



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

THIRD SECTION

CASE OF MENDEL v. SWEDEN

(Application no. 28426/06)

JUDGMENT

STRASBOURG

7 April 2009

FINAL

07/07/2009

This judgment may be subject to editorial revision

In the case of Mendel 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 Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 28426/06) 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, Ms Sonja Mendel (“the applicant”), on 28 June 2006.

2. The applicant was represented by Mr J. Södergren, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Mrs C. Hellner, of the Ministry for Foreign Affairs.

3. The applicant alleged that her right to access to a court according to Article 6 § 1 of the Convention had been violated since she had not been able to appeal to a court against a decision by an authority to withdraw permission for her to participate in a labour market policy programme. On the same ground, she argued that she had been denied the right to an effective remedy under Article 13 of the Convention.

4. On 12 December 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Malmö.

6. Since 1992 the applicant has been registered with the Employment Service (*Arbetsförmedlingen*) in Malmö and, since 2001, she has been taking part in different programmes provided by it. One of these programmes, called activity guarantee (*aktivitetsgaranti*), was a programme for persons who were, or who were at a risk of becoming, unemployed for a long period as well as for groups of persons who often had difficulties in finding a job. The purpose of the programme was to give the participants greater opportunities to find a job and it involved different activities such as short term education and the possibility to try different kinds of work. Each person who participated in the programme had a personal supervisor from the Employment Service and together they were supposed to set up a plan for the activities in which the participant was taking part. The participant was obliged to attend meetings and to meet his or her supervisor on a regular basis, and he or she also had an obligation to apply for suitable jobs which were advertised through the Employment Service.

7. On 4 July 2005 the Employment Service (apparently on delegation from the County Labour Board (*Länsarbetsnämnden*)) decided to withdraw its approval for the applicant to take part in the programme in which she was participating. The decision was taken in accordance with Section 37(a) of the Ordinance on Labour Market Policy Programmes (*förordningen om arbetsmarknadspolitiska program*, SFS 2000:634; hereafter "the 2000 Ordinance"). According to the Employment Service, the applicant had not been acting in a proper manner in relation to the demands laid upon her. The decision was taken on the basis of a report drawn up by the Employment Service. The report stated that the applicant had been called to attend information meetings on several occasions but that she had either announced that she was not able to attend or she had simply not attended. It also stated that the applicant, at an information meeting, had made statements that led to a job interview being cancelled.

8. When the applicant's permission to participate in the programme was revoked, her subsistence support in the form of activity support (see § 18 below) was also revoked, leaving her without any income. According to the applicant this forced her to pay for living expenses out of her savings for nine months and to take 25% early retirement in September 2005.

9. On 21 July 2005 the applicant appealed against the decision of the Employment Service to the National Labour Market Board (*Arbetsmarknadsstyrelsen* –hereafter "the Board"). She claimed that there were several statements in the report which were not true. For instance, she had been ill

and hospitalised and therefore had not been able to attend certain meetings and she had informed the Employment Service about the situation. She also alleged that a note in the report which stated that on one occasion she had not attended a meeting was not true. Moreover, she claimed that, at the aforementioned information meeting, she had told an official of the Employment Service that she felt she was not suited for the job in question. Thereafter, the official had told her that she could leave.

10. On 29 March 2006 the Board decided to reject the appeal. It found that the applicant had, on several occasions in August and September 2004, announced that she was not able to attend certain meetings; on one occasion because she had planned to go on vacation. The Board took into account the possibilities to adapt the kind of work the applicant was offered, and the fact that she had not proved her medical problems or shown that they were of a permanent nature, and found that she had not done everything in her power to get a job. Therefore, the Board concluded that there were grounds to withdraw her entitlement to participate in the programme. Consequently, the appeal was rejected.

11. In the Board's decision, it was expressly stated that there was no possibility in accordance with Section 39 of the 2000 Ordinance to appeal against the decision.

12. On 6 April 2006 the applicant wrote a letter to the Board, expressing her dissatisfaction with its decision. In the letter she referred, *inter alia*, to the fact that the Board in its decision had noted that no appeal lay against the decision and asked how she could obtain redress.

13. On 11 September 2006 the applicant submitted a complaint to the Chancellor of Justice (*Justitiekanslern*) where she complained, *inter alia*, about the authorities' decisions and their handling of her case. She requested damages, but did not claim that there had been a breach of her rights under Article 6 of the Convention. This complaint seems still to be pending before the Chancellor of Justice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Unemployment benefits

14. A person who is unemployed may be entitled to subsistence support through the unemployment insurance. The main regulations in this area are given in the Unemployment Insurance Act (*lagen om arbetslöshetsförsäkring*, SFS 1997:238; hereafter "the 1997 Act") and the Unemployment Funds Act (*lagen om arbetslöshetskassor*, SFS 1997:239). Unemployment benefits are financed through membership contributions made by the members of the unemployment insurance funds and State

funding. A person who is not a member of an unemployment insurance fund can still receive some benefit, a so-called basic insurance. Benefits are paid to a person who is unemployed and has fulfilled a qualifying period of employment, that is he or she has worked a certain number of months before becoming unemployed, and who fulfils certain basic qualifying conditions, for example, he or she must actively be looking for work. At the relevant time benefits were provided for a limited number of days. After that, a new qualifying period of employment had to be completed in order to qualify for a new period of benefits.

15. According to Section 45(a) of the 1997 Act, the benefits will be reduced for a certain period if the beneficiary, without acceptable reasons, rejects suitable work or if he or she, without having expressly rejected the work, by his or her actions causes employment not to be realised. The third time this happens the beneficiary will be disqualified from receiving benefits. According to Section 46, the same will happen if a beneficiary without acceptable reasons rejects an assignment to a labour market policy programme (*arbetsmarknadspolitiskt program*). Decisions regarding the right to the benefits regulated in the 1997 Act can be appealed against to the administrative courts.

B. The activity guarantee scheme and activity support

16. The activity guarantee scheme was one of several different labour market policy programmes. The scheme ceased to be in force on 2 July 2007. According to Sections 8 and 21 of the 2000 Ordinance, a person could (the word “may” (*får*) was used in the Ordinance) be assigned to the activity guarantee scheme if he or she was at least 20 years old, was or was at risk of becoming unemployed for a long time and was searching for work through the public employment service. Section 6 of the 2000 Ordinance stated that an assignment to the programme had to be motivated in terms of labour market policy and, thus, an assignment could only be made if it appeared appropriate both for the individual and from an overall labour market policy perspective. Moreover, Section 7 stated that an assignment to the activity guarantee scheme would apply for as long as it was justified in terms of labour market policy.

17. A person who entered into the activity guarantee scheme would no longer be entitled to unemployment benefits. His or her subsistence would instead be paid according to the provisions in the Ordinance on Activity Support (*förordning om aktivitetsstöd*, SFS 1996:100). Section 23 of the 1997 Act stated that a person who entered into the activity guarantee scheme would lose his or her remaining days of unemployment benefits. In the preparatory works preceding the amendment of Section 23 of the 1997 Act the Government stated that it was not necessary to allow people who left the activity guarantee scheme a possibility to use their remaining days

of unemployment benefits, “*since the system around the activity guarantee scheme means that no one should have to leave the activity guarantee without having his or her support secured*” (Government Bill 2002/03:44 p. 54).

18. The Ordinance on Activity Support stated that a person who took part in, *inter alia*, the activity guarantee scheme was entitled to economic support. According to Section 5 of the Ordinance, a person who was or would have been entitled to unemployment benefits or who had received unemployment benefits for the longest period for which benefits could be provided, would be given activity support equivalent to the unemployment benefits he or she would have received under the 1997 Act. A person who was not entitled to benefits as described above would still be given a specific amount per day in activity support. When a person who had been taking part in a programme such as the activity guarantee ceased to be part of it, he or she was no longer entitled to the activity support.

19. Section 37(a) of the 2000 Ordinance stated that an assignment to the activity guarantee scheme would be revoked if a person assigned to it refused an offer of suitable work or another measure under the guarantee scheme without an acceptable reason. An assignment to the activity guarantee scheme would also be revoked if the individual did not act in a proper manner or otherwise disrupted the activities. Moreover, an assignment could be revoked if there were other special reasons to do so.

20. According to Section 37(b) of the 2000 Ordinance, if an assignment to the activity guarantee scheme was revoked because the individual had refused an offer of suitable work or another measure under the guarantee scheme, without an acceptable reason, the individual would (the word “shall” (*skall*) was used in the Ordinance) be reassigned to the activity guarantee scheme after a suspension of 45 days, if certain basic requirements were met. In the Government Bill which preceded the introduction of this provision, the Government noted that the consequences for those who had their assignment to the activity guarantee scheme revoked would be far-reaching unless they had fulfilled a new qualifying period of employment. The Government also observed that the activity guarantee scheme had the character of a last economic protection among the labour market policy measures for those who were, or were at a risk of becoming, unemployed for a long period. Thereafter the Government stated: “*The person applying should therefore in principle have a right to participate in the activity guarantee until he or she finds a solution for his or her unemployment situation, on condition that he or she in an active way contributes to such a solution. ... A person who has had his or her assignment to the activity guarantee revoked on the ground that he or she has refused an offer of suitable work or another measure under the guarantee scheme, shall therefore be offered a new assignment to the guarantee.*” (Government Bill 2002/03:44 p. 66)

21. Decisions regarding the revocation of an assignment to a labour market policy programme, including the activity guarantee scheme, were taken by the County Labour Board. Appeals against the County Labour Board's decision could be made to the National Labour Market Board. According to Section 39 of the 2000 Ordinance, no appeal lay against the National Labour Market Board's decisions.

22. In connection with a reorganisation of the Labour Market Administration into the Employment Service, the issue of whether decisions regarding labour market policy programmes should be subject to appeal was considered by the Government. It first stated that there was a right to be assigned to the labour market policy measure called "new start jobs" (*nystartjobb*) and then stated, *inter alia*, the following: "*In the case of other labour market policy measures and financial compensation, assignment decisions to them depend to a great extent on the situation in the labour market. There is no right to receive such a measure and there is no right to retain it either. This means that the decisions to be taken by the new agency in these matters, including the revocation of a measure, do not need to be examined by a court. Nor are the decisions suited to an examination by a court.*" (Government Bill 2006/07:89 p 79)

C. Appeals against an authority's decision

23. The handling of matters in the Swedish public administration is regulated by the Administrative Procedure Act (*förvaltningslagen*, SFS 1986:223; hereafter "the 1986 Act"). Section 3 § 1, of the 1986 Act states that the provisions in the Act are subsidiary if they differ from the provisions in any other act or ordinance. According to Section 22, a decision may be appealed against by any person whom the decision concerns, provided the decision affects him or her adversely and an appeal against the decision is permitted. Section 22(a) states that appeals are to be made to the administrative courts. The preparatory works (Government Bill 1997/98:101 pp 59 and 112) state that one of the purposes of Section 22(a) is to assign a competent court when a prohibition to appeal against a decision has to be set aside because it would be in violation of the Convention.

24. On 1 July 2006 a new second paragraph was added to Section 3 of the 1986 Act which states that the provisions on appeal according to the Act should always apply if it is necessary in order to provide for everyone's right to a fair trial in the determination of their civil rights or obligations as laid down in Article 6 § 1 of the Convention. According to the preparatory works (Government Bill 2005/06:56 p 10), one of the reasons for amending the 1986 Act was to make it clear that the 1986 Act's provisions on appeal applied regardless of what was stated in other acts or provisions, if this was

necessary in order to satisfy the right to access to court in accordance with the Convention.

25. Section 21 § 2 of the 1986 Act states that an authority has an obligation to inform a party about how to appeal against all decisions that affect the party adversely, if the decision can be appealed against.

26. In a decision of 22 November 1994 (NJA 1994 p. 657) the Swedish Supreme Court (*Högsta domstolen*) found that a dispute over agricultural subsidies concerned a civil right in the sense of Article 6 of the Convention and found that a trial before a court should be allowed. Therefore, the court set aside the prohibition to appeal against the authority's decision. Similarly, the Supreme Administrative Court (*Regeringsrätten*) has set aside prohibitions to appeal against different authorities' decisions, when the cases concerned civil rights and obligations (see, for example, decision of 25 November 1997 in RÅ 1997 ref. 65 and decision of 30 November 2001 in RÅ 2001 ref. 56).

D. The State's liability to pay damages

27. It follows from Chapter 3, Section 2 of the Tort Liability Act (*Skadeståndslagen*, SFS 1972:207) that the State is liable to pay compensation for, *inter alia*, financial loss caused by a wrongful act or omission in connection with the exercise of public authority. From Chapter 3, Section 3 of the Act it follows that, under certain circumstances, the State is liable to pay compensation for financial loss caused by an erroneous instruction or advice given by an authority.

28. In a judgment of 9 June 2005 (NJA 2005 p. 462), the Supreme Court found that an individual had a right to bring a civil action against the State before the national courts on the ground that there had been a violation of Article 6 § 1 of the Convention because a criminal case against the individual had not been concluded within a reasonable time. The Supreme Court has subsequently, in a judgment on 21 September 2007 (NJA 2007 p. 584), found that individuals have a right to bring civil suits against the State for violations against any Articles of the Convention when the State, according to the Convention, has an obligation to pay damages for the violation and such obligation cannot be based on national legislation.

29. Anyone who wishes to claim compensation from the State for financial loss, which he or she considers to have been caused by a wrongful decision taken by a court or an administrative State authority, can proceed in two different ways: He or she may either petition the Chancellor of Justice in accordance with Section 3 of the Ordinance on the Administration of Claims for Damages against the State (*Förordningen om handläggning av skadeståndsanspråk mot staten*, SFS 1995:1301), or bring a civil action against the State in the ordinary courts. No appeal lies against a decision of

the Chancellor of Justice. However, if the claim is rejected, the claimant still has the possibility to institute civil proceedings before the courts.

THE LAW

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

30. The applicant complained under Article 6 § 1 of the Convention that she was not able to appeal against the decision by the Board, thereby being denied access to court. This provision provides in so far as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

(a) Parties' submissions

31. The Government submitted that the complaint under Article 6 should be declared inadmissible as incompatible *ratione materiae* on the ground that the Board's decision did not involve a dispute over a “right” as understood by Article 6 of the Convention.

32. Initially, the Government referred to Government Bill 2006/07:89, p. 79, where it was stated that decisions concerning labour market policy programmes other than “new start jobs” were largely dependent on the labour market situation and that there was no right to be assigned to or be allowed to remain in a programme. Thus, they argued that the applicant could derive no right from the national legislation to be assigned to or allowed to remain in any labour market policy programme, including the activity guarantee scheme. This was so, according to the Government, due to the fact that the provisions governing the labour market policy programmes were worded in such a way that they did not lay down tangible eligibility criteria that could be examined without difficulty by the competent authorities and, upon appeal, by the national courts.

33. The Government further submitted that several features of the relevant legal provisions, most notably the 2000 Ordinance, showed that there were no arguable grounds to claim a right to be assigned to a labour market policy programme. Referring to the wording of Section 8 of the 2000 Ordinance, which listed certain criteria for eligibility to be assigned to a labour market policy programme, the Government pointed out that the

word “may” had been used consciously by the Government in order to show that being assigned to a labour market policy programme or being allowed to remain in such a programme was not to be considered as a right. By using the word “may”, the Government underlined that the sphere of labour market policy programmes should be governed by current labour market policy concerns which gave the authorities unfettered discretion to decide whether and to which individuals such programmes should be assigned.

34. Furthermore, the Government argued that another pertinent feature of the provisions governing labour market policy programmes was the requirement laid down in Sections 6 and 7 of the 2000 Ordinance, which provided that an assignment to a programme had to be “motivated in terms of labour market policy”. According to the Government, that criterion was laid down so that the authorities could refrain from assigning a person to a programme or cancel a person’s assignment to the programme with reference to overall labour market policy. That policy criterion also demonstrated the unfettered discretion available for the authorities when deciding whether to assign a person to a programme. As a consequence, no attention whatsoever should be paid to a person’s need or suitability for assignment to a programme if the individual’s participation in the programme was not appropriate from an overall labour market policy perspective. It was, in other words, left entirely up to the authorities implementing the Government’s labour market policies to decide whether a person should be assigned to or allowed to stay in a programme.

35. The Government submitted that, should the Court find that the applicant could arguably derive a right to remain in the activity guarantee scheme from the national legislation at issue, it recognised that such a right must be considered to be a “civil right” within the meaning of Article 6 § 1 of the Convention.

36. The applicant submitted that a distinction had to be made when examining the existence of a civil right in the domestic system between applications for rights not yet received and revocations of already existing rights. The primary issue in the instant case, according to the applicant, was not whether there was discretion in assigning a person to a labour market policy programme, but rather whether an authority had an absolute discretion to revoke a person’s existing assignment to a programme.

37. The applicant argued that the relevant provisions in the 2000 Ordinance, on which the decision to exclude the applicant from the activity guarantee scheme was based, were quite detailed and certainly contained tangible criteria. Therefore, the applicant argued, the authorities did not have unfettered powers to revoke her assignment to the activity guarantee scheme.

38. The applicant also claimed that, while assignments to the programmes may be refused in the form of general measures, for instance for budgetary reasons, thus affecting a number of unidentified applicants

seeking an assignment after a certain date or between certain dates, she disputed that a revocation of an already decided and ongoing assignment was permissible for budgetary reasons. The applicant further submitted that there had to be a clear distinction between general measures such as forming and shaping the programmes and setting budgets and so on, and the individual measures, such as revoking an assignment due to reasons connected with the individual's alleged behaviour and suitability.

39. The applicant further stressed that the statements made in Government Bill 2006/07:89, p. 79 (see § 22 above), were made after the revocation of the applicant's assignment to the programme.

40. Furthermore, the applicant argued that the word "may" was used in many Swedish regulations whereby individuals could apply for various rights recognised under domestic law, if certain conditions were met. The mere use of the word "may" did not, according to the applicant, normally mean that authorities had an unfettered discretion in granting or refusing to grant the right.

(b) The Court's assessment

41. The Court reiterates that, according to the principles laid down in its case-law, it must ascertain whether there was a dispute ("*contestatio*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. Article 6 § 1 of the Convention does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive for the right in question. Finally, the right must be civil in character (see, for example, *Allan Jacobsson v. Sweden* (no. 2), 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I).

42. The Court first has to consider whether or not the right claimed by the applicant exists in Sweden. In this respect, it observes that the Convention does not grant a person a right to be assigned to or be allowed to stay in a labour market policy programme. It follows that the question of whether such a right can be said in any particular case to exist must be answered solely with reference to domestic law. In this connection, in deciding whether a right, civil or otherwise, could arguably be said to be recognised under Swedish law, the Court must have regard to the wording of the relevant legal provisions and to the way those provisions are interpreted by the domestic courts (see *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A).

43. The Court reiterates that the existence of a margin of discretion on the part of the domestic authorities does not necessarily preclude the applicability of Article 6. If the subject of the court proceedings in question

was a discretionary decision which interfered with the applicant's rights, the Court has held Article 6 to be applicable (see *Pudas v. Sweden*, 27 October 1987, § 34, Series A no. 125-A and *Mats Jacobsson v. Sweden*, 28 June 1990, § 32, Series A no. 180-A).

44. However, if the subject of the national proceedings was a discretionary decision as to whether the applicant was to receive certain benefits or was entitled to actions by the authorities, the Court has held that unfettered discretion or even a wide margin of discretion on the part of the domestic authorities indicated that no "right" to those benefits or actions is recognised under domestic law. As a consequence, Article 6 is not applicable to those proceedings (see *Masson and van Zon*, cited above, § 51; and *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI).

45. The Court has furthermore specified that a "right" within the meaning of Article 6 § 1 must be related to certain tangible criteria, which can be examined without difficulties by the competent authorities, and upon appeal, by the national courts (see *Ankarcrona*, cited above).

46. As regards the authorities' decisions to assign persons to the activity guarantee scheme, the Court notes that the relevant provisions were drafted with the word "may" and that they also stated that an assignment had to be motivated in terms of labour market policy. Accordingly, it appears from the very terms of the legislation in issue that a "right" to be assigned to the activity guarantee scheme could not, on arguable grounds, be said to be recognised under national law.

47. However, the Court also has to consider whether a person who had already been assigned to the activity guarantee scheme can be considered to have gained, on at least arguable grounds, a right not to have their assignment to the scheme arbitrarily revoked.

48. Although the Court notes that Section 7 of the 2000 Ordinance stated that an assignment to the activity guarantee scheme would apply for as long as it was justified in terms of labour market policy, the Court also observes that the applicant's assignment to the activity guarantee scheme was not revoked on grounds of labour market policy. It was revoked because the applicant had allegedly not acted in a proper manner in relation to the demands laid upon her, in accordance with Section 37(a) of the 2000 Ordinance.

49. Section 37(a) of the 2000 Ordinance stated that an assignment to the activity guarantee scheme could be revoked if a person refused an offer of suitable work or another measure under the guarantee scheme without an acceptable reason, if he or she did not act in a proper manner or otherwise disrupted the activities, or if there were other special reasons to revoke the assignment.

50. This section must, in the Court's view, be considered to have laid down tangible criteria, the existence of which could be examined without particular difficulties by the competent authorities and, subject to appeal, the

national courts. The Court also considers that the relevant provision did not leave the domestic authorities unfettered discretion or even a wide margin of discretion.

51. The Court further notes that an unemployed person collecting unemployment benefits could, according to Sections 45(a) and 46 of the 1997 Act, in practice, be forced to participate in the activity guarantee scheme. When that person entered the activity guarantee scheme, he or she would no longer be entitled to unemployment benefits and would lose all remaining days of benefits. Thus, after leaving the activity guarantee scheme, he or she would not be able to go back to the said benefits until he or she had fulfilled a new qualifying period of employment. A person participating in the activity guarantee scheme would instead receive his or her subsistence in the form of activity support, which would be cancelled when his or her assignment to the activity guarantee scheme was revoked.

52. A revocation of the assignment to the activity guarantee scheme would therefore have serious economic consequences for the individual involved. This was one of the reasons given by the Government for introducing Section 37(b) of the 2000 Ordinance. Section 37(b) stated that if an assignment to the activity guarantee scheme was revoked because the individual had refused an offer of suitable work or another measure under the guarantee scheme, the individual would be reassigned to the activity guarantee scheme after a suspension, if certain basic requirements were met. In the Government Bill preceding the introduction of Section 37(b), the Government expressed the opinion that a person in the activity guarantee scheme would in principle have a right to participate in the scheme until he or she found a solution to his or her unemployment (see above § 20).

53. The Government also, in the preparatory works preceding the amendment of Section 23 of the 1997 Act, stated that the system around the activity guarantee scheme meant that no one should have to leave the scheme without having his or her support secured (see above § 17).

54. In view of the above considerations, the Court concludes that the applicant's claim not to have her assignment to the activity guarantee scheme arbitrarily revoked did concern a "right" which could arguably be said to be recognised under Swedish law.

55. In addition, the proceedings complained of were capable of leading - and did in the present case lead - to confirmation by the Board of the Employment Service's decision to revoke the applicant's participation in the activity guarantee scheme. They were therefore directly decisive for the right at issue.

56. Therefore, and since it has not been disputed that the right must be considered a "civil" right within the meaning of Article 6 § 1 of the Convention, the Court concludes that Article 6 § 1 of the Convention was applicable to the proceedings in this case.

2. Exhaustion of domestic remedies

(a) Failure to claim compensation from the State

57. The Government further submitted that, should the Court come to the conclusion that the complaints concerned a civil right according to the Convention, the complaints should be declared inadmissible due to failure to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention.

58. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her since she had not availed herself of the possibility to claim compensation from the State for the alleged violation of the Convention before the Chancellor of Justice and/or the domestic courts. They relied on two judgments of the Supreme Court, pronounced on 9 June 2005 and 21 September 2007 (see § 28 above). Thus, according to the Government, there was an effective remedy available to the applicant which she was obliged to exhaust before complaining to the Court.

59. Referring to the Commission's case-law (*Dello Preite v. Italy*, no. 15488/89, Commission decision of 27 February 1995, Decisions and Reports (DR) 80-B, p. 22) the Government further argued that ignorance about law or jurisprudence was not a legitimate excuse for an applicant's failure to exhaust domestic remedies.

60. The applicant submitted that the Government's argument that she should have brought a civil suit against the State for damages was completely contrary to the traditional division in Sweden between administrative and civil cases. She further submitted that there would be no prospect of success at all by such a remedy.

61. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has a close affinity - that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, for example, *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

62. Furthermore the Court observes that, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

63. The Court notes that the first of the two judgments referred to by the Government concerned length of proceedings in a criminal case, whereas the present case concerns the lack of access to court in administrative proceedings. The second judgment referred to by the Government was pronounced on 21 September 2007, that is almost one year and three months after the applicant lodged the present application with the Court. Thus, at the time of introduction of the present application to the Court, there were no indications that a claim for compensation from the State for the lack of access to court could be an effective remedy in Sweden.

64. Therefore, the applicant must be considered to have exhausted domestic remedies in this respect.

(b) Failure to appeal against the Board's decision

65. The Government further submitted that appeal prohibitions could be set aside, in accordance with the case-law of the Supreme Court and the Supreme Administrative Court (see above § 26), if a decision that was excluded from appeal concerned a person's civil rights or obligations under Article 6 of the Convention. Therefore, if the applicant's complaint was considered to be a civil right, she would have had the right to have her case examined on the merits by a court of law, notwithstanding the appeal prohibition in Section 39 of the 2000 Ordinance. Hence, the Government contended that the applicant should have submitted an appeal to the domestic courts. By not having done so, the applicant had failed to exhaust domestic remedies.

66. The applicant disagreed. In particular, she argued that the Swedish legal position concerning the possibility to appeal against administrative decisions, where there existed a domestic legal provision explicitly stating that the decision at issue was not subject to appeal, was not sufficiently clear. She further claimed that she had a legitimate expectation that the

information given by the Board was correct, especially since a Government ordinance stated the same.

67. The Court finds that the question of the effectiveness of this remedy and thus the issue of exhaustion are closely linked to the substance of the applicant's complaint under Article 6 § 1 of the Convention. It should, therefore, be joined to the merits.

(c) Conclusions

68. The Court considers, in the light of the parties' submissions, that the applicant's complaint about lack of access to a court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties' submissions

69. The applicant complained that there had been a violation of her right of access to a court. She claimed that if there was indeed a possibility, as claimed by the Government, to appeal against the Board's decision, then she had been misled by the Board which had explicitly stated that its decision was not subject to appeal. In connection with this the applicant stressed the Board's obligation, according to Section 21, § 2 of the 1986 Act, to inform her of how to appeal against the decision since it had affected her adversely.

70. The applicant also stressed that she was not represented by a legal representative before the national authorities since the general understanding was that legal representation was unnecessary in most administrative procedures and her legal costs would not therefore have been reimbursed, even if she had been successful in the procedure before the authorities. Thus, she submitted that it was normally not economically justifiable to engage a legal representative in such an administrative procedure.

71. In sum, the applicant argued that the Swedish legal position concerning the possibility to appeal over administrative decisions, where there existed a domestic legal provision explicitly stating that the decision at issue was not subject to appeal, was not sufficiently clear. That fact alone, or at least taken in conjunction with the fact that she was explicitly informed that the decision was not subject to an appeal, in a procedure without legal representation, had the effect that the remedies argued by the Government

were not sufficiently accessible and effective within the meaning of Article 35 § 1 of the Convention.

72. The Government disagreed with these statements and submitted that the possibility to set aside an appeal prohibition, if the decision concerned a person's civil rights or obligations under Article 6 of the Convention, was firmly established in the case-law of the Supreme Court and the Supreme Administrative Court at the relevant time. The Government further argued that the case-law cited by it, and its later codification, was adopted specifically for cases where an appeal prohibition might otherwise violate Article 6 § 1 of the Convention and also in order to ensure compliance with the Convention regardless of whether the Court's interpretation of the term "civil rights and obligations" had evolved since the legislation at issue was adopted.

2. The Court's assessment

73. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 35-36, Series A no. 18).

74. Furthermore, the Court points out that the right of access to a court is not absolute and may be subject to legitimate restrictions. Where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation does not impair the very essence of the right and where it pursues a legitimate aim, and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, § 57, Series A no. 93).

75. As concerns the present case, the Court considers that, at the relevant time, a right to appeal against decisions by national authorities that concerned a person's "civil rights and obligations" according to Article 6 § 1 of the Convention, irrespective of any prohibitions against appeals in law or ordinance, could be found in the case law of the Supreme Court and the Supreme Administrative Court (see above § 26).

76. However, the Court will consider whether this right to appeal could, in the instant case, be considered as an effective access to a court.

77. In this regard, the Court observes that the Board, in accordance with Section 21 § 2 of the 1986 Act, had an obligation to inform the applicant whether the decision could be appealed against and, if so, how to appeal. The Board left no appeal instructions. On the contrary, it expressly stated that the decision, in accordance with Section 39 of the 2000 Ordinance, was

not subject to appeal. Here, the Court notes that the 2000 Ordinance was the relevant national legislation in force regulating the activity guarantee scheme.

78. The Court further observes that, at the relevant time, the above-mentioned amendment to Section 3 of the 1986 Act (see above § 24) had not yet been introduced.

79. Furthermore, the Court stresses that, on 6 April 2006, the applicant in a letter to the Board expressed her dissatisfaction with the Board's decision and asked how she could obtain redress. However, the Board apparently did not reply to the letter or otherwise advise the applicant of her possibility to appeal against the decision.

80. In view of the above considerations, and taking into account that the applicant was not represented by legal counsel, the Court concludes that the applicant should have been allowed to rely on the information given by the Board, and on Section 39 of the 2000 Ordinance, that the Board's decision was not subject to appeal.

81. Having regard to all the circumstances of the case, the Court finds that the Government's preliminary objection as to exhaustion of domestic remedies (see above § 66), previously joined to the merits (see above § 68) must be dismissed and that the applicant did not have a practical, effective right of access to court. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

82. The applicant also invoked Article 13 of the Convention, on the ground that she had no effective remedies in respect of her complaint under Article 6 § 1. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

83. The Court notes that this complaint is linked to the complaint examined above and must therefore likewise be declared admissible.

84. Having regard to its decision concerning Article 6 § 1 (see paragraphs 73-81 above), the Court takes the view that it does not have to examine the case under Article 13 as its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, among other authorities, *Håkansson and Stureson v. Sweden*, 21 February 1990, § 69, Series A no. 171-A; and *Dragičević v. Croatia*, no. 11814/02, § 32, 9 December 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage and SEK 90,000 (approximately EUR 8,400) in respect of pecuniary damage.

87. The Government considered that any compensation for non-pecuniary damage should not exceed EUR 2,000. They contested the claim for pecuniary damage. The Government submitted that the applicant had not substantiated her claim and had not shown any causal link between the alleged violation of the Convention and any pecuniary damage.

88. The Court considers that an award of just satisfaction must be based in the present case on the fact that the applicant did not have the benefit of the right of access to a court for the purposes of Article 6 § 1 of the Convention. It cannot speculate as to what the outcome of a trial, in compliance with Article 6 § 1 of the Convention, would have been. The Court therefore does not discern any causal link between the violation found and the pecuniary damage alleged. Consequently, it rejects this claim. On the other hand, deciding on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

89. The applicant also claimed SEK 27,000 (approximately EUR 2,520), exclusive of value-added tax (VAT), in legal fees for the proceedings before Court. This amount corresponded to a total of 15 hours of work for the applicant’s counsel at an hourly rate of SEK 1,800.

90. The Government did not question the number of hours indicated but considered the hourly rate charged to be excessive. They noted that SEK 1,081, exclusive of VAT, was the hourly rate currently applied under the Swedish legal aid system. The Government could accept a higher rate, but not exceeding SEK 1,200. Accordingly, should the Court find a violation, they would be prepared to pay a total of SEK 18,000 (approximately EUR 1,680), exclusive of VAT, in respect of legal costs.

91. 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 and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

92. 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. *Decides* to join to the merits the Government's preliminary objection as to the exhaustion of domestic remedies in respect of Article 6 § 1 of the Convention and dismisses it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *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 which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs;
 - (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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President