



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

SECOND SECTION

CASE OF TIBBLING v. SWEDEN

(Application no. 59129/00)

JUDGMENT

STRASBOURG

11 October 2005

FINAL

11/01/2006

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 Tibbling v. Sweden,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 20 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 59129/00) 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, Sören Tibbling (“the applicant”), on 19 May 2000.

2. The Swedish Government (“the Government”) were represented by their Agent, Mrs Inger Kalmerborn, of the Ministry of Foreign Affairs.

3. On 26 November 2002 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE****The proceedings between Intertex and the HotLine companies.**

4. The applicant was chairman of the board of directors of two private limited companies, in the following referred to as “HotLine Production” and “HotLine Export”, or together “the HotLine companies”.

5. In the 1990's the HotLine companies entered into business with a private limited company, henceforth referred to as "Intertex", concerning the use of modem components. Following a dispute, in December 1994 Intertex instituted civil proceedings before the District Court of Stockholm (*Stockholms Tingsrätt*) against HotLine Production and in October 1995 against HotLine Export, claiming compensation for the alleged exploitation of trade secrets, breach of contract, and infringement of copyright.

6. The cases were dealt with in joint proceedings and by judgment of 14 July 1997 the District Court found HotLine Production liable to pay damages to Intertex in the amount of 13,180,225 Swedish kronor (SEK), equal to approximately 1,442,701 euros (EUR), for which HotLine Export was found jointly liable as to SEK 7,516,875.

7. On appeal, before the Court of Appeal (*Svea Hovrätt*) on 19 January 1998 the applicant claimed that the judgment should be set aside and the case referred back to the District Court. In support thereof he submitted that the latter had not decided whether or not some disputed printed circuits were to be regarded as trade secrets. Written observations were submitted, and on 6 October 1998 the applicant urged the Court of Appeal to remit the case to the District Court as soon as possible. His claim was refused on 22 March 1999 by the Court of Appeal, and leave to appeal to the Supreme Court (*Högsta domstolen*) was refused on 3 May 1999. In vain the applicant repeated his request in this respect on 16 April 1999 and 12 April 2000.

8. By decision of 30 November 2000, the Court of Appeal quashed the District Court judgment of 14 July 1997 and referred the case back to the District Court on account of procedural errors because the latter had wrongly assumed that the question whether some printed circuits were to be regarded as trade secrets was non-contentious and therefore had not determined it. Intertex's request for leave to appeal to the Supreme Court against the remittal was refused on 10 September 2001.

9. The trial took place in the period between 16 September and 2 October 2002, and on 23 October 2002 the District Court delivered its second judgment finding HotLine Production liable to pay damages to Intertex in the amount of SEK 1,742,000, equal to approximately EUR 190,678, and rejecting Intertex's action against HotLine Export.

10. Both parties appealed against the judgment to the Court of Appeal, before which apparently the case is still pending.

The proceedings between Intertex and the applicant.

11. In the meantime, on 27 December 1995 Intertex instituted civil proceedings before the District Court of Stockholm against the applicant claiming compensation in the amount of SEK 11,325,000, an amount that was subsequently modified several times, alleging that pursuant to

Chapter 15, § 1 of the Companies Act (*Aktiebolagslagen*) the applicant had incurred liability in his role as chairman of the board of directors for having taken various questionable measures in order to intentionally reduce the HotLine companies' net capital. Thus, if the Hotline companies were to lose their case against Intertex, the former would not be in a position to pay any compensation which might be awarded to Intertex in these proceedings. The case was assigned to the same division of the District Court that examined the case lodged by Intertex against the HotLines companies, and on 26 March 1996 a common preparatory session was held in the two cases. Another two of such sessions were held in respectively December 1996 and January 1997, subsequent to which, on 20 January 1997 the District Court decided to adjourn the proceedings in the Intertex v. the applicant case pending the outcome of the case Intertex v. the Hotline companies.

12. At the request of Intertex, on 17 February 1998 the District Court decided by way of an interim measure to sequester as much of the applicant's property as corresponded to an amount of SEK 9,500,000, equal to approximately EUR 1,039,865. *De facto*, however, the value of the applicant's possessions that were sequestered never exceeded SEK 275,000, equal to EUR 30,101. In order to provide security for any loss which the applicant might suffer in this respect, Intertex had to provide a banker's guarantee to the court in the amount of SEK 500,000. The applicant appealed in vain against the sequestration order and his subsequent requests that the District Court revoke it were refused on 23 April, 26 May and 3 July 1998, and on 12 July and 5 August 1999. On appeal, the decisions were upheld, as to the latest by the Court of Appeal on 17 November 1999, against which decision the Supreme Court refused leave to appeal on 21 January 2000.

13. Eventually, however, by decision of 7 March 2001 the District Court lifted the sequestration order.

14. In the meantime, on 8 May 2000 the City Court rejected the applicant's request that the stay of the proceedings be revoked, a decision that was upheld on appeal on 16 June 2000 by the Court of Appeal.

15. On 7 March 2001 the applicant requested that Intertex's action should be dismissed as being unlawful in that it did not relate to a claim that was due or even a fixed amount. The sequestration order having been lifted beforehand, his request was rejected by the District Court on 8 May 2001.

16. Anew, on 5 October 2001 the applicant requested that the stay of the proceedings be revoked. Consequently, on 31 January 2002 in the two sets of proceedings, a common preparatory session was held before the District Court, at which the parties accepted that a separate judgment be passed in the Intertex v. the applicant case. Shortly thereafter, on 7 February 2002, Intertex brought a new action against the applicant, which it requested be joined with its original action, a request that was complied with on 15 February 2002.

17. On 20 March 2002 the District Court passed its separate judgment refusing to dismiss Intertex's action, and stating that if it was established in the case Intertex v. the HotLine companies that the former had a money claim against the latter, that claim should form the basis of the assessment in the proceedings between Intertex and the applicant. Also, the proceedings should continue to be stayed awaiting the outcome of the proceedings between Intertex and the HotLine companies. The applicant's appeal against the part of the judgment that concerned the refusal to dismiss the action was upheld by the Court of Appeal on 3 January 2003. The applicant did not specifically appeal against the part of the District Court's judgment that concerned the continued stay of the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

18. With regard to the proceedings in the case Intertex v. the applicant, the latter complained that the courts, by ordering the sequestration of his possessions, prevented him from providing for his family and from running his business. He invoked Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

19. The applicant was never deprived of his liberty during the proceedings in question. Moreover, even assuming that the complaint can be subsumed under another Article of the Convention or its Protocols, and assuming that the applicant has exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention, in the light of all the material in its possession, the Court cannot find that the sequestration order issued by the courts discloses any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

20. With regard to the proceedings between Intertex and the applicant, the latter complained that the courts were partial since they adjourned the case pending the final outcome of the dispute in the Intertex v. the Hotline

companies proceedings. He invoked Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

21. The Court recalls that under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. This condition is not met by the mere fact that an applicant has submitted his or her case to the various competent courts. It is also necessary for the complaint brought before the Court to have been raised by the applicant, at least in substance, during the proceedings in question. On this point the Court refers to its established case-law. In the present case the applicant failed to raise either in form or in substance the complaint that is made to the Court. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

22. Invoking the same provision, the applicant complained that the length of the proceedings in the case *Intertex v. the applicant* had been incompatible with the “reasonable time” requirement.

23. He submitted that the case could not be considered complex, either technically or juridically.

24. With regard to the conduct of the national authorities, in the applicant’s view the delay could be attributed significantly to the District Court, which in the case *Intertex v. the HotLine companies* had made such procedural errors that the Court of Appeal in its decision of 30 November 2000 quashed the judgment of 14 July 1997 and referred the case back to the first instance court.

25. The Government found that the complaint regarding the length of the proceedings should be declared inadmissible as being manifestly ill-founded. In any event they maintained that the applicant could not claim to be a victim of any violation of the Convention in respect of the time following the delivery of the District Court’s judgment of 20 March 2002, since the link between the two sets of proceedings had been formally established in that judgment, since the applicant had accepted that link by not lodging an appeal against the judgment, and since he had not complained about the length of the proceedings in the case *Intertex v. the Hotline companies*.

26. Turning to the merits of the complaints, the Government submitted that when assessing the reasonableness of the length of the proceedings between Intertex and the applicant, regard had to be had also to the proceedings between Intertex and the HotLine companies, and that both sets of proceedings had been factually and technically very complex. Specifically with regard to the proceedings between Intertex and the applicant, the Government maintained that the parties to a great extent themselves had contributed to prolonging the proceedings, which duration could not be attributed to the domestic courts. As to the decision to stay the proceedings between Intertex and the applicant in order to await the outcome of the proceeding between Intertex v. the HotLine companies, the Government maintained that the reasonableness of such a decision to a high degree must fall within the margin of appreciation of the national authorities and that, in the circumstances of the present case, the adjournment was relevant, reasonable and compatible with the fair balance that has to be struck between the various aspects of the fundamental requirement of a proper administration of justice as laid down in Article 6 of the Convention.

27. The Court notes that the period to be taken into consideration began on 27 December 1995 when Intertex instituted civil proceedings against the applicant before the District Court of Stockholm and that apparently the period has not yet ended. However, even if the Court endorses the Government's argument that as a consequence of the applicant's failure to appeal against the judgment of 20 March 2002, from that moment on he accepted that the proceedings be stayed awaiting the final outcome of proceedings in the case of Intertex v. the HotLine companies, the period to be taken into consideration would have lasted six years and three months for one level of jurisdiction.

A. Admissibility

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

B. Merits

29. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

30. In the present case, although raising factual questions of some complexity, this was clearly not the reason for the considerable length of the proceedings between Intertex and the applicant. Furthermore, the Court cannot agree with the Government that the applicant's conduct prolonged the proceedings or caused unnecessary delays.

31. Instead, the main reason for the protraction of those proceedings can be attributed to the decisions to adjourn them pending the outcome of *Intertex v. the HotLine companies*. It is recalled that the first decision in this respect was taken on 20 January 1997 and the last by judgment of 20 March 2002.

32. In the Court's view, when assessing the relevance and reasonableness of an adjournment of a case pending the outcome of another case, it must be taken into account what is at stake for the persons involved. Notably, if the adjournment of the proceedings has a serious impact to the detriment of the person in question, the progress of the case of which the outcome is awaited, should be monitored thoroughly by the court which decides to adjourn the proceedings (see *mutatis mutandis Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 38, and *Pedersen and Pedersen v. Denmark*, no. 68693/01, § 46, 14 October 2004).

33. The Court notes that the progress of the case *Intertex v. the HotLine companies*, of which the outcome was awaited, could very easily and thoroughly be monitored by the court which decided to adjourn the proceedings in the case of *Intertex v. the applicant*, since both cases were assigned to the same division of the District Court of Stockholm. Nevertheless, the proceedings between *Intertex* and the *HotLine companies* before the first judicial instance, i.e. the District Court, ended on 23 October 2002, thus lasting almost eight years. Also, apparently the proceedings in that case before the appellate court are still pending.

34. Moreover, the Court observes that in the case *Intertex v. the applicant*, during the period from 17 February 1998 until 7 March 2001, thus a period which lasted more than three years, an order was upheld to sequester as much of the applicant's property as corresponded to an amount of SEK 9,500,000, equal to approximately EUR 1,039,865. Even if *de facto* the value of the applicant's possessions that were sequestered never exceeded SEK 275,000, equal to EUR 30,101, in the Court's view this measure, together with the adjournment of the proceedings, unavoidably had a serious impact to the detriment of the applicant.

35. In these circumstances, even assuming that the period to be taken into consideration lasted "only" six years and three months for one level of jurisdiction, and having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

36. There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

39. In the Government’s view, should the Court find a violation of Article 6 of the Convention, a reasonable amount for non-pecuniary damage should not exceed EUR 5,000.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under that head.

B. Costs and expenses

41. The applicant also claimed SEK 875,000 SEK, equivalent to EUR¹ 95,692, for the costs and expenses incurred before the domestic courts and the Court, relating to work performed by his former counsel, Mr Lindström, who ceased to represent him in November 2002.

42. The Government contested this claim and pointed out that the applicant has not submitted any specification regarding the costs. Specifically, as to the domestic proceedings, since they are still pending the applicant may possibly be awarded compensation for costs and expenses in those proceedings. Also, only the costs which have been incurred in an attempt to prevent or redress the violation of the Convention should be taken into account. With regard to the proceedings before the Court, the Government reiterated that the representative had been involved only in the very initial phase of the proceedings. Accordingly, the Government could accept a reimbursement in the amount of SEK 25,000 inclusive of VAT, equivalent to approximately EUR 2,750, based on 20 hours of work at an hourly rate of SEK 1,250 inclusive of VAT.

43. 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 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

¹ On 4 June 2004, the date on which the claim was submitted.

the sum of EUR 2,750 for costs and expenses in the domestic proceedings and for the proceedings before the Court.

C. Default interest

44. 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 UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts
 - (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,750 (two thousand seven hundred and fifty euros) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable on these sums;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President