CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70072/01
by Kjell NÄMND
against Sweden

The European Court of Human Rights (Second Section), sitting on 13 December 2005 as a Chamber composed of:

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

Having regard to the above application lodged with the European Court of Human Rights on 27 March 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Kjell Nämnd, is a Swedish national, who was born in 1948 and lives in Falun. He is represented before the Court by Anders Grahn, a lawyer practising in Falun. The Government are represented by their Agent, Mrs Inger Kalmerborn, of the Ministry for Foreign Affairs.

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

In the beginning of the 1990's the applicant owned and ran several private limited companies. He was also employed in a leading position in a private limited company, called HN, which was not owned by him.

On 18 October 1994 the applicant was arrested and charged with bribery. A search was carried out at his home and office, during which approximately 90 files were seized. On 20 October 1994 the District Court of Sundsvall (*Sundvalls Tingsrätt*) remanded the applicant in custody. He, a co-suspect N, who was the managing director of HN, and three witnesses were heard, subsequent to which on 3 November 1994 the applicant was released. On 28 March 1995 the applicant was informed that he was also suspected of instigating a breach of trust. During the first half of 1995 the investigation authorities went through various documents and heard witnesses and, on 18 July 1995, the preliminary investigation report, which ran to 1,500 pages, was communicated to the applicant who was given until 25 August 1995 to submit comments and request additional investigative measures. At the applicant's request, the time-limit was extended until 15 September 1995 and he was re-heard on 26 September 1995. N was also re-heard.

On 16 October 1995 the prosecution submitted an indictment to the District Court containing two counts. The first count concerned bribery alleging that the applicant in 1992, representing a private limited company, bought shares on two occasions from and via N in the company HN. The shares were sold at a price exceeding the real value by about 2 million Swedish kroner (SEK), equivalent to approximately 209,765 euros (EUR), in order to procure an improper profit for N. N was charged with taking the bribe. The second count concerned instigating a gross breach of trust, alleging that the applicant had made N grant the applicant's private limited company an irregular loan from HN to pay the bribe. The loan was covered up by misleading book-keeping. By granting the loan, N abused his position as managing director of HN, to the detriment of his principal, and he was also charged with a gross breach of trust.

On 23 October 1995 the District Court invited the applicant to state within two weeks what evidence he wished to submit. The information was submitted by the applicant on 16 January 1996, almost three months later.

On 1 April 1996 the District Court scheduled the hearing to be held on 22 May 1996. On 30 April 1996 N requested that the hearing be adjourned. The applicant did not object. Instead the hearing was held on 23 October 1996 during which the applicant, N and two witnesses were heard and extensive written material submitted.

By judgment of 20 November 1996, the District Court convicted the applicant and N, in accordance with the indictment, pursuant to the Penal Code (*brottsbalken)* chapter 10 § 5, chapter 23 § 4 and chapter 17 § 7. However, as regards the second count, it did not consider that the

circumstances were sufficiently serious to be qualified as "gross". The applicant and N were each sentenced to one year's imprisonment.

On 19 December 1996, the applicant appealed against the judgment to the Court of Appeal (*Hovrätten för Nedre Norrland).* N also appealed.

On 18 August 1997 the Court of Appeal scheduled a hearing for 7 and 8 October 1997. On 19 September 1997, N requested that the hearing be adjourned as he wished to call a new witness who would be in Alaska at that time. The applicant informed the court that he too wished to call that witness. Their request was granted and the hearing re-scheduled for 6 and 7 April 1998. On 31 March 1998 the prosecutor submitted the records from interviews held by the police with this witness. The following day, N requested that the hearing be adjourned as he did not have sufficient time to go through the new documentation. The applicant and the prosecutor did not object and, accordingly, the hearing was re-scheduled for 17 and 18 November 1998. During the hearing the applicant, N, and four witnesses were heard and extensive written material submitted, including new material submitted by the applicant and a statement from an expert witness relied on by N.

On 17 December 1998 the judgment was upheld by the Court of Appeal, which stated *inter alia*:

> "The penal value of the crimes of which [the applicant and N] have been found guilty clearly exceeds one year's imprisonment. No personal circumstances with regard to [the applicant and N] have emerged which constitute sufficient reasons for choosing any other sanction than imprisonment. As the district Court has found, both of them shall therefore be sentenced to imprisonment.
>
> Certainly, between the commission of the crimes and the sentencing, a longer period of time has elapsed than appears justifiable by reference to the nature and scope of the crimes. However, even in view of this and of what has further emerged in the case, the Court of Appeal finds that the sentences determined by the District Court appear well balanced."

On 18 January 1999 the applicant and N requested leave to appeal to the Supreme Court (*Högsta Domstolen).* In the period between February 1999 and May 2000, the applicant and N were granted a number of extensions of the time-limits to submit their grounds of appeal. The applicant submitted his grounds of appeal on 29 March 1999. The applicant claimed that he completed his appeal on the same day. The Government claimed that the applicant did not complete his appeal until 5 May 2000. It is undisputed, however, that he submitted his claim for legal costs on the latter date. N completed his appeal on 17 May 2000 and submitted his claim for legal costs on 8 September 2000. On 27 September 2000 the Supreme Court refused leave to appeal.

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that the criminal charge against him was not determined within a reasonable time.

THE LAW

Complaining of the length of the criminal proceedings against him, the applicant invoked Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government's preliminary objection

The Government contended that the applicant could not claim to be a victim, within the meaning of Article 34 of the Convention, since the Court of Appeal stated that the penal value of the crimes of which the applicant was found guilty clearly exceeded one year's imprisonment and thereafter expressly referred to the "length factor" as a mitigating circumstance for the applicant's sentence.

The applicant disagreed. He pointed out that the prosecution did not appeal against the District Court's judgment to the Court of Appeal. Accordingly, the latter had no power to increase the sentence imposed on him. Nevertheless, despite its observations as to the length of the proceedings, the Court of Appeal found that the sentence determined by the District Court appeared well balanced.

The Court reiterates that, in this kind of case, in order to deprive an applicant of his status as a victim, within the meaning of Article 34 of the Convention, the national authorities must have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and provided redress, e.g. by reducing the sentence in an express and measurable manner (see the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, § 66**,** *Beck v. Norway*, no. 26390/95, 26 June 2001, § 27, *Graaskov Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X, *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001 and *Ohlen v. Denmark* (striking out), no. 63214/00, § 27, 24 February 2005).

When the District Court and the Court of Appeal passed their judgments, the proceedings had lasted approximately two years and four years respectively. In its judgment of 17 December 1998, the Court of Appeal did not state that the authorities had failed to observe the reasonable time requirement. Whilst finding the length of proceedings unjustified, it

nevertheless concluded that the sentence imposed by the District Court was well balanced.

In these circumstances, the Court is not convinced that the national authorities have acknowledged in a sufficiently clear way a failure to comply with the "reasonable time" requirement, within the meaning of Article 6 § 1 of the Convention, and afforded the applicant redress by reducing the sentence in an express and measurable manner.

Accordingly, the Court finds that the applicant may still claim to be a victim of a violation of his right to trial within a reasonable time as guaranteed by 6 § 1 of the Convention. It follows that the Government's preliminary objection must be rejected.

The alleged breach of Article 6 § 1 of the Convention

(a) Period to be taken into consideration

It is not in dispute that the period commenced on 18 October 1994, when the applicant was arrested and a search was carried out at his home and office. Nor is it in dispute that the proceedings ended on 27 September 2000, when the Supreme Court refused leave to appeal**.** Thus, the proceedings lasted over five years and eleven months.

(b) Reasonableness of the length of the proceedings

From a general point of view the reasonableness of the length of the proceedings must be assessed with reference to the complexity of the case, the conduct of the applicant and that of the authorities before which the case was brought (cf. *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

Complexity of the case

The Government submitted that the criminal proceedings concerned fairly complex matters. Notably the investigation was extensive in scope and complicated by the fact that the transaction relating to the second count was covered up through misleading book keeping.

Recalling the Court of Appeal's statement that the period of time between the commission of the crimes and the sentencing appeared longer than justifiable by reference to the nature and scope of the crimes, the applicant maintained that the case was neither extraordinary nor complex.

The Court reiterates that the scale and complexity of a criminal case concerning financial crimes, like fraud, may justify the extensive length of proceedings (see, among other authorities, *C.P. and Others v. France*, no. 36009/97, § 30, 1 August 2000, *Hozee v. the Netherlands*, judgment of 22

May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1102, § 52; *Wejrup v. Denmark* (dec.), no. 49126/99, ECHR 2002-IV, *Petersen v. Denmark* (dec.), no. 6315/02, 13 May 2004, *Frederiksen v. Denmark* (dec.), 23012/02, 16 September 2004, and *Wallin Karlsen* (dec.), no. 23523/02, 1 February 2005).

The charges against the applicant and N in the present case concerned bribery and a breach of trust, hidden by misleading book-keeping. The offences were intertwined and connected to the roles of the applicant and N in the private limited company, HN. Approximately 90 files were seized at the applicant's home and office on 18 October 1994 and the preliminary investigation report of 18 July 1995 ran to 1,500 pages. Extensive written material was submitted to the District Court, before which witnesses were also heard. Additional material was submitted to the Court of Appeal, including a statement from an expert witness called by N.

Having regard to these circumstances, the Court finds that the investigations and the court proceedings were rather complex.

The applicant's conduct

In the Government's opinion, the conduct of the applicant and N before the courts was a contributory factor for the length of the proceedings.

The applicant disagreed and pointed out that he was not responsible for the delays caused by N.

The Court notes that the applicant himself did not cause any inappropriate prolongation of the criminal proceedings against him. However, his co-accused asked for frequent adjournments, to which the applicant did not object. The ensuing delays were not therefore the responsibility of the State

Conduct of the national authorities

The Government considered that the investigation was concluded rapidly. Moreover, taking into consideration the nature, scope and complexity of the case, they were of the opinion that the proceedings before the courts were accomplished within a reasonable time and that there were no periods of inactivity which could be attributed to the national authorities.

The applicant submitted that both the investigation and the length of the proceedings before the courts were unreasonably long.

The Court notes that the applicant was charged on 18 October 1994 and that the indictment was submitted to the District Court on 16 October 1995. Thus, the period of investigation by the police and the legal evaluation by the prosecution lasted a year, which cannot be criticised.

The applicant was at liberty, apart from a couple of weeks on remand at the outset. There was therefore no need to expedite matters for this reason.

The ensuing proceedings before the District Court ended on 20 November 1996. Thus, they also lasted about a year, which cannot be criticised. It is to be noted that, at the request of N, the hearing fixed for 22 May 1996 was adjourned to 23 October 1996, and the applicant did not object to this postponement.

The proceedings before the Court of Appeal lasted from 19 December 1996 until 17 December 1998, i.e. two years. On 18 August 1997 the Court of Appeal scheduled a hearing for 7 and 8 October 1997. Subsequently the hearing was re-scheduled twice at the request of N, mainly because he wished to call a new witness. The applicant did not object. On the contrary, he also wished to call that witness. The hearing took place on 17 and 18 November 1998, and judgment was passed a month later.

The fixture of hearing dates does not always depend on the courts alone; due regard also has to be had to the availability of the accused, co-accused and their counsel. Thus, the Court finds that the period which elapsed from the case being brought before the court until the first dates were set for the hearing, cannot be criticized. Nor was it the responsibility of the national authorities that the hearing had to be re-scheduled twice, and consequently took place more than a year after the first proposed date. Finally, in the Court's opinion, there were reasonable grounds to join the criminal proceedings against the applicant with those against N, as the offences were connected to the respective roles of the applicant and N in the private limited company HN.

The proceedings before the Supreme Court came to an end approximately one year and eight months after the applicant and N had requested leave to appeal. It is undisputed that the applicant submitted his claim for legal costs on 5 May 2000, that N completed his appeal on 17 May 2000 and that he submitted his claim for legal costs on 8 September 2000. The Supreme Court passed its decision to refuse leave to appeal on 27 September 2000. In these circumstances the Court finds that the proceedings before the Supreme Court do not disclose any periods of unacceptable inactivity for which the national authorities can be criticised.

Overall assessment

In the light of the aforementioned considerations, particularly regarding the complexity of the present case, the conduct of all concerned and the total length of the proceedings, the Court finds that these proceedings did not exceed the reasonable time requirement of Article 6 § 1 of the Convention.

Accordingly, 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.

S. DOLLÉ
Registrar

J.-P. COSTA
President