



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

THIRD SECTION

CASE OF ISELSTEN v. SWEDEN

(Application no. 11320/05)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Iselsten v. Sweden,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 11320/05) 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 John Iselsten (“the applicant”), on 11 March 2005.

2. The applicant, who had been granted legal aid, was represented by Mr P.-O. Nordh, a lawyer practising in Vallentuna. The Swedish Government (“the Government”) were represented by their Agent, Mr B. Sjöberg, of the Ministry for Foreign Affairs.

3. On 4 January 2007 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of an oral hearing before the Court of Appeal to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1932 and lives in Stockholm. He is a lawyer.

5. On 17 March 1997 he sued the Swedish State for damages before the District Court (*tingsrätten*) of Stockholm, claiming negligence in the administration of his bankruptcy. The applicant requested that the court

render a declaratory judgment (*fastställelse*), establishing that the State was liable for damage allegedly caused by negligence during the Enforcement Service's administration of his bankruptcy in 1987/88.

6. The District Court, in June 1997, ordered the applicant to specify his claims and to elaborate further the grounds for these claims. Upon a request by the applicant, the court granted him an extension of the time-limit for submitting the supplementary material. On 20 August 1997, the court received the applicant's submissions, which included 57 annexes.

7. On 29 October 1997 the District Court, without having issued a summons, rejected the applicant's claim as being clearly unfounded.

8. The applicant appealed to the Svea Court of Appeal (*hovrätten*) and demanded that the case be remitted to the lower court for proper examination. The Court of Appeal, in June 1998, requested the applicant to supplement his appeal and to specify his claims. After having been granted an extension of the time-limit, the applicant complied with the request.

9. In a judgment of 17 December 1998, the Court of Appeal set aside the lower court's judgment as far as the applicant's claim relating to damage allegedly caused by the Enforcement Service's administration of his bankruptcy was concerned and remitted the case to the District Court for proper examination. However, the Court of Appeal also decided not to allow the applicant to plead that the State was responsible for damage caused by an alleged breach of contract by the Enforcement Service.

10. The applicant appealed against the judgment to the Supreme Court (*Högsta domstolen*), seeking leave to invoke the alleged breach of contract. On 23 April 1999, the Supreme Court refused leave to appeal.

11. The proceedings were then re-initiated before the District Court, which, in June 1999, issued a summons to the State, represented by the National Tax Board (*Riksskatteverket*). The State disputed the claims and the applicant was given the opportunity to comment on the State's submissions. After having been granted two extensions of the time-limit due to ill-health, the applicant had his third such request for an extension rejected. The court called the parties to a preparatory meeting to be held on 18 January 2000. As the meeting could not be finalised in one day, it was resumed on 21 February 2000. The parties were subsequently requested to submit the evidence invoked. The applicant asked for, and was granted, another three extensions of the time-limit during the spring and summer before submitting all the requested material. During the autumn of 2000 both parties submitted comments relating to, *inter alia*, the oral evidence invoked and the schedule for the oral hearing. Due to the applicant's health problems, the main hearing was eventually scheduled for 23 and 24 January 2001. During the hearing, four witnesses were heard and extensive written evidence was produced.

12. On 21 February 2001 the District Court rejected the applicant's claim for damage as it did not find that the Enforcement Service's administration of the bankruptcy had been negligent.

13. The applicant appealed against the judgment to the Court of Appeal, requesting that the case be remitted to the lower court or, in the alternative, that his claims be upheld. He further asked to be heard under oath (*sanningsförsäkran*) before the Court of Appeal and for the four witnesses to be heard again. The State submitted its reply to the applicant's submissions on 6 August 2001.

14. On 30 December 2003 the Court of Appeal rejected the applicant's request to have the case remitted to the District Court. It further refused to allow the applicant to invoke certain new evidence, and to be heard under oath, since he had not shown that he had a valid excuse for having failed to produce the evidence previously before the lower court. At the same time, the court informed the parties that it was considering adjudicating the case without holding an oral hearing. Thus, the parties were given the opportunity to state their view on this matter and to conclude their submissions. The State consented to the case being decided upon without a main hearing, whereas the applicant opposed it.

15. In a judgment of 10 June 2004, the Court of Appeal upheld the lower court's judgment in full, noting that the parties had essentially invoked and developed the circumstances on which their claims were based in the same manner as before the District Court and that they had invoked written evidence. The Court of Appeal found no reason to depart from the evaluation of the case made by the lower court. As concerned its decision not to hold an oral hearing the court stated that, according to the relevant rules in the Code of Judicial Procedure, an appeal could always be adjudicated without a main hearing if it was clear that such a hearing was unnecessary. The court then considered that it was clear that a main hearing was unnecessary in the case before it in view of the investigation of the matter at hand. The fact that the applicant opposed the determination of the case without a hearing was immaterial as the issues of law raised in the case had been elucidated at the District Court in a way that made it obvious that a main hearing would not add anything of value to the case. Hence, the court found that there was no impediment to the case being adjudicated without a main hearing.

16. On 20 July 2004 the applicant's appeal reached the Supreme Court and he asked for, and was granted, an extension of the time-limit to supplement his appeal. In August 2004 he submitted his supplementary pleadings and, on 14 September 2004, the Supreme Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW

17. Proceedings before the general courts in civil disputes are mainly governed by the 1942 Code of Judicial Procedure (*rättegångsbalken* – hereafter “the Code”) with amendments.

18. Chapter 42, section 6, of the Code stipulates that a district court shall prepare cases with a view to their speedy adjudication. The Code does not, however, contain any provision stating that civil cases must be determined within certain time-limits.

19. Moreover, a general principle underlying the Code is that the Court of Appeal is not to try claims, circumstances invoked as a basis for claims or evidence as a court of first instance. This means that, as a general rule, the Court of Appeal’s examination of the case is limited to investigation of the matter presented to and examined by the District Court. This is in particular so in cases amenable to out-of-court settlement (*dispositiv tvistemål*) where a party cannot invoke a circumstance or item of evidence not previously presented, unless he or she can show probable cause for not having been able to invoke the circumstance or item of evidence in the lower court, or otherwise has a valid excuse for his or her failure to do so (Chapter 50, section 25 of the Code).

20. In civil cases amenable to out-of-court settlement, the parties determine the framework of the proceedings which means that they decide which evidence and which facts and circumstances are to be examined by the court (see, *inter alia*, Chapter 17, section 3 and Chapter 35, sections 3 and 6, of the Code).

21. Chapter 50, section 13 of the Code provides for the possibility of deciding a civil case before the Court of Appeal without a main hearing. The section is formulated on the assumption that a main hearing is held and, accordingly, enumerates exceptions to this general rule. The third paragraph of this section thus stipulates that the Court of Appeal may always determine an appeal without a main hearing if it is clear that a hearing is unnecessary.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

22. The applicant 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...”

23. The Government left it to the Court to decide whether this complaint revealed a violation of the Convention.

24. The period to be taken into consideration began on 17 March 1997 and ended on 14 September 2004. It thus lasted approximately seven years and six months for three levels of jurisdiction.

A. Admissibility

25. The Court notes 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

26. 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).

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

28. The Government claimed that the national proceedings had been relatively complicated and had involved substantial submissions by the applicant. They further observed that the applicant had been responsible for certain delays before the national courts as he had repeatedly requested extensions of the time-limit for supplementing his submissions. In this respect, the Government alleged that the applicant had been responsible for a delay amounting, in total, to approximately one year.

29. The applicant maintained his position and emphasised that even taking into account his requests for respite, which had been due to his illness, the total length of the proceedings had been unacceptable.

30. The Court accepts that the present case concerned matters of some complexity and notes that the case actually passed through the system twice, first when the District Court dismissed the applicant's action, and his appeals in that connection, and a second time when the courts tried his claim for damages on the merits. It further considers that the applicant was responsible for some of the delays before the national courts when requesting several extensions of the time-limit. However, the Court does not find that the applicant's conduct alone contributed to the prolonged length

of the proceedings. On the contrary, the Court is of the opinion that there were periods of inactivity, in particular when the case was pending the second time before the Court of Appeal, which were at least in part attributable to the national courts and that their handling of the case did not facilitate its timely completion.

31. Thus, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LACK OF AN ORAL HEARING

32. The applicant also complained that the Court of Appeal had refused to hold an oral hearing despite his express request for one. Article 6 § 1 of the Convention, in the relevant parts, reads as follows:

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

Admissibility

33. The Government argued that this complaint was manifestly ill-founded since the case concerned a civil matter amenable to out-of-court settlement where the District Court had held an oral hearing. They further claimed that an oral hearing was clearly unnecessary since there were no new circumstances or new evidence that had to be examined before the Court of Appeal and that the outcome before the appellate court was not dependent on the credibility of the oral evidence invoked. Moreover, the Government observed that the applicant had had ample opportunity to put forward his case and conclude his actions in writing.

34. The applicant maintained that the Court of Appeal should have held an oral hearing since there were no exceptional circumstances which justified dispensing with a main hearing in the present case. He had insisted that an oral hearing be held in order to rehear the witnesses from the District Court and thereby clarify certain obvious contradictions and misunderstandings between the testimonies. Moreover, he had wanted to be heard under oath. Thus, it was clear that the oral evidence was of great importance for the settlement of the case and that a main hearing before the Court of Appeal had been necessary to comply with Article 6 of the Convention.

35. The Court reiterates that the manner in which Article 6 of the Convention applies to proceedings before courts of appeal depends on the

special features of the domestic proceedings viewed as a whole. Even where the court of appeal has jurisdiction both in respect of the facts and the law, Article 6 does not always require a right to a public hearing. The publicity requirement is certainly one of the means whereby confidence in the courts is maintained. However, the Court has also accepted that there are other considerations, including the right to a trial within a reasonable time and the related need for an expeditious handling of the courts' case-load, which must be taken into account in determining the necessity of public hearings in the proceedings subsequent to the trial at first-instance level (see, for example, *Rippe v. Germany*, no. 5398/03, February 2006; *Jan Åke Andersson v. Sweden*, judgment of 29 October 1991, Series A no. 212-B, § 27; and *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, § 36).

36. The absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue (see, among many other authorities, *Jan Åke Andersson*, cited above, § 29; *Helmers*, cited above, § 36; *Ivanovski v. the former Yugoslav Republic of Macedonia* (dec.) no. 21261/02, 29 September 2005; and *Kaipila v. Finland* (dec.), no. 49453/99, 18 October 2005). Accordingly, the Court has held that 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 to be heard in person by the appeal court. Furthermore, a hearing may not be necessary when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see *Fejde v. Sweden*, judgment of 29 October 1991, Series A no. 212-C, § 33; and *Pahverk v. Sweden* (dec.), no. 41042/98, 11 February 2003). However, it is the overarching principle of fairness embodied in Article 6 which is, as always, the key consideration (see *Jussila v. Finland* [GC], no. 73053/01, § 42, ECHR 2006-...).

37. Turning to the circumstances of the present case, the Court first observes that it concerned a civil action for damages against the State. As such it was amenable to out-of-court settlement and it was consequently for the parties to determine the framework of the proceedings. Moreover, they knew that the Court of Appeal's examination of the case would be limited to the investigation of the matter presented to and examined by the District Court. Thus, in the Court's view, it must have been clear to both parties that they had to invoke and present all circumstances and evidence before the District Court. In fact this also seems, essentially, to have occurred since, before the Court of Appeal, the applicant did not request to hear any new witnesses but wanted the four witnesses heard before the District Court to be heard again. The Court also observes that the State agreed with the Court of Appeal that an oral hearing was unnecessary.

38. The Court further attaches importance to the fact that the District Court held two preparatory meetings with the parties and then a main hearing which lasted for two days. Hence, the applicant had the opportunity to present all his evidence orally to the court and hear the witnesses whom he had called and also to cross-examine the State's witnesses, which indeed he did. Furthermore, both parties submitted extensive written submissions which were considered by the District Court and the entire case file was sent to the Court of Appeal together with the applicant's appeal. Thus, when the Court of Appeal examined the case, it had access to all the material, including the tapes from the oral hearing before the District Court, as well as to the supplementary submissions made by the parties before the appellate court. Here, the Court also has regard to the fact that the parties were informed by the Court of Appeal, on 30 December 2003, that it was considering not holding an oral hearing and were given the opportunity to finalise their submissions, which they did. Since the appellate court gave judgment in June 2004, about six months later, the applicant had ample time to make his final pleadings in the case.

39. In these circumstances, the Court finds that the requirements of fairness were complied with and did not, in the particular circumstances of this case, necessitate an oral hearing. It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 101,000 euros (EUR), or in the alternative EUR 13,500, in respect of non-pecuniary damage in relation to the length of the proceedings.

42. The Government contested these claims. They considered that if the Court found a violation in respect of the length of the proceedings, the compensation should not exceed EUR 2,000.

43. The Court considers that the applicant must have sustained some non-pecuniary damage because of the excessive length of the national proceedings. Ruling on an equitable basis, it awards him EUR 1,500 under that head.

B. Costs and expenses

44. The applicant also claimed 54,495 Swedish kronor (approximately EUR 5,760) for the costs and expenses incurred before the Court.

45. The Government found this claim acceptable if the Court were to find violations concerning both complaints to the Court. However, if the Court were to find a violation of only one of the complaints, the Government considered that the amount claimed should be reduced proportionately.

46. According to the Court's case-law, an applicant is entitled to the reimbursement of 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, the above criteria and the fact that the Court has found a violation of only one of the applicant's two complaints, the Court considers it reasonable to award the sum of EUR 2,500 for the proceedings before the Court.

C. Default interest

47. 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, to be converted into Swedish kronor at the rate applicable at the date of the settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President