CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73841/01
by KLEMECO NORD AB
against Sweden

The European Court of Human Rights (Second Section), sitting on 14 June 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 3 April 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having deliberated, decides as follows:

THE FACTS

The applicant, Klemeco Nord AB, is a limited company registered in Sweden. It is represented before the Court by Mr. B. Burström, the sole owner of the applicant company. He lives in Munka-Ljungby.

A. The circumstances of the case

The facts of the case, as submitted by the applicant company, may be summarised as follows.

In 1986 the applicant company sued company X. for breach of contract and demanded SEK 609,000 in compensation. The District Court (*tingsrätten*) in Malmö rejected the claim but, upon appeal, the Court of Appeal (*hovrätten*) of Skåne and Blekinge awarded the applicant company SEK 442,942. Company X. appealed to the Supreme Court (*Högsta domstolen*) which, in 1992, quashed the Court of Appeal's judgment and upheld the District Court's judgment. Before the District Court and the Court of Appeal, the applicant company was represented by lawyer A. However, after the oral hearing in the Court of Appeal, the applicant company made it clear that it had lost its confidence in A., for which reason she resigned. During the proceedings before the Supreme Court, the applicant company was thus represented by another lawyer.

On 7 June 1993 the applicant company sued A. before the District Court of Ängelholm, claiming that she had been negligent while representing it before the District Court and the Court of Appeal. In particular, she had failed to invoke a standard contract ("EÅ 85") as a ground for its claim. It demanded that A. pay it SEK 1,478,054 (roughly EUR 161,000) in compensation. A. contested the allegations and insisted that she had carried out her assignment with proper care. Both parties, in particular the applicant company, submitted very extensive pleadings and documents and the court held oral preparatory meetings with the parties.

On 22 and 23 January 1996 the District Court held an oral hearing on the merits of the case and, on 23 February 1996, it rejected the applicant company's claim. It gave detailed and well-reasoned grounds for its judgment. In its conclusion, the Court stated, *inter alia*, that it found that A. had not been negligent in any of the respects referred to by the applicant company. On the contrary, the examination of the case confirmed that A. had carried out her assignment conscientiously and skilfully.

On 14 March 1996 the applicant company appealed against the judgment to the Court of Appeal of Skåne and Blekinge. In May 1996 it supplemented its appeal and submitted new evidence which it requested that the court accept. It further requested that the case be remitted to the District Court and that it be granted legal aid.

In June 1996 the court rejected the request for legal aid, a decision which the applicant company appealed against. Consequently the entire case-file was sent to the Supreme Court which, in October 1996, upheld the decision and sent the case-file back to the Court of Appeal. In October and December 1996, the applicant company made further submissions to the court which were sent to the opposite party for comments.

An oral hearing was planned for the middle of April 1997 but it was postponed since A. could not attend.

In June 1997 the Court of Appeal rejected the applicant company's request to have the case remitted to the lower court for retrial but admitted the new evidence which it had produced.

The Court of Appeal then set a new date for an oral hearing for February 1998. However, it was again postponed, this time because a hearing in another case was given priority. Instead, the hearing was scheduled for the beginning of October 1998. On 25 August 1998 the summons to the hearing was sent to the parties and, on 7 September 1998, the applicant company contacted the court with a request that the hearing be postponed until it could find a lawyer to represent it. It further noted that the court had promised to contact it before setting the date for the hearing but had failed to do so. Because of this, the court granted the request and ordered the applicant company to inform the court, no later than 15 October 1998, about its legal representation. On this date, the applicant company notified the court that its owner would represent it (as he had done all along). The oral hearing was held on 13 and 14 October 1999.

On 4 November 1999 the Court of Appeal delivered its judgment. It very briefly set out the parties' claims and submissions but did not expressly refer to the new evidence which the applicant had been allowed to submit. It then, under the title “the Court of Appeal's judgment”, wrote:

> “The Court of Appeal confirms the District Court's judgment”.

Further, it appended the lower court's judgment to its own.

On 1 December 1999 the applicant company appealed to the Supreme Court, stating, *inter alia*, that the proceedings before the Court of Appeal had been of excessive duration and that the judges had been biased against it. In February 2000 the applicant company made further submissions in which it developed its grounds of appeal, emphasising the importance that the Supreme Court clarify the responsibilities and obligations that a lawyer belonging to the Swedish Bar Association (*Svenska Advokatsamfundet*) has towards his or her client. It noted that no case-law regarding the matter existed and that it was impossible for a private person to win a case against a lawyer for malpractice.

On 19 October 2000 the Supreme Court refused leave to appeal.

In February 1999 the applicant company complained to the Chancellor of Justice (*Justitiekanslern*) that the District Court and the Court of Appeal had

delayed the proceedings in its case. After having received submissions from the two courts, to which the applicant company submitted replies, the Chancellor of Justice decided that no further action would be taken in the matter. In its submission, the Court of Appeal noted, *inter alia*, that the case had not concerned a complicated matter but that the case-file was very voluminous and difficult to grasp. It further regretted that the processing of the case had taken time and that the court had failed to contact the applicant company, as promised, before setting a hearing date in October 1998.

COMPLAINTS

The applicant company complains about several matters under Article 6 of the Convention. It claims that the national courts, in general, are partial in favour of lawyers being sued for malpractice and that the rules governing the obligations of representatives are out-dated and too general. It further complains that the Court of Appeal failed give any reasons for its judgment and that its presiding judge was biased against it. Last, it claims that the overall length of the proceedings was excessive as it took almost seven and a half years for the national courts to dispose of the case.

By letter of 31 March 2005, the applicant added that it also considers that its rights under Articles 13 and 14 of the Convention have been violated.

THE LAW

1. The applicant company makes various complaints under Article 6 of the Convention which, in relevant parts, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly..."

2. The applicant company claims that lawyers belonging to the Swedish Bar Association receive preferential treatment from the national courts, and are protected by them, making it impossible to win a case of malpractice against a lawyer.

The Court finds that the applicant company has not substantiated its allegations and notes that the District Court based its judgment on grounds which were detailed and well-reasoned, disclosing no signs of arbitrariness or partiality.

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant company also complains that the rules governing the obligations of representatives are out-dated and should not be tolerated in a modern society.

The Court considers that this complaint is of a very general nature and falls neither within in the ambit of Article 6 of the Convention, nor any other provision of the Convention or its Protocols.

Thus, this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

4. Further, the applicant company alleges that, because it had complained to the Chancellor of Justice about the proceedings before the Court of Appeal, the presiding judge in its case before that court was biased against it.

The Court notes that the presiding judge allowed the applicant company to submit new evidence to the Court of Appeal and that he cancelled a hearing and gave the company extra time to find a lawyer to represent it, even though it had already had two years to do so. The sole fact that the applicant company complained to the Chancellor of Justice about the Court of Appeal's handling of its case is, in the Court's view, not sufficient to establish that the presiding judge was biased against the company. Moreover, since the Chancellor of Justice did not criticise the Court of Appeal, or the presiding judge, there was no reason for the presiding judge to adopt a negative attitude towards the applicant company.

The Court, therefore, finds that this complaint is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

5. Next, the applicant company complains that the Court of Appeal failed to give any reasons for its judgment.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. Furthermore, the applicant company complains that the national proceedings were of excessive length, lasting more than seven years and four months.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

7. Lastly, the applicant company claims that its rights under Articles 13 and 14 of the Convention have been violated in the present case.

The Court observes that these complaints were lodged with the Court on 31 March 2005, more than four years after the final domestic decision had been taken by the Supreme Court on 19 October 2000.

It follows that this part of the application must be rejected for failure to observe the six months' time-limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the lack of reasoning in the Court of Appeal's judgment and the length of the proceedings;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President