



## M.S. v. Sweden

App. No. 20837/92, Eur. Ct. H.R. 49 (1997).

**Country:** Sweden

**Region:** Europe

**Year:** 1997

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Health information, Health systems and financing, Occupational health

**Human Rights:** Right to due process/fair trial, Right to privacy

### Facts

Applicant was a Swedish citizen who slipped and fell at work. She made a claim for compensation under the Industrial Injury Insurance Act from the State Insurance Office. The applicant's lawyer made a routine request for her file and it was revealed that the State Office had been in correspondence with the woman's clinic and had accessed the applicant's medical file, which contained information that the applicant suffered from spondylolisthesis, had a history of chronic back pain and had sought an abortion. There was no information in the file that the fall had caused her back pain. Her claim for compensation was therefore rejected. The applicant appealed to all the relevant domestic bodies but was not successful.

She complained to the European Court alleging that the communication of her medical records to the Social Insurance Office constituted an unjustified interference with her right to respect for private life under Article 8 of the European Convention on Human Rights (ECHR). She also alleged violations of Article 6 (right to a fair trial) and 13 (right to an effective remedy) of the ECHR.

### Decision and Reasoning

The Court found that the disclosure of medical information did not violate Article 8. The Court confirmed that the applicant, in submitting for a compensation claim, had not waived in an unequivocal manner, her right to respect for private life with regard to the medical records at the clinic. However, the disclosure had a legal basis and was foreseeable being that there was a legitimate aim (the protection of the economic well-being of the country) and being that it was necessary in a democratic society and proportionate.

The Court found no violation of Articles 6 as it was inapplicable. Indeed, the clinic had been under an obligation to supply the Office with information on the applicant concerning the circumstances relating to her compensation application and enjoyed considerable discretion in assessing what data would be relevant.

While the applicant had a claim under Article 13 (in light of the Court's findings under Article 8), the Court found no violation. Indeed, the applicant had had access to domestic authorities empowered both to deal with the substance of her Article 8 complaint and to grant her relief as it was open to her to bring criminal and civil proceedings against the relevant staff of the clinic and to claim damages for breach of professional secrecy.

### Decision Excerpts

"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)."