CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

AFFAIRE M.S. c. SUEDE

CASE OF M.S. v. SWEDEN

(74/1996/693/885)

ARRET/JUDGMENT

STRASBOURG

27 août/August 1997

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SUMMARY[1]

Judgment delivered by a Chamber

Sweden – communication, without the patient's consent, of personal and confidential medical data by one public authority to another and lack of possibility for patient, prior to the measure, to challenge it before a court (Secrecy Act 1980 and Industrial Injury Insurance Act 1976)

I. ARTICLE 8 OF THE CONVENTION

A. Article 8 § 1

Under the Swedish system, the contested disclosure depended not only on fact that applicant had submitted a compensation claim to the Social Insurance Office but also on a number of factors beyond her control – it could not therefore be inferred from her request for compensation that she had waived in an unequivocal manner her right to respect for private life with regard to the medical records at the clinic – accordingly Article 8 § 1 applied.

Medical records in question contained highly personal and sensitive data about applicant – although they remained confidential, they had been disclosed to another public authority and therefore to a wider circle of public servants – collection and storage of information at clinic and its subsequent communication to Office had served different purposes – disclosure thus entailed an interference with applicant's right to respect for private life.

B. Article 8 § 2

1. "In accordance with the law"

Requirement was satisfied as interference had a legal basis and was foreseeable.

2. Legitimate aim

Protection of the economic well-being of the country: communication of data was potentially decisive for allocation of public funds to deserving claimants.

3. "Necessary in a democratic society"

The medical data were communicated by one public institution to another in context of an assessment of whether applicant satisfied legal conditions for obtaining a benefit which she herself had requested – the Office had a legitimate need to check information received from her against data in the possession of the clinic – the claim concerned a back injury which she had allegedly suffered and all the medical records produced to the Office contained information relevant to applicant's back problems – allegation that clinic could

1. This summary by the registry does not bind the Court.

not reasonably have considered certain records material to the Office's decision was unsubstantiated – in addition, the contested measure was subject to important limitations and was accompanied by effective and adequate safeguards against abuse – there were thus relevant and sufficient reasons for the communication of the applicant's medical records by the clinic to the Office; the measure was not disproportionate to the legitimate aim pursued.

Conclusion: no violation (unanimously).

II. ARTICLE 6 § 1 OF THE CONVENTION

The clinic had been under an obligation to supply the Office with information on the applicant concerning circumstances of importance to the application of the Insurance Act – thus, the obligation incumbent on the imparting authority *vis-à-vis* the requesting authority depended exclusively on the relevance of the data in its possession; it comprised all data which the clinic had in its possession concerning the applicant and which were potentially relevant to the Office's determination of her compensation claim – scope of this obligation and fact that the clinic enjoyed a very wide discretion in assessing what data would be relevant – a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law.

Conclusions: inapplicable (six votes to three) and no violation (unanimously).

III. ARTICLE 13 OF THE CONVENTION

A separate issue arose under Article 13 – having regard to above findings under Article 8, applicant had an arguable claim for the purposes of Article 13 – question whether she was afforded an effective remedy – in this regard, it was open to her to bring criminal and civil proceedings before the ordinary courts against the relevant staff of the clinic and to claim damages for breach of professional secrecy – she thus had access to an authority empowered both to deal with the substance of her Article 8 complaint and to grant her relief – having regard to the limited nature of the disclosure and to the different safeguards, in particular the Office's obligation to secure and maintain the confidentiality of the information, the various *ex post facto* remedies referred to satisfied Article 13.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

27.4.1988, Boyle and Rice v. the United Kingdom; 25.11.1993, Zander v. Sweden; 19.7.1995, Kerojärvi v. Finland; 28.9.1995, Masson and Van Zon v. the Netherlands; 15.11.1996, Chahal v. the United Kingdom; 25.2.1997, Z v. Finland

In the case of M.S. v. Sweden[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. GÖLCÜKLÜ,
Mrs E. PALM,
Mr R. PEKKANEN,
Sir John FREELAND,
Mr G. MIFSUD BONNICI,
Mr J. MAKARCZYK,
Mr D. GOTCHEV,
Mr P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 21 March and 25 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 28 May 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 20837/92) against the Kingdom of Sweden lodged with the Commission under Article 25 by a Swedish citizen, Ms M.S., on 23 September 1992.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 § 1, 8 and 13 of the Convention.

Notes by the Registrar

1. The case is numbered 74/1996/693/885. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyer who would represent her (Rule 31).

3. The Chamber to be constituted included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 10 June 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr S.K. Martens, Mr R. Pekkanen, Mr L. Wildhaber, Mr J. Makarczyk, Mr D. Gotchev and Mr P. Jambrek (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr G. Mifsud Bonnici, the first substitute judge, replaced Mr Martens, who had resigned, and Sir John Freeland, the second substitute judge, replaced Mr Wildhaber, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. By letter of 22 July 1996, the Agent of the Swedish Government ("the Government") informed the Registrar that it was the opinion of the Government that the present case and the case of Anne-Marie Andersson v. Sweden (no. 72/1996/691/883) should be considered by the same Chamber and that both cases should be considered by a Grand Chamber in accordance with Rule 53 § 1.

On 13 August 1996 the Registrar informed the Agent that, before drawing lots in the two cases, Mr Ryssdal had considered whether to constitute a single Chamber. However, bearing in mind, *inter alia,* that none of those taking part in the proceedings had asked that the case be examined by the same Chamber, he decided to constitute a separate Chamber for each case.

On 25 August 1996 the Chamber decided not to relinquish jurisdiction forthwith in favour of a Grand Chamber.

5. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence on 25 August 1996, the Registrar received the applicant's and the Government's memorials on 13 and 16 December 1996 respectively.

6. On 20 December 1996 the applicant requested that the oral hearing in her case take place in camera, but subsequently withdrew her request.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 18 March 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Ms E. JAGANDER, Director, Ministry of Foreign Affairs, *Agent*,
Mr G. SCHÄDER, Director-General of Legal Affairs,
Ministry of Justice,
Mr B. REUTERSTRAND, Director-General of Legal Affairs,
Ministry of Health and Social Affairs,
Ms H. JÄDERBLOM, Legal Adviser,
Ministry of Justice, *Advisers*;

(b) *for the Commission*
Mrs G.H. THUNE, *Delegate*;

(c) *for the applicant*
Mrs S. WESTERBERG, Lawyer, *Counsel*,
Mrs C. BOKELUND, Lawyer, *Adviser*.

The Court heard addresses by Mrs Thune, Mrs Westerberg and Ms Jagander.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

8. Ms M.S. is a Swedish citizen born in 1951 and resident in Sweden. Prior to the events in question she was employed as a nursery-school teacher.

9. When she was 14 years old she was diagnosed as having spondylolisthesis, a condition affecting the spine which can cause chronic back pain.

10. On 9 October 1981 she slipped and fell at work, injuring her back. She was pregnant at the time, and had been seeing a doctor at the women's clinic at the hospital. On the afternoon of the accident she went to the same clinic.

Following this incident, Ms M.S. was unable to return to work for any sustained period of time because of severe back pain. After she had been on the sick-list for some time, she was granted a temporary disability pension (*sjukbidrag*) and, from October 1994, a disability pension (*förtidspension*).

11. On 13 March 1991 she made a claim for compensation under the Industrial Injury Insurance Act (*Lagen om arbetsskadeförsäkring,* 1976:380 – hereafter "the Insurance Act") from the Social Insurance Office (*Försäkringskassan*; hereafter "the Office").

12. Some time thereafter, as a matter of routine, her lawyer requested a copy of the file which had been compiled by the Office for the purposes of her claim. From the documents on the file she learnt that the Office had written to the women's clinic on 25 March 1992 as follows:

> "[The applicant] has reported an industrial injury which occurred on 9 October 1981. She contacted your clinic as she was pregnant at the time. The Office requests copies of medical records from that time. We hope you will assist us as soon as possible as the matter has been pending for some time and we need the records in order to determine it."

It was also apparent from the file that, on 30 March 1992, the head of the clinic had submitted copies of her medical records containing information on treatment she had received in October 1981, March 1982 and between October 1985 and February 1986. Ms M.S. had not been consulted prior to the disclosure of these documents.

13. The medical records from October 1985 stated, *inter alia,* that Ms M.S. had complained of pain in her hips and back, but there was no indication that she had alleged that she had injured herself at work. The records from this period contained details of an abortion which she had requested because her pregnancy exacerbated her back complaint. The abortion had been performed in October 1985. In this regard, an entry of 22 October 1985 stated:

> "The reason for the termination is above all that she had an incredibly bad back, especially during her last pregnancy."

14. On 19 May 1992 the Office rejected Ms M.S.'s claim for compensation under the Insurance Act, finding that her sick-leave had not been caused by an industrial injury. The applicant appealed successively to the Social Insurance Board (*Socialförsäkringsnämnden*), the local County Administrative Court (*Länsrätten*) and the competent Administrative Court of Appeal (*Kammarrätten*), but at each stage her appeal was rejected. On 26 February 1996 the Supreme Administrative Court (*Regeringsrätten*) refused her leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The general principle of freedom of information

15. Under sections 1 and 2 of chapter 2 of the Freedom of the Press Act (*Tryckfrihetsförordningen*), which is part of the Swedish Constitution, everyone is entitled to access to public documents, subject to exceptions set out in the Secrecy Act (*Sekretesslagen*, 1980:100).

B. Confidentiality of medical information

16. One of the exceptions to this general rule relates to confidentiality of information in the field of health and medical care and is set out in chapter 7, section 1, of the Secrecy Act, which provides as follows:

> "Secrecy applies ... in the field of health and medical care to information on the individual's state of health or otherwise concerning his or her private life, unless it is clear that the information can be disclosed without any harm to the individual or persons closely related to him or her ..."

C. Duty to submit information

17. Notwithstanding the above rule of confidentiality, in certain circumstances health and medical-care authorities are required to submit information to another public authority. Thus, chapter 14, section 1, of the Secrecy Act provides the following:

> "Secrecy does not prevent ... the disclosure of information to another authority, if an obligation to disclose the information is laid down in an act of law or a government ordinance."

18. Such an obligation follows from chapter 8, section 7, of the Insurance Act, which reads as follows:

> "A public authority ... [is] obliged to submit, on request, to the courts, the National Social Insurance Service [*Riksförsäkringsverket*] [or] the Social Insurance Office ... information on a named person concerning circumstances of importance to the application of this Act ..."

In this context, a doctor employed by a public hospital (as in the present case) is regarded as a representative of a public authority. In addition, the person applying for compensation under the Insurance Act is obliged to provide the Social Insurance Office with information of importance to the claim (chapter 8, section 6, of the Insurance Act).

19. The Social Insurance Office is under a corresponding duty to obtain a physician's opinion in relation to each reported industrial injury (section 13 of the Ordinance on Industrial Injury Insurance and State Injury Compensation Guarantee – *Förordning om arbetsskadeförsäkring och statligt personskadeskydd*, 1977:284).

20. Information which is submitted to the Office is protected by the rule of confidentiality provided by chapter 7, section 7, of the Secrecy Act:

> "Secrecy applies at the Social Insurance Office, the National Social Insurance Service and the courts in matters arising under the legislation on ... industrial injury assurance ... in respect of information on an individual's state of health or otherwise concerning his or her private life, if it can be assumed that the individual concerned or persons closely related to him or her will be harmed if the information is disclosed ..."

D. Remedies

21. Under the Freedom of the Press Act and the Secrecy Act, there is a right to appeal against a decision not to grant access to public documents. There is, however, no such right in respect of decisions to grant access to information contained in public documents. Furthermore, there is no right for the individual concerned to be consulted before such information is disclosed or to be notified of the disclosure afterwards.

22. Under chapter 20, section 3, of the Penal Code (*Brottsbalken*), a physician who, intentionally or through negligence, discloses information which should be kept confidential according to law is guilty of breach of professional secrecy. Proceedings may be brought in the ordinary courts by the public prosecutor or, if the public prosecutor decides not to prosecute, the aggrieved individual. Such a breach of professional secrecy may also constitute a basis for claiming damages under chapter 2, section 1, or chapter 3, section 1, of the Damage Compensation Act (*Skadeståndslagen*, 1972:207). Action may be taken by the individual against the physician or his or her employer.

23. Public authorities and their employees are, furthermore, subject to the supervision of the Chancellor of Justice (*Justitiekanslern*) and the Parliamentary Ombudsman (*Justitieombudsmannen*). The Chancellor and the Ombudsman investigate whether those exercising public powers abide by laws and follow applicable instructions and may prosecute a certain individual or refer the matter to disciplinary action by the relevant authority.

PROCEEDINGS BEFORE THE COMMISSION

24. Ms M.S. lodged her application (no. 20837/92) with the Commission on 23 September 1992. She complained, under Article 8 of the Convention, that the submission of her medical records to the Social Insurance Office constituted an unjustified interference with her right to respect for private life and, under Articles 6 and 13, that she had no remedy she could use to challenge this measure.

25. The Commission declared the application admissible on 22 May 1995. In its report of 11 April 1996 (Article 31), the Commission expressed the opinion that there had been no violation of Article 8 of the Convention (twenty-two votes to five), that there had been no violation of Article 6 § 1 of the Convention (twenty-four votes to three) and that no separate issue arose under Article 13 of the Convention (twenty votes to seven).

The full text of the Commission's opinion and of the five separate opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

26. At the hearing on 18 March 1997 the Government, as they had done in their memorial, invited the Court to hold that there had been no violation of the Convention in the present case.

27. On the same occasion the applicant reiterated her request to the Court stated in her memorial to find that there had been violations of Articles 6, 8 and 13 and to award her just satisfaction under Article 50 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant maintained that the communication of her medical records by the clinic to the Social Insurance Office constituted a violation of

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

her right to respect for private life under Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

29. The Government disputed that Article 8 § 1 was applicable to the matter complained of by the applicant and maintained that, in any event, there had been no interference with any of her rights guaranteed by that provision. In the alternative, they argued that the measure had been justified under paragraph 2 of the Article.

30. The Commission was of the opinion that paragraph 1 of Article 8 applied, that there had been an interference with the applicant's right to respect for her private life under that provision but that the interference had been justified under paragraph 2.

A. Article 8 § 1

1. Was Article 8 § 1 applicable?

31. In contesting the applicability of Article 8 § 1 the Government submitted that, by having initiated the compensation proceedings, the applicant had waived her right to confidentiality with regard to the medical data which the clinic had communicated to the Office (see paragraph 11 above). The measure had constituted a foreseeable application of the relevant Swedish law, from which it clearly followed that the Office was under an obligation to request the information in issue, which the clinic had a corresponding duty to impart (see paragraphs 18–19 above). In this connection, they stressed that the data had not been made public but remained confidential in the Office (see paragraph 16 above).

32. The Court observes that under the relevant Swedish law, the applicant's medical records at the clinic were governed by confidentiality (see paragraph 16 above). Communication of such data by the clinic to the Office would be permissible under the Insurance Act only if the latter authority had made a request and only to the extent that the information was deemed to be material to the application of the Insurance Act (see paragraph 18 above). This assessment was left exclusively to the competent authorities, the applicant having no right to be consulted or informed beforehand (see paragraph 21 above).

It thus appears that the disclosure depended not only on the fact that the applicant had submitted her compensation claim to the Office but also on a number of factors beyond her control. It cannot therefore be inferred from her request that she had waived in an unequivocal manner her right under Article 8 § 1 of the Convention to respect for private life with regard to the medical records at the clinic. Accordingly, the Court considers that this provision applies to the matters under consideration.

2. Was there an interference?

33. With reference to the arguments set out in paragraph 31 above, the Government disputed that the communication of the data in question amounted to an interference with the applicant's right to respect for her private life under Article 8.

34. The applicant and the Commission, stressing that information of a private and sensitive nature had been disclosed without her consent to a certain number of people at the Office, maintained that the measure constituted an interference.

35. The Court notes that the medical records in question contained highly personal and sensitive data about the applicant, including information relating to an abortion. Although the records remained confidential, they had been disclosed to another public authority and therefore to a wider circle of public servants (see paragraphs 12–13 above). Moreover, whilst the information had been collected and stored at the clinic in connection with medical treatment, its subsequent communication had served a different purpose, namely to enable the Office to examine her compensation claim. It did not follow from the fact that she had sought treatment at the clinic that she would consent to the data being disclosed to the Office (see paragraph 10 above). Having regard to these considerations, the Court finds that the disclosure of the data by the clinic to the Office entailed an interference with the applicant's right to respect for private life guaranteed by paragraph 1 of Article 8.

It remains to be determined whether the interference was justified under paragraph 2 of Article 8.

B. Article 8 § 2

1. "In accordance with the law"

36. The applicant submitted that the disclosure of her medical records by the clinic had exceeded the Office's request. Whilst the Office had only

asked for medical records relating to the time of her back injury allegedly sustained at work on 9 October 1981, the clinic had produced records covering a period up to February 1986 (see paragraph 12 above). The information disclosed did not therefore meet the requirement contained in chapter 8, section 7, of the Insurance Act that only data requested should be produced (see paragraph 18 above), and its communication had consequently not been "in accordance with the law".

37. However, in the Court's view the terms of the above provision suggest that the decisive factor in determining the scope of the imparting authority's duty to provide information is the relevance of the information rather than the precise wording of the request (see paragraph 18 above). The Court is satisfied that the interference had a legal basis and was foreseeable; in other words, that it was "in accordance with the law".

2. Legitimate aim

38. The object of the disclosure was to enable the Office to determine whether the conditions for granting the applicant compensation for industrial injury had been met. The communication of the data was potentially decisive for the allocation of public funds to deserving claimants. It could thus be regarded as having pursued the aim of protecting the economic well-being of the country. Indeed this was not disputed before the Court.

On the other hand, the Court does not consider it necessary to examine the second aim invoked by the Government, namely protection of the "rights ... of others".

3. "Necessary in a democratic society"

39. In the applicant's submission, the disclosure of her medical records could not be regarded as having been necessary in a democratic society. She maintained that, while there was no dispute as to the fact that her disability prevented her from working, there was disagreement as to its cause, whether it was spondylolisthesis or the alleged work injury (see paragraphs 9–10 above). Information about her abortion in 1985 had been irrelevant to the issue to be determined by the Office (see paragraphs 12–13 above). In addition, she argued that the duty of confidentiality to which public servants at the Office were subject provided a weaker protection of the applicant's interests than that applying to medical personnel at the clinic. Thus, whilst it was for the patient to show that he or she had suffered damage as a result of disclosure by an ordinary public servant, a doctor had to show that disclosure had not caused damage.

In addition, she maintained that an effective protection of her rights under Article 8 required that she should have been notified of the clinic's intention to communicate the data and afforded an opportunity to exercise judicial remedies against that decision before it was implemented (see paragraph 21 above).

40. The Government and the Commission were of the view that the disclosure was "necessary". Not only had the medical records been relevant to the Office's decision but the fact that they might be relevant must also have been apparent to her when she made her claim. Even the information concerning the abortion had related to her back problems (see paragraph 13 above). If the Office had been requested to rely exclusively on the applicant's submissions, there would have been a risk of her withholding relevant evidence. Since the data remained confidential while they were in the possession of the Office (see paragraph 16 above), the interference which the disclosure had entailed was of a limited nature.

41. The Court reiterates that the protection of personal data, particularly medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. The domestic law must afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (see the Z v. Finland judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 347, § 95).

Bearing in mind the above considerations and the margin of appreciation enjoyed by the State in this area, the Court will examine whether, in the light of the case as a whole, the reasons adduced to justify the interference were relevant and sufficient and whether the measure was proportionate to the legitimate aim pursued (ibid., § 94).

42. Turning to the particular circumstances, the Court notes that the applicant's medical data were communicated by one public institution to another in the context of an assessment of whether she satisfied the legal conditions for obtaining a benefit which she herself had requested (see paragraphs 11–14 above). It recognises that, in deciding whether to accept the applicant's compensation claim, the Office had a legitimate need to check information received from her against data in the possession of the clinic. In the absence of objective information from an independent source, it would have been difficult for the Office to determine whether the claim was well-founded.

That claim concerned a back injury which she had allegedly suffered in 1981, and all the medical records produced by the clinic to the Office, including those concerning her abortion in 1985 and the treatment thereafter, contained information relevant to the applicant's back problems. As appears from the records of 1985, her back pains constituted the main reason for the termination of pregnancy (see paragraphs 12–13 above). Moreover, the data covered the period in respect of which she claimed compensation under the Insurance Act (see paragraphs 10–11 above). In the Court's view, the applicant has not substantiated her allegation that the clinic could not reasonably have considered her post-1981 medical records to be material to the Office's decision.

43. In addition, under the relevant law it is a condition for imparting the data concerned that the Office has made a request and that the information be of importance for the application of the Insurance Act (see paragraph 18 above). Staff at the clinic could incur civil and/or criminal liability had they failed to observe these conditions (see paragraph 22 above). The Office, as the receiver of the information, was under a similar duty to treat the data as confidential, subject to similar rules and safeguards as the clinic (see paragraphs 20 and 22 above).

In the circumstances, the contested measure was therefore subject to important limitations and was accompanied by effective and adequate safeguards against abuse (see the above-mentioned Z v. Finland judgment, p. 350,§ 103).

44. Having regard to the foregoing, the Court considers that there were relevant and sufficient reasons for the communication of the applicant's medical records by the clinic to the Office and that the measure was not disproportionate to the legitimate aim pursued. Accordingly, it concludes that there has been no violation of the applicant's right to respect for her private life, as guaranteed by Article 8 of the Convention.

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

45. The applicant further alleged a breach of Article 6 § 1 of the Convention, which, in so far as is relevant, reads:

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

She complained in particular that, contrary to this provision, she had not been afforded a possibility, prior to the communication of her medical records by the clinic, to challenge the measure before a court (see paragraph 21 above).

46. The Government disputed that Article 6 § 1 was applicable and maintained that, in any event, it had been complied with in the present case (see paragraphs 22–23 above). The Commission, for its part, considered that the provision was applicable and had been complied with (see paragraph 22 above).

47. The Court must first examine whether Article 6 § 1 was applicable to the disagreement between the applicant and the Swedish authorities as to the disclosure of her medical records. It reiterates that, according to the principles laid down in its case-law (see the judgments of Zander v. Sweden, 25 November 1993, Series A no. 279-B, p. 38, § 22, and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 12, § 32), it must ascertain whether there was a dispute ("*contestation*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive for the right in question. Finally, the right must be civil in character.

48. Under the rule on confidentiality in chapter 7, section 1, of the Secrecy Act, a duty of confidentiality applied to the data in issue in the present case (see paragraph 16 above). The provision was evidently designed to protect a patient's interest in non-disclosure of medical data.

49. On the other hand, according to chapter 14, section 1, of the Secrecy Act the rule of confidentiality did not apply where a statutory obligation required the disclosure of information to another authority (see paragraph 17 above). In the case under consideration, the clinic had been under an obligation to supply the Office with "information on [the applicant] concerning circumstances of importance to the application of [the] Act ..." (chapter 8, section 7, of the Insurance Act). Thus, the obligation incumbent on the imparting authority *vis-à-vis* the requesting authority depended exclusively on the relevance of the data in its possession; it comprised all data which the clinic had in its possession concerning the applicant and which were potentially relevant to the Office's determination of her compensation claim.

In addition to the scope of this obligation as described above, the Court notes that the clinic enjoyed a very wide discretion in assessing what data would be of importance to the application of the Insurance Act. In this regard, it had no duty to hear the applicant's views before transmitting the information to the Office (see paragraph 21 above).

Accordingly, it appears from the very terms of the legislation in issue that a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law (see the Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, pp. 19–20, §§ 49–52). No evidence suggesting the contrary has been adduced before the Court.

50. Having regard to the foregoing, the Court reaches the conclusion that Article 6 § 1 was not applicable to the proceedings under consideration and has therefore not been violated in the present case.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51. Relying on essentially the same arguments as with regard to Article 6 § 1, the applicant claimed that there had also been a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

She maintained that, since the disclosure of confidential data was a measure that could not be reversed, it was crucial for the effectiveness of a remedy against disclosure that the interested person should be able to exercise it beforehand.

52. The Government contended that Article 13 was not applicable, as they did with regard to Articles 6 § 1 and 8. However, they accepted that if the Court found Article 8 applicable and Article 6 § 1 inapplicable, a separate issue would arise under Article 13. In their view, the aggregate of remedies (see paragraphs 21–23 above) available to the applicant in order to obtain redress for breach of confidentiality satisfied the requirements of that provision.

53. The Commission, having found that Article 6 § 1 was applicable and had been complied with in the present case, did not deem it necessary to examine the applicant's complaint also under Article 13. Since the requirements in Article 13 were less strict than, and were absorbed by, those in Article 6 § 1, it concluded that no separate issue arose under the former provision.

54. In view of its conclusions with respect to the applicant's complaints under Articles 8 and 6 § 1 (see paragraphs 32 and 50 above), the Court considers that a separate issue arises with regard to her complaint under Article 13.

Article 13 of the Convention guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 (see, for instance, the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, pp. 1869–70, § 145).

However, the Article 13 guarantee applies only in respect of grievances under the Convention which are arguable (see, for example, the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

55. The applicant's complaint under Article 8 was essentially that the clinic had communicated to the Office certain data which in her view were irrelevant to the latter's examination of her compensation claim (see paragraphs 36 and 39 above). Having regard to its findings under Article 8 above, the Court is satisfied that she had an arguable claim for the purposes of Article 13. It remains to examine whether she was afforded an effective remedy.

In this regard, it was open to her to bring criminal and civil proceedings before the ordinary courts against the relevant staff of the clinic and to claim damages for breach of professional secrecy (see paragraph 22 above). Thus the applicant had access to an authority empowered both to deal with the substance of her Article 8 complaint and to grant her relief.

Having regard to the limited nature of the disclosure and to the different safeguards (see paragraphs 16–18, 20 and 22 above), in particular the Office's obligation to secure and maintain the confidentiality of the information, the Court finds that the various *ex post facto* remedies referred to above satisfied the requirements of Article 13.

56. Accordingly, the Court finds no violation of Article 13 of the Convention in the present case.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 8 of the Convention;
2. *Holds* by six votes to three that Article 6 § 1 of the Convention was not applicable in the present case;
3. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously that there has been no violation of Article 13 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 August 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the partly concurring and partly dissenting opinion of Mr Ryssdal, joined by Mr Gölcüklü and Mr Jambrek, is annexed to this judgment.

Initialled: R. R.
Initialled: H. P.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE RYSSDAL, JOINED BY JUDGES GÖLCÜKLÜ AND JAMBREK

1. I am unable to share the majority's view that Article 6 § 1 of the Convention was not applicable in the present case. However, I consider that the provision was complied with and therefore concur with the majority's conclusion that Article 6 § 1 has not been violated.

2. As regards the question whether an arguable claim existed, I attach weight to the fact, also mentioned in the judgment, that a duty of confidentiality applied to the kind of data in issue and was designed to protect the patient's interests in non-disclosure.

It is true that this rule of confidentiality did not apply with regard to information in the clinic's possession which would be of importance to the Office's determination of a compensation claim under the Insurance Act and that the clinic, as the imparting authority, enjoyed a considerable discretion in assessing what data would be relevant in this respect.

However, that discretion was not unfettered and was significantly more circumscribed than that in issue in the case of Masson and Van Zon v. the Netherlands (judgment of 28 September 1995, Series A no. 327-A, pp. 19–20, §§ 49–52), referred to in the majority's reasoning. In that case, the issue was whether a suspect, who was subsequently acquitted, had a right to compensation under certain provisions of Netherlands law for damage resulting from detention. A decisive factor leading to the Court's finding that no actual right to compensation was recognised under the national law was that the State had no obligation to pay even if the conditions set out in the relevant provision were fulfilled; an award was contingent on the competent court being of the opinion “that reasons in equity” exist therefor (ibid., § 51).

In contrast, the scope of the discretion in issue in this case was defined with greater precision. According to the relevant national provisions, a disclosure of medical data by the clinic to the Office was permissible only in so far as the information was of importance to the application of the Insurance Act; were the disclosure to exceed those limits it would constitute a breach of the clinic's obligation to maintain the confidentiality of the information.

In my view, the applicant could therefore arguably maintain that the national law recognised a right for her to challenge the disclosure of the data communicated by the clinic to the Office.

3. Moreover, the applicant disputed the relevance of certain data communicated by the clinic to the Office for the latter's examination of her compensation claim. There was thus a serious disagreement between the applicant and the authorities capable of raising issues going to the lawfulness under Swedish law of the clinic's decision to disclose the medical records. That decision was moreover directly decisive for the applicant's right to maintain the confidentiality of the records at the clinic. Accordingly, there was a dispute over a "right".

4. In addition, I am of the opinion that the right in issue, which concerned the protection of the confidentiality of the applicant's personal medical data, was civil in character.

5. As to the question of compliance, the remedies discussed under Article 13 (see paragraphs 22 and 55 of the judgment) in my view also satisfied the requirements of Article 6 § 1. By bringing civil and/or criminal proceedings before the Swedish courts against the relevant personnel at the clinic, the applicant would have been able to obtain a review, addressing both questions of fact and of law, of the merits of her claim that the clinic had communicated to the Office medical information about her which had not been relevant to the determination of her compensation claim under the Insurance Act. The fact that the applicant could not bring proceedings before the disclosure of the information to the Office did not in my opinion impair the very essence of the "right to a court".

6. In the light of the foregoing, I find no violation of Article 6 § 1 of the Convention in the present case.

7. I agree that there has been no violation of Article 13 of the Convention.