CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SALOMONSSON v. SWEDEN

(Application no. 38978/97)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

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 Salomonsson v. Sweden,

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

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 38978/97) against the Kingdom of Sweden lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Hans Salomonsson ("the applicant"), on 15 September 1997.

2. The applicant was until 31 May 2000 represented by Mr G. Antal and thereafter by Mr U. Jacobson, both lawyers practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms E. Jagander, Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that his rights under Article 6 of the Convention had been violated on account of the lack of an oral hearing before the Administrative Court of Appeal and the Supreme Administrative Court in proceedings concerning social security benefits.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First 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.

6. By a decision of 4 May 2000 the Court declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 17 October 1994 the applicant, who was born in 1937 and had been on early retirement since 1989, applied for disability benefits under the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381; hereinafter "the 1962 Act"). He claimed that he had extra costs following an operation on his intestines in September 1994 due to, *inter alia*, an increased consumption of fluids.

9. By a decision of 28 December 1994 the Social Insurance Office (*försäkringskassan*; hereinafter "the Office") of the County of Stockholm rejected the application, finding that the applicant's costs were not such as to make him eligible for benefits.

10. The applicant later made a new application, which was rejected by the Office on 8 February 1995.

11. The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm. On 16 May 1995 the court rejected his appeal. The court did not hold an oral hearing nor did the applicant request one.

12. Following the applicant's further appeal, the Administrative Court of Appeal (*kammarrätten*) in Stockholm, by a decision of 17 November 1995, refused him leave to appeal.

13. On 5 December 1995 the applicant made yet another application for disability benefits. On 3 April 1996 the application was rejected by the Office, which again found that the applicant's costs did not attain the required level. The Office had at its disposal three medical certificates issued by different physicians. They expressed differing opinions on the applicant's need of extra consumption of fluids, two of them considering that there was no such need and the third one stating that the applicant was recommended, from a surgical point of view, an increased consumption of, for instance, mineral water.

14. The applicant appealed to the County Administrative Court. In a decision of 23 July 1996 the court noted that the issue in the case was whether the applicant's extra costs attained the level required for a disability allowance under the 1962 Act. Finding that the medical evidence in the case was inconclusive and did not provide the Court with a sufficient basis for a decision, the court ordered the National Social Insurance Board (*Riksförsäkringsverket*; hereinafter "the Board") to submit observations in the case. The Board answered by a letter of 13 August 1996, in which it contested the applicant's claims. The applicant made observations in reply.

15. On 16 October 1996 the County Administrative Court gave judgment in the applicant's favour. Having reiterated that the medical evidence was inconclusive, the court also noted that the calculations of the

applicant's extra costs made by the Office and the applicant himself were very close on either side of the level required for entitlement to a disability allowance. In these circumstances, it gave the applicant the benefit of the doubt and granted him an allowance. An oral hearing was not requested by the applicant, nor did the court hold one of its own motion.

16. The Board appealed against the judgment to the Administrative Court of Appeal and submitted a medical certificate from a further physician, who stated that an increased consumption of fluids was necessary due to the applicant's handicap but that there was no particular need for mineral water. On 2 April 1997 the appellate court granted the Board leave to appeal.

17. By a letter of 23 April 1997 the applicant requested the appellate court to hold an oral hearing in the case. He did not state any reasons for his request. On 15 May 1997 it was rejected by the court. After having restated section 9 of the Administrative Court Procedure Act (*Förvaltningsprocess-lagen*, 1971:291; hereinafter "the 1971 Act"; see further paragraph 25 below), the court gave the following reasons:

> "Having regard to the subject-matter at issue and the information that has come to hand in the case, [the court] finds that an oral hearing is unnecessary and rejects the request to that effect. [The applicant] is invited to state the further circumstances he wishes to invoke and submit his final written observations in the case within two weeks after having been notified of this decision.
>
> The case can be determined notwithstanding a failure to submit such written observations."

18. The applicant reiterated his request for an oral hearing on 22 May 1997. He now stated that he wished to be heard in person about his working conditions and the costs of his consumption of fluids. Further, representatives of the Board should be heard about the applicable levels for entitlement to and calculation of disability allowances.

19. On 24 June 1997 the Administrative Court of Appeal rejected the applicant's renewed request for an oral hearing and gave judgment in favour of the Board. Thus, it quashed the County Administrative Court's judgment and confirmed the Office's decision of 3 April 1996. Without giving any further reasons, it considered that the information in the case did not show that the applicant met the conditions for a disability allowance.

20. The applicant appealed to the Supreme Administrative Court (*Regeringsrätten*). He requested that the case be referred back to the Administrative Court of Appeal for re-examination or, alternatively, that the Supreme Administrative Court confirm the County Administrative Court's judgment. He complained about the lack of an oral hearing in the Administrative Court of Appeal and also requested the Supreme Administrative Court to hold an oral hearing.

21. By a letter of 28 July 1997 the Supreme Administrative Court informed the applicant that it did not normally hold oral hearings and gave him the opportunity to complete his appeal in writing.

22. On 26 August 1997 the Supreme Administrative Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

A. Disability benefits

23. According to chapter 9, section 2 of the 1962 Act, a person who is ill or handicapped is entitled to disability benefits, provided that, before reaching the age of 65, he or she has become functionally impaired for a considerable time and to such a degree that he or she needs time-consuming assistance from another person in everyday life or continuing assistance in order to be gainfully employed or otherwise has considerable extra expenses. The total need of support and assistance determines the eligibility for disability benefits and the amount of compensation. It is thus necessary to look at the whole situation of the person in question and to add together the need for different types of assistance and the extra expenses. According to the Board's guidelines, the total cost of all extra needs due to the disability should come to at least 28.5% of a basic amount geared to the price index (*basbelopp*) in order to make the individual eligible for an allowance. In 1995, when the applicant made his second application to the Office, this corresponded to 10,175 Swedish kronor (SEK).

B. Procedure

24. A decision by the Social Insurance Office under the 1962 Act may be appealed against to the County Administrative Court and from there on to the Administrative Court of Appeal and the Supreme Administrative Court.

25. The procedure in the administrative courts is governed by the provisions of the 1971 Act. Section 9 provides:

> "The proceedings are in writing.
>
> An oral hearing may be held in regard to a certain issue, when there is reason to assume that that would be to the benefit of the proceedings or the speedy determination of the case.
>
> In the Administrative Court of Appeal and the County Administrative Court an oral hearing shall be held if requested by an individual party to the proceedings, unless it is unnecessary or there are particular reasons against holding a hearing."

The possibility for an individual party to obtain an oral hearing on request under those circumstances is not available in the proceedings before the Supreme Administrative Court.

26. According to the preparatory documents to the 1971 Act, an oral hearing can be a valuable complement to the written proceedings and may benefit the examination of a case in two situations in particular: firstly, when it is necessary to hear a witness, an expert or a party or when it is difficult for a party to present the case in writing and, secondly, when different positions in the case need to be sorted out in order to eliminate unnecessary or pointless issues of dispute. In the latter case, the oral hearing takes on a preparatory character. It was stressed, however, that an oral hearing should not to be seen as an alternative to the written procedure but as a complement to it (see Government Bill 1971:30, p. 535).

27. It was further stated, in respect of the third paragraph of section 9, that a party's request for an oral hearing should be given great consideration. However, such a request should not have a decisive influence on the matter, as the question whether an oral hearing is necessary is to be determined primarily on the basis of the available information in the case. Still, other circumstances may be of relevance, for instance the importance for the party of the matter at stake or the possibility that an oral hearing could enhance the party's understanding of a future decision in the case. Nevertheless, if the case is of a trivial character or the costs of an oral hearing would be disproportionate to the values at stake in the case, there could be reason not to hold an oral hearing (p. 537).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The applicant complained that the lack of an oral hearing before the Administrative Court of Appeal and the Supreme Administrative Court had constituted a violation of his rights under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

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

A. The submissions of the parties

1. The Government

29. The Government claimed that it had been justified to dispense with an oral hearing in the applicant's case. They contended that a hearing would

not have added anything to the proceedings and that the issues involved had been adequately resolved on the basis of the case file and the applicant's written observations. In this respect, they submitted that the case had concerned purely medical issues or issues closely related to such issues. They pointed out that the applicant wished to be heard in person before the Administrative Court of Appeal about his working conditions and the costs of his consumption of fluids. However, he had been on early retirement since 1989. Furthermore, all the relevant evidence in the case had been in writing. The judges, possessing no medical expertise, could not have made their own assessment of the applicant's need of fluids due to his handicap by meeting him in person but had had to rely on the written medical evidence submitted in the case. Moreover, the applicant had been assisted by counsel apparently familiar with the subject-matter and thus could not be considered to have had difficulties in arguing his case in writing. Also, as the cases had concerned the applicant's entitlement to benefits under a social-insurance scheme, no questions of public interest had been involved.

30. The Government also pointed out that the Administrative Court of Appeal had found it unnecessary to hold an oral hearing and that its decisions on this matter had been fully in line with domestic law. Furthermore, they maintained that, as the applicant had not requested the County Administrative Court to hold an oral hearing, he had, at least tacitly, waived his right to have his case heard in public before that judicial instance.

2. The applicant

31. The applicant submitted that an oral hearing could be dispensed with only if the person concerned had explicitly waived the right thereto and there were exceptional circumstances which justified not holding a hearing. He stated that the case had not concerned purely medical issues but had rather concerned the amount of the applicant's extra costs. This amount could not be derived from the opinions given in the medical certificates. Rather, the applicant had been the only one to give that kind of information and an account of his personal situation. It had therefore been indispensable to hold a hearing in order to complete the case file in these respects. Moreover, the County Administrative Court and the Administrative Court of Appeal disagreed on the issue whether the applicant's costs were such that he was entitled to the disability benefits requested. Thus, his case had been of a borderline nature which had further emphasised the need for an oral hearing.

32. The applicant also found it remarkable that the appellate court had considered a hearing to be unnecessary without giving any further reasons. He therefore could not assess whether the decisions had been in compliance with the 1971 Act.

B. The Court's assessment

1. Applicability of Article 6 § 1

33. Noting that the Government have not disputed the applicability of Article 6 § 1 to the case at hand, the Court observes that the proceedings at issue concerned the applicant's claim to benefits under a social-security scheme. The purpose of the proceedings was to obtain a decision in a dispute over "civil rights and obligations", and they accordingly fall within the scope of Article 6 § 1 (see, among other authorities, *Duclos v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2179-80, § 53).

2. Compliance with Article 6 § 1

34. The Court first finds that the entitlement to a "public hearing" in Article 6 § 1 necessarily implies a right to an "oral hearing". However, the obligation under Article 6 § 1 to hold a public hearing is not an absolute one. Thus, a hearing may be dispensed with if a party unequivocally waives his or her right thereto and there are no questions of public interest making a hearing necessary. A waiver can be done explicitly or tacitly, in the latter case for example by refraining from submitting or maintaining a request for a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 66; and *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58).

Furthermore, a hearing may not be necessary due to exceptional circumstances of the case, for example 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, *mutatis mutandis*, *Fredin v. Sweden* (no. 2), judgment of 23 February 1994, Series A no. 283-A, pp. 10-11, §§ 21-22; and *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44).

35. In the present case, the Court notes that the applicant did not request a hearing before the County Administrative Court. As Section 9 of the 1971 Act provided that the proceedings before the administrative courts were normally in writing, the applicant could have been expected to request a hearing before that court if he attached importance to it. He did not do so, however, and the Court therefore finds that he can reasonably be considered to have waived his right to a hearing before the County Administrative Court.

Moreover, the Supreme Administrative Court only determined whether or not leave to appeal should be granted and, as a consequence of its refusal to grant leave, did not make a full examination of the applicant's case. Even assuming that Article 6 § 1 applies to the determination of this question, the

Court finds that it could be adequately resolved on the basis of the case file and the written submissions and that, accordingly, the absence of an oral hearing before the Supreme Administrative Court was justified.

36. It remains to be determined whether the lack of an oral hearing before the Administrative Court of Appeal involved a breach of the applicant's rights under Article 6 § 1. In this connection, the Court reiterates that in proceedings before a court of first and only instance there is normally a right to a hearing (see, among other authorities, *Håkansson and Sturesson v. Sweden*, judgment cited above, p. 20, § 64). However, the absence of a hearing before a second or third instance may be justified by the special features of the proceedings at issue, provided a hearing has been held at first instance (see, for instance, *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 16, § 36). Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance.

37. The Court notes that no hearing was held at first instance since the applicant did not request the County Administrative Court to hold one. It acknowledges that, in the interests of the proper administration of justice, it is normally more expedient that a hearing is held already at first instance rather than only before the appellate court. Depending on the circumstances of the case, it might therefore be acceptable to reject a request for a hearing upon appeal, although no such hearing has been held at first instance.

38. The Court further recognises that disputes concerning benefits under social-security schemes are generally rather technical and their outcome usually depends on the written opinions given by medical doctors. Many such disputes may accordingly be better dealt with in writing than in oral argument. Moreover, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy. Systematically holding hearings could be an obstacle to the particular diligence required in social-security cases (see *Schuler-Zgraggen v. Switzerland*, judgment cited above, pp. 19-20, § 58).

39. In the applicant's case, the Court observes that the jurisdiction of the Administrative Court of Appeal was not limited to matters of law but also extended to factual issues. As noted by the County Administrative Court, the main issue in the case was whether the applicant's extra costs attained the level required for a disability allowance under the 1962 Act. It is true that the written medical evidence was of considerable importance to the determination of this issue. However, the physicians giving their opinion in the case were not in agreement; as regards the applicant's consumption of fluids, two of them considered that his handicap necessitated an increased consumption whereas the other two contended that there was no such need. In requesting an oral hearing, the applicant stated that he wished to be heard about, *inter alia*, the costs of his consumption of fluids. In these

circumstances, it appears that an oral hearing could have provided information of relevance to the determination of the case.

The Court also notes that the Administrative Court of Appeal found against the applicant whereas the County Administrative Court had given judgment in the applicant's favour, having found that the medical evidence was inconclusive and that, even according to the Office's calculation, the applicant's extra costs were close to the level required for entitlement to a disability allowance.

40. Having regard to the foregoing, the Court cannot find that there were exceptional circumstances which justified dispensing with a hearing. Having expressly requested an oral hearing in the Administrative Court of Appeal, the applicant was thus entitled to such a hearing before that instance.

The refusal by the Administrative Court of Appeal to hold an oral hearing amounted therefore to a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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. Legislative amendment

42. The applicant asked the Court to order the Swedish Government to undertake a reform of the law by which it should "take measures to preclude the occurrence of breaches of the Convention, such as occurred in respect of the applicant, in the future".

43. The Government maintained that legislative measures did not fall within the scope of Article 41 of the Convention.

44. The Court notes that the Convention does not empower it to order a State to alter its legislation; the Court's judgment leaves to the State the choice of the means to be used in its domestic legal system to give effect to its obligation under Article 46 § 1 (see, among other authorities, *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 33, § 78).

B. Damage

45. The applicant submitted that he had sustained pecuniary damage in that the County Administrative Court's judgment in his favour would not have been quashed by the Administrative Court of Appeal had the latter

held an oral hearing in the case. He estimated that loss at SEK 77,070 until the end of July 2000.

46. The Government contended that there was no causal link between a violation of Article 6 § 1 of the Convention and the applicant's claim for pecuniary damages.

47. The Court rejects the applicant's claim as it cannot speculate as to the outcome of the proceedings had a hearing taken place before the appellate court.

C. Costs and expenses

48. The applicant claimed SEK 18,750, including value-added tax (VAT), in legal fees for the domestic proceedings and SEK 85,000, excluding VAT, in legal fees and translation costs for the proceedings before the Commission and the Court. The legal fees corresponded to 18.75 hours of work for the applicant's first counsel in the domestic proceedings as well as 58 and 10 hours of work, respectively, for the two counsel in those before the Convention organs.

49. The Government considered the number of hours of work stated by the applicant to be excessive. Noting that the invoices submitted were not specified and that the translation costs were not supported by any documentation, they submitted that the legal fees incurred in the domestic proceedings seemed to relate to the case as a whole and not only to work pertaining to the requests for an oral hearing. As regards the work undertaken in the proceedings before the Convention organs, the Government pointed out that part of the application had been declared inadmissible by the Court on 4 May 2000 and contended that the change of counsel had entailed additional costs. If the Court were to find a violation in regard to the question of an oral hearing, they regarded as appropriate the award of a sum not exceeding SEK 28,500 in respect of costs and expenses.

50. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, 10 May 2001, § 120). Moreover, compensation for costs incurred in the domestic proceedings may only be granted in so far as they were necessary in trying to prevent the violation found (see *König v. Germany* (Article 50), judgment of 10 March 1980, Series A no. 36, p. 17, § 20). In the present case, the Court finds that only a smaller part of the stated costs incurred in the domestic proceedings can be considered to relate to the issue of an oral hearing. As regards the proceedings before the Convention organs, it further takes into account that the translation costs have not been substantiated and that the applicant was only partially successful with his application. Making

an assessment on an equitable basis, the Court awards the applicant by way of costs and expenses the global sum of EUR 5,000, including VAT.

D. Default interest

51. 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 (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957, § 124, to be published in ECHR 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the lack of an oral hearing before the Administrative Court of Appeal;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State 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;

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

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

N.B.
M.O'B.