

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

FIFTH SECTION

DECISION

Application no. 21660/09
Omar OSORIO
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 22 May 2012 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 15 April 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Omar Osorio, is a Chilean national who was born in Tocopilla, Chile on 22 November 1970 and lives in Södertälje. He was represented before the Court by Mr K. Potthoff, from Växjö. The Swedish Government ("the Government") were represented by their Agent, Ms G. Isaksson, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

The applicant came to Sweden as a refugee in 1979. In 1998, after a routine operation, he started to suffer from severe pain. This pain was treated by strong pain killers which allegedly caused him to suffer brain damage. He was able to recover and to work in a boat factory for a while in 1998 and 1999. In 2000, however, he again became unable to work and started to receive sickness allowance (*sjukpenning*), which was later transformed into an early retirement pension (*förtidspension*) as of 1 January 2001.

The applicant applied for life annuity (*livränta*) from the Social Insurance Office (*försäkringskassan*) in Stockholm, claiming that his injuries had been caused by solvents to which he was exposed while working in the boat factory.

On 29 January 2003 the Social Insurance Office decided to refuse the application for life annuity as the applicant's brain damage could not be considered a work-related accident or a condition caused by the working environment. According to the medical opinion given on 6 November 2002 by Dr P.L., the Social Insurance Office's own medical doctor (*försäkringsläkare*), it was not probable that the applicant's brain damage was connected to his work.

By letter dated 23 March 2003 the applicant appealed to the County Administrative Court (*länsrätten*) in Stockholm, claiming that he had a right to life annuity. He stated that he had been more sensitive to chemicals due to his prior brain damage in 1998. The applicant submitted a document by D, a professor in procedural law, entitled "Statement concerning the evidentiary requirements in work injury cases in general, with the case of [M.B.] as an example". The applicant reserved the right to request that D be heard as an expert witness. He submitted written evidence, mainly articles from medical journals, and requested that this evidence be sent to D for comments.

On 3 March 2004 the County Administrative Court, which interpreted the applicant's request as a request for a written expert opinion, rejected the applicant's request to obtain a statement from D. The applicant was provided with the opportunity to complete his appeal within two weeks.

On 6 December 2005 the applicant requested that an oral hearing be held without giving any reasons for his request. The County Administrative Court offered the applicant the opportunity to finalise his submissions and to submit all evidence he wished to invoke. The applicant was also informed that the court would then decide on his request for an oral hearing. Furthermore, the applicant was informed about the applicable legislation

concerning oral hearings and was asked to indicate whether he maintained his request.

On 2 January 2006 the applicant submitted his evidence to the County Administrative Court. He did not invoke any oral evidence or comments on the issue of an oral hearing.

On 24 May 2006 the County Administrative Court rejected the applicant's request to obtain a written opinion from D., the request for an oral hearing and the applicant's appeal. After having examined several medical certificates and opinions, included in the applicant's case file and submitted by both parties, the court found that the medical evidence did not show that the applicant was more sensitive to solvents or that such short-term work with solvents would have exposed him to brain damage such as he had suffered. His condition could thus not be considered as a work-related condition and he had therefore no right to life annuity.

On 1 August 2006 the applicant appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm and maintained what he had claimed before the first instance court. Additionally, he stated that he had invoked oral evidence before the first instance court and claimed that the rejection of his request for an oral hearing constituted a violation of his rights under the Convention. Furthermore, the applicant requested an oral hearing to be held. On 7 August 2006 the applicant was offered the opportunity to complete his appeal. He was reminded that the issue of whether to grant leave to appeal could be decided even if he did not complete his appeal. He was also informed that his request concerning an oral hearing would not be determined before the issue of leave to appeal. In a submission of 25 August 2006 the applicant confirmed that he did not request an oral hearing on the question of leave to appeal. He stated that the reasons for his request for an oral hearing concerning the factual issues were complex, that an oral hearing was not unnecessary and that there was no reason not to hold an oral hearing.

On 3 October 2006 the Administrative Court of Appeal refused leave to appeal.

By letter dated 2 December 2006 the applicant appealed to the Supreme Administrative Court (*Regeringsrätten*), reiterating the grounds of appeal already presented before the lower instances, claiming compensation and requesting the court to hold an oral hearing. The applicant stated that he had been refused an oral hearing before the lower courts and that the County Administrative Court had also rejected his request to hear an expert witness. He maintained that his case was complex and important and that, for these reasons, he had a right to an oral hearing.

On 23 January 2007 the applicant was informed that the Supreme Administrative Court would, first of all, examine whether leave to appeal should be granted and that it had understood his request for an oral hearing to be related to the substance of the case. The applicant was given the

opportunity to comment on both issues and to complete his appeal. On 7 May 2007 the applicant requested once again that an oral hearing be held without clarifying whether it concerned the issue of leave to appeal or the substance of the case.

On 12 December 2007 the Supreme Administrative Court rejected the applicant's request for an oral hearing regarding the issue of leave to appeal and gave the applicant the opportunity to finalise his submissions.

On 9 January 2009 the applicant completed his appeal and requested that an oral hearing be held with reference to his previous requests.

On 20 February 2009 the Supreme Administrative Court refused leave to appeal.

B. Relevant domestic law

Domestic provisions of relevance in the present case are found in the 1976 Work Injury Insurance Act (*Lagen om arbetsskadeförsäkring,* SFS 1976:380) and the Administrative Court Procedure Act (*Förvaltnings-processlagen*, SFS 1971:291, "the 1971 Act"). The 1976 Work Injury Insurance Act has been incorporated into Chapters 39 and 41 of the Social Insurance Code as of 1 January 2011.

1. Work Injury Insurance Act

According to Chapter 2, section 1, of the 1976 Work Injury Insurance Act, the term "work injury" mainly refers to injuries resulting from accidents or other harmful factors at a person's workplace. Under the Act, all gainfully employed persons working in Sweden are insured against work injuries.

For an injury to qualify as a work injury, a causal link must be established between the accident or harmful factor in the workplace and the insured person's health problems. What is meant by "harmful factor" is the influence of a factor that is very likely to cause an injury or illness such as that incurred by the insured person. At the relevant time, it had to be "highly probable" that a certain factor in the working environment could cause a person's injuries and, thereby, be considered to constitute a harmful factor. The view that a certain factor is very likely to cause an injury has to be relatively generally accepted (Govt. Bill 1992/93:30, pp. 20 and 36). This is the case where substantial knowledge exists, within medical or other science, that a certain factor has such harmful effect. If there is a lack of such support, such as, for example, profound differences in expert opinion, this requirement cannot be considered fulfilled. Thus, the opinion of a specific researcher or medical doctor should not constitute a sufficient basis for a positive decision on the issue of harmful effect.

2. Administrative Court Procedure Act

Section 9 of the 1971 Act, as in force at the relevant time, was worded as follows:

> "The procedure shall be in writing.
>
> Where it may be assumed to be advantageous for the investigation or promote the expeditious determination of the case, the processing may include an oral hearing regarding certain issues.
>
> 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."

In a case concerning social insurance, leave to appeal was required for the Administrative Court of Appeal to consider an appeal against a decision enacted by a County Administrative Court. Leave to appeal was to be granted if it was of importance for the guidance of the application of law that a superior court consider the appeal, if reason existed for amendment of the County Administrative Court's conclusion, or if there were otherwise extraordinary reasons to entertain the appeal.

A decision of the Administrative Court of Appeal not to grant leave to appeal could be appealed against to the Supreme Administrative Court.

COMPLAINTS

The applicant complained of several matters under Article 6 § 1 of the Convention, namely:

(i) that he did not have a fair trial as no oral hearing was held by the domestic courts at any stage of the proceedings and thus he was not able to have any witnesses heard;

(ii) that the length of the proceedings had been excessive;

(iii) that the domestic courts weighed the evidence incorrectly and that they failed to give adequate reasons for their decisions;

(iv) that he had no access to a civil court to claim compensation due to lack of funds and thus he had no effective remedy.

The applicant also complained under Article 14 of the Convention that he had been discriminated against.

THE LAW

1. The applicant first complained that he had been deprived of his right to a fair hearing since he had not been granted an oral hearing. He relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

The Swedish Government submitted that this complaint was inadmissible for non-exhaustion of domestic remedies as the applicant had not turned to the Chancellor of Justice or the relevant domestic court to seek compensation for damages. If the Court did not accept this objection, the complaint was inadmissible as manifestly ill-founded, considering that the case revealed no violation of the Convention.

The Government emphasised that the case concerned benefits under Swedish social security schemes and that such disputes were generally rather technical. Their outcome usually depended on written opinions provided by medical doctors and, accordingly, many such disputes were better dealt with in writing than in oral argument. The Government took the view that the County Administrative Court's examination of this issue had to be considered rather technical in nature and, consequently, that it could be adequately resolved on the basis of the written evidence and the parties' written submissions. This was particularly pertinent in view of the fact that the case was properly communicated to the applicant and that the County Administrative Court offered the applicant the opportunity to finalise his submissions and to submit all evidence before the court delivered its judgment.

The Government submitted that an oral hearing, with regard to the issues that were to be examined and the material submitted, would not have provided a better basis for the court's assessment. A majority of the experts consulted in the case concluded that there was no sufficient causal link between the injury and a factor at the applicant's workplace.

Another circumstance to which the Government referred was that the applicant did not give any reasons for his request that the County Administrative Court hold an oral hearing. In this respect, the Government found it necessary to emphasise that the court not only informed the applicant about applicable legislation concerning oral hearings, but also asked the applicant to indicate whether he maintained his request and informed him that the case could be decided even if he did not submit any additional documents. However, the applicant did not submit any additional documents and did not submit any comments on the issue of an oral hearing. Nor did he invoke any oral evidence before any of the domestic court instances, for example, that witnesses should be heard or that he should be heard in person.

The Government further pointed out that the applicant's requests for oral hearings before the Administrative Court of Appeal and the Supreme Administrative Court concerned the merits of the case and not the question of leave to appeal. However, the appellate courts only determined the question of leave to appeal. The Government contended that the issue of leave to appeal could be adequately resolved on the basis of the case file and the parties' submissions. The appellate courts also offered the applicant the opportunity to finalise his submissions and to submit all evidence he wished to invoke before they decided on the issue of leave to appeal.

The applicant maintained his complaints without submitting any substantive arguments on the issue of an oral hearing.

The Court need not examine the Government's objection of non-exhaustion of domestic remedies as the applicant's complaint under Article 6 § 1 of the Convention with regard to the lack of an oral hearing is in any event inadmissible for the following reasons.

The Court considers that the present application concerns a "civil right" and that the applicant would be entitled to an oral hearing, according to Article 6 § 1 unless there are exceptional circumstances that justify dispensing with such hearing (cf. *Eriksson v. Sweden*, no. 60437/08, §§ 63-64, 12 April 2012. The issue is whether there was a failure to comply with Article 6 § 1 on account of the refusal to hold an oral hearing.

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), 23 February 1994, §§ 21-22, Series A no. 283; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; and *Salomonsson v. Sweden*, no. 38978/97, § 34, 12 November 2002).

The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases (see, for instance, *Jussila v. Finland* [GC], no. 73053/01, § 42, ECHR 2006-XIII).

For example, the Court has recognised that disputes concerning benefits under social-security schemes are generally rather technical, often involving numerous figures, 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 *Döry v. Sweden*, no. 28394/95, § 41 and *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263).

Turning to the particular circumstances of the present case, the Court observes from the outset that no oral hearing was held at any stage of the proceedings. The applicant made a request for an oral hearing before all three instances and there can be no question of the applicant having waived any right to a hearing under Article 6 § 1. However, since the appellate courts refused leave to appeal, they did not make a full examination of the applicant's case and the issue to be determined is therefore whether the County Administrative Court's refusal to hold an oral hearing was justified by exceptional circumstances.

The case before the national authorities concerned the specific question of whether the applicant had a medically increased sensitivity to solvents and if it was "highly probable" that short-term work with a specific solvent could have caused the applicant's brain damage. The case-file contained a considerable number of written opinions by medical doctors and the determination by the court was rather technical in nature. It also appears that the outcome depended on the written medical opinions. Thus, the Court finds that the case as such did not raise any issues which could not have been adequately resolved on the basis of the case-file and the parties' written observations (cf. *Fexler v. Sweden*, no. 36801/06, §§ 66 and 67, 13 October 2011).

Moreover, the Court notes that, following submissions by both parties, the applicant was given two weeks to complete his appeal. Only at this late stage of the proceedings, did the applicant request an oral hearing before the County Administrative Court. The court offered the applicant the opportunity to finalise his submissions and to submit all evidence he wished to invoke. Furthermore, the applicant was informed about the applicable legislation concerning oral hearings and was asked to indicate whether he maintained his request. The applicant did not submit any additional documents or comments on the issue of an oral hearing. Nor did he invoke any oral evidence before the court, for example, that witnesses should be heard or that he should be heard in person. Accordingly, the applicant did not give any reasons for the request for an oral hearing.

Having regard to the foregoing, the Court finds that the lack of an oral hearing was justified by the circumstances in the case and that there is no appearance of a breach of the applicant's rights within the meaning of Article 6 § 1 in this regard. It follows that this complaint must be rejected as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

2. The applicant submitted a number of other complaints under Articles 6 § 1 and 14 of the Convention, summarised under "Complaints" above, *inter alia* about the allegedly excessive length of the proceedings.

Having examined the materials in its possession, and insofar as the matters complained of are within the Court's competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President