



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

THIRD SECTION

CASE OF REY AND OTHERS v. SWEDEN

(Application no. 17350/03)

JUDGMENT

STRASBOURG

20 December 2007

FINAL

20/03/2008

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 Rey and Others v. Sweden,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 29 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 17350/03) 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 two Swedish nationals, Mr Lars Rey and Ms Inger Rey, and a Swedish company, Pulverbränsle Summa AB (“the applicants”), on 26 May 2003.

2. The applicants were represented by Mr J. Thörnhammar, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Ms I. Kalmerborn, Ministry for Foreign Affairs.

3. On 26 September 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. 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**

4. The first two applicants, a married couple, were born in 1935 and 1944 respectively and live in Klippan. The third applicant was a limited liability company wholly owned by the first two applicants.

5. On 28 October 1992 the company concluded a contract with a municipal energy company, Drefviken Energi AB, concerning deliveries of wood-powder fuel.

6. On 3 December 1992 a bank, Skandinaviska Enskilda Banken, and two other investors granted the company loans to construct a plant for the production of wood-powder fuel. The bank's loan, amounting to 5.8 million Swedish kronor (SEK), was to be paid in instalments. In December 1992 and January 1993, 3.8 million SEK of the loan was paid to the company.

7. In March 1993, at a first testing of the completed plant, it was discovered that certain modifications had to be made. In March and April, the company therefore requested the bank to pay the remaining 2 million SEK of the loan. However, the bank refused to do so.

8. In April 1993, Drefviken Energy AB cancelled the fuel delivery contract, apparently due to the fact that the company had not concluded the construction of the plant and it was therefore very doubtful whether it would be able to deliver the agreed amounts of fuel for the 1993/94 season.

9. Subsequently, the company tried to find other customers and reiterated its request to the bank to receive the remainder of the loan. It was paid to the company on 28 June 1993.

10. The bank's payment, together with an additional loan from another investor, enabled the company to uphold a limited production capacity for a time. However, on 7 September 1994 it was declared bankrupt.

11. The bank instituted proceedings against the first and second applicants, claiming their joint liability for 1.1 million SEK of the company's loan in accordance with the personal guarantees they had signed. On 24 February 1995, in a different action, the applicants and a company named Boket Konsult AB (hereinafter "Boket") claimed compensation from the bank in the amount of 37 million SEK for the damage allegedly caused by the bank's initial refusal to pay the last instalment of the loan. They claimed that that refusal had violated the terms of the loan contract and, in any event, that the bank had incurred liability for damages due to negligence, since the project in question had depended on the loan being paid out on demand.

12. On 3 October 1995 the Supreme Court (*Högsta domstolen*) ordered that the proceedings should be examined jointly by the District Court (*tingsrätten*) of Stockholm.

13. Throughout the subsequent proceedings, the parties lodged several supplementary arguments and procedural requests and submitted documentary evidence to the court. The parties asked for and were granted extensions of the time-limits set by the court on several occasions. It further appears that the judge in charge of the proceedings was replaced on several occasions.

14. An oral preparation with the parties was held by the District Court on 18 September 1995. By a decision of 10 June 1996, the court rejected the

bank's request for the applicant company's and Boket's action to be dismissed due to lack of standing. A further oral preparation, scheduled for 16 December 1996, was cancelled due to the illness of the applicants' and Boket's counsel. In February 1997, the applicants and Boket asked the court to rule on the alleged breach of contract in a partial judgment. An oral preparation was held on 7 April 1998. On 29 September 1998 the court sent a summary of the cases to the parties and, by a decision of 30 September 1998, it rejected the request for a partial judgment. On 14 December 1998 the applicants and Boket requested that the court order the bank to produce the files concerning the loan. On 29 June 1999 the court granted this request, and on 23 July 1999 the bank produced the loan files. On 17 January 2000 Boket's action was struck out of the court's list. On 5 July 2000 the court delivered another summary of the cases and gave the parties the opportunity to make comments, which they did in September 2000. On 26 and 27 March and 2 April 2001 an oral hearing was held.

15. By a judgment of 27 April 2001, the District Court found in favour of the bank. It noted that 2 million SEK of the bank loan had been pledged by the company at the time when the loan contract had been concluded through the deposit of that amount on a blocked bank account. It found that, in the absence of any other clauses or agreements with regard to the bank loan or the pledge, this measure showed that the amount, like any other pledge, was only available for withdrawal if so approved by the bank. Consequently, the bank had not breached the loan contract by its initial refusal to pay the amount in question. Moreover, on account of the difficulties related to the company's fuel production, the bank had had good reasons to be cautious and not make available the disputed amount earlier than July 1993, the date originally projected. The bank could not therefore be held liable for negligence towards the company.

16. The applicants appealed to the Svea Court of Appeal (*Svea hovrätt*). On 5 February 2002, following a hearing, the appellate court agreed with the District Court's reasoning and upheld its judgment. On 29 November 2002, after the applicants had been granted several respites to complete their submissions, the Supreme Court refused the applicants leave to appeal.

THE LAW

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

17. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

18. The Government contested that argument.

19. The period to be taken into consideration began on 24 February 1995 and ended on 29 November 2002. It thus lasted approximately seven years and nine months for three levels of jurisdiction.

A. Admissibility

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

B. Merits

21. The applicants stated that, while they directed no criticism against the time spent by the Court of Appeal and the Supreme Court, the period of approximately six years and two months before the District Court was unreasonable and caused mainly by numerous changes of the responsible judge and the court's inability or unwillingness to speed up the proceedings in the face of the bank's repeated attempts to delay them. They maintained that the case was not complex.

22. The Government asserted that the case was rather complex, both from a legal point of view and due to the fact that the parties initiated altogether four actions against each other which were examined jointly and that they submitted extensive written material and made many procedural motions. In regard to the proceedings before the District Court, the Government maintained that, with a few exceptions, there were continuous activities in the handling of the case. The court had to decide on the procedural motions and the proceedings were delayed due to events which were mainly attributable to the applicants, including two orders for them to specify their claims, a change of legal counsel and several extensions of time-limits.

23. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. The present case came before three levels of jurisdiction. It was dealt with speedily by the courts of second and third instance. However, the proceedings were pending before the District Court between 24 February 1995 and 27 April 2001. It is true, as asserted by the Government, that the

parties made extensive submissions and procedural motions in the case and that the applicants, on several occasions, requested and were granted extensions of the time-limits set by the court. As a consequence, the case gained some complexity, although the subject-matter does not appear to have been particularly complex. Moreover, some of the delays were clearly attributable to the parties. Nevertheless, it was the responsibility of the Court to see to it that the proceedings were conducted expeditiously, if necessary by refusing further extensions of time-limits and ordering the parties to make their final submissions. The fact that the case was pending before the District Court for more than six years indicates that the proceedings were not sufficiently expeditious.

25. In these circumstances, and taking into account the overall duration of the proceedings and the criteria laid down in its case-law, the Court considers that the length of the proceedings in the instant case was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicants claimed 8000 euros (EUR) each in respect of non-pecuniary damage.

28. The Government maintained that any compensation for non-pecuniary damage should not exceed a total of EUR 4000.

29. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 4000 jointly under that head.

B. Costs and expenses

30. The applicants claimed compensation for costs, but they did not quantify their claim or submit any documents in this respect.

31. The Government did not express an opinion on the matter.

32. As the applicants did not submit a quantified claim for costs and expenses within the fixed time-limit, the Court considers that there is no call to award any sum on that account.

C. Default interest

33. 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 remainder of the application admissible;
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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Swedish kronor at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President