whether he fulfilled the conditions for obtaining disability benefits under Chapter 9, section 2 of the 1962 Act. According to this provision it was a condition that, before reaching the age of 65, he must have been functionally impaired for a considerable time and to such a degree that he needed time-consuming assistance from another person in everyday life or continuing assistance in order to be gainfully employed or otherwise had considerable extra expenses. A person's eligibility for disability benefits was to be determined in the light of his or her "total need of support and assistance", making it "necessary to look at the whole situation of the person in question and to add together the need for different types of assistance and the extra expenses".

34. In addition, the medical certificates on which the applicant relied supported rather than contradicted his claim that he did fulfil the above conditions for disability pension, though did not conclusively deal with the issue. When the matter was before the Social Security Office, one member reserved his position and was in favour of remitting the case for further investigation of the applicant's need for assistance. The County Administrative Court, for its part, when refusing to hold an oral hearing, noted an uncertainty as to his extra costs due to disability but considered

that this could be clarified, albeit in writing. When later determining the merits of the case, in the light of all the evidence, it conceded that before the age of 65 the applicant had for a considerable time been functionally impaired. But the County Administrative Court rejected his claim, finding that the degree of his disability did not reach the minimum required.

Therefore, in the Court's view, the question of the degree of disability was apparently not straightforward. For example, the Court is unable to accept the Government's argument that, because of the passage of time, oral evidence from the applicant's personal doctor was unlikely to add anything useful. On the contrary, it is not inconceivable that the doctor could have fleshed out at an oral hearing the various observations he had made in the relevant medical records, and could have given his opinion on their implications for the issues raised before the County Administrative Court.

Nor does it seem, either from the arguments and evidence submitted to the County Administrative Court or the latter's reasoning, that the issue of extra costs was clear-cut. For instance, it is not immediately apparent why the figures adduced (totalling SEK 18,100) did not reach the requisite minimum 28.5% of the basic amount (which in 1997 was SEK 36,300 and in 1983 was SEK 19,400).

The Court considers that the issues raised by the applicant's judicial appeal were not only technical in nature. In its view, the administration of justice would have been better served in the applicant's case by affording him a right to explain, on his own behalf or through his representative, his personal situation, taken as a whole at the relevant time, in a hearing before the County Administrative Court (see, *mutatis mutandis*, the above-cited *Göç* judgment, § 51).

35. In these circumstances it could hardly be said that the applicant's claim was incapable of giving rise to any issue of fact or of law which was of such a nature as to require an oral hearing for the determination of the case.

36. Finally, as regards the Government's submission that the applicant failed to give reasons for his request for an oral hearing, the Court observes that the applicant was not expressly invited by the County Administrative Court to explain his wish for an oral hearing. After the latter's refusal to hold an oral hearing the applicant stated that he considered that his medical certificates needed to be clarified and that oral evidence from his own doctor would be important for establishing the degree of his disability. Therefore the competent national court had sufficient elements to be in a position to consider the matter.

37. Against this background it cannot be said that the question whether the applicant, before the age of 65, fulfilled the legal conditions for the grant of a disability pension, was of such a nature as to dispense the County Administrative Court from the normal obligation to hold an oral hearing.

Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

39. The applicant claimed SEK 10,000 in respect of non-pecuniary damage.

40. The Government were of the view that the finding of a violation would in itself constitute adequate just satisfaction. However, if the Court were to find that an award should be made under this heading, the Government would find the amount claimed acceptable.

41. The Court, making an assessment on an equitable basis, awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant requested the reimbursement of the legal fees incurred, as follows:

- (a) SEK 20,000 for the work (16 hours at the rate of SEK 1,000 per hour plus 20% Value Added Tax (V.A.T.)) by his legal representative, Mr G. Antal, in the domestic proceedings;
- (b) SEK 7,500 for the work (6 hours at the same rate) by the above lawyer in the Strasbourg proceedings until July 1999;
- (c) SEK 78,750 for the work (42 hours at 1,500 SEK per hour, plus 20% V.A.T.) by Mr U. Jacobson, who took over as his legal representative in August 1999.

43. The Government did not object to the hourly rate but considered the number of hours claimed excessive. In the domestic proceedings, only costs referable to the oral hearing issue should be reimbursed and should not be reimbursed beyond SEK 4,000. In so far as costs before the Court were concerned, the Government considered 3 hours' work by Mr Antal and 17 hours work by Mr Jacobson to be reasonable. Thus, an award of SEK 28,500, V.A.T. included, would be reasonable in their view.

44. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred in order to prevent or obtain redress for the violation found and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 in respect of items (a) and (b) and EUR 3,500 in respect of item (c) (both amounts being inclusive of V.A.T.).

C. Default interest

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the lack of an oral hearing admissible and the remainder of the application inadmissible;
2. *Holds* by four votes to three that there has been a violation of Article 6 § 1 of the Convention on account of the refusal to hold an oral hearing;
3. *Holds* by four votes to three
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 4,500 (four thousand five hundred euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Costa and the dissenting opinions of Mr Baka, joined by Mr Jungwiert, and Mr Türmen are annexed to this judgment.

S.D.
J.-P. C.

CONCURRING OPINION OF JUDGE COSTA

(Translation)

Albeit grudgingly, I have voted in favour of the finding of a violation of Article 6 § 1 by Sweden.

My natural tendency would have been to consider that the absence of a hearing in this case was justified by the nature of the issues of fact and law that were to be determined. In my opinion, it was possible to rule that the issues were technical in nature and could be satisfactorily settled solely on the basis of the file. The case is close to that of *Schuler-Zgraggen v. Switzerland* (judgment of 24 June 1993, Series A no. 263), which also concerned a disability pension. Admittedly, Mr Miller wished to have doctors and those employees of the Social Insurance Office who had participated in the contested decision called as witnesses. Normally, however, examination of the medical certificates included in the case file would have been enough to compensate for the non-appearance of such witnesses. Social security is a technical area, and has nothing in common with, for example, criminal matters, where the oral character of deliberations and the hearing of witnesses are of great importance.

Two elements, however, have prompted me to join the majority. In the first place, there has been a certain judicial obduracy against the applicant's position. In turn, the Administrative Court of Appeal and the Supreme Administrative Court dismissed the applicant's request for a hearing to rule on whether he was to be granted leave to appeal and on the merits, and they subsequently also refused to grant such leave. Thus, Mr Miller's case was examined by only one level of jurisdiction, without an oral hearing. That in itself is not decisive, but it is a factor to be taken into account.

Above all, however, the Grand Chamber judgment in *Göç v. Turkey* (no. 36590/97, ECHR 2002-V) shows that the Court's position has become more stringent. More than in the past, the Court seems to require that an individual must be able to present his or her personal circumstances orally before the courts. Although I was one of the eight judges who expressed a dissenting opinion in this connection in the *Göç* judgment, I feel bound to comply with the Court's previous finding.

Nonetheless, I should like to see the Court take a more flexible approach in the future. Written proceedings (which the Court itself generally uses) are frequently reconcilable with the proper administration of justice; they do not always result in unfair proceedings.

DISSENTING OPINION OF JUDGE BAKA
JOINED BY JUDGE JUNGWIERT

(Translation)

I disagree with the majority of the Court that there has been a violation of Article 6 § 1 of the Convention in the present case.

Like the majority, I also think that the right to a public hearing -specially at the first instance level - is an essential safeguard of judicial procedure. Under Article 6 § 1 and its interpretation in the case-law of the Court there is a general entitlement to an oral hearing unless exceptional circumstances justify dispensing with such a hearing (*Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 64, or more recently, *Göç v. Turkey* (GC), no. 36590/97, §§ 47-52 ECHR 2002-V).

In a number of judgments the Court has also pointed out that 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. In other words, the Court has tried to strike the right balance between transparency and important elements of procedural safeguards on one hand, and practical functionality and the everyday reality of the different national courts on the other.

Applying the above principles to the present case, I am convinced that on the basis of the special circumstances of the present case the County Administrative Court was justified in dispensing with an oral hearing. Not on the ground that the proceedings before the Swedish administrative courts were in principle in writing nor on the ground that disputes concerning benefits under social security schemes are generally technical ones. I took into account however the fact that the applicant's claim, the figures and his medical assessment had already been established and all the relevant documents were available for the County Administrative Court to be able to take a decision.

The only open question in the present case was whether the extra costs incurred before the applicant's 65th birthday owing to his illness could be covered by the disability benefit under the relevant Swedish law. I think that in this situation to establish the applicant's degree of disability 13 years before the matter was brought before the courts the requested oral hearing would have had a very limited value. The offered oral evidence from the applicant's doctor about his state of health 15 years earlier - with a very high probability - had to be based on the medical documents available at the time. In my view it was justifiable to dispense with an oral hearing owing to the exceptional circumstances, such as the limited scope of the rather

technical case and the significant amount of time which had elapsed since the events.

I also think that the case is different from the *Göç* case relied on by the majority. The subject matter of that case was financial compensation for unlawful detention decided by national courts without holding a hearing. That case would have required a careful assessment of the applicant's and his family's personal distress and anxiety during his detention and an evaluation of these personal factors for the determination of his financial compensation. Moreover, I think that even though the Court was divided in the *Göç* case, in that type of case the need for transparency and public scrutiny justifies public hearings more than in the *Miller* case, which was much more technical in nature.

DISSENTING OPINION OF JUDGE TÜRMEŒ

I fully agree with the dissenting opinion of Judge Baka, except for its last paragraph.