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

SECOND SECTION

CASE OF KLEMECO NORD AB v. SWEDEN

(Application no. 73841/01)

JUDGMENT

STRASBOURG

19 December 2006

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 Klemeco Nord AB v. Sweden,

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

Mr A.B. BAKA, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. PELLONPÄÄ,
Mrs A. MULARONI,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 73841/01) 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 company, Klemeco Nord AB ("the applicant company"), on 3 April 2001.

2. The applicant company was represented by Mr. B. Burström, its sole owner. He lives in Munka-Ljungby. The Swedish Government ("the Government") were represented by their Agent, Ms I. Kalmerborn of the Ministry for Foreign Affairs.

3. On 14 June 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of reasoning in the Court of Appeal's judgment to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the remaining application at the same time.

4. Moreover, Ms. Elisabet Fura-Sandström, the judge elected in respect of Sweden, withdrew from sitting in the case (Rule 28) and the Government accordingly appointed Mr. Matti Pellonpää, the judge elected in respect of Finland, to sit as judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a limited company registered in Sweden.

6. In 1986 the applicant company sued company X. for breach of contract and requested SEK 609,000 in compensation. The District Court (*tingsrätten*) in Malmö rejected the claim but, upon appeal, the Court of Appeal (*hovrätten*) of Skåne and Blekinge awarded the applicant company SEK 442,942. Company X. appealed to the Supreme Court (*Högsta domstolen*) which, in 1992, quashed the Court of Appeal's judgment and upheld the District Court's judgment. Before the District Court and the Court of Appeal, the applicant company was represented by lawyer A. However, after the oral hearing in the Court of Appeal, the applicant company made it clear that it had lost confidence in A., who accordingly resigned from the case. During the proceedings before the Supreme Court, the applicant company was represented by another lawyer.

7. On 7 June 1993 the applicant company sued A. before the District Court of Ängelholm, claiming that she had been negligent while representing it before the District Court and the Court of Appeal. In particular, she had failed to invoke a standard contract ("EÅ 85") as a ground for their claim. It demanded that A. pay it SEK 1,478,054 (approximately EUR 161,000) in compensation. A. contested the allegations and insisted that she had carried out her assignment with proper care. Both parties, in particular the applicant company, submitted extensive pleadings and documents, and the court held three oral preparatory meetings with the parties. Following each of these meetings, more submissions were made by the parties, and efforts were made to find a theme on which the District Court could issue an interim judgment (*mellandom*). However, these efforts failed. Furthermore, in submissions to the District Court between September and December 1995, both parties revoked their witnesses, leaving only the applicant company's owner and A. to be heard at the main hearing.

8. On 22 and 23 January 1996 the District Court held an oral hearing on the merits of the case and, on 23 February 1996, it rejected the applicant company's claim. It gave detailed grounds for its judgment. In its conclusion, the court stated, *inter alia*, that it found that A. had not been negligent in any of the respects referred to by the applicant company. On the contrary, the examination of the case confirmed that A. had carried out her assignment conscientiously and skilfully.

9. On 14 March 1996 the applicant company appealed against the judgment to the Court of Appeal of Skåne and Blekinge. In May 1996 it supplemented its appeal and submitted new evidence which it requested the

court to accept. It further requested that the case be remitted to the District Court and that it be granted legal aid.

10. In May 1996 the Court of Appeal rejected the request for legal aid, a decision against which the applicant company appealed. Consequently, the entire case file was sent to the Supreme Court which, in October 1996, upheld the decision and sent the case file back to the Court of Appeal. In October and December 1996, the applicant company made further submissions to the court, which were sent to the other party for comments.

11. An oral hearing was planned for the middle of April 1997, but it was postponed since A. could not attend.

12. In July 1997 the Court of Appeal rejected the applicant company's request to have the case remitted to the lower court, but admitted the new evidence which had been produced as it considered that the applicant company had had a valid excuse for not having relied on such material before the District Court.

13. The Court of Appeal then set a new date for an oral hearing in February 1998. However, it was again postponed, this time because a hearing in a criminal case was given priority. Instead, the hearing was scheduled for the beginning of October 1998. On 25 August 1998 the summons to the hearing was sent to the parties and, on 7 September 1998, the applicant company contacted the court with a request that the hearing be postponed until it could find a lawyer to represent it. It further noted that the court had promised to contact it before setting the date for the hearing, but had failed to do so. Consequently, the court granted the request and ordered the applicant company to inform it, no later than 15 October 1998, about its legal representation. On this date, the applicant company notified the court that its owner would represent it (as he had done all along). The oral hearing was held on 13 and 14 October 1999.

14. On 4 November 1999 the Court of Appeal delivered its judgment. It briefly set out the parties' claims and submissions, but did not expressly refer to the new evidence which the applicant company had been allowed to submit. Under the title “the Court of Appeal's judgment”, it simply held:

> “The Court of Appeal confirms the District Court's judgment”.

15. Further, it appended the lower court's judgment to its own.

16. On 1 December 1999 the applicant company appealed to the Supreme Court, stating, *inter alia*, that the proceedings before the Court of Appeal had been of excessive duration and that the judges had been biased against it. In February 2000 the applicant company made further submissions in which it developed its grounds of appeal.

17. On 19 October 2000 the Supreme Court refused leave to appeal.

18. In February 1999 the applicant company complained to the Chancellor of Justice (*Justitiekanslern*) that the District Court and the Court of Appeal had delayed the proceedings in its case. After having received

submissions from the two courts, to which the applicant company replied, the Chancellor of Justice decided, in April 1999, that no further action would be taken in the matter. In its submission, the District Court first noted that since A. worked as a lawyer within its jurisdiction, judges of another court had dealt with the case which had prolonged the proceedings somewhat. It further considered that the circumstances of the case had been special and fairly complicated from a legal point of view, and that the preparations for the main hearing had been demanding. For its part, the Court of Appeal noted, *inter alia*, that the case had not concerned a complicated matter, but the case file had been voluminous and difficult to grasp. It regretted that the processing of the case had taken so long and that the court had failed to contact the applicant company, as promised, before setting a hearing date in October 1998.

II. RELEVANT DOMESTIC LAW

19. Proceedings before the general courts in civil disputes are mainly governed by the 1942 Code of Judicial Procedure (*rättegångsbalken* – hereinafter "the Code") with amendments.

20. Chapter 42, section 6, of the Code stipulates that a district court shall prepare cases with a view to their speedy adjudication. The Code does not, however, contain any provisions stating that civil cases must be determined within certain time-limits.

21. Moreover, according to Chapter 17, section 7 of the Code, a judgment in civil cases shall specify in separate sections: the court; the time and place of the pronouncement of the judgment; the parties and their representatives; the final judgment (*domslut*); the parties' claims and objections and the circumstances on which they are founded; and the reasoning in support of the judgment (*domskäl*), including a statement of what has been proven in the case.

22. However, in certain cases the courts may render a judgment in a so-called simplified form (*förenklad form*). Thus, Chapter 17, section 8 of the Code states that a judgment by a higher court confirming the judgment of a lower court may be so simplified. In such a case, the appellate court must give reasons for its judgment only in so far as they differ from those of the lower court judgment (section 22 of the Ordinance concerning Cases and Matters before the General Courts; *förordningen om mål och ärenden i allmän domstol,* SFS 1996:271). If the appellate court simply confirms the latter, it means that it shares the assessment of the lower court with regard to both the final judgment and the reasoning.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

23. The applicant company complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

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

24. The Government contested that argument.

25. The period to be taken into consideration began on 7 June 1993 and ended on 19 October 2000. It thus lasted over seven years and four months for three levels of jurisdiction.

A. Admissibility

26. The Government submitted that the applicant company had failed to exhaust the domestic remedies available to it since it had not sued the Swedish State for damages on account of the length of the proceedings. They relied on a judgment of the Supreme Court, pronounced on 9 June 2005, where a plaintiff had been granted compensation for both pecuniary and non-pecuniary damage because of a breach of the "reasonable time" requirement of Article 6 § 1 of the Convention in a criminal case. Thus, according to the Government, the applicant company should have tried this venue before complaining to the Court or, in any event, should now do so.

27. The Court first observes that the case before the Supreme Court referred to by the Government related to criminal proceedings whereas the present case before the Court relates to civil proceedings. Moreover, the judgment of the Supreme Court was pronounced on 9 June 2005, i.e. more than four years after the applicant company lodged its case with the Court. Thus, the Court considers that it cannot now be required of the applicant company to lodge a compensation claim before the national courts and nor could it have been expected to have done so 5 years ago since, at that time, there were no indications that it would have been an effective remedy. In this respect, the Court notes that the applicant company, during the proceedings before the Court of Appeal, did complain to the Chancellor of Justice that the proceedings were taking too long. The Government's objection must therefore be dismissed.

28. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also

notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

30. The Government claimed that the case had been rather complicated from a legal point of view, in particular because of the extensive written materials submitted by the parties. Moreover, they alleged that the applicant company had been responsible for much of the delays, in that it had repeatedly altered its claims, added new grounds and evidence, and had made frequent requests for extensions of time-limits. Furthermore, they argued that the case did not require special priority and the applicant company's conduct during the proceedings did not demonstrate a pressing wish or need for a quick determination.

31. The applicant company maintained its stance and stressed that its case had been treated with low priority even though it had involved a significant amount of money for it. Moreover, it had repeatedly urged the national courts to expedite their handling of its case.

32. The Court, like the Court of Appeal in its submissions to the Chancellor of Justice, considers that the case did not concern a complicated matter, but the case file was voluminous and therefore difficult to grasp. It further observes that the applicant company was responsible for some of the delays when requesting several extensions of time-limits. However, the Court does not find that its conduct alone contributed to the prolonged length of the proceedings. On the contrary, the Court is of the opinion that there were periods of inactivity, in particular before the Court of Appeal, which were attributable to the national courts, and that their handling of the case did not promote its timely completion.

33. Thus, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings of which complaint is made was, overall, excessive and failed to meet the “reasonable time” requirement.

34. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE FAIRNESS OF THE PROCEEDINGS

35. The applicant company also complained that the proceedings had not been fair as the Court of Appeal had failed to give reasons for its judgment.

36. The Government contested this view.

A. Admissibility

37. The Government argued that this complaint was manifestly ill-founded as the Court of Appeal had expressly stated that it upheld the District Court's judgment in full, and had appended the lower court's judgment to its own. They stressed that this technique of drafting and presenting the judgment was in accordance with Swedish legislation and legal tradition. Moreover, they claimed that it had not hindered the applicant company from appealing in an effective way against the judgment, as was evident from its submissions to the Supreme Court. Furthermore, the fact that the Court of Appeal did not mention the new evidence invoked by the applicant company was clearly because it had no bearing on the outcome of the case. Thus, the Government considered that the proceedings had been fair, noting that the applicant company had had the benefit of adversarial proceedings, including an oral hearing, and had been able to present all the arguments and evidence which it considered relevant to the case.

38. The applicant company maintained that the Court of Appeal should have given its own reasons, clearly stating the grounds for its decision. This was especially important as the company had submitted new, relevant evidence to the appellate court and, moreover, had complained about several deficiencies in the District Court's handling of the case. Having regard to the very special circumstances of its case and the amount of money at stake, it argued that the Court of Appeal had had no excuse for not giving a well-reasoned judgment.

39. The Court reiterates that, according to its established case-law reflecting the need for the effective administration of justice, courts and tribunals should adequately state the reasons on which they base their decisions. The extent to which this obligation applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. However, 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 of the lower court (see the *García Ruiz v. Spain* judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 26; *Helle v. Finland*, judgment of 19 December 1997, *Reports* 1997-VIII, §§ 59-60).

40. In the present case, the Court observes that the District Court gave detailed reasons for its judgment, leaving no doubt as to how it had reached

its conclusions. Moreover, both the applicant company and A. were allowed to invoke and develop their grounds and evidence, and even alter their claims, during the proceedings before the lower court. Thus, the Court finds that the proceedings before the District Court were fair and that the applicant company could appeal in an effective way against its judgment to the Court of Appeal.

41. Concerning the proceedings before the Court of Appeal, the Court notes that the appellate court took separate decisions with regard to the procedural requests made by the applicant company, including allowing it to submit new evidence. Furthermore, the Court of Appeal held an oral hearing and allowed both parties to supplement their submissions before it. Thus, in these respects, the applicant company also benefited from adversarial and fair proceedings before the Court of Appeal.

42. The Court emphasises that the function of a reasoned judgment is to afford the parties the possibility of an effective appeal and to show to the parties that they have been heard (see, *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003). By confirming the District Court's judgment and appending it to its own, the Court of Appeal demonstrated to the parties that it agreed with the lower court's reasoning and that the new evidence before it did not alter its conclusion. Consequently, the Court finds that the appellate court's judgment was sufficiently clear and did not hinder the applicant company's effective appeal to the Supreme Court.

43. Thus, the Court considers that, taken as a whole, the proceedings at issue were fair, for the purposes of Article 6 § 1 of the Convention.

44. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant company claimed a total amount of 10,000,000 Swedish kronor (SEK) (approximately EUR 1,076,000) in compensation, covering pecuniary and non-pecuniary damage as well as costs and expenses. It stated that this included all its legal costs during the national proceedings and the proceedings before the Court, the accrued interest, and its economic losses due to A.'s failure to represent it properly in the first

proceedings before the national courts. In addition, it claimed EUR 7,500 in non-pecuniary damage for suffering and distress caused by the delay in the national proceedings.

47. The Government contested these claims. They contended that there was no causal link between any violation of Article 6 § 1 of the Convention and the alleged pecuniary damage. In their view, the finding of a violation would constitute sufficient just satisfaction. In any event, they considered that the applicant company should not be granted more than EUR 1,000 in this regard.

48. The Court finds no causal link between the violation found and the alleged pecuniary damage. However, the Court considers that the applicant company must have sustained some non-pecuniary damage because of the excessive length of the national proceedings. Ruling on an equitable basis, it awards EUR 2,000 under that head.

B. Costs and expenses

49. Of the SEK 10,000,000 claimed by the applicant company, it specified that SEK 60,000 (EUR 6,458) related to the costs and expenses incurred before the Court. It submitted an invoice for the translation of submissions to the Court from Swedish to English in the amount of SEK 8,280 (EUR 891).

50. The Government contested the claims. They noted that the applicant company had not provided a breakdown of the sums claimed and that most of its complaints had been declared inadmissible. Thus, the claim under this head should be rejected.

51. According to the Court's case-law, an applicant is entitled to 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant company, which was not represented by a lawyer, the sum of EUR 500 for the costs and expenses incurred before the Court.

C. Default interest

52. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant company, 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 2,000 (two thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	A.B. BAKA
Registrar	President