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In case no. 3112-23, the **Swedish Pensions Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 27 December 2024.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the ruling of the administrative court of appeal, the ruling of the administrative court and the decision of the Swedish Pensions Agency of 26 February 2021 and disallows AA's request for reconsideration of the decision of the Swedish Pensions Agency of 19 November 2020.

BACKGROUND

1. The entitlement to national public pension is determined by the Swedish Pensions Agency. In conjunction with the determination, the agency shall ensure that the question is investigated to the extent required by its character, and the individual is obliged to provide the information which is material to the assessment of whether there is an entitlement to pension.
2. In the event of death, the entitlement to national public pension ceases. Pension payments are made up to and including the month in which the entitlement to them ceases.
3. On 19 November 2020, the Swedish Pensions Agency decided that BB would not receive any national public pension commencing July 2020. The decision was explained by the fact that the agency had received notice that BB had been missing since 2016, which had also been confirmed by his wife. Given that BB was missing and had neither made a claim for pension nor personally used his bank account, and since there were no signs of life from him, the agency determined that there was no longer any entitlement to national public pension.

4. At the request of BB's wife, AA, the Swedish Pensions Agency, on 26 February 2021, reconsidered the decision to withdraw BB's pension. The previous decision, however, was not changed. The agency observed that the individual was obliged to provide the information which was material to the assessment of the pension question. In addition, it was stated in the decision that a request was made to BB to visit the agency's closest local office in order to identify himself and thereby prove that he was alive, but such had not occurred.
5. AA appealed the reconsideration decision to the Administrative Court in Stockholm. The court rejected the appeal after having initially made the determination that AA, in the capacity of BB's wife, was affected by the decision of the Swedish Pensions Agency in such a manner that she was entitled to appeal the decision pursuant to section 42 of the Administrative Procedure Act (2017:900).
6. After AA appealed to the Administrative Court of Appeal in Stockholm, the court overturned the Swedish Pensions Agency's reconsideration decision. The administrative court of appeal found that an express requirement cannot be gleaned from the Social Insurance Code according to which it must be established that a person is deceased or declared dead in accordance with the Declaration of Death Act (2005:130) in order for the entitlement to national public pension to cease. The court stated, however, that there was no reason to apply lower requirements for the investigation by the Swedish Pensions Agency in this respect than the requirements for a declaration of death in accordance with the Declaration of Death Act.
7. The administrative court of appeal observed that BB, at the time of the appealed decision, had not been missing for a minimum of five years and, accordingly, a declaration of death would require either that it was established that he was dead or that, taking into account the circumstances surrounding the disappearance and what is otherwise known, there is a high degree of probability that he was dead.

The court was of the opinion that the circumstances indeed suggested that BB was dead but, since there was no clear information regarding the disappearance, there was no such high degree of probability that BB is dead as required for the right to national public pension to have ceased.

CLAIMS, ETC.

8. *The Swedish Pensions Agency* claims that the judgment of the administrative court of appeal is to be overturned and the judgment of the administrative court is to be affirmed.
9. AA is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

Legislation, etc.

The Social Insurance Code

10. The Social Insurance Code contains provisions which govern the entitlement to national public pension and provisions regarding processing, reconsideration and appeal to be applied in matters regarding such pension.
11. Pursuant to Chapter 56, section 7, national public pension payments are made up to and including the month in which the entitlement to the pension ceases.
12. Chapter 110, section 13 provides that the administrative authority shall ensure that the matters are investigated to the extent required by their character. In addition, it is prescribed that the individual is obliged to provide information which is material to the assessment of the question of compensation or otherwise for the application of the Code.

13. Pursuant to section 52, first paragraph (2), compensation pursuant to the Code may be withdrawn or reduced where the insured or the person who otherwise receives the compensation has not provided information in accordance with section 13. The second paragraph provides that the withdrawal or reduction may pertain to a certain period of time or until further notice and that the measures are only to be taken where the matter involves a question of a circumstance which is material to the entitlement to, or the amount of, the compensation.
14. Provisions regarding reconsideration and appeal of decisions regarding national public pension are found in Chapter 113. As a main rule, for decisions taken in accordance with the Code, the decision-making authority must first reconsider its decision (underlying decision) before it can be appealed to an administrative court (sections 7 and 10).
15. According to the general reconsideration provision in section 7, first paragraph, the Swedish Pensions Agency shall reconsider a decision where so requested in writing by an individual to whom the decision pertains. Section 22, second paragraph states, however, that only section 7, second paragraph and sections 9, 21 and 23-31 apply to the question of reconsideration of decisions by the Swedish Pensions Agency in matters regarding national public pension.
16. Provisions regarding the right of an individual to request reconsideration of a decision regarding retirement pension are found in sections 23 and 24.
17. According to section 23, a decision is to be reconsidered where so requested by the person to whom the decision pertains or where there are other reasons.
18. Section 24 prescribes that where the person to whom a decision regarding income-based retirement pension pertains has died, another person who is affected by the decision may also request reconsideration thereof in writing.

19. Section 33 prescribes that, where the person to whom a decision regarding national public pension pertains has died, another person who is affected by the decision may also appeal the same.

The Administrative Procedure Act

20. According to section 42 of the Administrative Procedure Act, a decision may be appealed by the person to whom the decision pertains where a decision is not in his or her favour. It follows from section 4, however, that the provision is not to be applied where another act or an ordinance contains any provision which deviates from the Administrative Procedure Act. Instead, the provision of the other statute is to be applied.

The Court's assessment

21. The appealed ruling relates to a matter at the Swedish Pensions Agency regarding reconsideration of a decision on the entitlement to national public pension in accordance with the Social Insurance Code. The examination is thus to be conducted by application of the provisions of the Social Insurance Code.
22. In the matter before the Swedish Pensions Agency, the agency applied the provisions of Chapter 110, sections 13 and 52 of the Social Insurance Code in order to investigate and examine BB's continued entitlement to pension. It follows from the provisions that the pension may be withdrawn in the event the individual does not provide information which is material to the assessment of the entitlement to the compensation.
23. In conjunction with the reconsideration of a decision regarding national public pension, in so far as is of interest here, the special reconsideration rules in sections 23 and 24 shall, according to Chapter 113, section 22, second paragraph of the Social Insurance Code, be applied in lieu of the general reconsideration rule in section 7, first paragraph.

24. It appears from the relevant reconsideration decision that the decision to withdraw was reconsidered upon request by AA. However, the Swedish Pensions Agency has not stated the basis upon which the agency believed that she had a right to reconsideration of the decision regarding withdrawal of BB's pension.
25. According to section 23, reconsideration requires that such be requested in writing by the person to whom the decision pertains or "where there are other reasons". The decision does not pertain to AA. Other reasons refer to the situation in which the agency, on its own initiative, finds cause to reconsider the decision (Government Bill 1997/98:151, p. 751). None of these grounds for reconsideration apply. Thus, such reconsideration could not be carried out by virtue of section 23.
26. In the event the person to whom the decision pertains has died, however, there is a possibility pursuant to section 24 for another person who is affected by the decision to request reconsideration in writing. The preparatory works state that the decision regarding the deceased's earned pension right, pension points, etc., may be reconsidered upon request by the person who is affected and, above all, it is the person entitled to some form of survivor's pension who can be considered (*ibid.*, Government Bill, pp. 496 and 752).
27. As a starting point, in order for a decision which has been taken in accordance with the Social Insurance Code to be subject to appeal to an administrative court, it must first be reconsidered by the decision-making authority. The question of whether an individual has the right to request reconsideration is thus significant even to the issue of whether the individual has a right to have the case tried in court .
28. Irrespective of whether AA was affected in the sense referred to in the provision in section 24, the provision presupposes according to its wording that the person to whom the decision pertains has died. This must, in the view of the Supreme

Administrative Court, be understood such that it is to be established that the person to whom the decision pertains has died or has been declared dead in accordance with the Declaration of Death Act at the time of the request for reconsideration. In a comparable way, the aforementioned should also apply in conjunction with the application of the corresponding appeals provision in section 33.

29. It may be noted that, at the time of AA's request for reconsideration, it had not been established that BB was dead or had been declared dead in accordance with the Declaration of Death Act. Thus, AA did not have the right to have the underlying decision reconsidered by virtue of section 24.

30. Thus, the Supreme Administrative Court finds that the conditions were not present for reconsideration of the underlying decision regarding the withdrawal of BB's pension at the request of AA. Accordingly, the Swedish Pensions Agency should have disallowed her request regarding reconsideration. The aforementioned entails that the rulings of the administrative court of appeal and administrative court, as well as the reconsideration decision by the Swedish Pensions Agency are to be overturned and that AA's request for reconsideration of the decision of the Swedish Pensions Agency of 19 November 2020 is to be disallowed. Accordingly, the latter-mentioned decision by the Swedish Pensions Agency is affirmed.

Justices Henrik Jermsten, Per Classon, Mahmut Baran, Marie Jönsson and Linda Haggren have participated in the ruling.

Judge Referee: Hedvig Areskoug.