



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

FIRST SECTION

CASE OF LUORDO v. ITALY

(Application no. 32190/96)

JUDGMENT

STRASBOURG

17 July 2003

FINAL

17/10/2003

In the case of Luordo v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 26 June 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32190/96) against the Italian Republic 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 an Italian national, Mr Giuseppe Luordo (“the applicant”), on 28 March 1996.

2. The applicant was represented before the Court by Mr F. Fiandrotti, a lawyer practising in Turin. The Italian Government (“the Government”) were represented successively by their Agents, Mr U. Leanza and Mr I.M. Braguglia, and by their respective Co-Agents, Mr V. Esposito and Mr F. Crisafulli.

3. The applicant alleged a violation of Article 1 of Protocol No. 1 in that a bankruptcy order had deprived him of all his possessions. He further complained that after he had been declared bankrupt all the correspondence addressed to him had been handed over to the trustee in bankruptcy (Article 8 of the Convention) and that the bankruptcy order prevented him from taking legal proceedings to defend his interests (Article 6 § 1). Lastly, relying on Article 2 of Protocol No. 4, the applicant complained of the rule barring bankrupts from moving away from their place of residence.

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 First 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. Mr V. Zagrebelsky, the judge elected in respect

of Italy, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr G. Raimondi to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

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

7. By a decision of 23 May 2002 the Chamber declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1928 and lives in Druento (Turin).

10. In 1982 the Asti District Court made an order for the compulsory winding up of a commercial partnership formed by the applicant's wife in 1980.

11. On 16 November 1984 the same court made an order declaring the applicant personally bankrupt on the ground that he was a *de facto* partner.

12. On an unspecified date the trustee in bankruptcy filed a list of the bankrupt estate's debts with the registry.

13. On 21 November 1984 the judge assigned to the case gave the trustee in bankruptcy leave to intervene in proceedings that had been brought by a bank, SPT, for the forced sale of the applicant's house.

14. On 27 November 1984 he gave the trustee in bankruptcy leave to lodge tax appeals with the Tax Commissioners (*Commissione Tributaria*) in respect of sums claimed by the Turin and Asti tax authorities from the applicant's partnership.

15. Between 15 and 28 December 1984 the judge gave the trustee in bankruptcy permission to withdraw sums from the current account of the bankrupt estate for the payment, *inter alia*, of fees due to the trustee and an expert.

16. On an unspecified date in 1985 an initial attempt to sell the applicant's house at auction failed.

17. On 26 March 1985 the trustee in bankruptcy lodged a report. On 28 March 1985 the President of the District Court summoned G.Z. to appear in order to establish whether he was a partner of the applicant. G.Z. was heard on 26 April 1985.

18. On 10 June and 6 September 1985 the judge authorised the trustee in bankruptcy to make payments covering, *inter alia*, an expert's fees and the costs of publication of various notices.

19. On 21 January 1986 the judge gave permission for a lawyer to be instructed to act in the aforementioned proceedings concerning the applicant's house.

20. On 10 March 1986 the judge gave the applicant permission to draw his pension and on 21 March 1986 authorised the trustee in bankruptcy to settle proceedings that had been brought by S.G. for an order for the restitution of certain movables that were part of the bankrupt estate.

21. On 6 August 1986 the judge authorised the trustee in bankruptcy to enter into a loan agreement in respect of a building included in the bankrupt estate.

22. On 19 December 1986 the judge gave permission for a lawyer to be instructed to act in proceedings brought by P.C. contesting the bankrupt estate's liabilities.

23. On 23 March and 3 December 1987 the judge authorised the payment of various costs necessarily incurred in the proceedings.

24. On 16 December 1987 the trustee in bankruptcy sought an order for the replacement of the chairman of the Creditors' Committee following the latter's death.

25. On 22 December 1987 the judge refused permission for the sale by private contract (*vendita a trattativa privata*) of immovable property from the bankrupt estate on the ground that the Insolvency Act did not permit private sales of immovable property.

26. On 28 December 1987 the judge authorised the payment of a carer's allowance to the applicant's wife.

27. On 21 January 1988 he authorised the trustee in bankruptcy to return the deposit that had been paid on the proposed sale by private contract.

28. On 4 May 1988 the judge granted an application by O.D.S., one of the applicant's partners, for restitution of sums paid by a company, CPI, for services she had rendered.

29. On 28 June and 3 and 17 November 1988 he authorised the payment of advertising costs and taxes incurred on the sale of a building from the bankrupt estate.

30. On 8 February 1989 the judge authorised the payment of part of the fees of the lawyer acting in the proceedings brought by P.C.

31. On 3 March 1989 he authorised the payment of a tax liability and on 2 June 1989 of sums relating to the sale of the aforementioned building.

32. On 15 May 1991 he authorised the payment of the lawyer's fees incurred in the proceedings for the forced sale of the applicant's house and on 7 June 1991 the inclusion of a sum belonging to O.D.S. in the assets of the bankrupt estate.

33. On an unspecified date in September 1991 the trustee in bankruptcy intervened in tax enforcement proceedings (*procedura di esecuzione esattoriale*) brought by the Druento Tax Collector's Office (*Esattoria*) for the recovery of sums due on the sale of the applicant's house. Ultimately, the sale did not go ahead; on 13 November 1991 the judge authorised payment of the lawyer who had acted in the proceedings.

34. On 7 December 1991 the judge authorised the part payment of seniority pay (*trattamento di fine rapporto*) to the applicant.

35. On 28 April 1992 the judge appointed a valuer to value the applicant's assets and on 4 July 1993 authorised the payment of the costs thereby incurred.

36. On 12 May 1994 he appointed a new chairman to the Creditors' Committee at the request of the trustee in bankruptcy (who had made a like request on 16 December 1987).

37. On 10 January 1995 a further attempt was made to sell the applicant's house at auction, without success.

38. On 14 February 1995 the trustee in bankruptcy reported on the state of the proceedings at the judge's request. In particular, he said that all the assets of the bankrupt estate apart from the applicant's house had been sold. He also reserved the right to make a further proposal for the sale of the property at auction.

39. On 3 March 1995, in response to a request by the judge on 17 February 1995, the trustee in bankruptcy explained that there had been no partial distribution (*ripartizione parziale*) of the assets among the creditors because appeals were still pending before the Tax Commissioners.

40. As the applicant's house had been unlawfully occupied in the interim by D.L. and S.B., the judge ordered their eviction in a decision (*decreto di rilascio*) of 13 April 1995. On 14 April 1995 he asked the trustee in bankruptcy to produce a draft proposal for the partial distribution of the assets.

41. On 15 May 1995 the trustee in bankruptcy reported that the appeals to the Tax Commissioners had been successful and lodged a draft proposal for the partial distribution of the assets. Two days later he was authorised by the judge to transfer the current account of the bankrupt estate to another bank.

42. On 23 October 1995 the judge ruled that the draft proposal for the partial distribution of the assets could be implemented.

43. The following day D.L. moved out of the applicant's house. However, on an unspecified date S.B., who in the meantime had appealed against the judge's order of 13 April 1995, proposed to settle the dispute by undertaking to purchase the house.

44. On 14 December 1995 the trustee in bankruptcy filed a report.

45. On 6 February 1996 the judge fixed 19 April 1996 as the date for the auction of the applicant's house.

46. On an unspecified date the applicant sought a composition with the creditors. His application was declared inadmissible on 1 April 1996 on the ground that it did not satisfy the conditions laid down by section 124 of the Bankruptcy Act.

47. On 5 April 1996 the applicant asked the judge to refer to the Constitutional Court the question of the legitimacy of the system of proprietary and personal disabilities to which bankrupts were subject and, in particular, sections 48, 49 and 50(3) of the Bankruptcy Act and Articles 350, 393, 407, 2382, 2417, 2488 and 2516 of the Civil Code. In a decision of 17 April 1996, the judge rejected that application as being manifestly ill-founded, holding that the legislature's decision to give the creditors' proprietary interests precedence over those of the bankrupt did not entail a violation of the debtor's rights guaranteed by the Constitution.

48. In an application lodged with the registry on 17 April 1996, the applicant sought a stay of the order of 6 February 1996 for the sale of his house.

49. On 19 April 1996 the sale of the applicant's house by auction was adjourned to 21 April, when it was sold.

50. On 22 April 1996 the trustee in bankruptcy resigned. The District Court appointed a replacement the following day, who lodged a report on 11 October 1996.

51. On 3 May 1996 the applicant appealed to the Court of Cassation, with a view to having the order for the sale of his house set aside. According to information he has provided, his appeal was dismissed as being out of time.

52. On 12 December 1996 the judge appointed a valuer to carry out a valuation before title to the applicant's house was transferred to the successful bidder. The transfer was effected by a court order of 7 July 1997.

53. In a decision of 25 September 1998 the judge approved accounts that had been submitted by the trustee in bankruptcy.

54. On 5 October 1998 he authorised payment of the trustee in bankruptcy's fees.

55. On 23 March 1999 he approved the final proposal for the distribution of the assets, noting that the applicant had sufficient means after the sale of his house to honour his debts and bring the bankruptcy to an end.

56. On 17 July 1999 the judge terminated the bankruptcy.

II. RELEVANT DOMESTIC LAW

57. The relevant provisions of the Bankruptcy Act (Royal Decree no. 267 of 16 March 1942) read as follows:

Section 42

“The bankruptcy order divests the bankrupt of the rights to administer or to deal with assets that were in existence at the date of the said order. ...”

Section 43

“Legal proceedings concerning disputes over property issues arising in respect of assets forming part of the bankrupt estate shall be taken or defended by the trustee in bankruptcy.

The bankrupt shall only be entitled to intervene in the proceedings in so far as they concern an allegation of criminal bankruptcy on his part or if permitted by law.”

Section 48

“Correspondence addressed to the bankrupt must be passed to the trustee in bankruptcy, who shall be empowered to retain correspondence concerning property interests. The bankrupt may consult the correspondence. The trustee in bankruptcy shall keep the content of correspondence not relating to such interests confidential.”

Section 49

“The bankrupt may not leave his place of residence without the authorisation of the bankruptcy judge and must report to that judge, the trustee in bankruptcy and the creditors' committee when summoned unless he is prevented from doing so on legitimate grounds and has been given leave by the judge to send a representative.

If the bankrupt fails to comply with a summons, the judge may order that he be brought by the police.”

Section 50

“A public register of the names of bankrupts shall be held at the registry of each district court. Names shall be deleted from the register by order of the district court. Bankrupts shall be subject to the disabilities laid down by law until such time as their name has been deleted from the register.”

Section 88

“The bankrupt's property shall be administered by the trustee in bankruptcy from the moment it is recorded in the inventory of such assets drawn up by the trustee in bankruptcy ...”

58. The relevant provisions of the Civil Code are worded as follows:

Article 350

“The following may not be appointed as guardians or, if already appointed, must cease to act in that capacity:

... a bankrupt whose name has not been deleted from the bankruptcy register.”

59. Article 393 essentially prevents disqualified bankrupts from acting as trustees in bankruptcy until their names have been deleted from the bankruptcy register.

60. Articles 2382, 2399, 2417 and 2516 of the Civil Code prohibit a bankrupt from being appointed as a director or trustee in bankruptcy of a commercial or cooperative company or as a representative of the debenture holders in a public company.

61. Article 2 of Presidential Decree no. 223 of 20 March 1967, as amended by Law no. 15 of 16 January 1992, essentially provides for the suspension of the bankrupt's electoral rights for the duration of the bankruptcy proceedings and, in any event, for a period not exceeding five years from the date of the bankruptcy order.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

62. The applicant complained that the bankruptcy order had deprived him of all his possessions. In that connection, he relied on Article 1 of Protocol No. 1, which 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.”

A. The parties' submissions

1. The applicant

63. The applicant denounced the “economic demise of the bankrupt” decided on as a result of the “bad management of his affairs”. He also complained of the adverse effects the delays in the proceedings had had on his financial situation and economic activity.

2. The Government

64. The Government stated that, since bankruptcy proceedings were prescribed by law and pursued a legitimate aim, namely ensuring that creditors recovered at least part of their debts, the resulting deprivation of property did not infringe Article 1 of Protocol No. 1. As to the length of the proceedings, the Government said that it was primarily attributable to the unsuccessful attempts that had been made to sell the applicant's house at auction. Following attempts on unspecified dates in 1985, 1991 and 1995, the sale had finally been fixed for 19 April 1996, then adjourned to 21 April 1996. The applicant was also responsible for the length of the proceedings, as he had resorted to every means possible to block the liquidation process. He had made an application for a composition with the creditors, which had been declared inadmissible on 1 April 1996, requested the bankruptcy judge on 5 April 1996 to refer an issue to the Constitutional Court thereby causing the proceedings to be stayed, made an application on 17 April 1996 for a stay of execution of the order for sale (which was dismissed the following day) and followed that up with a like application on an unspecified date to the Court of Cassation.

B. The Court's assessment

1. Whether there was interference

65. The Court notes that the parties do not dispute that there has been interference.

2. The applicable rule

66. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain

conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

67. The Court notes that, following the bankruptcy order, the applicant was deprived not of his property, but of the right to administer and deal with his possessions, as the responsibility for administering them was assigned to the trustee in bankruptcy. The interference with his right to the peaceful enjoyment of his possessions thus took the form of a control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1.

3. Compliance with the conditions in the second paragraph

68. The Court notes that the prohibition on a bankrupt administering and dealing with his possessions is intended to ensure that the creditors are paid. The interference therefore pursued a legitimate aim that was in accordance with the general interest, namely the protection of the rights of others.

69. The Court reiterates that an interference must achieve a “fair balance” between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III, and *Immobiliare Saffi*, cited above, § 49).

70. The limitation on the applicant's right to the peaceful enjoyment of his possessions is not in itself open to criticism, particularly in view of the legitimate aim pursued and the margin of appreciation afforded by the second paragraph of Article 1. However, the risk with such a system is that it may unreasonably restrict an applicant's ability to deal with his possessions, particularly if the proceedings are protracted, as they were in the instant case in which they lasted fourteen years and eight months. The Government attributed the delays in the proceedings to the failure of the attempts to sell the applicant's house at auction and to the applicant's conduct.

Thus, while it is true that several attempts were made, albeit unsuccessfully, to sell the applicant's house at auction (on unspecified dates in 1985 and 1991 and on 10 January 1995), the Court notes that the bankruptcy authorities failed to take the slightest action during the intervals of approximately six years (from 1985 to 1991) and four years (from 1991 to 10 January 1995) between successive sale attempts.

As regards the applicant's conduct, the Court acknowledges that he sought a composition with the creditors (on an unspecified date), applied for a referral to the Constitutional Court (on 5 April 1996), applied for a stay of execution of the order for sale (on 17 April 1996) and appealed to the Court of Cassation (on 3 May 1996) against the refusal of a stay. However, it finds that those actions did not significantly slow down the bankruptcy proceedings because, apart from the request for a composition with the creditors (the date of which has not been given), all the applications were made in or after 1996 and were decided expeditiously by the courts concerned (for instance, the application for a referral to the Constitutional Court was decided within twelve days and the application for a stay of the order for sale within one day).

Furthermore, the Court notes that there were periods of judicial inactivity, in particular, between 2 June 1989 and 15 May 1991 (approximately two years), 28 April 1992 and 4 July 1993 (approximately one year and two months) and 7 July 1997 and 25 September 1998 (approximately one year and two months).

Consequently, the Court finds that there was no justification for restricting the applicant's right to the peaceful enjoyment of his possessions for the full duration of the proceedings, since, while in principle it will be necessary to deprive the bankrupt of the right to administer and deal with his or her possessions in order to achieve the aim pursued, the necessity will diminish with the passage of time. In the Court's view, the length of the proceedings thus upset the balance that had to be struck between the general interest in securing the payment of the bankrupt's creditors and the applicant's personal interest in securing the peaceful enjoyment of his possessions. The interference with the applicant's right was accordingly disproportionate to the aim pursued.

71. Having regard to the foregoing, the Court finds that there has been an infringement of the applicant's right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

72. The applicant further complained that, following the bankruptcy order, all the correspondence addressed to him had been handed over to the trustee in bankruptcy. He relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for 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.”

A. The parties' submissions

1. The applicant

73. The applicant said that there had been no justification whatsoever for monitoring his correspondence. He submitted that since bankruptcy orders were made public, notably through the display of a notice in the courthouse, anyone wishing to correspond with a bankrupt would be aware of his or her financial situation. Consequently, correspondence addressed to the bankrupt was purely personal and did not relate to the financial interests concerned by the bankruptcy proceedings. Lastly, the fact that the trustee in bankruptcy was under a duty to keep the content of personal correspondence confidential did not, in the applicant's opinion, prevent there being a breach of Article 8.

2. The Government

74. The Government submitted that the restriction imposed on the applicant's right to respect for his correspondence by section 48 of the Bankruptcy Act was intended to “achieve a fair balance between the public interest” and the applicant's interest. It enabled the trustee in bankruptcy to obtain all the information that was relevant to establishing the bankrupt's financial situation in order to prevent him from concealing or diverting sums of money to the creditors' detriment. The legal basis for the limitation on the right to respect for correspondence was included in the specific exceptions set out in paragraph 2 of Article 8 by the reference to the “protection of the rights ... of others”. The Government stressed that the monitoring was temporary and not punitive. Moreover, the trustee in bankruptcy was under a statutory duty to send the bankrupt any correspondence that did not relate to his financial interests and to keep the content of his personal correspondence confidential.

B. The Court's assessment

1. Whether there was interference

75. The Court notes that the parties do not dispute that there has been interference. Such interference will constitute a violation of Article 8 of the Convention unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society” (see, *mutatis mutandis*, *Labita v. Italy* [GC], no. 26772/95, § 179, ECHR 2000-IV).

2. Lawfulness and purpose of the interference

76. The interference was in accordance with the law (section 48 of the Bankruptcy Act). Furthermore, as the Government have stated, it was intended to enable information relating to the bankrupt's financial situation to be obtained in order to prevent him from diverting his assets to the creditors' detriment. The interference therefore pursued a legitimate aim, namely the protection of the rights of others.

77. It remains to be determined whether the measure in question was necessary in a democratic society.

3. Proportionality of the interference

78. The existence of a system to monitor the applicant's correspondence is not in itself open to criticism. However, the risk with such a system is that it may unreasonably restrict the applicant's right to respect for his correspondence, particularly if the proceedings are protracted, as they were in the instant case in which they lasted fourteen years and eight months. In that connection, referring to its findings with respect to Article 1 of Protocol No. 1, the Court considers that, contrary to what the Government have affirmed, the delays in the proceedings were not attributable to the failure of the attempts to sell the applicant's house at auction or to the applicant's conduct.

Consequently, it finds that there was no justification for restricting the applicant's right to respect for his correspondence for the full duration of the proceedings, since, while in principle monitoring correspondence will be necessary to achieve the aim pursued, the necessity will diminish with the passage of time. In the Court's view, the length of the proceedings thus upset the balance that had to be struck between the general interest in securing the payment of the bankrupt's creditors and the applicant's personal interest in securing respect for his correspondence. The interference with the applicant's right was accordingly disproportionate to the aim pursued.

79. Having regard to the foregoing, the Court finds that there has been a breach of the applicant's right to respect for his correspondence as guaranteed by Article 8 of the Convention.

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

80. The applicant also complained that the bankruptcy order had prevented him from taking legal proceedings in order to defend his interests. Article 6 § 1 of the Convention provides:

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

A. The parties' submissions

1. The applicant

81. The applicant said that the loss, as a result of bankruptcy, of the capacity to take legal proceedings was highly damaging to the bankrupt. At the same time, there was a conflict of interest between the trustee in bankruptcy, who acted in lieu of the bankrupt, and the bankrupt.

2. The Government

82. The Government contended that the purpose of preventing bankrupts from taking legal proceedings was to protect a third-party right, namely “the interests of the bankrupt's creditors”. Furthermore, the restriction applied solely to issues concerning pecuniary rights and, accordingly, was within the State's margin of appreciation. The Government added that the bankrupt was in any event represented in court by the trustee in bankruptcy. Lastly, the applicant had not sustained any loss, as he had instituted various court proceedings while the bankruptcy proceedings were pending (for instance, an application on 5 April 1996 for a referral to the Constitutional Court and an application on 17 April 1996 for a stay of execution of the order for sale).

B. The Court's assessment

83. The Court considers, firstly, that the restriction on the applicant's ability to take legal proceedings must be considered from the perspective of the right of access to a court. It reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute

proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 17-18, §§ 35-36). This right extends only to disputes (“*contestation*”) over “civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law (see, *inter alia*, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81, and *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, pp. 16-17, § 36).

84. The Court notes that the restrictions on the applicant's ability to take legal proceedings concerned disputes over issues of a pecuniary nature. The civil limb of Article 6 is therefore applicable.

85. Furthermore, the “right to a court” is not absolute. It is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57). However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40).

86. The Court considers that the purpose of the restriction on the applicant's capacity to take legal proceedings is to assign the role of representing the bankrupt in court in respect of issues arising over the bankrupt's pecuniary rights to the trustee in bankruptcy as, once the bankruptcy order has been lodged, he is responsible for the administration of the bankrupt's assets. Indeed, it is self-evident in the Court's view that disputes over such matters may have major repercussions on the assets and liabilities of the bankrupt estate. The Court consequently finds that the restriction is intended to protect the rights and interests of others, namely those of the bankrupt's creditors. The Court must go on to examine whether the consequences suffered by the applicant were proportionate to the legitimate aim pursued.

87. The restriction on the applicant's right of access to a court is not in itself open to criticism. However, the risk with such a system is that it may unreasonably limit the right of access to a court, particularly if the proceedings are protracted, as they were in the instant case in which they lasted fourteen years and eight months. In that connection, referring to its findings with respect to Article 1 of Protocol No. 1, the Court considers that, contrary to what the Government have affirmed, the delays in the

proceedings were not attributable to the failure of the attempts to sell the applicant's house at auction or to the applicant's conduct.

Consequently, it finds that there was no justification for restricting the applicant's right of access to a court for the full duration of the proceedings, since, while in principle a restriction on the right to take legal proceedings is necessary to achieve the aim pursued, the necessity will diminish with the passage of time. In the Court's view, the length of the proceedings thus upset the balance that had to be struck between the general interest in securing the payment of the bankrupt's creditors and the applicant's personal interest in having access to a court. The interference with the applicant's right was accordingly disproportionate to the aim pursued.

88. Having regard to the foregoing, the Court concludes that there has been an infringement of the right of access to a court as guaranteed by Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

89. Lastly, the applicant complained of the prohibition on bankrupts moving away from their place of residence. He relied on Article 2 of Protocol No. 4, which provides:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

A. The parties' submissions

1. *The applicant*

90. The applicant argued that the restriction on his freedom of movement was unjustified, as the trustee in bankruptcy or, alternatively, the legal representative, could have stood in for him when necessary in the proceedings.

2. *The Government*

91. The Government submitted that the restriction on freedom of movement imposed by section 49 of the Bankruptcy Act was a temporary measure which was not absolute – the sole obligation on the applicant being to seek leave from the judge before leaving his place of residence – and pursued a legitimate aim, namely to “ensure that the bankrupt could be contacted in order to obtain any vital information required to implement and terminate the procedure”.

B. The Court's assessment

1. *Whether there was interference*

92. The Court notes that the parties do not dispute that there was a restriction on the applicant's freedom of movement.

93. In addition, it considers that such a restriction will be in breach of Article 2 of Protocol No. 4 unless it is “in accordance with the law”, pursues one or more of the legitimate aims contemplated in paragraph 3 of the same Article and may be regarded as a measure which is “necessary in a democratic society” (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 19, § 39).

2. *Lawfulness and purpose of the interference*

94. The Court notes that the interference was in accordance with the law (section 49 of the Bankruptcy Act) and accepts the Government's submission that its purpose was to ensure that the bankrupt could be contacted in order to facilitate progress in the proceedings. The Court accordingly finds that the restriction was intended to protect the rights of others, namely the interests of the bankrupt's creditors.

95. It remains to be determined whether the measure was necessary in a democratic society.

3. *Proportionality of the interference*

96. The Court notes at the outset that the restriction placed on the applicant's freedom of movement is not in itself open to criticism. However, the risk with such a system is that it may unreasonably restrict the applicant's freedom to move freely, particularly if the proceedings are protracted, as they were in the instant case in which they lasted fourteen years and eight months. In that connection, referring to its findings with respect to Article 1 of Protocol No. 1, the Court finds that, contrary to what the Government have affirmed, the delays in the proceedings were not attributable to the failure of the attempts to sell the applicant's house at auction or to the applicant's conduct.

Consequently, it finds that there was no justification for restricting the applicant's freedom of movement for the full duration of the proceedings, since, while in principle a restriction on the right to move away from the place of residence is necessary to achieve the aim pursued, the necessity will diminish with the passage of time. Even though there is nothing in the case file to indicate that the applicant wished to move away from his place of residence or was refused permission to do so, in the Court's view, the length of the proceedings upset the balance that had to be struck between the general interest in securing the payment of the bankrupt's creditors and the applicant's personal interest in having freedom of movement. The interference with the applicant's freedom was accordingly disproportionate to the aim pursued.

97. Having regard to the foregoing, the Court concludes that there has been an infringement of the applicant's freedom of movement as guaranteed by Article 2 of Protocol No. 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant said that he had sustained loss and asked the Court to assess the amount.

100. The Government argued that the applicant should not be awarded just satisfaction.

101. With regard to the applicant's claim for reparation for pecuniary damage, the Court declines to make an award as the applicant has not discharged his burden of proof (see, among many other authorities, *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. 57, p. 17, § 53, and *Campbell and Cosans v. the United Kingdom* (Article 50), judgment of 22 March 1983, Series A no. 60, pp. 7-8, § 11). It finds, however, that the applicant must have sustained non-pecuniary damage. Having regard to the circumstances of the case and ruling on an equitable basis as required by Article 41 of the Convention, it decides to award him the sum of 31,000 euros.

B. Default interest

102. 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 1 of Protocol No. 1;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 2 of Protocol No. 4;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 31,000 (thirty-one thousand euros) for non-pecuniary damage, together with any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in French, and notified in writing on 17 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President