CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF SWEDISH TRANSPORT WORKERS' UNION v. SWEDEN

(Application no. 53507/99)

JUDGMENT
(Striking out)

STRASBOURG

18 July 2006

FINAL

18/10/2006

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 Swedish Transport Workers' Union 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 I. CABRAL BARRETO,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 2004 and on 27 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 53507/99) 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 the Swedish Transport Workers' Union (*Svenska Transportarbetareförbundet* - "the applicant"), on 17 August 1999.

2. The applicant was represented by Mr K. Junesjö, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Mrs E. Jagander, of the Ministry for Foreign Affairs.

3. The applicant complained that its lack of access to a court under Swedish law to challenge the Competition Authority's decision of 19 February 1990 had violated Article 6 § 1 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 30 November 2004, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits and the question of just satisfaction under Article 41 of the Convention (Rule 60). Subsequently, the Government requested the Court to strike the application out of its list of cases.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The facts of the case, as submitted by the parties, may be summarised as follows.

8. As from 1976 there had been a clause in the collective labour agreement (*kollektivavtal* – "the agreement") between the applicant union and the Swedish Association of Newspaper Publishers (*Svenska Tidningsutgivareföreningen* – "the Association") which read as follows:

> "Companies which are bound by this collective agreement and hire a contractor must draw up a separate contract with the Swedish Transport Workers' Union[1]. ...
>
> [Footnote 1: Distribution work on foot, by bicycle or by car may not be carried out by contractors.]"

9. The clause was introduced on the initiative of the applicant, under threat of industrial action, with a view to preventing the agreement's clauses on salaries being circumvented by member companies of the Association hiring contractors not covered by the agreement. According to the applicant, the clause served an important purpose in that it protected a weaker party from being forced to abandon the status of an employee covered by the social security system and become a contractor not covered by this system.

10. In 1995 T., a company belonging to the Association, hired a contractor, the L. company, to carry out the distribution of newspapers by car in a district where a union member had previously performed that task. As the applicant considered that this action violated the relevant clause in the agreement, it sued the Association and T. before the Labour Court (*Arbetsdomstolen*) in 1996, after negotiations between the parties had failed. The Association and T. claimed that the clause adversely affected competition in the newspaper-distribution market and thus violated the Competition Act (*konkurrenslagen,* SFS 1993:20).

11. On 16 September 1998 the Labour Court, by seven votes to two, found for the applicant, *inter alia* rejecting the argument that the disputed clause infringed the Competition Act. The minority considered that the clause was incompatible with section 6 of the Act.

12. In 1996 the L. company complained to the Swedish Competition Authority (*Konkurrensverket*), claiming that the clause in question violated the Competition Act, in that it prohibited the use of contractors and thus restricted competition in a manner contrary to section 6 of the Act. The Competition Authority heard evidence from the Association, T. and four other member companies, as parties to the case. The applicant was given the opportunity to submit its observations on the case but was not formally a party to the proceedings.

13. In a decision of 19 February 1999, the Competition Authority first observed that its examination of the case was limited to considering whether the decision by the Association and its member companies to include the clause in the agreement with the applicant was contrary to section 6 of the Competition Act. It then went on to consider the newspaper-distribution market, and the restrictive effects which the clause had on that market. While taking note of the Labour Court's judgment, the Competition Authority found that the decision had in effect noticeably hindered, limited or made difficult competition in that market, and therefore violated section 6 of the Competition Act. As a consequence, the Association and its member companies were ordered, under section 23 of the Competition Act, to discontinue applying the decision in question. Thus, in effect, the clause became invalid.

14. Under section 60 of the Competition Act, only a company affected by the Competition Authority's decision could lodge an appeal against it to the Market Court (*Marknadsdomstolen*). No appeal was lodged against the decision of 19 February 1999.

15. According to information submitted by the Government, a legislative review of the limitations on access to a court implied by section 60 of the Competition Act is currently being carried out and is due to be concluded by 1 November 2006 (*Tilläggsdirektiv till Utredningen om en översyn av konkurrenslagen* (N 2004:19) Dir. 2005:75). The review is made with specific reference to the above-mentioned decision of 19 February 1999 by the Competition Authority and the Government's acknowledgment that there has been a violation of Article 6 of the Convention in the present case.

THE LAW

APPLICATION OF ARTICLE 37 OF THE CONVENTION

A. The Government's invitation to the Court to strike the case out and the applicant's objections thereto

16. On 17 January 2006 the Government reiterated their acknowledgment, made both before and after the Court had declared the application partly admissible, that there had been a violation of Article 6 § 1 of the Convention in the present case. Moreover, they confirmed their willingness to review section 60 of the Competition Act, referring to an additional directive of 30 June 2005 related to the ongoing review of the

Competition Act, the conclusions of which were scheduled to be reported no later than 1 November 2006.

17. Furthermore, the Government stated their preparedness to pay the applicant union compensation for the violation of Article 6 § 1, but not for the original complaints under Articles 11 and 13 which the Court had declared inadmissible. Their offer comprised the following items: (1) SEK 40,000 in compensation for non-pecuniary damage resulting from the applicant's lack of access to a court; (2) SEK 140,000 (inclusive of value-added tax – "VAT") for its lawyer's work in the Strasbourg proceedings (80 hours at SEK 1,750 per hour); and (3) SEK 8,160 (VAT included) for the costs of translating the applicant's observations in reply to those of the Government.

18. As regards item (1), the Government stressed that, whereas the applicant had claimed SEK 500,000 for violations of Articles 6 § 1, 11 and 13 of the Convention, the complaints under the latter two provisions had been declared inadmissible. With respect to item (2), the Government submitted that they were not prepared to pay the SEK 20,000 claimed in respect of domestic legal costs before the Competition Authority. The applicant had not been a party to those proceedings. Nor had the number of hours spent or the rate charged been specified.

19. In the light of the above, the Government invited the Court to strike the case out under Article 37 § 1 (c) of the Convention, which reads, in so far as relevant, as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ...
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

20. The applicant union objected to the Government's request to strike out the application, and invited the Court to proceed with its examination of the case. It submitted that the Government's acknowledgment of a violation of Article 6 § 1 of the Convention had no legal value before the Swedish courts. Were the applicant to seek a judicial order quashing the Competition Authority's decision of 19 February 1999, a finding of a violation by the Strasbourg Court would have much more weight.

21. The applicant union moreover disputed that the sum offered by the Government, SEK 40,000, would constitute adequate just satisfaction for the damage caused by the violation of the Convention; they had claimed SEK 500,000 on account of the violations of Articles 6 § 1, 11 and 13 of the Convention. The ongoing review of section 60 of the Competition Act did

not in any way deal with the problem and no action had been taken so far to remedy the damage caused.

22. Finally, the applicant contested the fact that the Government were not prepared to reimburse the legal costs of the domestic proceedings, nor any costs incurred in relation to its complaints under Articles 11 and 13 of the Convention. The applicant insisted that it should be reimbursed SEK 20,000 for the legal costs incurred before the Competition Authority and SEK 257,031 (117.5 hours at the rate of SEK 2,187.50, inclusive of VAT) for such costs incurred before the Strasbourg Court.

B. The Court's assessment

23. The Court reiterates that on 30 November 2004 it declared admissible the applicant's complaint under Article 6 § 1 of the Convention concerning a lack of access to a court, and declared the remainder of the application, including complaints under Articles 11 and 13 of the Convention, inadmissible.

24. In its examination of the Government's request to strike the case out under Article 37 § 1 (c) on the basis of their unilateral declaration, the Court will have regard to the (non-exhaustive) principles stated in the *Tahsin Acar v. Turkey* judgment (Preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

25. First, the Court observes that not only after, but even before, it declared admissible the applicant's complaint about the lack of access to a court to challenge the Competition Authority's decision of 19 February 1999, the Government acknowledged unequivocally that the matter had given rise to a violation of Article 6 § 1 of the Convention. The Court also takes note of the ongoing legislative review of section 60 of the Competition Act with specific reference to the Competition Authority's aforementioned decision, due to be completed by 1 November 2006.

26. In this connection, the Court recalls that in a number of previous cases it has had the opportunity to rule on the scope of the right of access to a court implied by Article 6 § 1 of the Convention. Several such cases have originated in applications lodged against Sweden, which has shown willingness to take general measures (see for instance the 1988 Act on the Judicial Review of Certain Administrative Decisions - *lagen om rättsprövning av vissa förvaltningsbeslut 1988:205*) in the light of the Court's judgments.

27. The Court is further satisfied that the amount offered by the Government in compensation for non-pecuniary damage – SEK 40,000 - would constitute adequate pecuniary redress for the impugned absence of access to a court. Moreover, it considers that the sums proposed by them for the reimbursement of costs and expenses – totalling SEK 148,160 - could reasonably be considered to correspond to what has actually been incurred

by the applicant union in order to obtain redress for the alleged violation of Article 6 § 1 of the Convention, and is acceptable as to quantum.

28. Against this background, the Court considers it no longer justified, within the meaning of Article 37 § 1 (c) of the Convention, to continue the examination of the present application, and finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision. Accordingly, the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the application out of its list of cases.

Done in English, and notified in writing on 18 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President