CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11781/03
by Siv BJÖRKLUNDH
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 23 March 2004 as a Chamber composed of:

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

Having regard to the above application lodged on 28 March 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Siv Björklundh, is a Swedish national, who was born in 1934 and lives in Årsta. She was represented before the Court by Messrs G. Antal and U. Jacobson, lawyers practising in Stockholm.

A. The circumstances of the case

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

In December 1998 the applicant, assisted by legal counsel, applied for disability benefits under the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381; hereinafter "the 1962 Act"). She claimed that she was in need of assistance for about 20 minutes per day and had extra expenses in the amount of 18,460 Swedish *kronor* (SEK) per year following operations which had removed part of her intestines. She submitted certificates from a medical doctor and a dentist.

By a decision of 23 February 1999 the Social Insurance Office (*försäkringskassan*; hereinafter "the Office") of the County of Stockholm granted her a disability allowance as from December 1998. The Office found that she was in need of assistance for 2 hours and 20 minutes per week and accepted additional costs amounting to SEK 16,800 per year. Added together, these items corresponded to an allowance of 53% of a basic amount geared to the price index (*basbelopp*).

The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm, maintaining that she was entitled to an allowance of 69% of the basic amount. She submitted that she had further expenses due to her handicap which she had previously failed to state and that the total amount of the extra expenses was SEK 21,600. She further claimed that she should be given an allowance as from December 1996.

On 1 December 1999 the County Administrative Court held an oral hearing in the case. At the hearing, the applicant claimed that her extra expenses amounted to SEK 23,430 and the Office stated that it accepted SEK 17,540 thereof.

By a judgment of 13 December 1999 the court rejected the applicant's appeal in so far as it concerned the period from December 1998. It found that SEK 18,040 could be accepted as extra expenses for the applicant, but that these expenses and her need of assistance, taken together, did not make her eligible for an allowance with a higher amount than the one granted by the Office. As regards the period before December 1998, the court referred the matter back to the Office for a decision. It appears that no appeal was made against the court's judgment.

On 23 February 2000 the Office granted the applicant a disability allowance of 36% of the basic amount for the period November 1996 – November 1998. In so doing, it accepted extra expenses for that period amounting to SEK 14,820 and thus considered that some of the extra expenses fixed by the County Administrative Court had not existed before December 1998.

The applicant appealed against this decision and claimed an allowance of 69%, alternatively 53%, of the basic amount for the period November 1996 – November 1998. She also requested that the Office be ordered to explain its decision in several respects.

On 17 July 2001 the County Administrative Court rejected the request for explanations from the Office. It noted that the applicant's appeal had been communicated to the Office which thus had been given an opportunity to submit comments. The court further ordered the applicant to complete her appeal by 14 August 2001.

The applicant made submissions to the court on 6 August 2001. She further requested that the County Administrative Court hold an oral hearing in order to have clarified certain factual issues in the case. In this connection, she maintained that the Office had failed to give satisfactory answers to her questions.

By a judgment of 27 February 2002 the County Administrative Court found partly in favour of the applicant and granted her a disability allowance of 53% of the basic amount for the period at issue, November 1996 – November 1998. The court considered that the circumstances relating to that period, in all important respects, were the same as for the period examined in the judgment of 13 December 1999. On the basis of a medical certificate submitted by the applicant, it further found that the extra expenses which the Office had not accepted for the period in question had in fact existed since 1979. As regards the applicant's claim that she was entitled to 69% of the basic amount, the court found no reason to change the assessment made in its earlier judgment.

By the judgment the County Administrative Court further rejected the applicant's request for an oral hearing. It noted that it had ordered the applicant to make her final submissions in the case and that it had already held an oral hearing on 1 December 1999 in the case concerning benefits for the period starting in December 1998. As the circumstances in that case had been essentially the same and as the court had drawn the same conclusions with regard to the applicant's entitlement to benefits for the two periods in question, the court found a hearing unnecessary in the case at hand.

The applicant appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm and complained about the County Administrative Court's decision not to hold an oral hearing. She further claimed that, if the appellate court were to examine the case on the merits, it should hold an oral hearing.

On 17 May 2002 the appellate court refused the applicant leave to appeal. On 11 February 2003 the Supreme Administrative Court (*Regeringsrätten*) also refused her leave to appeal.

B. Relevant domestic law

1. Disability benefits

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 guidelines issued by the National Social Insurance Board (*Riksförsäkringsverket*), the total annual costs of all extra needs due to the disability should come to at least 28.5% of the basic amount in order to make the individual eligible for an allowance. If the total costs reach or exceed that level, the individual is, pursuant to chapter 9, section 3 of the 1962 Act, entitled to an annual allowance corresponding to 69, 53 or 36% of the basic amount, depending on the level of the total costs. In December 1998, when the applicant lodged her application with the Social Insurance office, the basic amount was SEK 36,400.

2. Procedure

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.

The procedure in the administrative courts is governed by the provisions of the Administrative Court Procedure Act (*Förvaltningsprocesslagen*, 1971:291; hereinafter "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.

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).

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).

COMPLAINTS

The applicant complained she did not have an oral hearing before the County Administrative Court and the Administrative Court of Appeal. She further complained that the appellate court had not examined her appeal against the County Administrative Court's decision on this matter. She relied on Articles 6 and 13 of the Convention

THE LAW

The applicant made complaints under Articles 6 and 13 of the Convention. In relevant parts, these provisions read as follows:

Article 6 § 1:

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

Article 13:

> "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."

The Court first considers that Article 6 § 1 is, as such, applicable to the proceedings in the applicant's case. It further finds that the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 § 1. Furthermore, noting that the applicant's request for an oral hearing before the County Administrative Court was examined by that court, the Court does not find that the decision by the Administrative Court of Appeal to refuse leave to appeal in this respect involved a breach of the provisions relied on by the applicant. Moreover, reiterating that the applicant only asked the appellate court to hold a hearing itself if it were to examine the case on the merits, the Court finds that, even assuming that Article 6 § 1 applies to the determination of the question whether to grant leave to appeal, that question could be adequately resolved on the basis of the case-file and the written submissions. The absence of an oral hearing before the appellate court was thus justified.

It remains to be determined whether the County Administrative Court's decision not to hold an oral hearing before giving its judgment of 27 February 2002 involved a violation of Article 6 § 1 of the Convention.

The Court reiterates 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 the 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, *inter alia*, *Döry v. Sweden,* no. 28394/95, § 37, 12 November 2002; *Lundevall v. Sweden,* no. 38629/97, § 34, 12 November 2002; *Salomonsson v. Sweden,* no. 38978/97, § 34, 12 November 2002; and *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).

In the present case, the applicant specifically requested an oral hearing before the County Administrative Court. Thus, no question arises as to whether or not the applicant waived her right thereto. It remains to be examined whether the circumstances of the applicant's case were such as to justify the absence of an oral hearing.

The dispute before the County Administrative Court concerned the applicant's eligibility for disability benefits. The Court reiterates its recognition 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 the following judgments cited above: *Schuler-Zgraggen v. Switzerland*, pp. 19-20, § 58; *Döry v. Sweden*, § 41; *Lundevall v. Sweden*, § 38; and *Salomonsson v. Sweden*, § 38).

The Court notes that the particular issue to be decided by the County Administrative Court was the amount of benefits to which the applicant was entitled for the period November 1996 – November 1998. The appealed decision granted her an allowance corresponding to 36% of the basic amount, whereas she claimed that she was entitled to 69% of that amount. In deciding the case, the court had before it the case-file from the Social Insurance Office, including medical opinions, and the applicant's written submissions. There is no indication that a hearing was needed in order to hear oral testimony. More importantly, as noted by the County Administrative Court, the case concerned essentially the same circumstances as the earlier case relating to the applicant's disability benefits for the period starting in December 1998 in which the court, on 1 December 1999, had already held an oral hearing. The Court further notes that the applicant, on 17 July 2001, was ordered to complete her appeal by 14 August 2001.

In sum, the Court is of the opinion that the applicant had a sufficient opportunity to put her case before the County Administrative Court and that that court, in the circumstances of the case, in particular the fact that it had already held a hearing in an essentially identical case, could adequately resolve the relevant issues on the basis of the medical opinions and the applicant's written submissions.

Consequently, the Court finds that, in the present case, there were circumstances which justified dispensing with a hearing.

It follows that the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President