Government Offices of Sweden

Ministry for Foreign Affairs
Department for International Law and Human Rights

Stockholm, 9 August 2024
UDFMR2023/13/ED
UDFMR2023/14/ED

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application nos. 12908/23 and 24544/23

Paic and Wernersson

v.

Sweden

COMMENTS FROM THE SWEDISH GOVERNMENT

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1. These comments are submitted in response to the letter of the European Court of Human Rights ('the Court') dated 1 July 2024, requesting the Swedish Government to submit comments on the applicants' letter.

2. The Government has taken note of the Supreme Court's judgment in case T 2760-23. The Government maintains its arguments on the admissibility of the cases, as expressed in the observations of 8 January and 16 April 2024, and holds that the aforementioned judgment confirms these arguments. In response to the applicants' letter, the Government wishes to submit the following.

3. Firstly, the Government agrees with the applicants' understanding of the judgment, according to which the right to compensation for violations of the European Convention on Human Rights ('the Convention') extends to violations having occurred before the Convention was incorporated into Swedish legislation. In its recent judgment, the Supreme Court states the following:

> 12. The Convention violations alleged in this case took place many years ago, in the mid-1970s. Nonetheless, it is in the nature of legal precedent that new case-law can have a bearing not only on the future but also on things that occurred in the past, regardless of whether the legal situation at the time was perceived in a different way or appeared unclear. Likewise, the fact that the Convention became Swedish law in 1995, i.e. 20 years after the foster home placement, cannot influence the assessment of whether a claim based on the right to damages subsequently developed in case-law is time-barred.

4. Nonetheless, the Government holds that this was clear already when the applicants lodged their applications with the Court. The Government refers to its previous observations in this regard (in particular, paras. 8–11 of the Government's observations of 16 April 2024). Thus, the above cited statement is not a new principle, but merely an express confirmation of what was already applicable.

5. Secondly, the Government does not consider that it can be concluded from the Supreme Court's judgment that the applicants' right to damages became time-barred on 3 December 2019. The Government wishes to submit the following in that respect.

6. As noted by the applicants, in case T 2760-23 the Supreme Court made an exception to the general principle of when the limitation period starts to run. The

Government notes that the exception was justified by the consideration that, having regard to the general perception at the time of the alleged violation in that case that there was no possibility to claim damages directly based on the Convention, it would hardly be acceptable to apply the general principle. According to the Supreme Court, such an application would be questionable from a Convention perspective. Therefore, it was necessary to seek another solution (para. 13 of the judgment).

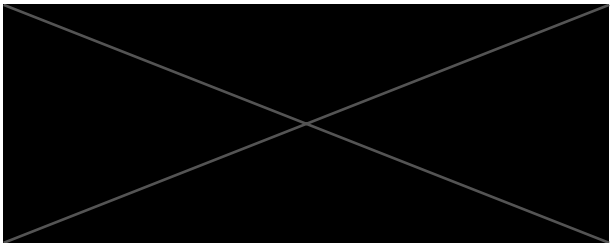
7. The Government further notes that when seeking another solution, the Supreme Court had regard to the requirement under Article 13 of the Convention of remedies which are accessible and practicable for the individual, and which give real possibilities to have the matter examined (para. 14 of the judgment). Moreover, as regards the solution chosen for the case at hand, the Supreme Court stated that it was the most consistent with the idea that a rule on limitation should be applied in a way that gives the individual a real possibility, in legal terms, to raise the claim (para. 15 of the judgment).

8. The Government notes that the Supreme Court attached significant importance to the real possibility for the individual to raise the claim. That the Supreme Court in case T 2760-23 found that the limitation period started on 3 December 2009 must be seen in the light of the circumstances of that case, where the claimant had been aware of the relevant facts since the 1970's but had not had a real possibility to raise the claim until the judgment in case NJA 2009 N 70 was delivered on 3 December 2009. The Supreme Court makes no statement on when the limitation period starts when a claimant is not aware of the facts allegedly constituting a violation. The Government does not consider that the starting date in case T 2760-23 simply can be transposed to the case of the applicants, who have not had a real possibility to raise their claims until they became aware of the relevant facts in 2022 and 2023 respectively (cf. para. 16 of the applicants' observations of 27 February 2024 on the admissibility and merits).

9. Finally, the Government reiterates that the reason for mentioning case T 2760-23 and case NJA 2018 p. 103 was to show that there is room for bringing an action before the Swedish courts and succeeding with an argument that the limitation period does not start to run until the individual has had a real possibility to raise his or her claim (see para. 13 of the Government's observations of 16 April 2024). In both NJA 2018 p. 103 and T 2760-23, the Supreme Court has made an exception to the main rule on the starting point of the limitation period, and has

based its assessment on the real possibility for the individual to raise his or her claim.

10. In conclusion, the Government maintains its position that neither the circumstance that the acts occurred before the Convention was incorporated into Swedish legislation, nor the domestic provisions on statutory limitation, can dispense the applicants from the obligation to exhaust domestic remedies. The applicants have not taken any appropriate steps to enable the national authorities to fulfil their role in the Convention protection system. The Government therefore still holds that the cases should be declared inadmissible for non-exhaustion of domestic remedies.



Agent of the Swedish Government