

oikeusministerio@om.fi

Lausuntopyyntö 9.2.2011 Dnrot OM12/41/2007, OM 004:00/2008

OIKEUDENKÄYNTI HALLINTOASIOISSA. PROSESSITYÖRYHMÄN MIETINTÖ.

Oikeusministeriön lainvalmisteluosasto on viitekirjeellään pyytänyt Turun hallinto-oikeuden lausuntoa otsikkoasiasta. Hallinto-oikeusasetuksen 9 §:n momentin mukaan ylituomari ratkaisee hallinto-oikeuden hallintoasiat, mukaan luettuna lausuntojen antaminen.

Olen ylituomarina ollut jäsenenä sekä prosessityöryhmän ohjausryhmänä toimineessa hallintolainkäyttötoimikunnassa että mietinnön laatineessa prosessityöryhmässä. Prosessityöryhmän valmistelussa Turun hallinto-oikeuden henkilöstöä on kuultu Webropol-kyselyn avulla henkilökohtaisesti, hallinto-oikeus on antanut työryhmän välimietinnöstä ylituomarin sijaisen allekirjoittaman, sisäisen työryhmän työhön perustuneen lausunnon ja olen johtoryhmän valtuuttamana ja sen hyväksymän kannanoton pohjalta ollut kuultavana työryhmän kuulemistilaisuudessa.

Kun näin ollen olen työryhmän jäsenenä ollut saatujen lausuntojen ja kannanottojen pohjalta laatimassa ja osaltani allekirjoittamassa työryhmän yksimielistä mietintöä, katson, että Turun hallinto-oikeuden kanta on työryhmän mietinnössä lähtökohtaisesti tullut asianmukaisesti huomioonotetuksi. Tämän vuoksi hallinto-oikeus ei anna mietinnöstä enempää lausuntoa.

Olen kuitenkin työryhmän työn lopputuloksen ja sen yksityiskohtien arvioimiseksi vielä tässä lausuntovaiheessa asettanut työryhmän laatimaan lopullisesta ehdotuksesta muistion, joka on käsitelty hallinto-oikeuden yhteistoimintajohtoryhmässä. Liitän muistion oheen.

Muistion ovat laatineet hallinto-oikeustuomarit Paula Olenius, Ritva Isomoisio ja Ulla Partanen, jotka ovat työskennelleet hallinto-oikeuden kaikilla jaostoilla ja muissakin tehtävissään soveltaneet nykyistä hallintolainkäyttölakia, sekä hallinto-oikeussihteeri Kristian Hellman, joka puolestaan on soveltanut lakia paitsi hallinto-oikeudessa, myös vakuutus-oikeudessa. Heillä on siten laaja käytännön alalta ja hyvät edellytykset uudistusehdotuksen yksityiskohtien arviointiin.

Ylituomari

Hannu Renvall

Osoite

Sairashuoneenkatu 2-4
PL 32, 20101 Turku

Puhelinväihde

010 364 2400
0100 86355

Telefax

010 364 2414

Sähköposti

turku.hao@oikeus.fi

29.03.2011

LAKI OIKEUDENKÄYNNISTÄ HALLINTOASIOISSA, prosessityöryhmän mietintö 4/2011**Yleistä**

Ylituomari on 15.2.2011 nimennyt työryhmän arvioimaan prosessityöryhmän loppumietinnön keskeisiä ehdotuksia silmällä pitäen sen soveltuvuutta hallintolainkäytön yleiseksi menettelysäännöksi, joka korvaa nykyisen hallintolainkäyttölain. Tässä muistiossa esitetään työryhmän arvio.

Hallintolainkäyttölain päivittäminen ja vakiintuneiden menettelytapojen kirjaaminen lakiin lisää lain informatiivisuutta ja selkeyttä ja on omiaan yhdenmu-kaistamaan mahdollisesti tällä hetkellä olevia erilaisia menettelyjä. Kokonai-suutena lakiehdotus on hyvä. Lakiehdotuksessa on useita erittäin hyviä täs-mennyksiä tai uutuuksia.

Siltä osin kuin olemme pitäneet ehdotusta hyvänä tai erittäin hyvänä, emme lausu erikseen. Jäljempänä erikseen esille otettuja kohtia olemme pitäneet jol-tain osin epätarkkoina tai arvioineet niissä voivan olla aineksia tulkintaongel-miin.

Yksityiskohtiin liittyviä arvioita**4 § Määritelmät**

On sinänsä erittäin hyvä, että lakiin on koottu määritelmät keskeisistä käyte-tyistä käsitteistä.

Asianosaisen, oikeudenkäynnin osapuolen ja oikeudenkäynnin asianosaisen osalta lakiin jää kuitenkin määrittelystä huolimatta tulkinnanvaraisuutta ja he-rää myös kysymys, onko myöhemmissä eri pykälissä (esim. 29 §, 48 §, 50 § 3 mom, 57 §, 61 §, 66 §, 74 §, 80 §) kyseisiä käsitteitä käytetty johdonmukai-sesti. Monissa kohdin puhutaan asianosaisesta, vaikka näyttäisi tarkoitetavan oikeudenkäynnin osapuolta. Jossain kohdin käytetään pelkästään termiä osa-puoli.

Osoite

Sairashuoneenkatu 2-4
PL 32, 20101 Turku

Puhelin

010 364 2400
0100 86355

Telefax

010 364 2414

Sähköposti

turku.hao@oikeus.fi

7 § Asianosaisen valitusoikeus hallintopäätöksestä

Vaikka lain 3 §:ssä on säädetty sen toissijaisuudesta, voisi olla selkeämpää, jos 7 § otsikko olisi vain "Valitusoikeus hallintopäätöksestä" ja että 2 momentissa olisi lisäys "tai jonka valitusoikeudesta on erikseen laissa säädetty".

13 § Toimivaltainen hallinto-oikeus

Yleislakina tässä laissa ei luonnollisesti ole voitu huomioida erityistilanteita, vaan niistä on luontevaa säätää erikseen erityislaeissa. Kiinnitämme tässä yhteydessä kuitenkin huomiota siihen, että ainakin uusien aluehallintoviranomaisten (AVIt ja ELYt) on havaittu aiheuttavan toimivaltaisen hallinto-oikeuden suhteen tulkintaongelmia. Niillä on pääosin alueellinen toimivalta, jolloin toimivaltainen hallinto-oikeus määräytyy niiden päätoimipaikan perusteella eli 13 § 2 momentin mukaan. Joissakin asioissa jollakin niistä on kuitenkin koko maan kattava toimialue, jolloin toimivaltainen hallinto-oikeus määräytyy 13 § 3 momentin mukaan. Tämä ei ole ainakaan selkeätä, tuskin tarkoituksenmukaistakaan. Samantapainen ongelma voi syntyä kuntien laajojen yhteistoimintaelimien kohdalla.

29 § Hallintoriita-asia

Yksityisen asianosaisen, joka on valittanut hallinto-oikeuteen, voi olla erittäin vaikeata ymmärtää asiaa, kun hallinto-oikeus kuulee häntä siitä, käsiteltäisiinkö hänen valituksena vireille panemansa asia hallintoriitana. Erityistilanteissa kuulemisella ja asian vireille panijan tahdolla voi luonnollisesti olla merkitystä, ja silloin kuuleminen on tietenkin tehtävä. Eikö kuuleminen kuitenkin voisi jäädä hallintotuomioistuimen harkintaan lisäämällä 3 momentin lauseeseen sana "tarvittaessa"?

52 § Suullinen valmistelu

Pykälän perusteluissa todetaan, että suullinen valmistelu voidaan järjestää asianosaisten olematta paikalla, siis vain asiamiesten läsnä ollessa, ja että valmisteluun voidaan kutsua suullisesti. Näiden seikkojen voisi olla hyvä näkyä laista. Oletus on muutoin se, että menettelyssä noudatetaan, siltä osin kuin ei ole toisin säädetty, varsinaista suullista käsittelyä koskevia säännöksiä.

53 § Suullisen käsittelyn järjestäminen

Pykälän 2 momentissa on lueteltu tilanteet, joissa pyydetty suullinen käsittely voidaan jättää toimittamatta.

Euroopan ihmisoikeustuomioistuimen 7.12.2010 antaman päätöksen 17202/04 Andersson v. Ruotsi perusteella olemme pohtineet, aiheuttaako kyseinen päätös tarvetta täsmentää tai tarkistaa 2 momenttia.

63 § Asioiden käsittelyjärjestys

Periaatteessa 1 momentissa säädetty käsittelyyn ottaminen vireilletulojärjestyksessä on oikein ja vastaa nykykäytäntöä. Sen kirjoittaminen lakiin saattaa kyllä aiheuttaa tarpeettomia kanteluita ja selittelyjä. Jos säännöstä yritetään noudattaa täsmällisesti, 2 momentin jousto huomioon ottaenkin, se saattaa aiheuttaa kokonaisuuden kannalta epätarkoituksenmukaisia erityisiä työjärjestelyjä ja asioiden siirtoja valmistelijalta ja jaostolta toiselle. Väljempi säännös asioiden joutuisasta käsittelystä voisi olla riittävä. Tämä tuntuu asialta, josta olisi luontevampaa säätää hallinto-oikeuksien työjärjestyksissä. Jos käsittelyyn ottamisella tarkoitetaan asian kirjaamista ja lausunto- ja kuulemismenettelyn aloittamista, säännös vaikuttaa tarpeettomalta.

90 § Äänestämisen

Hallinto-oikeuksissa merkittävän asiaryhmän muodostavissa veroasioissa äänestyksen lopputuloksen määräytymisestä säädetään verotusmenettelylain 74 §:ssä. Vaikka ehdotetun lain 3 §:ssä on yleisviittaus erityislainsäädäntöön, niin informatiivisuuden kannalta voisi olla parempi, jos tuomioistuimessa tapahtuvaa äänestystä koskeva säännös olisi veroasioidenkin osalta ehdotetussa 90 §:ssä tai siinä olisi erillinen viittaus erityislainsäädäntöön.

91 § Päätöksen sisältö

Olemme lakiehdotusta arvioidessamme pohtineet tämän pykälän 1 momentin toisen virkkeen täsmällisessä soveltamisessa mahdollisesti esiin tulevia ongelmia. Yksityiskohtaisissa perusteluissa tosin todetaan, että hallintotuomioistuimella olisi harkintavaltaa sen suhteen, mitä valitusperusteita pidettäisiin asian kannalta sillä tavoin merkityksellisinä, että niistä lausuttaisiin päätöksessä. Kannan ottaminen kaikkiin valitusperusteisiin ei kuitenkaan kaikissa tapauksissa ole edes mahdollista, vaikka ne olisivat asian kannalta sinänsä merkityksellisiä. Ainakaan tapauksissa, joissa kumoamisperusteina on esitetty sekä menettelyyn liittyviä perusteita että päätöksen muuhun lainmukaisuuteen liittyviä perusteita, ei muihin valitusperusteisiin voida vastata, jos menettelyä koskeva peruste (esimerkiksi viranomaisen toimivalta tai esteellisyys) johtaa päätöksen kumoamiseen.

Kaikkiin valitusperusteisiin vastaamisen merkitys riippuu myös siitä, onko asiassa muita oikeudenkäynnin osapuolia kuin valittaja ja päätöksen tehnyt hallintoviranomainen vai ei. Jos jutussa on vain yksi asianosainen ja hän voittaa asiansa jollakin valitusperusteella, hylättäviin valitusperusteisiin vastaaminen tuntuu epätarkoituksenmukaiselta resurssien käytöltä.

Jos hallinto-oikeus esimerkiksi lupa-asiaassa kumoaa päätöksen jollakin valitusperusteella ja toisaalta hylkää jotkut valitusperusteet, asia saattaa tämän jälkeen olla yhtä aikaa vireillä sekä hallintoviranomaisessa että korkeimmassa hallinto-oikeudessa. Tämä ei nähdäksemme selvennä asiaa eikä välttämättä myöskään lyhennä asian kokonaiskäsittelyaikaa.

99 § Korvattavat oikeudenkäyntikulut

Pykälän 2 momentin sanamuotoa lienee syytä tarkistaa, koska se nyt kuuluu: "Korvattaviin oikeudenkäyntikuluihin kuuluvat ... oikeudenkäynnistä aiheutuneesta *työstä* ja oikeudenkäyntiin välittömästi liittyneestä menetyksestä *aiheutuneet kulut*...". Momentissa tarkoitettaneen samaa kuin oikeudenkäymiskaaressa (21:8) eli: "*Korvausta* suoritetaan myös oikeudenkäynnin asianosaiselle

aiheuttamasta *työstä* ja oikeudenkäyntiin välittömästi liittyvästä menetyksestä.

Muuta

Parissa kohtaa heräsi kysymys, onko eri pykälissä käytetyt toisistaan poikkeavat sanamuodot valittu tarkoituksellisesti. Pykälässä 8 viranomaisen valitusoikeus on kytketty siihen, että viranomainen on asianosainen, mutta pykälässä 109 siihen, että päätös vaikuttaa välittömästi viranomaisen oikeuteen, etuun tai velvollisuuteen. Erilainen sanamuoto tuntuu tarpeettomalta. Pykälässä 23 sallitaan uuden vaatimuksen esittäminen oikaisuvaatimuksen jälkeisessä valituksessa, jos vaatimus perustuu "sittemmin *esille tulleeseen* seikkaan". Pykälässä 25 puolestaan sallitaan uuden vaatimuksen esittäminen valitusajan päättymisen jälkeen, jos se perustuu "valitusajan päättymisen jälkeen *valittajan tietoon tulleeseen*". Onko tarpeen käyttää erilaisia sanamuotoja?

Lain ruotsinkielinen nimi

Ehdotuksessa: Lag om *rättegången* i förvaltningsärenden
Vrt. esim. Lag om *rättegång* i brottmål

Kristian Hellman

Ritva Isomoisio

Paula Olenius

Ulla Partanen

THIRD SECTION

CASE OF ANDERSSON v. SWEDEN

(Application no. 17202/04)

JUDGMENT

STRASBOURG

7 December 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Andersson v. Sweden,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, President,
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, judges,
and Santiago Quesada, Section Registrar,

Having deliberated in private on 16 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17202/04) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Mr Freddie Andersson ("the applicant"), on 9 May 2004.
2. The applicant was represented by Ms Mia Andersson. The Swedish Government ("the Government") were represented by their Agent, Ms Anna Erman from the Ministry for Foreign Affairs.
3. The applicant alleged, in particular, that the administrative courts had failed to hold an oral hearing in proceedings relating to his request for occupational injury compensation.
4. By a decision of 3 June 2008, the Court declared the application partly inadmissible and decided to communicate the complaint concerning the lack of an oral hearing before the administrative courts to the Government. It was also decided to examine the merits of this complaint at the same time as its admissibility (Article 29 § 1).
5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1930 and lives in Ingarö.

7. In September 1996 the applicant submitted an occupational injury report (arbetsskadeanmälan) to the Social Insurance Office (Försäkringskassan –hereinafter “the Office”) of the County of Stockholm in which he requested that his lower back and hip joint problems be considered work-related, thereby making him eligible for occupational injury compensation (arbetsskadeersättning).

8. In a decision of 13 December 1996, the Office noted that the applicant had carried out heavy work as a slaughterhouse worker until 1982 when he had moved to the USA and worked on renovating walls. In 1988 the applicant had informed the Office that he could no longer carry out his work because of his hip joint problems. Thus, in June 1988, he had been granted early retirement pension on the ground that he suffered from lumbar spondylosis and coxarthrosis (a degenerative joint disease of his lower back and right hip). On the basis of the above, the Office considered that it was possible that the applicant's work in the USA had harmed him and, since it could only consider injuries which had occurred while working in Sweden, it could not examine the request.

9. Upon request by the applicant, the Office, on 17 February 1997, reconsidered its previous decision but decided not to change it.

10. The applicant appealed to the County Administrative Court (länsrätten) of the County of Stockholm, claiming that his injuries had been caused by his work in Sweden. He stated that he had created a company in the USA to import Swedish fibreglass fabric but that, in order to get his business going, he had had to include measuring, installing and painting. However, since he already had pain in his hip joint and lower back, he had not been able to carry out the work and had sold the company. He further added that he had worked in slaughterhouses between 1948 and 1980, which had involved very heavy work in difficult conditions. In support, he submitted a medical certificate from Dr S.R., who had been working as a company doctor for more than 20 years in the food industry and had been the applicant's company doctor between 1967 and 1980. According to Dr S.R., the applicant's injuries were work-related, noting that he had carried animal carcasses and heavy pieces of meat up and down stairs, causing extreme strain on the back, hips, knees and ankles. Moreover, the work had been carried out in humid, draughty premises and with slippery floors.

11. On 15 September 1997 the County Administrative Court repealed the Office's decision and sent the case back for renewed examination. It found that the applicant's injuries could well have been caused by his work in Sweden and that the Office had the duty to evaluate whether this was the case.

12. To prepare the case, the Office requested the opinion of one of its own medical doctors (försäkringsläkare), Dr S.H., as to whether the applicant's injuries were work-related. The doctor, who was a specialist in orthopaedics, gave his opinion on 23 September 1997. It was based on the information in the Office's case-file and stated essentially the following.

13. It appeared from other medical certificates that the applicant had been healthy until his hip joint problems began in 1985-86. In 1988 his right hip and lower back had been x-rayed, which showed that the hip joint had degenerative alterations, whereas the lower back was not remarked on, having regard to the applicant's age. In July 1996 the applicant had undergone a hip joint operation. In Dr S.H.'s opinion, the applicant suffered from moderate arthritis in his hip joint, which had developed slowly from the age of 55 and thus was age-related, not work-related. In this respect, he claimed that there was no general support in scientific literature for the proposition that elements in the working environment could cause arthritis.

14. On 14 January 1998, the Office decided that the applicant could not be granted occupational injury compensation as it considered that his injuries were not related to his work in Sweden. In reaching its decision, it had put much emphasis on the opinion of Dr S.H., since he was a specialist in orthopaedics.

15. The applicant appealed to the County Administrative Court, maintaining that he was entitled to occupational injury compensation due to his injuries, which were clearly work-related. In support of his appeal, he submitted a medical certificate by Dr P.H., specialist in orthopaedic surgery, who had treated the applicant. According to Dr P.H., the applicant had suffered from serious joint arthritis of the right hip when he first met him during the spring of 1996, which had led to the operation in July 1996. As the illness did not run in the applicant's family and it had developed at an earlier age in the applicant than was normal, Dr P.H. considered that it was probable that the injury had been caused by the applicant's heavy work in the slaughterhouse. Moreover, in his view, the applicant's work in the USA had in no way affected the development of the arthritis.
16. The Office disputed the appeal and submitted that Dr P.H.'s opinion did not clearly show that the applicant's work at the slaughterhouse had caused his injuries.
17. In May 1998 the applicant contacted the County Administrative Court and requested that an oral hearing be held in his case so that he could describe his working situation. However, by decision of 25 May 1998, the court rejected the request as it found that it was unnecessary with regard to the nature of the subject matter. The applicant was given three weeks in which to finalise his submissions.
18. On 29 June 1999, when asked by the County Administrative Court, the applicant renewed his request for an oral hearing but sent on the same day a fax to the court explaining that he did not request an oral hearing.
19. On 29 June 1999 the County Administrative Court rejected the applicant's appeal. It did not question that his work had been of a very heavy nature. However, it noted that it had to be relatively widely accepted that certain factors in the working environment, with a high level of probability, could cause the relevant injuries. In the present case, the court found that the applicant had failed to show that there was a high level of probability that his work at the slaughterhouse had caused his hip joint arthritis.
20. The applicant made a further appeal to the Administrative Court of Appeal (kammarrätten) in Stockholm, maintaining his claims and adding that he wanted an oral hearing to be held so that he could prove his case, inter alia, by describing his working conditions in the slaughterhouse and developing the medical investigation. In this respect, he referred to Article 6 of the Convention and noted that he would later specify whom he wanted to call as expert witnesses.
21. Furthermore, the applicant submitted another medical certificate which supported his claim that his injuries were work-related. It was written by Dr H.B., specialist in orthopaedics, who had examined the applicant. In the certificate, Dr H.B. stated that studies existed which indicated a connection between heavy physical work and the development of hip joint arthritis. There were also studies which showed that the risk of developing hip joint arthritis increased with the number of tons that a person lifted during his working life. Having regard to the applicant's background, his work at the slaughterhouse and the relatively young age at which he had developed the arthritis, Dr H.B. concluded that there were much stronger reasons in support of a connection between the applicant's injuries and his work than against it.
22. The Office disputed the applicant's appeal and the new medical certificate, submitting that the appeal should be rejected.
23. On 28 June 2001 the Administrative Court of Appeal rejected the applicant's request for an oral hearing as it considered that, with regard to the nature of the subject matter, it was unnecessary to hold a hearing. The court granted the applicant two weeks to finalise his submissions in the case.
24. Subsequently, on 24 September 2001, the Administrative Court of Appeal rejected the appeal. Having regard to the medical investigation in the case, in particular the opinion of Dr S.H., as well as the time aspect (the applicant had stopped working in 1980 at the slaughterhouse but only been operated on in 1996), the court found that it had not been shown, with a high level of probability, that the work had caused the applicant's injuries.

25. The applicant appealed to the Supreme Administrative Court (Regeringsrätten) and requested that an oral hearing be held. He stressed that the lower courts had failed to hold a hearing, despite his express request and in violation of Article 6 of the Convention. Moreover, he submitted that a hearing was necessary in order for him to describe his working conditions at the slaughterhouse and to be able to question specialists to clarify his injuries and their causes.

26. On 16 July 2003 the Supreme Administrative Court rejected the applicant's request for an oral hearing as it considered that there was no need for a hearing before it decided on whether or not to grant leave to appeal. It gave the applicant three weeks to submit any additional comments.

27. On 10 November 2003 the Supreme Administrative Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Work Injury Insurance Act

28. 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 place of work. Under the Act, all gainfully employed persons working in Sweden are insured against work injuries. The insurance scheme is administered by the social insurance offices (as from 2005 the Swedish Social Insurance Agency) and includes, among other things, compensation for loss of earnings. A work injury must be immediately reported to the employer who is required to notify the social insurance office. The office must obtain a medical opinion concerning the injury. A medical doctor is attached to the office to assist it in medical matters. The assessment of whether an injury qualifies as a work injury, as well as the degree of reduction of a person's ability to engage in gainful employment, shall be made on the basis of the available medical opinions, the medical doctor's assessment of these opinions and any other relevant information.

29. For an injury to qualify as a work injury, a causal link must be established between the accident or harmful effect in the workplace and the insured person's health problems. What is meant by "harmful effect" is the influence of a factor that is very likely to cause an injury or illness such as that incurred by the insured person (Chapter 2, section 1, of the 1976 Act in its wording from 1 January 1993 until 30 June 2002). At the relevant time, the question of whether a particular injury or illness incurred by the insured person was to be regarded as a work injury was subject to the following special rule of evidence. If the insured person had suffered an accident or had been subjected to some other harmful effect at work, his or her medical problems were presumed to have been caused by the accident or the harmful effect if there were substantial grounds in support of such a conclusion (Chapter 2, section 2, of the 1976 Act in its wording from 1 January 1993 and until 30 June 2002).

30. The amendments entering into force on 1 January 1993, and which applied to work injury reports that were submitted after 30 June 1993, the requirements in Chapter 2, sections 1 and 2, of the 1976 Act were tightened up. This meant, *inter alia*, that it had to be "highly probable", and not merely "probable" that a certain factor in the working environment could cause a person's injuries and, thereby, be considered as having harmful effects. The *travaux préparatoires* (see the Government Bill 1992/93:30, pp. 20 and 36) state that this implies that the responsible authorities have to consider more extensively than previously whether the exposure to a harmful factor at work has been of such an extent, intensity and duration that from this it can be concluded that the existence of harmfulness is highly probable. Furthermore, the collected knowledge must indicate with a considerable degree of probability that a factor in the environment is harmful. The view that a certain factor is very likely to cause an injury has to be relatively generally accepted. This is the case where substantial knowledge exists, within medical or other science, that a certain factor has such harmful effects. If there is a lack of such support, such as when, for example, there are profound differences in expert opinions, this requirement cannot be considered as 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 effects.

31. The *travaux préparatoires* also state that the tightened requirement of harmfulness in many cases pre-

supposes more careful investigations at workplaces regarding the harmful factors invoked and that the question of the causes of certain diseases has to be discussed more thoroughly. This, in turn, will result in the social insurance offices and the courts basing their decisions more extensively on different assessments of harmfulness within medical science.

B. Administrative Court Procedure Act

32. Section 9 of the Administrative Court Procedure Act (förvaltningsprocesslagen, Act no. 1971:291, 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.”

33. The travaux préparatoires to the Administrative Court Procedure Act emphasise that an oral procedure can be advantageous for the investigation of a case in two respects in particular. Firstly, such a hearing may be needed in order to examine a witness, expert or party or in cases where a party has difficulty expounding his or her claim in writing. Secondly, an oral hearing may be needed to clarify the positions taken by the parties in the case and perhaps eliminate unnecessary or meaningless points of dispute. In the latter case, the procedure is typically of a preparatory nature. Moreover, the oral form of procedure envisaged in the 1971 Act is not to be seen as an alternative to the written form, but rather as a complement to that form (see the Government Bill 1971:30, p. 535).

34. The possibility of holding an oral hearing in order to promote an expeditious determination of the case, which was first introduced in 1983, was a clarification of a practice that already applied (see the Government Bill 1982/83:134, Parliamentary Committee on Justice JuU 36, Parliamentary Communication 378, SFS 1983:461). The purpose of the legislative amendment was to make it clearer that an oral hearing can and should be used for preparatory purposes in certain cases, to make for speedier and more effective proceedings. The amendment was primarily intended for tax cases associated with tax offence cases before courts of general jurisdiction.

35. Furthermore, the travaux préparatoires to the 1971 Act underlined, in connection with the provision in section 9 of the Act concerning the right of a party to an oral hearing in certain cases, that while serious consideration should be given to the wishes of a party for such a hearing, the party could hardly be allowed to have a decisive influence in the matter. The question of whether a hearing is necessary should primarily be assessed in the light of the existing investigation of the case, but it should also be possible to accord significance to other factors, for example, if the case is very important for the party and a hearing would give him a better understanding of the import of the decision to be given in the case. One particular reason not to arrange an oral hearing could be that the case is of a trivial nature or that the costs of the hearing are high compared to the value of the object of dispute (see Government Bill 1971:30, p. 537).

36. In recent years the Supreme Administrative Court has set aside a number of decisions on appeal and referred the case back to the administrative courts of appeal because of the lack of an oral hearing in the lower courts (see, for example, RA 2002 ref. 23, BA 2003 note 68, RA 2004 note 65 and RA 2007 note 171; as more specifically regards work injuries, see RA 2004 note 66 and RA 2006 note 207). In the last mentioned case, an administrative court of appeal had changed the lower court's judgment to the applicant's disadvantage without holding an oral hearing. Furthermore, the applicant had requested that a medical doctor be heard as a witness.

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicant claimed that the national courts' refusal to hold an oral hearing in his case, despite his explicit request before all three judicial instances, had violated his right to a fair trial.

38. Article 6 § 1 of the Convention reads, in relevant parts, as follows:

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

A. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

40. The applicant claimed that had he had an oral hearing, the outcome of his case would have been different. The expert medical doctor had never examined him, and such a doctor was not criminally liable for writing a medical certificate, like the other doctors were. The Office had also failed to refer to certain precedent cases which had previously been mentioned in the context of similar cases.

41. The applicant claimed that on 29 June 1999 he had been contacted by the County Administrative Court and asked to withdraw his request for an oral hearing even though it had already been decided on 25 May 1998. This had been the reason for requesting an oral hearing before the Administrative Court of Appeal.

(b) The Government

42. The Government maintained that the lack of an oral hearing before the administrative courts did not violate the applicant's right to a fair and public hearing within the meaning of Article 6 § 1 of the Convention. The right to an oral hearing was not absolute. Social security disputes were generally rather technical, their outcome usually being dependent on written opinions given by medical doctors, and many such disputes were better dealt with in writing than in oral argument. The administrative courts had to have regard also to the demands of efficiency and economy: systematic holding of oral hearings could be an obstacle to the particular diligence required in social security cases.

43. In the Government's view the applicant had waived his right to an oral hearing before the County Administrative Court by sending a fax to the court explaining that he was not requesting an oral hearing. As to the proceedings in the Supreme Administrative Court, the applicant had made a request for an oral hearing. However, this court had only determined whether or not leave to appeal should be granted and, as a consequence of its refusal to grant leave to appeal, had not made a full examination of the applicant's case. The Government contended that the case could be adequately resolved on the basis of the case file and written submissions and, accordingly, that the absence of an oral hearing before the Supreme Administrative Court had been justified.

44. As to the lack of an oral hearing before the Administrative Court of Appeal, the Government maintained that in the present case it had been acceptable to reject the applicant's request for oral hearing. It was normally more expedient that a hearing be held at first instance rather than before the appellate court. Moreover, one of the reasons for an oral hearing had been that the applicant had questioned the applicability of an act, an issue, as maintained the Government, of strictly legal character which would not have been

resolved in a more appropriate manner had an oral hearing been held. In any event, the applicant had not requested that the experts involved be heard as witnesses or that he himself be heard in person. He had never returned to the issue or specified the witnesses despite several opportunities given to him. Even if he had, the Government contended that differing medical opinions was not in itself a sufficient reason for the court to hold an oral hearing.

45. The Government maintained that the Administrative Court of Appeal's assessment of written medical evidence had to be considered as rather technical in nature and it could be adequately resolved on the basis of the parties' written submissions. An oral hearing would not have provided any new information. The judgment of the Administrative Court of Appeal had been unanimous. Moreover, the proof required in the present case had been very high, which meant that the burden of proof could not be met if there were profound differences in the experts' opinions. Even though the applicant had not been represented by counsel, his interest had been properly presented and protected and he had been given ample opportunity to put forward his case in writing.

2. The Court's assessment

46. It has not been argued, nor is there anything to suggest, that this case relating to the applicant's claim for benefits under the national social security scheme did not concern a dispute (contestation) over a "right" which could be said, on arguable grounds, to be recognised under domestic law. In particular, it could not be said that the applicant's claim was frivolous or vexatious or otherwise lacking in foundation (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 39 in fine, Reports of Judgments and Decisions 1997-IV). Nor is it disputed, and the Court is satisfied, that the right in question was "civil" in character in the autonomous sense of Article 6 § 1 of the Convention (see, for example, *Duclos v. France*, 17 December 1996, § 53, Reports of Judgments and Decisions 1996-VI). This provision is accordingly applicable; the only issue is whether there was a failure to comply with it on account of the refusal to hold an oral hearing in the case.

47. 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, for instance, *Fredin v. Sweden* (no. 2), 23 February 1994, §§ 21-22, Series A no. 283-A; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; *Allan Jacobsson v. Sweden* (no. 2), 19 February 1998, § 46, Reports of Judgments and Decisions 1998-I; *Salomonsson v. Sweden*, no. 38978/97, § 34, 12 November 2002; *Lundevall v. Sweden*, no. 38629/97, § 34, 12 November 2002; *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Göç v. Turkey* [GC], no. 36590/97, §§ 47-52, ECHR 2002-V; and *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 73, ECHR 2007-IV).

48. 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. 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 *Schuler-Zraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; *Salomonsson v. Sweden*, cited above, § 38; *Lundevall v. Sweden*, cited above, § 38; and *Döry v. Sweden*, cited above, § 41).

49. The Court further reiterates that, provided a public hearing has been held at first instance, a less strict standard applies to the appellate level, at which the absence of such a hearing may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given the opportunity to be heard in person by the appeal or cassation court. Regard must be had to the nature of the national appeal system, to the scope of the appellate court's po-

wers and to the manner in which the applicant's interests are actually presented and protected in the appeal, particularly in the light of the nature of the issues to be decided by it, and whether these raise any questions of fact or questions of law which cannot be adequately resolved on the basis of the case-file (see for instance *Helmerts v. Sweden*, 29 October 1991, § 36, Series A no. 212-A).

50. The Court considers that this less strict standard should also apply if an oral hearing has been waived at first instance and requested only on appeal. In the interests of the proper administration of justice, it is normally more expedient that a hearing be held at first instance rather than only before the appellate court (see the above-mentioned *Döry* judgment).

51. 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. There can be no question of the applicant having waived any right to a hearing under Article 6 § 1 of the Convention (cf. *Håkansson and Sturesson v. Sweden*, 21 February 1990, §§ 64 and 66, Series A no. 171-A; and *Schuler-Zraggen v. Switzerland*, cited above, § 58). The applicant had already expressly requested an oral hearing at what, in the Court's view, was the most appropriate stage of the proceedings - at first instance before the County Administrative Court - and the court had rejected that request on 25 May 1998. It cannot thus be said that the applicant would have waived his right to an oral hearing on 29 June 1999 as such request had already been decided by the County Administrative Court for more than a year earlier. On this account alone the present case is more striking than those of the aforementioned *Salomonsson* and *Lundevall* judgments, where an oral hearing was not requested until the appeal to the Administrative Court of Appeal, and where the Court nevertheless found a violation.

52. The applicant also made a request for an oral hearing to the Administrative Court of Appeal and the Supreme Administrative Court. Since the Supreme Administrative Court refused him leave to appeal, the County Administrative Court and the Administrative Court of Appeal became the only instances to examine the merits of his case. Therefore the only issue to be determined is whether the courts' refusal to hold an oral hearing was justified by exceptional circumstances.

53. In this regard the Court notes, by way of general observation, that proceedings before the Swedish administrative courts were in principle in writing. Pursuant to section 9 of the 1971 Administrative Court Procedure Act, before the Administrative Court of Appeal and the County Administrative Court, an oral hearing should be held if so requested by a party and if the competent court found that a hearing would neither be unnecessary nor dispensable for other particular reasons. According to the interpretation made by the Swedish courts, these two grounds for refusing a request to hold an oral hearing were alternative, not cumulative (see paragraph 32 above). Thus, there is an apparent discrepancy between the Convention case-law, according to which in principle an oral hearing must be held unless there are exceptional reasons, and the standard applied by the national courts which reverses the order of the principle. The Court considers that the respondent State should take appropriate measures to ensure that it is the Convention standard that applies.

54. It should also be emphasised that both the County Administrative Court and the Administrative Court of Appeal had full jurisdiction to examine the issue raised in the applicant's appeal, namely whether he fulfilled the conditions for obtaining occupational injury compensation under Chapter 2, sections 1 and 2, of the 1976 Work Injury Insurance Act. According to these provisions, it had to be "highly probable" that a certain factor in the working environment could cause a person's injuries, and thereby be considered as having harmful effects.

55. In addition, the medical certificates on which the applicant relied supported rather than contradicted his claim that he fulfilled the above conditions for occupational injury compensation. However, both the County Administrative Court and the Administrative Court of Appeal found that the applicant had failed to show that there was a high level of probability that his work at the slaughterhouse had caused his hip joint arthritis.

56. Therefore, in the Court's view, the question of the cause of the injury was apparently not straightforward. The Court is unable to accept the Government's argument that oral evidence from the applicant's

personal doctors was unlikely to add anything useful. On the contrary, it is not inconceivable that the doctors could have fleshed out at an oral hearing the various observations they had made in the relevant medical records, and could have given their opinion on the implications for the issues raised before the relevant courts. This is all the more so, considering that, according to the preparatory works, the tightened requirement of harmfulness in many cases presupposed that the question of the causes of certain diseases had to be discussed more thoroughly and the courts would have to base their decisions more extensively on different assessments of harmfulness within medical science.

57. The Court considers that the issues raised by the applicant's judicial appeal were not only technical in nature. In its view, the administration of justice would have been better served in the applicant's case by affording him a right to explain, on his own behalf or through his representative, his personal situation, taken as a whole at the relevant time, in a hearing before the administrative courts (see, *mutatis mutandis*, the above-cited Göç judgment, § 51).

58. Finally, as regards the Government's submission that the applicant failed to specify before the Administrative Court of Appeal whom he wanted to call as witnesses, the Court observes that it does not appear from the case file that the applicant had been expressly invited by that court to do so. The applicant stated before that court that he requested an oral hearing in order to "prove his case". Therefore, the Court finds that the Administrative Court of Appeal had sufficient elements to be in a position to consider the necessity of an oral hearing.

59. In these circumstances it could hardly be said that the applicant's claim was incapable of giving rise to any issue of fact or of law which was of such a nature as to require an oral hearing for the determination of the case. Against this background it cannot be said that the question of whether the applicant fulfilled the legal conditions for the grant of occupational injury compensation was of such a nature as to dispense the administrative courts from their normal obligation to hold an oral hearing.

60. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. The applicant claimed SEK 30,000 (approximately EUR 3,225) in respect of non-pecuniary damage occasioned by the absence of an oral hearing and SEK 50,000 concerning the excessive length of proceedings.

63. The Government pointed out that the complaint concerning the excessive length of proceedings had been declared inadmissible by the Court on 3 June 2008. As to the absence of an oral hearing, the Government considered the applicant's claim too high as to quantum and contended that the finding of a violation constituted sufficient reparation in the present case.

64. The Court recalls that the complaint concerning the excessive length of proceedings has been declared inadmissible by the Court on 3 June 2008. The Court, making an assessment on an equitable basis, awards the applicant EUR 3,000 in respect of non-pecuniary damage occasioned by the absence of an oral hearing.

B. Costs and expenses

65. The applicant also claimed SEK 31,300 (approximately EUR 3,365) as costs and expenses which

amount comprised the consultant's work (SEK 13,300), "own costs and expenses" (SEK 14,000) and other expenses (SEK 4,000). The applicant also claimed compensation for expenses amounting to EUR 5,200.

66. The Government had no objections to the claim for SEK 13,300 or EUR 1,300 (excluding the value-added tax). As concerned the "own costs and expenses", the Government considered that the amount of SEK 7,000 or EUR 700 (excluding the value-added tax) should be awarded in this respect. The other expenses amounting to SEK 4,000 or EUR 400 (excluding the value-added tax) were acceptable to the Government. In sum, in the Government's view compensation to be awarded for costs incurred should not exceed a total of EUR 2,000 and compensation for expenses EUR 400 (excluding the value-added tax).

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,500 covering costs and expenses under this head.

C. Default interest

68. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declared the complaint concerning the lack of an oral hearing admissible;

2. Held that there has been a violation of Article 6 § 1 of the Convention;

3. Held

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Swedish kronor at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to him, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismissed the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Josep Casadevall Registrar President

ANDERSSON v. SWEDEN JUDGMENT

Maat: Ruotsi

Antopäivä: 07.12.2010

Art: 6:1, 41

EIT: --

Vuosikirja: --

V: Freddie Andersson

Kysymys oikeudenmukaisesta oikeudenkäynnistä, kun työoloista johtuneeksi väitetystä lonkkaviasta maksettavaa vakuutuskorvausta koskeneessa asiassa ei pidetty suullista käsittelyä.

TOSISEIKAT: Vuonna 1930 syntynyt valittaja pyysi syyskuussa 1996 vakuutuskassalle tekemällään hakemuksella sen vahvistamista, että hänen alaselkensä ja lonkkansa vaivat olivat työperäisiä ja perustaisivat hänelle siten oikeuden työvammakorvaukseen. Päätöksellään joulukuussa 1996 kassa totesi, että valittaja oli ollut raskaassa työssä teurastamossa vuoteen 1982 saakka, jolloin hän oli muuttanut Yhdysvaltoihin ja tehnyt rakennustöitä. Kesäkuussa 1988 hänelle oli myönnetty varhaiseläke alaselkä- ja lonkkanivelvaivojensa vuoksi. Oli mahdollista, että vaivat olivat aiheutuneet hänen työstään Yhdysvalloissa. Niin ollen hakemusta ei voitu tutkia. Valittajan oikaisuvaatimus hylättiin. Hän valitti lääninoikeudelle ja totesi, että hän oli perustanut Yhdysvalloissa yhtiön tuodakseen Ruotsiin lasikuitukangasta mutta joutunut aluksi tekemään mittausta-, asennus- ja maalaustöitä. Jo tuolloin hänellä oli ollut kyseisiä kipuja, joiden vuoksi hän oli joutunut myymään yhtiönsä ja jäämään pois työstä. Hän jätti teurastamon lääkärin antaman todistuksen, jonka mukaan hänen sairautensa olivat työperäisiä. Hän oli työssään joutunut kantamaan raskaita eläinten ruhoja ja lihanpaloja portaissa, mikä oli rasittanut huomattavasti selkää, lonkkaa, polvia ja nilkkoja. Lisäksi teurastamon työtilat olivat kosteita ja vetoisia ja lattiat liukkaita. Lääninoikeus kumosi kassan päätöksen ja palautti jutun syyskuussa 1997 katsottuaan, että valittajan ilmoittamat vaivat olivat hyvin voineet aiheutua työstään Ruotsissa. Palautuksen jälkeen vakuutuskassa hankki omalta ortopediaan erikoistuneelta lääkäriltään lausunnon, jossa todettiin, että lonkkanivelvaivat olivat alkaneet vuosina 1985-1986. Röntgentutkimuksissa vuonna 1988 oli todettu, että niveleen oli tullut degeneroituneita muutoksia. Sen sijaan alaselästä ei ollut huomautuksia. Lonkkanivelleikkaus hänelle oli tehty heinäkuussa 1996. Lääkärin mielestä sanotut vaivat johtuivat valittajalle 55 ikävuoden jälkeen vähitellen kehittyneestä niveltulehduksesta eivätkä hänen työstään. Lääketieteellinen kirjallisuus ei antanut tukea sille, että niveltulehdus voisi aiheutua työympäristöstä. Tammikuussa 1998 vakuutuskassa katsoi mainitun lausunnon nojalla, ettei valittaja ollut oikeutettu työvammakorvaukseen.

Valittaja valitti lääninoikeudelle ja jätti häntä hoitaneen ortopediseen kirurgiaan erikoistuneen lääkärin lausunnon, jonka mukaan oli todennäköistä, että lonkkavika oli aiheutunut valittajan raskaasta työstä teurastamossa, koska sellaista sairautta ei esiintynyt hänen perheessään ja se oli tullut hänelle normaalia varhaisemmalla iällä. Työskentely Yhdysvalloissa ei ollut mitenkään vaikuttanut niveltulehduksen syntyyn. Vastauksessaan kassa väitti, että mainittu lausunto ei selkeästi osoittanut vaivojen työperäisyyttä. Valittaja pyysi lääninoikeutta pitämään suullisen käsittelyn, jossa hän voisi kertoa työoloistaan. Pyyntö kuitenkin evättiin ja häntä kehoitettiin antamaan loppulausunnon. Kun lääninoikeus sittemmin tiedusteli lausuntoa, hän pyysi uudelleen suullista käsittelyä mutta lähetti samana päivänä faksin, jossa hän ilmoitti, ettei hän vaatinut suullisen käsittelyn pitämistä. Lääninoikeus hylkäsi valituksen kesäkuussa 1999. Perusteluissa ei kyseenalaistettu valittajan työn raskautta teurastamossa. Hakemuksen hyväksyminen edellytti kuitenkin, että suhteellisen laajalti pidettäisiin hyvin todennäköisenä, että työympäristö voisi aiheuttaa lonkkanivelen tulehduksen. Valittaja ei ollut näyttänyt sellaista todennäköisyyttä. Valittaja valitti edelleen hallintoylioikeudelle ja pyysi suullista käsittelyä voidakseen kertoa työoloistaan teurastamossa ja lausua lääkärintutkimuksista. Hän ilmoittaisi myöhemmin henkilön, jota hän kuulisi asiantuntijana. Hän jätti myös erään toisen ortopedin antaman lausunnon, joka häntä tutkittuaan katsoi, että hänen lonkkavaivansa olivat työperäisiä. Lääkärin mukaan oli tutkimuksia, joiden mukaan lonkkaniveltulehduksen kehittyminen oli yhteydessä raskaaseen fyysiseen työhön. Vastauksessaan vakuutuskassa kiisti sanotun lausunnon ja vaati valituksen hylkäämistä. Hallintoylioikeus piti suullisen käsittelyn järjestämistä tarpeettomana ja syyskuussa 2001 hylkäsi valituksen nojautuen vakuutuskassan asiantuntijalääkärin lausuntoon. Perusteluissa huomautettiin myös siitä, että valittaja oli lopettanut työt teurastamossa jo vuonna 1980 ja lonkkaleikkaus oli tehty vasta vuonna 1996. Valittaja valitti edelleen korkeimmalle hallinto-oikeudelle ja pyysi jälleen

suullista käsittelyä kertoakseen työoloistaan teurastamossa ja voidakseen tehdä asiantuntijoille kysymyksiä hänen sairaudestaan ja sen syistä. Suullista käsittelyä ei kuitenkaan pidetty tarpeellisenä ennen valitusluvasta päättämistä. Marraskuussa 2003 korkein hallinto-oikeus epäsi valituslupan.

TUOMIO: 1) EIS 6 artiklan 1 kohdan rikkominen

Valittaja väitti rikkomusta, kun mikään juttua käsitelleistä kolmesta oikeusasteesta ei ollut suostunut pitämään suullista käsittelyä. Vakuutuskassan lääkäri ei ollut tutkinut häntä eikä tämä, toisin kuin muut lääkärit, ollut rikosoikeudellisesti vastuussa lausunnoistaan.

Tapauksessa oli riidatonta, että valitus koski yksityisluonteista oikeutta, jota voitiin ainakin puolustettavien perusteiden pitää kotimaisen oikeuden tunnustamana. Niin ollen EIS 6 artikla soveltui. Sen mukaan suullisen käsittely tuli pitää oikeudessa, jos se oli ainut oikeusaste eikä ollut sellaisia poikkeuksellisia asianhaaroja, jotka perustivat vapautuksen tuosta velvollisuudesta. Vapautusta harkittaessa oli otettava huomioon tuomioistuimessa päätettävien kysymysten laatu mutta ei sen sijaan niiden toistuvuus. Siten ei voitu sanoa, että suullisen käsittelyn pitämättä jättäminen oli oikeutettua vain hyvin harvoissa tapauksissa. Sosiaaliturva-asiat olivat laadultaan yleisesti verrattain teknisiä ja lopputulos riippui usein kirjallisista lääke- ja lausunnoista. Siten monesti sellaisia asioita voitiin käsitellä paremmin kirjallisessa kuin suullisessa menettelyssä. Viranomaisen tuli ottaa huomioon tehokkuuden ja taloudellisuuden vaatimukset. Suullisten käsittelyjen säännönmukainen järjestäminen voisi johtaa ristiriitaan sosiaaliturva-asioissa vaaditun joutuisuuden kanssa. Jos suullinen käsittely oli pidetty ensimmäisessä oikeusasteessa, sen pitämiseen valitusasteessa ei tarvinnut suhtautua yhtä tiukasti. Siten menettely valituslupaa tai pelkkiä oikeuskysymyksiä koskeissa asioissa saattoi täyttää EIS 6 artiklan vaatimukset, vaikka valittajaa ei kuultaisi henkilökohtaisesti valitusasteissa. Huomioon oli otettava asianomaisen valituksen laatu, valitusasteen toimivaltuudet ja se, miten valittajan etuja ajettiin ja turvattiin valitusasteessa erityisesti sen päätettäviin kysymyksiin nähden. Tuollainen lievämpi suhtautuminen suulliseen käsittelyyn oli paikallaan myös silloin, kun valittaja oli luopunut suullisesta käsittelystä ensimmäisessä oikeusasteessa ja pyysi sitä valitusasteissa. Oli normaalisti mielekkäämpää järjestää suullinen käsittely ensimmäisessä eikä ylemmissä oikeusasteissa.

EIT pani merkille, että valittaja oli alunperin pyytänyt suullista käsittelyä lääninoikeudessa ja pyyntö oli eväty oikeuden päätöksellä. Niin ollen ei voitu katsoa, että hän olisi myöhemmällä menettelyllään luopunut oikeudestaan suulliseen käsittelyyn tuossa oikeusasteessa eli kaikkein sopivimmassa vaiheessa oikeudenkäyntiä. Juttu oli tutkittu vain lääninoikeudessa ja hallintoylioikeudessa, kun korkein hallinto-oikeus oli evännyt valituslupan. Edellisillä oli ollut täysi toimivalta tutkia juttua eli kysymystä siitä, täytyivätkö työvamman korvauksen saamisen edellytykset. Lain mukaan täytyi olla hyvin todennäköistä, että jokin seikka työympäristössä oli voinut aiheuttaa loukkaantumisen. Valittaja oli jättänyt väitteidensä tueksi lääkärintodistuksia. Niin ollen kysymys loukkaantumisen syistä ei ollut ollut ilmeisen selvä. Ei voitu katsoa, että valittajan lääkäreiden suullinen kuuleminen ei todennäköisesti olisi selventänyt asiaa. Päinvastoin oli otaksuttavissa, että lääkärit olisivat voineet tarkentaa potilasasiakirjoihin tekemiään merkintöjä ja esittää käsityksiään tuomioistuimissa esillä olleista kysymyksistä. EIT viittasi myös kansallisen vakuutuskorvauslain esitöihin, joiden mukaan tiukentuneet vaatimukset työntekijälle aiheutuneen haitan suhteen edellyttivät, että tiettyjen sairauksien syitä käsiteltiin entistä perusteellisemmin tuomioistuimissa. EIT:n mielestä tuomioistuinten päätettävät kysymykset eivät olleet olleet pelkästään teknisiä. Oikeudenhoidon vaatimuksia olisi edistänyt paremmin se, että valittaja olisi saanut tilaisuuden kertoa henkilökohtaisista oloistaan koko relevanttina ajanjaksona suullisessa käsittelyssä. EIS 6 artiklan 1 kohtaa oli rikottu.

2) EIS 41 artiklan soveltaminen

Valittaja pyysi korvausta aineettomasta vahingostaan ja oikeudenkäyntikuluistaan EIT:ssa. EIT myönsi vahingosta 3.000 euroa ja kuluista 2.500 euroa.

LOPPUTULOS: EIT katsoi yksimielisesti, että EIS 6 artiklan 1 kohtaa oli rikottu ja valtion oli maksettava valittajalle korvausta aineettomasta vahingosta 3.000 euroa ja kuluista 2.500 euroa kummatkin mahdollisine veroineen 3 %:lla korotetun EKP:n maksuvalmiusluoton koron mukaisine viivästyskorkoineen.

Viittaukset: Håkansson and Stureson, EIT: A-171-A; Helmers, EIT: A-212-A; Schuler-Zraggen, EIT:

A-263; Fredin, EIT: A-283-A; Fischer, EIT: A-312; Duclos, R:1996/VI; Rolf Gustafson, R:1997/IV; Allan Jacobsson, R:1998/I; Göc, R:2002/V; Salomonsson 12.11.2002; Lundevall 12.11.2002; Döry 12.11.2002; Vilho Eskelinen and others, R:2007/IV.