



Supreme Court's JUDGMENT

delivered in Stockholm on 14 June 2024

Case no.
T 2760-23

PARTIES

Appellant

TR

Counsel: Attorney MC and lawyer FC

Respondent

Nässjö Municipality, 212000-0548
571 80 Nässjö

Counsel: Attorney EN

THE MATTER

Damages

RULING APPEALED

Judgment of the Göta Court of Appeal of 17/03/2023 in case T 2839-22.

JUDGMENT

The Supreme Court affirms the operative part of the judgment of the Göta Court of Appeal.

It is for the District Court to adjudicate the question of costs of litigation incurred in the Supreme Court in connection with the final decision of the case.

CLAIMS IN THE SUPREME COURT

TR has requested that the Supreme Court declare that her claim for damages against the Nässjö Municipality is not time-barred.

Nässjö Municipality has opposed modification of the judgment of the Court of Appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

REASONS FOR THE JUDGMENT

Background

1. From 1972 until 1974, TR was placed in foster care. In December 2021, she brought an action against Nässjö Municipality because of the placement, due to, inter alia, sexual abuse which allegedly occurred in the foster care during that time.

2. In the trial before the district court, TR request that the municipality pay SEK 300,000 in immaterial damages to her. In cause of her action, she refers to the municipality's failure to fulfil its supervisory responsibilities under the Child Welfare Law of 1960, thereby violating her rights under

Article 3 of the European Convention on Human Rights (ECHR) concerning inhuman treatment and Article 8 concerning respect for family life. She refers to governmental liability for fault or negligence in the current Chapter 3, Section 2, of the Tort Liability Act, to the provisions on convention damages in Chapter 3, Section 4, and to the case law and general principles regarding liability for violations of the ECHR. In the latter respect, she refers to the case law on the right to damages based directly on the ECHR which, without any explicit legal basis, has been developed by the Supreme Court in a number of judgments since 2005.

3. After the municipality objected that TR's claim for damages was time-barred, the district court decided to adjudicate that question by an intermediate judgment. The district court found that the claim is time-barred. The Court of Appeal has come to the same conclusion.

General information about limitations of actions and the ECHR

4. According to Section 2, first paragraph of the Limitation Act (1981:130), a claim is time-barred ten years after it has arisen, unless the limitation period is interrupted before then. The limitation of actions deprives the creditor of his or her right to enforce a claim.

5. In particular, this case raises the question of how the application of the Limitation Act in this instance relates to the ECHR.

6. Article 6 para 1 of the ECHR provides for a right of access to court but, as the European Court of Human Rights has stated, this right is not absolute. A measure that entails a restriction, such as limitation of actions, may be acceptable and within the Contracting States' margin of appreciation, if it does pursue a legitimate aim and if there is proportionality between the aim and the measure. The purposes of limitation of actions are usually referred to as the interest of foreseeability and the possibility of an

acceptable legal procedure, e.g., concerning the preservation of evidence. According to the European Court of Human Rights, there is a wide margin of appreciation as regards the starting point and length of the limitation period.¹

7. Limitation of actions may also violate the right to an effective remedy under Article 13. In this context, the European Court of Human Rights has emphasised that limitation of action, on the national level, may not be applied in an "excessively formalistic" manner.²

8. In this assessment, the European Court of Human Rights has taken into account to what extent the individual has had a real opportunity to assert his or her claim in time, although it is difficult to derive any generally applicable principle in this regard from the present case law.³ It may also be noted that some of the judgments of the European Court of Human Rights concern national limitation rules of a more procedural nature which have completely prevented judicial review, but the principles laid down by the Court must also be considered to play a role in statutory limitation provisions that is more substantively oriented, such as in Sweden.

Limitation of actions and damages for fault or negligence

9. In the case of compensation for immaterial damage, arising from fault of negligence in the exercise of official authority, the limitation period normally commences when the harmful act or omission occurs. Thus, to the extent that TR can assert a claim based on fault or negligence on the part of

¹ See, e.g., *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 50 and 54-57, *Reports of Judgments and Decisions* 1996-IV.

² See, e.g., *Loste v. France*, no. 59227/12, § 75, 3 November 2022.

³ See, e.g., *Stagno v. Belgium*, no. 1062/07, § 33, 7 July 2009, *Eşim v. Turkey*, no. 59601/09, §§ 25 and 26, 17 September 2013, and *Howald Moor and Others v. Switzerland*, nos. 52067/10 and 41072/11, §§ 77-79, 11 March 2014.

the municipality during the foster care placement occurring between 1972 and 1974, it is time-barred under the Limitation Act. Such an application of the law is clearly compatible with the requirements of the ECHR.

Limitation of actions and damages based on the ECHR

10. Chapter 3, Section 4 of the Tort Liability Act provides for the right of individuals to receive compensation from the government for immaterial damage in the event of a violation of the ECHR. This statutory right to convention damages came into effect on 1 April 2018 and only applies to violations occurring after its effective date.

11. However, as stated above (para. 2), a right to compensation for immaterial damage in the event of a violation of the ECHR has also developed in case law since 2005, a right which thus exists without any explicit legal basis and which applies irrespective of the temporal limitation under the statutory right to convention damages (cf. Govt. bill 2017/18:7 p. 52; see numerous cases, including "The CFO of ICS" NJA 2005 p. 462 and "The Municipality's Unlawful Deprivation of Liberty" NJA 2009 p. 463). This right to compensation is based on Sweden's obligation, under Article 13, to provide an effective legal remedy to prevent or compensate for violations.

12. The alleged violations of the ECHR, in this case, are said to have occurred many years ago, in the mid 1970s. However, as precedent is established over time it is natural that new case law may have implications, not only for the future, but also for the past, regardless of whether the legal situation at that time was perceived differently or appeared unclear. Nor can the fact that the ECHR became Swedish law in 1995, i.e., 20 years after the foster care placement, affect the assessment of whether a claim, which is based on the right to damages that later developed in case law, is time-barred.

13. The question is thus from which date the limitation period for the claim for damages should commence in a case such as the present, where the legal situation has been progressively developed and clarified through case law of the courts. Given the generally accepted legal view at the time, namely that it was not possible to claim compensation directly on the basis of the ECHR, it is hardly acceptable to allow the limitation period to commence at the time when the alleged violation occurred, i.e., in principle at the end of the foster care placement in 1974. Such an application is questionable from the perspective of the ECHR. Instead, a different starting point must be sought.

14. It may be noted that the right to convention damages developed in case law has been justified precisely by the need for Sweden to meet the requirement laid down in Article 13 of the ECHR for access to an effective legal remedy. It follows from this Article that a legal remedy must be accessible and practicable for the individual, and that it must be considered to provide real opportunities for adjudication. Due to the development of Swedish law, the European Court of Human Rights has ruled that, since early December of 2009, a generally applicable principle of Swedish law does permit damages to be awarded for a violation of the ECHR. According to the European Court of Human Rights, that date – 3 December 2009 – must therefore be decisive in assessing whether Swedish law provides an effective legal remedy under Article 13.⁴

15. Therefore, it appears logical to also make that date the starting point for the limitation period for claims based on an earlier violation of the ECHR. The date on which the European Court of Human Rights has based

⁴ See *Eskilsson v. Sweden*, no. 14628/08, 24 January 2012, *Eriksson v. Sweden*, no. 60437/08, 12 April 2012, §§ 33 and 50 and *Ruminski v. Sweden*, no. 10404/10, 21 May 2013, §§ 36, 37, 42 and 44.

its assessment of the individual's rights under the ECHR should thus be indicative, notwithstanding the fact that the date, in this case, is linked to a ruling (NJA 2009 N 70) in which the Supreme Court can be said to only affirm legal positions which formed the basis of previous decisions. This is also most consistent with the notion that a statutory limitation provision in such cases, should be applied in a way that gives the individual a legally effective opportunity to recover his or her claim.

16. In light of the fact that the European Court of Human Rights clearly has identified a specific date from which an individual has had the opportunity to assert his or her right, no substantial concerns arise regarding linking the limitation period to the development of case law (cf. "Citizenship II" NJA 2018 p. 103 para. 19).

17. The claim which TR could assert, on the basis of the case law regarding damages for violations of the ECHR, is thus time-barred ten years after 3 December 2009. Since the limitation period has not been interrupted, and the action was not brought until December of 2021, the claim is time-barred and can no longer be enforced.

Conclusion

18. The judgment of the Court of Appeal shall therefore be affirmed.

Justices of the Supreme Court Gudmund Toijer, Svante O. Johansson, Dag Mattsson (reporting Justice), Malin Bonthron and Johan Danelius participated in the ruling.
Judge referee: Caroline Smith