



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

SECOND SECTION

**CASE OF MITCHELL AND HOLLOWAY v. THE UNITED
KINGDOM**

(Application no. 44808/98)

JUDGMENT

STRASBOURG

17 December 2002

FINAL

21/05/2003

*This judgment will become final in the circumstances set out in Article 44
§ 2 of the Convention. It may be subject to editorial revision.*

In the case of Mitchell and Holloway v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 19 June 2001 and 3 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 44808/98) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two United Kingdom nationals, Mr Geoffrey Mitchell and Mr Louis Holloway (“the applicants”), on 1 July 1998.

2. The applicants were represented by Clarke, Wilmot and Clarke, solicitors practising in Southampton. The United Kingdom Government (“the Government”) were represented by their Agent, Mr H. Llewellyn of the Foreign and Commonwealth Office, London.

3. The applicants alleged, in particular, that civil proceedings brought against them were not determined within a reasonable time. They invoked Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 19 June 2001, the Court declared the application admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1946 and 1941 respectively and live in Kent.

10. On 7 February 1986 the applicants granted to a company now known as Buckingham International Limited (“Buckingham”) an option to purchase 90% of the share capital in Worldwide Dryers Limited (“WWD”) for 2 pounds sterling (“GBP”) a share, with a further option to purchase the remaining 10% at a price to be fixed by an agreed formula. On 2 October 1986 the first lot of shares in WWD was purchased. Relations between Buckingham and the applicants subsequently deteriorated.

11. On 12 February 1988 WWD and Buckingham issued High Court proceedings against the applicants claiming, *inter alia*, damages for breach of contract. On 27 October 1988 Buckingham exercised its call option on the remaining 10% of the shares of WWD, Buckingham alleging that no further payment was due to the applicants given its outstanding claims against them.

12. In January 1990 the second applicant was granted legal aid.

13. The plaintiffs finally served their statement of claim on 1 May 1990 having received numerous extensions of time (ordered by the court on the basis of the parties’ consent). The statement of claim ran to fifteen pages. It included many allegations of breaches of warranties in the option agreement and claims that the applicants owed WWD substantial sums of money which they had borrowed from WWD through directors’ loans schemes.

14. The applicants served a short-form defence on 31 July 1990 after two extensions of the relevant time-limit granted by the High Court following contested hearings. Further particulars of the defence were requested by the plaintiffs in November 1990. At a directions hearing on 28 February 1991, a Master of the High Court, *inter alia*, allowed the applicants to amend their defence and to file a counterclaim, and ordered that the action be set down for hearing on or before 23 March 1991. This date was subsequently vacated by the parties’ agreement. On 23 April 1991

the applicants were accorded until 14 May 1991 to file the amended defence and counterclaim, and it was so filed. In June 1991 the first applicant was granted legal aid. The plaintiffs' reply and defence to the counterclaim was served on 9 September 1991, after an extension of time.

15. At the request of the applicants' solicitors, on 23 October 1991 the High Court ordered that the plaintiffs' claim and the applicants' counterclaim be set down for hearing. The relevant setting down notice was filed by the plaintiffs on 31 October 1991.

16. On 13 November and 19 December 1991 the High Court ordered the plaintiffs to file outstanding pleadings. By letter dated 7 November 1991, the applicants requested an expedited hearing from the Lord Chancellor's office. The letter of the Administrator of the Royal Courts of Justice dated 20 November 1991, in response, explained that the applicants could apply to the High Court to advance the hearing but that the court was otherwise unable to bring the hearing date forward. It further explained that such delays often occurred given the number of cases waiting to be heard, in the light of the estimated hearing time (then ten days) and because a fixed hearing date had been requested.

17. In late 1991 and early 1992 the applicants were advised by solicitors and by junior and Queen's Counsel that an application for an expedited trial was unlikely to succeed as *inter alia* there were no grounds for granting the applicants priority over other litigants. On 9 January 1992 the plaintiffs filed outstanding pleadings (further and better particulars of the statement of claim) and in February and March 1992 discovery of documents took place in the case.

18. On 6 February 1992 counsel for all parties submitted an increased estimated hearing time of fifteen days. On 27 February 1992 the hearing date was fixed for 7 March 1994. The High Court later confirmed in its judgment of 5 November 1997 that the two-year delay in such cases was "not untypical" and that the reason was that the Chancery lists were "extremely congested".

19. On 8 December 1993 WWD was ordered (on its own petition) to be wound up.

20. On 24 February 1994, due to the late discovery of the plaintiff's documents (some 120 boxes), the applicants applied for an adjournment of the hearing date and for an expedited hearing date thereafter. Both requests were granted and the hearing date was re-scheduled for April 1994. On 12 April 1994 the applicants served further amendments to their defence and counterclaim.

21. The hearing began on 26 April 1994 and lasted 20 days. Since WWD was in liquidation and did not appear, the judge dismissed WWD's action at the outset. Buckingham applied to make substantial amendments to its pleadings and its claims were adjourned. Only the applicants' counterclaim was therefore examined. Judgment (ninety-nine pages) was

delivered by Ferris J. on 18 July 1994 in favour of the applicants in the sum of GBP 3,681,143.47 plus costs.

22. The execution of that judgment was stayed by order of the High Court on 27 July 1994 pending the lodging of a notice of appeal. On 29 July 1994 the High Court made an order for security for costs against Buckingham and on 15 August 1994 Buckingham lodged an appeal. On 12 September 1994 Buckingham's claims were dismissed by consent and costs were awarded to the applicants. The stay was partially lifted, allowing the applicants to pursue execution of a small part of the judgment. On 20 April 1995 a High Court Master made a provisional charging order over the property of Buckingham in the sum of the judgment.

23. On 27 April 1995 creditor banks appointed administrative receivers in respect of Buckingham. On 22 May 1995 the High Court Master confirmed the charge on Buckingham's property in the amount of the judgment and of the interest and legal costs accrued since the judgment. On 8 June 1995 Buckingham withdrew its pending appeal since the receivers did not wish to pursue it. The appeal was therefore dismissed by the High Court on 29 June 1995 and costs were awarded to the applicants. The stay was also lifted.

24. In March 1996 the Taxing Office assessed the applicants' costs (including those of the appeal but less the periods for which they were legally aided) at GBP 500,000 approximately.

25. Given the appointment of administrative receivers to Buckingham, the applicants investigated how to achieve priority for their judgment over unsecured and preferential creditors of Buckingham, and it was considered that the judgment could be enforced against the intra-group indebtedness of certain subsidiaries of Buckingham in the United States ("US").

26. In early 1996 the applicants therefore had the judgment registered in Florida. In May 1996 they issued proceedings in the US to garnishee funds owed to Buckingham by its US subsidiaries. On 8 May 1996 a circuit court in Florida made an order by which over 7,000,000 US dollars of those subsidiaries' funds were held in court as security for the judgment debt in the United Kingdom.

27. On 21 May 1996 the High Court, on the application of Buckingham's administrative receivers for a winding up order, appointed provisional liquidators to take over its affairs. In May 1996 those provisional liquidators obtained from the US courts a provisional discharge of the order garnisheeing the subsidiaries' funds. That provisional order was subject to the courts in the United Kingdom determining whether the latter would permit the applicants to enforce their judgment debt ahead of the existing secured and preferential creditors of Buckingham.

28. The applicants therefore issued new proceedings (no. 2835/1996) on 11 June 1996 in the High Court in the United Kingdom to have determined the issue identified by the US courts. Pointing to the delay in the

determination of their claim against Buckingham in the substantive proceedings, they requested the High Court to exercise its discretion to give them priority over the secured and preferential creditors of Buckingham.

29. On 3 July 1996 a compulsory winding up order of Buckingham was obtained which confirmed the provisional liquidators in office.

30. On 1 August 1996 the High Court ordered, on the basis of the parties' consent, that the jurisdiction issue be dealt with as a preliminary matter. On 11 October 1996 the High Court found that it did not have jurisdiction. A notice of appeal was issued on 28 October 1996 and leave to appeal was granted on 14 January 1997. On 21 February 1997 the Court of Appeal found that the High Court had jurisdiction and remitted the case to it. (*Mitchell and another v. Carter and another, Re Buckingham International plc* [1997] 1 BCLC 681).

31. On 12 May 1997 the applicants requested that their application be certified as fit for a speedy trial and that application was granted on 3 June 1997. The High Court heard the matter again on 9 July 1997. On 5 November 1997 Harman J. handed down the High Court's judgment. He found that he could not prefer the judgment debt of the applicants over the secured and preferential creditors of Buckingham. He described the "lamentable history" of the proceedings and was critical of the conduct of those proceedings by Buckingham and their legal representatives, referring to their "highly successful spoiling tactics", to the "carefully dilatory conduct of the action before mid-1992" and to their "extremely overdue" statement of claim pointing out, in this context, that "if litigation is about the obtaining of justice at a fair trial it is equally clear that that process was wholly obstructed". A notice of appeal was filed on 5 December 1997.

32. On 3 February 1998 the Court of Appeal heard the appeal and on 16 February 1998 it confirmed the judgment of the High Court (*Mitchell and another v. Buckingham International plc (in liq) and others, Re Buckingham International plc (in liq) (no 2)* [1998] 2 BCLC 383). The Court of Appeal also referred to the "delaying tactics adopted in the litigation by Buckingham and its solicitors" which "may have amounted to, or come close to, abuse of process". It went on:

"The civil justice system has unfortunately failed to give [the applicants] prompt relief for their complaints, and their eventual victory before Ferris J has become a very hollow victory. Nevertheless, there was in our judgment no substantial flaw in the way in which Harman J exercised his discretion."

33. The Court of Appeal also refused leave to appeal to the House of Lords. The application for leave to appeal to the House of Lords (filed on 16 March 1998) was rejected by that body on 29 June 1998.

34. The applicants finally recovered from the liquidators of Buckingham approximately GBP 100,000 after payment of their costs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. The High Court possesses an inherent jurisdiction to dismiss any action for “want of prosecution” by the plaintiff and an action is liable to be so dismissed where the plaintiff has been guilty of contumelious default or where there has been inordinate and inexcusable delay causing prejudice to the defendant.

36. It also has an inherent jurisdiction to strike out an action on the grounds that it is an abuse of the process of the Court. This latter power was supplemented by Order 18 rule 19 of the Rules of the Superior Courts (“RSC”) which provided for an express power to strike out any pleading or an endorsement of any writ on the grounds, *inter alia*, that it may prejudice, embarrass or delay the fair trial of the action, or is otherwise an abuse of process of the Court.

37. Order 19 rule 1 of the RSC provided that, where a plaintiff failed to serve a statement of claim on a defendant, the latter could apply to the court after the relevant time period passed for an order to dismiss the action. The court could dismiss the action or make such order as it thought fit.

38. Order 34 rule 2(2) of the RSC provided for action to be taken where the plaintiff failed to set down an action for hearing within the period stipulated by the court: the defendant could either set the case down for hearing or could apply to the court to dismiss the action for want of prosecution. Again, the court could dismiss the action or make such other order as it thought fit.

39. A party to proceedings could also apply to a Master or judge of the High Court for an order that the hearing of a case be expedited.

THE LAW

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

40. The applicants complain of the length of contract and enforcement proceedings, invoking Article 6 § 1 of the Convention which provides as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. The parties' submissions

1. *The applicant*

41. The applicants contended that English law, practice and procedure was deficient at the relevant time in dealing with delay in civil cases, in particular since there was no system of court case management. They referred in some detail to Lord Woolf's final report on "Access to Justice" of July 1996, to the Report of the Review Body on Civil Justice of June 1988 and to the introduction of the new Civil Procedure Rules in April 1999, which purported to effect radical changes to practice and procedure with a view to expediting cases.

42. As to the period prior to 31 October 1991, the applicants considered that they did everything in their power to progress their case and they pointed out that they were not granted legal aid until January 1990 and June 1991, respectively, which hampered them. They also recalled that the plaintiffs held the vast majority of the crucial documents, discovery of which was not possible until after the pleadings had closed.

43. The principal period of delay about which the applicants complained was that between 31 October 1991, when the notice to set the case down for hearing was filed, and 7 March 1994, the first date fixed for the hearing. They accepted that this is the only specific period of delay for which the Government could be held responsible and they contended that the Government were solely responsible for it. They disputed the Government's submissions about the impact of a request for a fixed hearing date, arguing that a fixed date was obtained primarily because of the estimated length of the hearing and that it was standard listing practice in the Chancery Division of the High Court to request a fixed date. It would have been abuse of process to apply for a "floating date" in a case of such length involving expert witnesses. They disputed that the availability of witnesses played any part in the delay in fixing a hearing date. They argued that it was unjustifiable to be obliged to wait over two years for a hearing which was not to be of an unusual length. Their own adjournment of the hearing from March to April 1994 was of minor relevance and, in any event, was explained by the disclosure by Buckingham of a significant number of documents on 18 February 1994. They further submitted that neither the complexity of the case nor the actions of third parties had anything to do with the delay in listing the case for hearing.

44. The applicants rejected the Government's argument they were at fault in failing to apply to the court for expedition, pointing out that it was the considered view of very experienced counsel and solicitors that such application would fail and that, as legally aided applicants, they would not be permitted to pursue applications unlikely to succeed. Counsel also

rejected the practicality of applying to transfer the case to another division of the High Court which would have refused such blatant forum-shopping.

45. The applicants did not complain about any specific period of delay after July 1995 because, at that stage, the administrative receivers had already been appointed to Buckingham.

2. The Government

46. The Government considered the length of the proceedings to be reasonable. In the first place, they submitted that the case was factually, legally and procedurally complex.

47. Secondly, and as to the applicants' conduct, they submitted that the applicants' failure to use the range of remedies available to them to shorten the proceedings meant that they bore the primary responsibility for the length of the proceedings. The Government referred, in particular, to their failure to apply to expedite the hearing of the substantive proceedings in the High Court. In addition, the Government contended that they took decisions which contributed to the length of proceedings (in particular, to deal separately with the jurisdiction issue before the High Court and the Court of Appeal in the enforcement proceedings). Moreover, the Government held the applicants solely responsible for certain periods of delay and, in particular, the delay between the service of the statement of claim and the fully pleaded amended defence and counterclaim, and between the initial hearing date of 7 March 1994 and 26 April 1994 when the hearing actually began. The earlier periods of delay by the parties must also be regarded as contributing to the later problems of listing and to the fact that the case was heard only in 1994.

48. Thirdly, the Government maintained that they were not responsible for the conduct of third parties such as Buckingham, the conduct of which company the domestic courts considered dilatory and almost an abuse of process, and which conduct was one of the primary causes of delay. Neither were the Government responsible for any failings or deficiencies of the applicants' solicitors.

49. As to the delay between listing the case for trial (31 October 1991) and the trial itself (26 April 1994), the Government accepted that a delay of over two years was undesirable and that the case lists in the Chancery Division of the High Court were "relatively congested" at the relevant time. However, the High Court was only notified by the parties of the time-estimate for the hearing on 6 February 1992 and was only then in a position to fix a date. In any event, the pleadings had not closed in October 1991 and the applicants themselves requested an adjournment of the original hearing date of 7 March 1994 until April 1994. The applicants also failed to apply for expedition of the trial during this period through the normal channels. It would have been open to the courts to grant the application. The Government did not accept that the applicants could rely on the advice of

their lawyers that an application would not be successful, noting that the terms of that advice have not been specified and pointing out the importance that the applicants alleged that they attached to an early hearing date and the possibility of putting forwards the arguments that they raise under Article 6 § 1. When the applicants did make such an application in February 1994 the request was granted and it was submitted that they were under a duty to avail themselves as quickly as possible of the opportunity to have the case expedited. In addition the applicants could have applied for the case to be transferred to another division of the High Court or applied for a “floating date” which would have given the court greater flexibility in listing.

B. The Court’s assessment

50. The lapse of time between the beginning of the substantive proceedings and the end of the enforcement proceedings (*Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgment and Decisions* 1997-II no. 33, §§ 40-41) amounts to 10 years, 4 months and 17 days. The Court should not deduct therefrom the total of the time-limits given for filing documents during that period (as the Government suggest) but such periods are not to be counted as delay attributable to the authorities (*Pretto v. Italy*, judgment of 8 December 1983, Series A no 71, §§ 36-37). However, the Court should deduct the time during which there were no proceedings before the United Kingdom courts (between 30 June 1995 and 10 June 1996 inclusive). Nevertheless, and just as for the duration of proceedings prior to a ratification, account should be taken of the stage reached in the proceedings in June 1996 when the subsequent enforcement proceedings began.

Accordingly, the period of time to be considered by the Court is 9 years, 5 months and 7 days, for two instances in the substantive proceedings and four in the enforcement proceedings.

51. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court’s case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV; *Horvat v. Croatia*, no. 51585/99, § 52, ECHR 2001-VIII).

52. The proceedings were complex factually, legally and procedurally and they were rendered even more so by the delaying tactics of the plaintiff company, Buckingham International Ltd. The conduct of the plaintiff in deliberately obstructing the progress of the case was subject to stringent comment in the High Court and Court of Appeal, the latter of which considered that it came close to an abuse of process. It may also be noted

that the case included a counterclaim by the applicants which was of considerable financial significance.

53. The Court observes that the applicants complain in essence about one period of delay for which they hold the Government solely responsible. The period covers 31 October 1991 (when the plaintiffs filed the notice setting the case down for hearing) and March 1994 (when the first hearing date was set in the substantive proceedings).

54. The Government, while acknowledging that the delay in listing the case for trial was “undesirable” and due to the congestion of the courts at the time, argued that the applicants were nonetheless responsible for contributing to this delay. The Court however is not persuaded that the applicants can be blamed for applying for a fixed date hearing to cover the anticipated 15-20 day trial or for not resorting to steps such as applying for a transfer to another division of the High Court. It considers that the delay derives, first and foremost, from the failure by the State to organise its system in such a way as to meet its Convention obligations (for example, *Salesi v. Italy* judgment of 26 February 1993, Series A no. 257-E, § 24) particularly when it appears that neither a fixed date nor a 15-day hearing were unusual matters in the Chancery division of the High Court. The applicants’ adjournment from March to April 1994 was justified (by late discovery of documents by the plaintiffs) and is, in any event, a relatively minor delay.

55. The Government also alleged that it was the applicants’ responsibility to make an application to the court to expedite the hearing during this period, observing that the Lord Chancellor’s office had informed them of this possibility in November 1991 and that, when they requested an expedited hearing in February 1994, this was granted. The applicants have pointed out that their experienced counsel and solicitors advised them that an application for expedition would not have had any prospect of success since it was only in exceptional circumstances, which did not pertain in their case, that a court would allow parties to jump the existing queue. Article 6 § 1 was not applicable in domestic courts at that time and it cannot be considered that reliance on arguments in that context would have been at all decisive. It may also be noted that, though the application for an expedited hearing was granted in February 1994, that was in the context of obtaining a date after yet another adjournment which resulted overall in the trial being set back another month.

56. In any event, even if a system allows a party to apply to expedite proceedings, this does not exempt the courts from ensuring that the reasonable time requirement of Article 6 is complied with, as the duty to administer justice expeditiously is incumbent in the first place on the relevant authorities (*Philis v. Greece* (no. 2), judgment of 27 June 1997, *Reports* 1997-IV, § 49).

57. Secondly, account must be taken of the stage and state of the proceedings in October 1991 when the case was set down for hearing. Three and a half years had passed since the proceedings had issued against the applicants, and much of that delay was caused by the plaintiffs' (essentially Buckingham's) deliberate delaying tactics, tactics the Government consider to be the primary cause of delay in these proceedings. However, the applicants are not responsible for delays resulting from the applications for extensions and adjournments made by Buckingham (*Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 28). In so far as the applicants either consented to certain extensions and adjournments and did not apply to have the case dismissed for failure by the plaintiffs to file the statement of claim during this period, the Court notes that the Government do not comment on the applicants' submission that they were hampered in dealing with the plaintiffs' actions due to the late grants of legal aid to them (in January 1990 and June 1991). As noted above, the duty to administer justice expeditiously is incumbent in the first place on the relevant authorities.

58. Given that the applicants do not hold the Government responsible for any other specific period of delay and do not even complain about any delay after July 1995 (as the administrative receivers had been appointed by then), the Court concludes that this period of unjustified delay (October 1991 to March 1994) gives rise to a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 13 OF THE CONVENTION

59. The applicants also complain about the length of the proceedings under Article 1 of Protocol No. 1 and Article 13 of the Convention.

Article 1 of Protocol No. 1 provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13 of the Convention 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."

60. Having regard to the circumstances of this case, the Court considers that the Article 1 of Protocol No. 1 complaint does not give rise to any

separate issue (see, for example, *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, § 23, and *Di Pede v. Italy*, judgment of 26 November 1996, *Reports* 1996-IV, no. 17, § 35).

61. The Court also notes that the applicants' complaint relates to the length of the proceedings and, in that respect, Article 6 is the *lex specialis*. They do not make specific and separate submissions under Article 13 about the lack of an effective domestic remedy for lengthy proceedings. Consequently, this case can be distinguished from that of *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI, §§ 146-160).

62. Consequently, no issues arise under these provisions requiring the determination of the Court.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

64. The applicants claimed pecuniary damage in the sum of the amount of the judgment made in their favour on 18 July 1994 by the High Court, namely, GBP 2,109,143.74, with appropriate interest running from that date. While they considered that the consequences of the delay in their case caused them greater losses, they restricted themselves to this sum for the sake of simplicity and stated that they would give credit for the relatively small sum received from the liquidators. They argued that Buckingham would have paid the monies due to the applicants if the Government had complied with their Convention obligations, claiming that Buckingham did not assert any difficulties in meeting its liabilities until 13 April 1994 and in its published accounts up to 1994 had funds to cover the applicants' claims. Furthermore, if the trial had come on earlier, it would anyway have been forced realistically to settle the case for a substantial amount.

65. The applicants also claimed non-pecuniary damage, submitting that they have suffered serious non-financial losses, including health, credit and employability, and a breakdown in family life. They did not propose any particular figure but stated that it should be substantial.

66. The Government submitted that the applicants had not showed that the delays in the litigation for which they were responsible caused them any actual financial loss. They argued that the period of unjustified delay was only a small part of the overall proceedings and the applicants could only claim for the losses caused by the listing delay which exceeded what would have been reasonable. Furthermore, the event which brought the litigation to an end was the insolvency of Buckingham, which led the latter to withdraw its appeal on 8 June 1995, and there is no basis for the suggestion that if the litigation had ended earlier that the applicants would have received full payment from Buckingham. They were unsecured creditors whose claims ranked behind those of the banks who had lent Buckingham money.

67. The Government also considered that the applicants had not identified any discrete suffering or distress which was caused to them as a result of the relevant period of delay and which would not have occurred in any event.

68. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, amongst other authorities, the *Barberà, Messegue and Jabardo v. Spain*, judgment of 13 June 1994 (Article 50), Series A no. 285-C, pp. 57-58, §§ 16-20; the *Cakıcı v. Turkey* judgment of 8 July 1999, *Reports 1999-IV*, § 127). The Court finds no such causal connection arising in the present case between the award for damages made by the High Court and the unreasonable length of proceedings found to disclose a breach of Article 6 § 1 of the Convention. It is not possible in the circumstances to speculate as to whether the applicants would have been more successful in enforcing the judgment against Buckingham if the identified period of delay had been reduced. No award is accordingly made for pecuniary damage.

69. Turning to non-pecuniary loss, the Court does not find it substantiated that the applicants suffered, as a result of the breach in this case, any concrete injury to health, family life or career. It does consider that they must have certainly suffered some non-pecuniary damage, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants a total sum of 5,000 euros (EUR) under this head.

B. Costs and expenses

70. The applicants claimed legal costs and expenses totalling GBP 58,352.48, inclusive of value-added tax ("VAT"). This included fees of GBP 35,132.50 for Queen's Counsel (Q.C.), fees for four members of the

solicitors' firm involved in working on the case and costs incurred in travelling to attend on the applicants.

71. The Government considered that the hourly rates claimed for solicitors and counsel were excessive, submitting that it was not necessary to instruct a Q.C. in this case and that the involvement of four representatives led to duplication of work. Counsels' fees were, in their view, enormous and unjustified for the nature of the work undertaken. They submitted that a total claim of GBP 25,000, inclusive of VAT, would be reasonable.

72. Having regard to the relative simplicity of the subject-matter under the Convention and the procedure adopted before the Court in this case, the Court finds the amount claimed by the applicant cannot be regarded as either necessarily incurred or reasonable as to quantum (see, amongst other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). It awards the sum of EUR 15,000 for legal costs and expenses, inclusive of VAT, and to be converted to pounds sterling at the date of settlement.

C. Default interest

73. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that no separate issues arise under Article 1 of Protocol No. 1 or Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into pounds sterling at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 15,000 (fifteen thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President