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. 45935/99
by Einar STRÖMBLAD
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 L. GARLICKI,
Mr J. BORREGO BORREGO, *judges* and
Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 12 November 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, Mr E. Strömblad, is a Swedish national, born in 1950 and living in Kristianstad, Sweden. He is represented before the Court by Mr O. Larsson, a lawyer practising in Hässleholm.

The respondent Government are represented by their Agent, Mr Lars Magnuson of the 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.

The applicant is the father of three children born in 1985, 1986 and 1990 respectively. The children live permanently with their mother from whom the applicant is divorced. Since they did not live with both their parents, each of his children were entitled under the Maintenance Support Act (*lagen om underhållsstöd,* lag 1996:1030 -hereinafter "the 1996 Act", which entered into force on 1 December 1996) to a monthly maintenance allowance (*underhållsbidrag*) of SEK 1,173 from the Social Insurance Office. The 1996 Act obliged the parent who under civil law was liable for maintenance to repay, in whole or in part, the community's costs for the maintenance support provided to the children. The amount to be repaid was determined as a percentage of the income of the person liable for maintenance. If the liable parent had 3 children, as was the applicant's case, he should repay 5% of his income for each child.

On 20 January 1997 the Social Insurance Office (*försäkringskassan* - hereinafter "the Office") of the County of Kristianstad decided that the applicant should repay a total sum of SEK 2,247 every month for the community's costs for the maintenance support with respect to his 3 children. In other words, the applicant should repay SEK 749 per month for each child. In accordance with section 25 of the 1996 Act (as in force at the relevant time), the Office determined the amount of the applicant's income as specified in the most recent tax assessment decision.

By letter of 23 January 1997 the applicant requested the Office to reconsider its decision. He argued that the Office had failed to estimate correctly his ability to pay the amount in question and should have based its calculations on his current income, not that indicated in the most recent tax assessment decision. On 7 March 1997 the Office found that there was no ground for altering its earlier decision.

The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Skåne. He maintained that his income was insufficient for paying the amount fixed by the Office. He pointed out that since the calculations regarding his ability to repay maintenance support were based on his income before the 1996 Act came into force, the decision had a

retroactive effect and was thus incompatible with the Swedish Constitution (*Regeringsformen*). Furthermore, the Office had calculated his income erroneously thereby obtaining a result which did not reflect his real ability to repay the maintenance support.

In his appeal the applicant also requested the County Administrative Court to hold an oral hearing in the case. He wished to participate in person at an oral hearing in order to present arguments on the issue of principle in the case and on the great economic impact a judgment could have on him. He underlined that his main argument in the case was the unconstitutional retroactive application of the 1996 Act by the Office.

On 8 April 1997 the County Administrative Court informed the applicant as follows:

> "The proceedings before [the court] consist of a written procedure. They may include an oral hearing with regard to a certain issue, when there is reason to assume that such a measure would be to the benefit of the proceedings or that it promotes a speedy determination of the case. An oral hearing shall be held if requested by an individual party to the proceedings, if such a hearing is not unnecessary and there are no particular reasons against it...
>
> ...It appears that you do not wish to submit any new information at the hearing but rather conduct a legal argumentation about the retroactivity of the legislation concerned and on how your deficit from earlier years' taxation should be taken into account when determining the amount that should be repaid. Having regard to these circumstances [the court] finds that the examination of the case is limited to issues concerning the application of the law. Therefore, [the court] finds an oral hearing unnecessary.
>
> [The court] hereby gives you the opportunity to submit, no later than 22 April 1997, your final observations in the case. If no response is submitted to [the court], the case will be determined on the basis of the material available."

The applicant made further submissions in the case and reiterated his request for an oral hearing, claiming that the court had failed to give any special reasons for dispensing with an oral hearing.

On 18 June 1997 the County Administrative Court delivered its judgment confirming the Office's decision. It found that the calculation of the applicant's income was done in accordance with the rules set out in the 1996 Act. While it was true that the calculation of the applicant's income was based on the most recent tax assessment decision, the amount that he was obliged to repay concerned future maintenance support. Therefore, the court did not consider the decision as retroactive within the meaning of the Constitution.

As regards the applicant's request for an oral hearing the Court held:

> "The court cannot omit to hold an oral hearing without having found after careful consideration that this is unnecessary or that there are special reasons against doing so. Considering [the applicant's] arguments in the case, [the court] finds that its

examination is limited to issues concerning the application of the law. In view of this [the court] considers an oral hearing unnecessary."

The applicant appealed against the judgment to the Administrative Court of Appeal (*kammarrätten*) in Gothenburg, complaining about the lack of an oral hearing before the County Administrative Court and maintaining all his other submissions and requests. By decision of 28 January 1998 the Administrative Court of Appeal refused leave to appeal.

The applicant appealed to the Supreme Administrative Court (*regeringsrätten*) which, on 17 September 1998, also refused leave to appeal.

B. Relevant domestic law

1. Maintenance support

The 1996 Act, which entered into force on 1 December 1996, applied in relation to maintenance support and duty of repayment. The 1996 Act replaced previous legislation in the relevant area.

According to the 1996 Act (as in force at the relevant time; January 1997) a child was entitled to maintenance support, at a rate of SEK 1,173 per month, if the parents did not live together. The parent who was liable under civil law for maintenance should repay to the State, in part or in whole, the amount corresponding to the maintenance support. According to its sections 24 and 25, the duty of repayment was determined as a certain percentage of the liable parent's income according to the most recent tax assessment decision after a deduction of SEK 72,000. If the liable parent had 3 children who received maintenance support, he or she should repay 5% of his income for each child. The duty of repayment should be reviewed when a new decision on annual tax assessment had been taken and when there was a change in the grounds for the applicable percentage.

In the event that the liable parent considered that he or she was unable to to repay the amount fixed, he or she could appeal for respite for discharge of the duty. If there were exceptional reasons relating to the liable parent's economic or personal circumstances, the Social Insurance Office could remit the debt, entirely or partially, upon application from the liable parent.

2. Procedure

A decision by the Social Insurance Office under the 1996 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 to the two latter courts are subject to leave to appeal proceedings.

The procedure in the administrative courts is governed by the provisions of the Administrative Court Procedure Act (*förvaltningsprocesslagen*, lag 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).

COMPLAINT

The applicant complained that the lack of an oral hearing before the County Administrative Court constituted a violation of Article 6 § 1 of the Convention.

THE LAW

The applicant complained that the County Administrative Court's refusal to hold an oral hearing in his case gave rise to a violation of Article 6 § 1 of the Convention which, in relevant parts, reads as follows:

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

The Government maintained that there was no need for an oral hearing when the County Administrative Court examined the case. Such a hearing would not have added anything to the proceedings under the prevailing circumstances and the questions involved were adequately resolved on the basis of the case-file and the applicant's written observations. In this respect, they pointed out that the County Administrative Court was in no doubt as to the views of the parties and that it was clear that the applicant's main argument concerned the compatibility of the 1996 Act with the Swedish Constitution. This issue was of a purely legal nature. Furthermore, the Government submitted, there was no need for a clarification of the facts. It was clear that the applicant had not intended to submit or invoke oral testimony from witnesses or experts. The decision of the County Administrative Court to refuse an oral hearing was taken after careful examination of the case. Therefore, the applicant's submissions to the court were not capable of raising any issue of fact or law which was of such a nature as to require an oral hearing.

The applicant maintained that his right to a public hearing had been violated. As a result of the fact that he was refused leave to appeal by the Administrative Court of Appeal and the Supreme Administrative Court, the County Administrative Court became the only court to try his case in full and therefore should have been obliged to hold an oral hearing. This could not be said to have been unnecessary. There were no particular reasons against holding one. Further, he was not represented by a legal counsel, as he was not afforded legal aid, but claimed that he would have engaged one if there had been an oral hearing in order to have his case professionally presented before the court. Moreover, he underlined that, since the 1996 Act was in conflict with the Constitution, it would have been of general interest to have that question tried by the court at a public hearing. That would also have afforded him a guarantee that the court heard all his arguments.

The Court first observes that the applicability of Article 6 § 1 to the case is not disputed. The purpose of the proceedings in question was to settle a dispute concerning the applicant's obligation to repay to the State an amount corresponding to part or all of the maintenance support paid by the State with respect to his three children. The object of the proceedings was therefore to obtain a decision in a dispute over "civil rights and obligations" within the meaning of Article 6 § 1, which is thus applicable.

As regards the further issue, whether Article 6 § 1 was complied with in the present case, the Court notes that the applicant complained only about the lack of an oral hearing before the County Administrative Court which, as a result of the refusal of leave to appeal by the Administrative Court of Appeal and the Supreme Administrative Court, became the only court to examine the merits of his case. In this connection the Court reiterates that in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see, among other authorities, *Allan Jacobsson v. Sweden* (No. 2), judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, § 46).

In determining whether there were any such exceptional circumstances in the applicant's case, the Court first notes that that the applicant did not, at any stage, dispute that he was the liable parent or that he should pay some sort of maintenance support for his children. At no time did he invoke oral testimony by a witness or an expert as a reason for his request for an oral hearing. Nor did he offer to give testimony himself.

In fact, the only reason he submitted for his request for an oral hearing was his wish to present oral argument, firstly, on the great impact which the Office's decision would have on his financial situation and, secondly, on his submission that, since it was applied retroactively, the 1996 Act was incompatible with the Swedish Constitution and thus did not provide a valid legal basis. However, on the first point the Court observes that the manner of calculation of the amounts to be repaid by the applicant was clearly set out in the relevant provisions of the 1996 Act and followed from a direct application of those provisions. The second point only concerned an issue of law which was more apt to be presented in writing.

In addition, the Court observes that the County Administrative Court informed the applicant in advance of its intention not to hold an oral hearing, giving him an opportunity to supplement his pleadings in writing, which he did.

In view of the above considerations, the Court finds on the evidence before it that the applicant's submissions to the County Administrative Court were not capable of raising any issues of fact or of law pertaining to his obligation to repay part of the maintenance support to his children which were of such a nature as to require an oral hearing for their disposition (see, for instance, *Allan Jacobsson v. Sweden* (No. 2), cited above, § 49). This is not altered by the applicant's argument that his case was of interest for the general public, as there was public access to the case-file.

Consequently, the Court finds that there were exceptional circumstances which justified dispensing with a hearing in the applicant's case. There has accordingly been no violation of Article 6 § 1 of the Convention.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President