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. 41042/98
by Väinö PAHVERK
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 11 February 2003 as a Chamber composed of

Mr M. PELLONPÄÄ, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 January 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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, Väinö Pahverk, is a Swedish national, who was born in 1932 and lives in Tumba. He was represented before the Court by Mr U. Jacobson, a lawyer practising in Stockholm. The respondent Government were represented by Ms E. Jagander, Ministry for Foreign Affairs.

A. The circumstances of the case

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

Following the applicant's laryngectomy operation in February 1989, at which his cancerous larynx was removed, the Social Insurance Office (*försäkringskassan*; hereinafter "the Office") of the County of Stockholm granted him disability benefits under the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381; hereinafter "the 1962 Act") amounting to 65% of a basic amount geared to the price index (*basbelopp*).

On 9 September 1992 the Office reviewed the applicant's eligibility for disability benefits and decided that such payments should be discontinued as he had retired from work and no longer had needs or additional costs which entitled him to further benefits. The applicant requested the Office to review its decision under chapter 20, section 10 a of the 1962 Act. Attaching a list of alleged additional costs, he claimed that the decision of 9 September 1992 had been based on incomplete information.

On 10 February 1993 the Office, having regard to the applicant's submissions, changed its earlier decision and granted the applicant disability benefits amounting to 36% of the basic amount. In an attached document, the Office indicated which additional costs had been accepted and which ones had not. In regard to several items, it also stated summary reasons for its decision.

The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm, requesting that the benefits be fixed at a higher percentage of the basic amount. In substance, he maintained what he had submitted to the Office.

By a judgment of 15 February 1994 the County Administrative Court rejected the appeal, subscribing to the reasons given by the Office. The court did not hold an oral hearing, nor did the applicant request one.

On 11 March 1994 the applicant appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm, essentially maintaining his previous submissions on additional costs and complaining that the Office and the County Administrative Court had failed to give reasons for their decisions. He completed his appeal on 17 October 1994, submitting further arguments in regard to his costs. At the end of that document, the following

handwritten note had been added: "P.S. Requesting an oral hearing." No reasons for the request were given.

On 12 April 1995 the appellate court rejected the request for an oral hearing. After having restated section 9 of the Administrative Court Procedure Act (*Förvaltningsprocesslagen*, 1971:291; hereinafter "the 1971 Act"; see further 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."

The applicant reiterated his request for an oral hearing on 17 May 1995 stating that it was necessary in order to "clarify circumstances relating to the subject-matter of importance to the outcome of the case".

By a judgment of 10 January 1996 the Administrative Court of Appeal rejected the applicant's appeal and his renewed request for an oral hearing. It stated that it shared the conclusion reached by the lower instances that the applicant's needs and additional costs were not such that he was entitled to higher disability benefits than had already been granted.

The applicant appealed to the Supreme Administrative Court (*Regeringsrätten*). He complained about the lack of oral hearings in the lower courts and asked the Supreme Administrative Court to hold one. In those respects, he claimed that the case had not been adequately investigated.

By a letter of 13 February 1996 the court informed the applicant that it normally did not hold oral hearings. He was given the opportunity to submit further observations in writing. He made such submissions on 19 February 1996 repeating, in regard to the oral-hearing issue, that a hearing had been necessary in order clarify circumstances relating to the subject-matter of the case.

On 18 December 1997 the Supreme Administrative Court refused the applicant 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.

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. Appeals may be made against the Office's ordinary decision or a decision upon review under chapter 20, section 10 a of the 1962 Act.

The latter provision enables the Office to change a decision it has previously taken in order to rectify certain obvious defects of that decision, provided that it has not already been reviewed by a court. Thus, the Office must change its earlier decision if it contains a writing error, miscalculation or similar mistake or if it is incorrect due to it being based on obviously incorrect or incomplete information or an obviously incorrect application of the law or other similar reason. A decision is to be changed under this provision even if a request to that effect has not been made by the individual concerned.

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.

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 that his right to a fair and public hearing under Article 6 § 1 of the Convention had been breached in the following respects:

1. The Administrative Court of Appeal and the Supreme Administrative Court had refused him an oral hearing.

2. The Office and the courts had failed to correctly assess the facts of the case and his submissions.

3. The Office and the courts had failed to give reasons for their decisions.

THE LAW

1. 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 ..."

The respondent Government submitted that the complaint was manifestly ill-founded. They contended that an oral hearing before the Administrative Court of Appeal would not have added anything to the proceedings as the applicant's submissions to that court had not been capable of raising any issue of fact or law which was of such a nature as to require a hearing and that, accordingly, the issues involved had been adequately resolved on the basis of the case file and the applicant's written observations. In this respect,

they pointed out that the applicant had not invoked any oral evidence and that the judges, possessing no medical expertise, could not have made their own assessment of the applicant's needs as a result of having met him in person. 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 certain social-insurance schemes, no questions of public interest had been involved.

The Government also pointed out that the Administrative Court of Appeal had found it unnecessary to hold oral hearings and that its decisions on this matter had been fully in line with domestic law. In addition, the applicant had not requested an oral hearing until 17 October 1994, seven months after his appeal to the appellate court, and then only in the form of a handwritten *post scriptum* to his supplementary submissions. No reasons whatsoever had been given for the request. He had reiterated his request on 17 May 1995 stating the need therefor in general terms. Furthermore, noting that the applicant had not requested an oral hearing before the lowest judicial instance, where the main focus in a case should lie, the Government contended that it was not reasonable that an individual party – by waiting to request a hearing until his or her case was before the second and, in most cases, the *de facto* last instance – should be allowed to have such a decisive impact on the working methods of the latter court.

The applicant submitted that there had been no exceptional circumstances which had justified dispensing with an oral hearing in his case. On the contrary, he claimed that such a hearing had been indispensable as the County Administrative Court had not given any reasons for its judgment, only declaring that it shared the view of the Office. A hearing had thus been necessary in order to further the examination of the case. Moreover, at a hearing he would have been able to explain his personal health situation and how it affected him. This would have been a complement to the written evidence in the case and could have contributed to dispelling any uncertainties regarding the facts. At an oral hearing the court would also have had the opportunity to pose questions to the applicant and his counsel could have acted in order to make corrections as to the result of the medical evaluations at hand.

The Court, noting that the Government have not disputed the applicability of Article 6 § 1 to the case at hand, observes that the proceedings at issue concerned the applicant's claim to benefits under social-security schemes. The purpose of the proceedings was to obtain decisions in disputes 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).

The Court 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).

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 Social Insurance 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 Social Insurance Court was justified.

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*, 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.

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.

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*, cited above, pp. 19-20, § 58).

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. The issue in the case was whether the applicant's needs and additional costs attained such a level that he was entitled to disability benefits with a higher amount than that granted by the Office, which corresponded to 36% of the above-mentioned basic amount. As the Office had accepted that the applicant's handicap involved certain needs and additional costs, the outcome of the case depended on an estimation of the total amount of the various costs deriving from that handicap. In the Court's opinion, there is nothing to indicate that such an issue could not be adequately resolved on the basis of written submissions. It notes, in this connection, that the Administrative Court of Appeal, in the decision of 12 April 1995 by which it rejected the applicant's request for an oral hearing, invited him to submit final observations in writing. Furthermore, the Court takes into account that the applicant did not request the appellate court to call any witnesses and did not rely on any other oral evidence. In fact, when originally requesting an oral hearing he did not state any reasons for the request and when, following the appellate court's decision of 12 April 1995, he reiterated his request he only referred to a need to clarify circumstances relating to the subject-matter of importance to the outcome of the case. It was not mentioned which those circumstances were.

Having regard to the foregoing, the Court finds that there were exceptional circumstances which justified dispensing with a hearing in the applicant's cases.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant also claimed that his rights under Article 6 § 1 of the Convention had been violated as the Office and the courts had failed to correctly assess the facts of the case and his submissions.

The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national authority or court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts. (see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

Noting that the present complaint concerns the Office's and the courts' evaluation of facts and evidence, the Court finds that an examination of the applicant's submissions do not disclose any appearance of a violation of the Convention.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Finally, the applicant claimed that his rights under Article 6 § 1 of the Convention had been violated as the Office and the courts had failed to give reasons for their decisions.

The Court reiterates that judgments of courts should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], cited above, § 26, with further references).

The Court notes that the County Administrative Court and the Administrative Court of Appeal, which determined the applicant's case on the merits, in their respective judgments explicitly subscribed to the reasons set out in the contested decision made by the Office. The latter decision indicated which of the applicant's additional costs had been accepted and which ones had not. In regard to several items, it also gave summary reasons for the conclusions drawn. Having regard to the fact that the case concerned the assessment of which costs could be considered as deriving from the applicant's handicap and thus were to be taken into account when determining the level of disability benefits to which he was entitled, the Court finds that these reasons were adequate and sufficient in the circumstances of the case.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President