CENTRUM FÖR RÄTTVISA

Stockholm, 26 June 2024

Ilse Freiwirth
Section Registrar
European Court of Human Rights
Council of Europe

BY E-TRANSMISSION ONLY

CASE OF PAIC AND WERNERSSON V. SWEDEN (NOS. 12908/23 AND 24544/23)

RE: Submission on behalf of the Applicants regarding important new factual information

Dear Madam,

The Applicants wish to draw the Court's attention to recent developments relevant to their case. They respectfully defer to the President of the Chamber to decide whether these submissions should be included in the case file under Rule 38 § 1 of the Rules of Court.

On 14 June 2024, the Swedish Supreme Court delivered a judgment in case no. T 2760-23 (see enclosure 1 to this letter), which has been addressed by the parties in their written observations. The case concerns abuse of children placed in state care between 1972 and 1974 and turns on the issue of when the limitation period starts to run when the claim for compensation is based on an alleged violation of the Convention. (See Government's Observations of 8 January 2024, para 34, and Applicants' Observations on the admissibility and merits of 27 February 2024, para 16.) The Supreme Court makes two findings relevant to the Applicants' case.

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The first finding concerns the statute of limitations. Under Swedish law, a ten-year limitation period starts to run when a claim arises. Generally, a claim for compensation for a violation of the Convention arises when the violation occurs. In its recent judgment, the Supreme Court has departed from that view when the claim relates to a violation of the Convention that occurred before the right to compensation for such violations was firmly established in domestic case-law. Accordingly, the Supreme Court held that the claim raised by the claimants did not arise when the violation occurred in the mid 70s. Instead, it arose on 3 December 2009, when the Supreme Court delivered the judgment NJA 2009 N 70 – which according to the Strasbourg Court cemented the right to compensation for Convention violations under Swedish law (see for instance *Eskilsson v. Sweden*, dec., no. 14628/08, 24 January 2012). The claim for compensation in the case before the Supreme Court was therefore considered time-barred on 3 December 2019, two years before the claimants seized the domestic courts.

Under this new case-law, the Applicants' right to compensation was similarly time-barred on 3 December 2019, about three years before either of them was made aware that their rights had been violated. In their submission, the precedent set by the Supreme Court does not improve the prospects of success in bringing a claim for damages after the expiry of the ten-year limitation period. The precedent merely redefines when a legal claim for compensation for violations of the Convention arises. It does not open for an exception from the limitation period with regard to a claimant's unawareness of the existence of a claim. Lodging a claim for damages thus remains an ineffective remedy in the Applicants' case, which they were not required to exhaust.

The second finding of the Supreme Court concerns the relevance under Swedish law that a violation occurred before the Convention was incorporated into Swedish law in 1995 (see § 12 of the Supreme Court's judgment). The Supreme Court holds that the time of incorporation does not affect the assessment of whether a claim is time-barred. In the Applicants' understanding, this finding seems to imply that the right to compensation for

violations of the Convention established by the Supreme Court between 2005 and 2009 extend to violations that occurred before the Convention was incorporated. If that is the case, the fact that the violations in the Applicants' case occurred before 1995 would no longer be a separate issue, should they raise their complaint before the domestic courts today (cf. Applicants' Observations on the Admissibility and Merits of 27 February 2024, paras 20–25). When they lodged their complaint with the Court, however, the Supreme Court's case-law was still silent on the prospect of raising a claim against a violation that occurred before 1995. The uncertain legal basis for the claim therefore added to the theoretical prospect of success caused by the time-bar.

In sum, these recent developments in the Supreme Court's case-law do not improve the prospects of success of bringing a case against the authorities before the domestic courts in the Applicants' situation. In any event, any development in the Supreme Court's case-law that occurred after the Applicants submitted their application to the Court lacks relevance for the purposes of exhaustion. It is for the Government to satisfy the Court that there were, at the time of lodging of the applications, effective remedies available (see for instance *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV). There were not. When the Applicants seized the Court, both the time-bar and the fact that the violation of their rights occurred before the incorporation of the Convention rendered the lodging of a claim for compensation obviously futile. This remains so.

Sincerely,

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