



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

SECOND SECTION

CASE OF DANELL AND OTHERS v. SWEDEN

(Application no. 54695/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

17 January 2006

In the case of Danell and Others v. Sweden,

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

Jean-Paul Costa, *President*,

Ireneu Cabral Barreto,

Rıza Türmen,

Volodymyr Butkevych,

Mindia Ugrekheldze,

Elisabet Fura-Sandström,

Danutė Jočienė, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 54695/00) 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 fifteen Swedish nationals, Mr Paul Danell, Mr Sven Danell, Mr Per Grape, Mr Bengt-Olov Innala, Mr Krister Innala, Mr Olle Innala, Mr Olov Innala, Mr Tage Innala, Mr Albin Luthström, Mr Arne Luthström, Mr Bertil Luthström, Mr Sune Luthström, Mr Rolf Styrefors, Mr Lennart Svedlund and Mr Stig Söderholm (“the applicants”), on 23 November 1999. Eight of them were professional fishermen and all of them held private fishing rights (*rätt till enskilt fiske*) in the coastal areas of Haparanda. They live in the north of Sweden close to the border with Finland.

Mr Albin Luthström died on 5 December 2003. His widow, Mrs Sinikka Luthström, pursued the application on his behalf.

2. The applicants were represented by Mrs U. Sundin Bonnedahl, a lawyer practising in Umeå. The Swedish Government (“the Government”) were represented by their Agent, Mrs I. Kalmerborn, of the Ministry of Foreign Affairs.

3. The applicants, who held private fishing rights in the Torne River Fishing Area, complained under Article 6 § 1 of the Convention that the Finnish-Swedish Frontier Rivers Commission, which had refused to grant them exemptions from a prohibition against certain types of fishing, could not be considered an independent and impartial tribunal and that, since no appeal lay against its decision, they had been denied access to a court. On the same grounds, they argued that they had been denied the right to an effective remedy under Article 13 of the Convention.

4. On 22 March 2005, after receiving the parties' observations, the Court declared the application admissible and invited the Finnish Government to submit their comments under Rule 44 § 2 (a) of the Rules of Court.

5. On 6 July 2005 the Registrar received from the Swedish Government a formal declaration, signed by both their Agent and by counsel for the applicants, agreeing to a friendly settlement of the case. On 27 September 2005 the Registrar received a letter from the Agent confirming that the Government had approved the settlement.

THE FACTS

6. On 16 September 1971 Sweden and Finland concluded the Frontier Rivers Agreement (“the Agreement”) under which an inter-State body, the Finnish-Swedish Frontier Rivers Commission (*finsk-svenska gränsälvskommissionen* – “the Commission”), was established in order to oversee implementation of the Agreement with respect to certain matters, including fishing, in the frontier area between the two countries covering, *inter alia*, the Torne River in the coastal area of Haparanda. The Agreement was incorporated into Swedish national law by means of the Law of 1971 concerning the Frontier Rivers Agreement of 16 September 1971 between Sweden and Finland (*lag 1971:850 med anledning av gränsälvöverenskommelsen den 16 september 1971 mellan Sverige och Finland*). To the extent that the Agreement did not include specific provisions, the relevant national law in force within each of the States was to apply (Chapter 1, Article 8).

7. In 1997 the Swedish government issued an ordinance concerning fishing in the Torne River Fishing Area (*förordning FIFS 1997:12 om fisket i Torne älvs fiskeområde*), according to which the fishing of salmon and trout within the frontier area was prohibited between 1 May and 5 July each year, as was fishing with stationary equipment (*fasta redskap*) for other fish. Under Article 22 of the Statute on fishing in the Torne River Fishing Area (*Stadgan för fisket i Torne älvs fiskeområde*, Appendix B to the Agreement), the Commission was, subject to certain conditions, authorised by the government to grant exemptions from the above prohibition for persons holding private fishing rights in the area.

8. For the 1999 season the applicants, who held private fishing rights in the Torne River Fishing Area, requested the Commission to grant them an exemption from the above prohibitions. On 31 May 1999 the Commission granted the eight professional fishermen authorisation to catch fish, other than trout and salmon, with stationary equipment, but rejected the remainder of the request.

9. According to Chapter 8, Article 17, of the Agreement, no appeal lay against the Commission's decision on a request for exemption, which came into force immediately.

10. Notwithstanding the above, the applicants appealed to the National Fishery Board (*Fiskeriverket*) and to the Environmental Court of Appeal (*Miljööverdomstolen*), both of which found, by decisions of 9 July 1999 and 5 October 2000 respectively, that they did not have jurisdiction to deal with the matter. Concurrently with this, the applicants also appealed to the County Administrative Court (*länsrätten*) of northern Sweden. That court referred the appeal to the Commission but, on 17 May 2000, the latter remitted the appeal to the County Administrative Court without taking any measures.

On 17 April 2001 the County Administrative Court dismissed the appeal on the following grounds. Reiterating the reasoning of the Environmental Court of Appeal, the County Administrative Court agreed that the determination of the applicants' right to dispensation was covered by Article 6 of the Convention and that they therefore had a right of access to a tribunal. The Commission, however, could not be regarded as a tribunal. The County Administrative Court concluded that it was not empowered to review an appeal against the Commission's decision. It stated, *inter alia*, that:

“The County Administrative Court notes that the Finnish-Swedish Frontier Rivers Commission is a special inter-State body which, in the County Administrative Court's opinion, cannot be equated with the County Administrative Board or the National Fishery Board. Thus, the County Administrative Court considers that the national rules concerning possible appeals against decisions by the County Administrative Board or the National Fishery Board do not empower the County Administrative Court to consider the appeal against the decision of the Finnish-Swedish Frontier Rivers Commission.”

11. The applicants appealed against the decision before the Administrative Court of Appeal (*kammarrätten*) of Sundsvall which, on 19 December 2002, dismissed the appeal. While it agreed that the applicants had the right to have their complaint examined by an impartial and independent tribunal and that the Commission did not fulfil this requirement, the court found that – as long as the Agreement was in force and in the absence of an appropriate agreement between Finland and Sweden – no Swedish court could be considered competent to examine the applicants' complaint.

The applicants appealed to the Supreme Administrative Court which, to the Court's knowledge, has not yet delivered its decision.

THE LAW

12. The applicants complained under Article 6 § 1 of the Convention that the Commission could not be considered an independent and impartial tribunal and that, since no appeal lay against its decision, they had been refused access to a court. On the same grounds they argued that they had been denied the right to an effective remedy under Article 13 of the Convention.

13. On 6 July 2005 the Court received a letter of the same date from the Government's Agent, to which was attached the following declaration, signed on 23 and 30 June 2005 respectively by the Agent and counsel for the applicants:

“SETTLEMENT

On 22 March 2005, the European Court of Human Rights ('the Court') declared admissible application no. 54695/00 lodged against Sweden on 23 November 1999 by fifteen Swedish nationals: Messrs Paul Danell, Sven Danell, Per Grape, Bengt-Olov Innala, Krister Innala, Olle Innala, Olov Innala, Tage Innala, Albin Luthström, Arne Luthström, Bertil Luthström, Sune Luthström, Rolf Styrefors, Lennart Svedlund and Stig Söderholm. Mr Albin Luthström died on 5 December 2003 and the application on his part was pursued by his sole legal successor, his wife Sinikka Luthström. She and the other fourteen people are hereinafter referred to as 'the applicants'.

The Swedish Government ('the Government') and the applicants have now reached the following friendly settlement on the basis of respect for human rights, as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in order to terminate the proceedings before the Court.

a) The Government will pay, *ex gratia*, the sum of SEK 750,000 (seven hundred and fifty thousand [Swedish kronor]) to the applicants. The amount will be paid to their counsel, Ms Ulrika Sundin Bonnedahl, who has been authorised by the applicants to receive payment on their behalf. Execution of payment will take place when the Government has received the Court's judgment striking the case out of its list of cases.

b) The applicants declare that they have no further claims on the Swedish State based on the facts of the above application.

c) The Government and the applicants undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.

This settlement is dependent upon the formal approval of the Government at a Cabinet meeting.”

14. In her letter of 6 July 2005, the Government's Agent further stated:

“In view of the friendly settlement reached, I hereby respectfully request, on behalf of the Government, that the Court suspend the written proceedings until further notice with regard to the merits of the application and the question of just satisfaction.

Finally, I would like to submit some information concerning the development of the negotiations between Finland and Sweden aiming at revising the 1971 Frontier Rivers Agreement, which were referred to in the Government's observations of 23 October 2003 (para. 22). The negotiations were concluded in October 2004 and the Swedish Government decided on 4 November 2004 to sign the revised agreement. The agreement has been signed by both Finland and Sweden. It has not yet entered into force. This cannot occur until it has been approved by the parliaments in the two States.

The Government's decision and the signed agreement are enclosed as Appendices 3 and 4. It transpires from Article 33 of the agreement that the 1971 agreement will cease to apply upon the entry into force of the new agreement. Furthermore, according to Article 8, a new Frontier Rivers Commission of a different character than the present one will be established. The new Commission's tasks and powers are listed in Articles 10 and 11. Unlike the present Commission, the new Commission will not be empowered to take decisions in individual cases. This means, for example, that it will not be able to grant exemptions from fishing provisions. Issues of that kind will instead be dealt with by domestic authorities and courts in the two States. The new Commission will only be entitled to submit its opinion in such cases (see Article 11.3).”

15. On 8 July 2005 the Registrar received from the Agent of the Finnish Government their observations under Article 36 § 2 of the Convention and Rule 44 § 2 (a) of the Rules of Court.

16. On 27 September 2005 the Registrar received a further letter from the Agent of the Swedish Government, dated 20 September 2005, confirming that the Government had approved the settlement on 15 September 2005 and would effect the *ex gratia* payment when the case had been struck out of the list of cases.

17. The Court takes note of the agreement reached between the parties (Article 39 of the Convention) and of the information provided by the Government regarding the revised Frontier Rivers Agreement signed by Finland and Sweden. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* and Rule 62 § 3).

18. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 17 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Jean-Paul Costa
President