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. 13599/03
by Helena RINGEL
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 15 April 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Helena Ringel, is an Swedish national, who was born in 1933 and lives in Uppsala. She was represented before the Court by Mr M. Axen, a lawyer practising in Uppsala.

A. The circumstances of the case

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

By a decision of 9 June 1992 the Social Insurance Office (*försäkringskassan*; hereinafter "the Office") of the County of Uppsala granted the applicant a life annuity (*livränta*) under the Act on Industrial Injury Insurance (*Lagen om arbetsskadeförsäkring*, 1976:380; hereinafter "the 1976 Act"). The amount on the basis of which the annuity was to be calculated – corresponding to the applicant's expected annual income had she continued to work – was fixed at 220,000 Swedish *kronor* (SEK). The applicant appealed against the Office's decision and the County Administrative Court (*länsrätten*) of the County of Uppsala, by a judgment of 28 March 1993, raised the amount in question to SEK 252,800. The applicant made a further appeal to the Administrative Court of Appeal (*kammarrätten*) in Stockholm. The National Social Insurance Board (*Riksförsäkringsverket*) also appealed. Whereas the applicant had not requested an oral hearing at first instance, she asked the appellate court to hold one. However, the appellate court refused the request, finding that a hearing was not necessary. By a judgment of 5 November 1996 it found in favour of the Board and thus quashed the appealed judgment and upheld the Office's decision. On 10 March 1998 the Supreme Administrative Court (*Regeringsrätten*) refused the applicant leave to appeal.

On 10 September 1993 the Office decided that the above amount should be fixed at SEK 258,100 for the period 1 December 1992 – 30 November 1995.

By a decision of 8 November 1995 the Office fixed the amount at SEK 244,000 for the following period. The applicant, assisted by legal counsel, appealed to the County Administrative Court and claimed that the amount should be fixed at SEK 258,000.

By a judgment of 23 February 1998 the court upheld the Office's decision, finding that the Office had correctly estimated the applicant's expected income at the time of the appealed decision. The court did not hold an oral hearing, nor did the applicant request one.

The applicant appealed to the Administrative Court of Appeal. By a letter of 2 March 2000 she requested that the appellate court hold an oral hearing at which she wished to make oral submissions. It appears from the wording

of the letter that the request was for a hearing to be held if the court were to examine the case on the merits.

On 15 March 2000 the Administrative Court of Appeal refused leave to appeal. On 16 October 2002, following a further appeal, the Supreme Administrative Court also refused leave to appeal.

B. Relevant domestic law

1. Industrial injury insurance

All gainfully employed persons working in Sweden are insured against industrial injuries in accordance with the 1976 Act. Anyone who is put on the sick-list as a result of an industrial injury and who is insured under the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381) is entitled to the same *per diem* benefit from the ordinary sickness insurance (social insurance) during the first 90 days as if he or she had been sick for a reason other than an industrial injury. When 90 days have passed, the insured person is entitled to a *per diem* sickness benefit in accordance with the 1976 Act (industrial injury insurance), if his or her ability to carry on with gainful employment is reduced by at least 25% (50% prior to 1 July 1990). After the period of sickness has come to an end and the insured person is no longer on the sick-list, he or she is entitled to a life annuity if the capacity for gainful employment is reduced by at least one fifteenth. In order to calculate the annuity, an amount corresponding to the expected annual income is fixed.

2. Procedure

A decision by the Social Insurance Office under the 1976 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 Administrative Court of Appeal and the Supreme Administrative Court in the proceedings concerning the Social Insurance Office's decision of 8 November 1995. She relied on Article 6 § 1 of the Convention.

THE LAW

The applicant complained of the lack of an oral hearing. She relied on Article 6 § 1 of the Convention which, in relevant parts, provides as follows:

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

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 Court notes that the applicant, who was represented by legal counsel throughout the proceedings, 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 she attached importance to it. She did not do so, however, and the Court therefore finds that she can reasonably be considered to have waived her right to a hearing before the County Administrative Court.

As regards the lack of oral hearings before the second and third instances, the Court first 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 an appellate court. Depending on the circumstances of the case, it might therefore be justified to reject a request for an oral hearing upon appeal where no request for such a hearing has been made at first instance.

The Court further notes that the dispute in the applicant's case concerned the amount on the basis of which her life annuity should be calculated. The fixing of that amount depended on the assessment of certain information relating to the applicant's income at the time when she worked and her expected income had she continued to work. The examination of this issue mainly involved the assessment of written evidence. There is no indication that a hearing was needed in order to hear oral testimony.

Moreover, the Administrative Court of Appeal and the Supreme Administrative Court only determined whether or not leave to appeal should be granted. It could be argued, based on the applicant's letter to the Administrative Court of Appeal, that she only requested a hearing in the

eventuality that leave to appeal was granted and the court examined the case on the merits. In any event, even assuming that Article 6 § 1 of the Convention applies to the determination of the question whether to grant leave to appeal, the Court finds that it could be adequately resolved on the basis of the case-file and the written submissions.

Consequently, the Court finds that, in the present case, there were circumstances which justified that the Administrative Court of Appeal and the Supreme Administrative Court dispensed 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