



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

SECOND SECTION

**CASE OF STOCKHOLMS FÖRSÄKRINGS- OCH
SKADESTÅNDSJURIDIK AB v. SWEDEN**

(Application no. 38993/97)

JUDGMENT

STRASBOURG

16 September 2003

FINAL

16/12/2003

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 Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNDSSON,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 August 2003,

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

PROCEDURE

1. The case originated in an application (no. 38993/97) against the Kingdom of Sweden 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 a Swedish limited liability company, Stockholms Försäkrings- och Skadeståndsjuridik AB (formerly Stockholms Modegarn AB; hereafter referred to as “the applicant”), on 25 September 1997.

2. The applicant was represented by Mr U. Jacobson, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agents, originally by Ms E. Jagander and subsequently by Ms I. Kalmerborn, Ministry for Foreign Affairs.

3. The applicant alleged that its rights under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated as it had had to pay the receiver’s fee for the administration of its bankruptcy, although the declaration of bankruptcy had been quashed as being erroneous, and as it had had no remedy for the determination of its liability to pay the fee.

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.

6. By a decision of 16 January 2001 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

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. In April 1989 the applicant instituted proceedings in the District Court (*tingsrätten*) of Stockholm against a forwarding agent, claiming that goods belonging to the applicant had been damaged or lost while in the care of the agent. The agent was later declared bankrupt but the bankruptcy estate of the agent declined to enter as a party to the proceedings. On 16 December 1991 the District Court gave judgment in default (*tredskodom*) according to which the agent – the bankruptcy debtor – was to pay the applicant 112,340 Swedish kronor (SEK) in damages and SEK 199,210 in litigation costs. No appeal was made and the judgment acquired legal force.

10. In March 1992 the applicant and the bankruptcy estate of the agent signed an agreement according to which the estate assigned to the applicant the estate's right to compensation from an insurance company under a third party insurance which had been taken out by the agent to cover possible liabilities incurred in connection with its forwarding business. Subsequently, the applicant instituted proceedings against the insurance company in the District Court, claiming that the insurance company should pay the applicant SEK 29,648 in compensation for damaged or lost goods and SEK 199,210 for the above-mentioned litigation costs.

11. On 7 July 1995 the District Court rejected the applicant's claims against the insurance company and ordered the applicant to pay the insurer's litigation costs in the amount of SEK 276,760. The court found that the bankruptcy estate of the forwarding agent had not been a party to the proceedings concluded by the judgment of 16 December 1991 – which had only determined the agent's liability vis-à-vis the applicant – and that, thus, the estate had not acquired any rights or obligations on account of that

judgment. Accordingly, the estate of the agent had not been in a position to assign to the applicant any rights emanating from the third party insurance.

12. The applicant appealed to the Svea Court of Appeal (*Svea hovrätt*) and requested that the enforcement of the District Court's judgment be suspended as it had not acquired legal force. On 9 August 1995 the appellate court found that there was no legal possibility to suspend the enforcement and thus rejected the applicant's request.

13. In order to recover its litigation costs, the insurance company requested the Enforcement Office (*kronofogdemyndigheten*) to levy execution on the applicant's assets. The Enforcement Office found, however, that the applicant had no seizeable assets. The insurance company then filed a bankruptcy petition against the applicant. In a decision of 19 October 1995 the District Court considered that the applicant's appeal against the judgment of 7 July 1995 had no prospects of success and that, consequently, its liability to pay the litigation costs in question would remain unchanged. Noting further that the applicant was insolvent as it had no assets to pay the litigation costs, the court declared the applicant bankrupt and ordered it to pay the insurer's litigation costs in the bankruptcy proceedings.

14. The declaration of bankruptcy was upheld by the Court of Appeal on 27 November 1995. However, the applicant made a further appeal to the Supreme Court (*Högsta domstolen*), and on 12 September 1996 that court quashed the appellate court's decision, rejected the bankruptcy petition filed against the applicant and ordered the insurance company to pay the applicant's litigation costs in the bankruptcy proceedings. The Supreme Court found that, by declining to enter as a party to the original damage proceedings, the bankruptcy estate of the forwarding agent had not renounced any rights it might have had vis-à-vis the insurance company under the third party insurance. Consequently, the transfer of its rights under that insurance to the applicant was in fact valid. In view of this and the complexity of other issues raised by the parties in the compensation proceedings adjudicated by the District Court on 7 July 1995, there was no basis for concluding that the applicant's appeal against that judgment lacked prospects of success. As the inventory of the applicant company did not reveal any other important debts, the declaration of bankruptcy was entirely dependent on the applicant's possible liability to pay the insurance company's litigation costs in the compensation proceedings. Having found that the outcome of those proceedings was uncertain, the Supreme Court concluded that the insurer had failed to show that the applicant was insolvent.

15. Following the Supreme Court's decision, the District Court, on 4 December 1996, fixed the fee to be paid to the official receiver who had been in charge of the applicant's bankruptcy at SEK 5,000. The District Court further recalled that the fee was to be paid by the bankruptcy estate.

In so doing, it referred to Chapter 2, Section 25 of the Bankruptcy Act (*Konkurslagen*, 1987:62) which provides that, following the decision by a superior court to quash a declaration of bankruptcy, the assets of the estate shall be returned to the bankruptcy debtor to the extent they are not required for the defrayal of the bankruptcy costs. The receiver's fee is considered as a bankruptcy cost, according to Chapter 14, Section 1 of the Bankruptcy Act.

16. The applicant appealed to the Court of Appeal. It did not challenge the fee as such but claimed that liability to bear the bankruptcy costs would violate the property rights of the estate and – consequently – the applicant. The applicant invoked Article 1 of Protocol No. 1 to the Convention.

17. In a decision of 30 December 1996, the Court of Appeal stated that the District Court had only recalled that, under the relevant law, the receiver's fee was to be paid by the bankruptcy estate. It had not ruled on the question whether the receiver's claim for remuneration had priority over the applicant's right to the assets. As a consequence, this question could not be examined by the Court of Appeal which, accordingly, dismissed the appeal.

18. The applicant made a further appeal to the Supreme Court. It claimed that, in referring to the above-mentioned provision of the Bankruptcy Act, the District Court had in fact determined that the bankruptcy estate – and not the State – was to defray the receiver's fee. The use of the word “recall” rather than “decide” was, in these circumstances, irrelevant. The applicant stated further that there was no other legal remedy available for the determination of the liability to pay the fee in question. Referring to Article 6 of the Convention, the applicant therefore claimed that the Court of Appeal was obliged to determine that liability.

19. On 5 June 1997 the Supreme Court refused the applicant leave to appeal against the Court of Appeal's decision.

20. The assets of the bankruptcy estate – SEK 1,597 according to the inventory deed – were appropriated to cover part of the receiver's fee. The remainder of the fee was paid by the insurance company.

21. By a decision of 22 September 1997 the Court of Appeal quashed the District Court's judgment of 7 July 1995 and referred the compensation case back to the latter court for re-examination. The appellate court found that the District Court had not examined the applicant's claim that the rights under the third party insurance had been transferred from the forwarding agent to its bankruptcy estate at the time when the agent was declared bankrupt, rather than as a consequence of the default judgment of 16 December 1991. The District Court had also failed to consider the insurance company's counter-claim that, under the relevant provision of the Insurance Contracts Act (*Lagen om försäkringsavtal*, 1927:77), it was not liable to pay any compensation as, at the time of the declaration of bankruptcy, the policy-holder, i.e. the forwarding agent, had had no claim

for compensation. Thus, the District Court had made a procedural error which presumably had affected the outcome of the case and which could not be remedied by the Court of Appeal.

22. After the case had been referred back to the District Court, the insurance company conceded the applicant's compensation claims. Consequently, on 22 January 1999, the District Court gave judgment in the applicant's favour, ordering the insurance company to pay the compensation claimed and the applicant's litigation costs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. References in this section are made to the Bankruptcy Act, unless otherwise indicated.

A. Bankruptcy

24. By means of bankruptcy, all creditors collectively and compulsorily take the total assets of an insolvent debtor for payment of their claims. During bankruptcy, the bankruptcy estate takes care of the debtor's assets on behalf of the creditors (chapter 1, section 1).

25. An insolvent debtor is declared bankrupt by the District Court following his own or a creditor's petition. As a rule, it is for the petitioner to show that the debtor is insolvent. However, if certain requirements are fulfilled, a debtor is considered insolvent unless otherwise shown (chapter 2, sections 8 and 9). In such cases, the burden of proof is placed on the debtor. Thus, unless otherwise shown, a debtor is deemed to be insolvent when, in the event of enforcement within six months before the bankruptcy petition, *inter alia*, it appeared that he or she did not have assets for full payment of the claim. If a creditor's claim has been confirmed by a court, the creditor may request that the debtor be declared bankrupt even if the court's decision has not acquired legal force. This does not apply, however, if the court has ordered that the judgment must not be enforced before it has acquired legal force (chapter 2, section 6).

26. The administration of a bankruptcy estate is managed by one or more official receivers appointed by the District Court and supervised by a section of the Enforcement Office, the Supervisory Authority in Bankruptcy (*tillsynsmyndigheten i konkurs*) (chapter 1, section 3, and chapter 7, sections 2 and 25). The receiver must have regard to the common rights and best interests of the creditors and shall take all necessary measures to promote an advantageous and expeditious winding-up of the estate. The receiver is obliged to notify the public prosecutor if he considers that the debtor may be suspected of certain economic crimes (chapter 7, section 16).

B. Bankruptcy costs

27. The bankruptcy costs include, *inter alia*, the official receiver's fee for work performed and the reimbursement of any special costs borne by him during the performance of his assignment (chapter 14, section 1).

28. If the District Court considers, after hearing the receiver, that the assets of the bankruptcy estate do not suffice to pay the bankruptcy costs and other debts that the estate has incurred, the court shall decide to terminate the bankruptcy proceedings (chapter 10, section 1).

29. The District Court determines the receiver's fee after having consulted the Supervisory Authority in Bankruptcy. The fee should constitute reasonable remuneration for the assignment (chapter 14, sections 4, 8 and 10).

30. The bankruptcy costs are paid out of the bankruptcy estate before other debts (chapter 14, section 2). Thus, no distribution to the creditors can take place until, first, the bankruptcy costs and, then, any other debts that the bankruptcy estate may have incurred have been paid. The State and the creditor who filed the bankruptcy petition can also be made liable for the bankruptcy costs but their liability is of a secondary nature (chapter 14, sections 2 and 3). Accordingly, if the bankruptcy proceedings are terminated in accordance with chapter 10, section 1, the creditor who filed the petition for bankruptcy is to pay the costs to the extent that they cannot be paid out of the estate. However, this liability is limited to one-tenth of a basic amount geared to the price index (*basbelopp*; this basic amount is regulated in the Social Insurance Act (*Lagen om allmän försäkring*, 1962:381)). At the time of the declaration of bankruptcy in the present case, one-tenth of the basic amount corresponded to SEK 3,570. If the amount to be paid out of the estate or by the creditor does not suffice to cover the bankruptcy costs, the remainder of the costs is to be borne by the State.

31. Bankruptcy decisions are immediately enforceable (chapter 16, section 4). Thus, following the declaration of bankruptcy of a debtor, the District Court must promptly appoint a receiver who shall start his or her work immediately, regardless of whether an appeal has been lodged against the declaration of bankruptcy. In the event of a higher court quashing the bankruptcy decision, all administrative measures are to be interrupted forthwith and the case referred back to the District Court for concluding measures.

32. In such a situation, the assets of the estate are restored to the debtor to the extent that they are not required for the defrayal of the bankruptcy costs and other costs that the estate has incurred (chapter 2, section 25). Thus, there is no exception to the estate's liability to pay the bankruptcy costs (chapter 2, section 25, and chapter 14, sections 2 and 3). According to the preparatory works to the Bankruptcy Act (see Government Bill 1986/87:90, pp. 206-207), the creditor who filed the petition for bankruptcy

should not be liable for the bankruptcy costs, as it may be difficult for the creditor to make an assessment as to the debtor's insolvency. Instead, even if a declaration of bankruptcy is later quashed for being factually erroneous, the bankruptcy costs are paid out of the estate. The main reason for this unconditional liability is that the debtor, being aware of the liability, is expected to do the utmost in the District Court in order to avoid being declared bankrupt and, thus, not to wait until the bankruptcy case is pending before a higher court.

33. However, as shown by a decision of the Supreme Court of 6 April 1998 (see *Nytt Juridiskt Arkiv* 1998, p. 214 et seq.), the State may be held liable to pay the bankruptcy costs when the declaration of bankruptcy is quashed due to a grave procedural error. In that case, the District Court had summoned the debtor to its hearing in an erroneous manner. Following the hearing, at which the debtor did not appear, the debtor was declared bankrupt. After the Supreme Court had quashed the declaration of bankruptcy, the District Court, in determining the receiver's fee, recalled that the bankruptcy costs were to be paid out of the estate. The Court of Appeal upheld the decision. The Supreme Court, however, found that the State should pay the bankruptcy costs. It considered that the rationale behind the provisions concerning the estate's liability for bankruptcy costs had no convincing force in that case, as the debtor, on account of the erroneous service of the summons, had been deprived of his right to take part in the proceedings.

C. The State's liability to pay damages

34. It follows from chapter 3, section 2 of the Tort Liability Act (*Skadeståndslagen*, 1972:207) that the State is liable to pay compensation for, inter alia, financial loss caused by a wrongful act or omission in connection with the exercise of public authority.

35. Anyone who wishes to claim compensation from the State for financial loss, which he considers to have been caused by a wrongful decision taken by a court or an administrative State authority, can proceed in two different ways: He or she may either petition the Chancellor of Justice (*Justitiekanslern*) in accordance with Section 3 of the Ordinance on the Administration of Claims for Damages against the State (*Förordningen om handläggning av skadeståndsanspråk mot staten*, 1995:1301, or bring a civil action against the State in the ordinary courts. No appeal lies against a decision of the Chancellor of Justice. However, if the claim is rejected, the claimant still has the possibility to institute civil proceedings in the courts.

36. In a judgment of 21 November 1994 (see *Nytt Juridiskt Arkiv* 1994, p. 654 et seq.), the Supreme Court examined whether the State was liable to pay damages on account of an appellate court's allegedly incorrect assessment of legal and evidentiary issues in connection with its

examination of an application for provisional attachment (*kvarstad*). The Supreme Court made the following general observation:

“When, as in the present case, legal and evidentiary issues are concerned, it is not sufficient for a liability to damages that a court has made an assessment that may be called into question. Considerations on such issues may vary to such an extent that it is rather rare that one can speak about *culpa* or, in other words, a wrongful act or omission within the meaning of chapter 3, section 2 of the Tort Liability Act. Only manifestly erroneous assessments can be considered as culpable.”

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

37. The Government, as they had done at the admissibility stage, claimed that the applicant had not exhausted domestic remedies since it had not instituted civil proceedings against the State, claiming compensation under the Tort Liability Act for the part of the receiver’s fee that had been paid out of the bankruptcy estate.

38. The applicant maintained that it had exhausted the relevant domestic remedies. It stated that it would not have been an effective remedy to institute civil proceedings against the State under the Tort Liability Act, as the fact that the lower courts had made a different assessment of facts and law than the Supreme Court did not mean that they had committed a wrongful act or omission, as envisaged by Chapter 3, Section 2 of that Act.

39. The Court notes that the provisions of the Bankruptcy Act do not contain any exception to the rule that, to the extent that the assets of the bankruptcy estate are sufficient, the receiver’s fee is to be paid out of those assets. The appropriation of the estate’s assets to cover part of the receiver’s fee in the present case was therefore made pursuant to these provisions. Moreover, the decisions of the District Court and the Court of Appeal to declare the applicant bankrupt were due to a different assessment than the Supreme Court’s as regards the prospects of success of the appeal in the case between the applicant and the insurance company. There is no evidence that their assessment was made arbitrarily or negligently. In these circumstances – and also taking into account the general observation made by the Supreme Court in its judgment of 21 November 1994 (paragraph 36 above) –, the Court cannot find any indication that the courts involved in the case committed such wrongful acts or omissions which could have incurred liability for the State under the Tort Liability Act. The Court therefore concludes that the Government have failed to show that, in the particular circumstances of the present case, a claim for damages under that Act would have constituted an effective remedy for the applicant’s grievances.

The Government's preliminary objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

40. The applicant company claimed that, given the erroneous decision to declare it bankrupt, the fact that it had had to pay part of the receiver's fee involved a violation of its property rights under Article 1 of Protocol No. 1 to the Convention. This provision reads as follows:

"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 submissions of the parties

1. *The applicant*

41. The applicant claimed that it had been deprived of its possessions. It stated that it had remained owner of its assets during the bankruptcy proceedings; the bankruptcy estate had only administered these assets. In any event, the applicant maintained that the assets relevant in the present case had undoubtedly belonged to the applicant before the declaration of bankruptcy and that they had thereafter been appropriated to pay costs caused by that erroneous declaration. Allegedly, already in those circumstances, the applicant's rights under Article 1 of Protocol No. 1 had been violated.

42. As regards the aim of forcing a debtor to be as active as possible in bankruptcy proceedings by making the bankruptcy estate liable for bankruptcy costs, the applicant asserted that it had done everything in its power during the entire proceedings to avoid being declared bankrupt. Therefore, the application of chapter 2, section 25 of the Bankruptcy Act to the particular circumstances of the applicant's case had not been reasonable.

2. *The Government*

43. The Government considered, since they were of the opinion that there had been no "right" at stake in the present case within the meaning of Article 6 § 1 of the Convention (paragraph 58 below), that the applicant's alleged right to the assets of the bankruptcy estate had not constituted "possessions" within the meaning of Article 1 of Protocol No. 1 to the

Convention. They noted that, under Swedish law, the applicant had had, after the quashing of the declaration of bankruptcy, a legitimate expectation to take possession of the assets in the bankruptcy estate only in so far as they had not been needed for the payment of the bankruptcy costs. Consequently, in the Government's view, there had not been an interference with the applicant's possessions.

44. Should Article 1 of Protocol No. 1 be considered applicable in the present case, the Government contended that the liability to pay bankruptcy costs should be regarded as falling within the concept of "contributions" within the meaning of the second part of the second paragraph of that Article.

45. In any event, the Government asserted that the aim of placing the liability for bankruptcy costs on the bankruptcy estate was to force the debtor to be as active as possible from the very beginning of bankruptcy proceedings and thereby avoid unnecessary bankruptcy declarations. The alleged deprivation of possessions had thus been made "in the public interest". Further, the relevant provisions governing the liability to pay bankruptcy costs were allegedly very clear and precise and had not been applied in an arbitrary manner. Also, taking into account, *inter alia*, the aim of the liability and the very modest amount in the present case – SEK 1,597 – the Government contended that the measures applied had struck a fair balance between the relevant interests and had not placed an excessive burden on the applicant.

B. The Court's assessment

46. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

"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 three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

1. Whether there has been an interference

47. The Court notes that the assets of the bankruptcy estate of the applicant company – SEK 1,597 – were appropriated to cover part of the

official receiver's fee for work performed during the bankruptcy proceedings. This appropriation took place after the Supreme Court's decision, on 12 September 1996, to quash the declaration of bankruptcy due to it having been made on partly erroneous grounds. It is thus clear that, apart from this erroneous declaration, the amount in question belonged to the applicant. In these circumstances, the Court finds that the assets in question must be considered to have been the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. Further, noting that those assets have been appropriated to defray bankruptcy costs and have not been returned to the applicant, the Court concludes that the applicant company was deprived of its possession within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

2. Purpose and lawfulness of the interference

48. The Court must therefore determine whether this deprivation of a possession pursued a legitimate aim "in the public interest" and was "subject to the conditions provided for by law" within the meaning of the second rule of Article 1.

49. As regards the requirement that the deprivation be "in the public interest", the Court agrees with the Government's contention that placing the liability for bankruptcy costs on the bankruptcy estate may generally contribute to efficient bankruptcy proceedings. Thus, although the expediency of applying this principle to the present case may be called into question, the Court accepts, also having regard to the margin of appreciation generally afforded to Contracting States under Article 1 of Protocol No. 1, that the deprivation of the applicant's possessions can be considered to have been pursued "in the public interest" within the meaning of that Article.

50. The Court further finds that the deprivation was made in pursuance of a clear and precise rule under chapter 2, section 25 of the Bankruptcy Act (paragraph 32 above), coupled with chapter 14, section 1 of the same Act (paragraph 27 above). The measure was therefore in accordance with domestic law.

3. Proportionality of the interference

51. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community 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. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In

other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others v. the United Kingdom*, judgment cited above, p. 34, § 50).

52. As to the facts of the present case, the Court notes that, although the entire assets of the applicant's bankruptcy estate were appropriated, the deprivation concerned only a limited amount, SEK 1,597 (or about 172 euros (EUR)) [The present exchange rate: SEK 9.27 = 1 euro].

53. However, as the decision of the Supreme Court of 12 September 1996 shows, the District Court's decision to declare the applicant bankrupt had been erroneous as there had been no basis for concluding that the applicant's appeal against the District Court's judgment of 7 July 1995 in the compensation proceedings had lacked prospects of success. In fact, in the continued compensation proceedings, judgment was given in the applicant's favour after the insurance company, the opposing party, had conceded the applicant's compensation claims. It is clear that the erroneous declaration of bankruptcy must be attributed to the assessment of the Swedish courts. There is no indication that the applicant, by its actions, contributed to the fact that it was declared bankrupt or to the ensuing bankruptcy costs.

54. In these circumstances, the Court considers that the applicant's obligation to defray part of the bankruptcy costs was wholly unjustifiable. Thus, even having regard to the limited amount of money involved, the deprivation of its assets for this purpose was not proportionate to the "public interest" in the case.

There has accordingly been a breach of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

55. The applicant complained that there had been no court determination of its liability to pay the receiver's fee. It relied on Article 6 § 1 of the Convention which, in relevant parts, provide the following:

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

A. The submissions of the parties

1. The applicant

56. The applicant contended that a civil right within the meaning of Article 6 § 1 of the Convention had been at stake. It stated that its assets – and not of the bankruptcy estate – had been appropriated for the payment of the receiver's fee, as the estate, during the bankruptcy, had only

administered the assets and had not had any other rights over the assets. As shown by the Supreme Court's decision of 6 April 1998, the applicant's liability to pay the fee should have been assessed on the merits. It was thus clear that, under Swedish law, there was a right at stake which was to be considered "civil" under Article 6 § 1 of the Convention. In the latter respect, the applicant claimed that there were no strong public law features in the present case: the applicant had had no employees, and there had been no other creditors than the forwarding agent. The applicant further adduced, as it had done in the domestic proceedings, that the District Court, by referring to a particular legal provision in its decision of 4 December 1996, in fact had ruled that the applicant's assets should defray the receiver's fee. Consequently, the applicant's obligations in this respect had been determined by the District Court.

57. As set out above (paragraph 38), the applicant further maintained that proceedings under the Tort Liability Act would not have constituted an effective remedy. Further, it should only be required to try one possible remedy, which it had done by appealing to the Supreme Court in the bankruptcy proceedings.

2. The Government

58. In the Government's view, the applicant could not claim, on arguable grounds, that it was entitled under Swedish law to the assets of the bankruptcy estate without deduction of the receiver's fee. Under the relevant legal provisions, there was an absolute obligation on the part of the bankruptcy estate to bear the bankruptcy costs as long as there were enough assets in the estate. In case a bankruptcy decision was quashed, the bankruptcy debtor had no right to such assets as were necessary for the payment of the bankruptcy costs. As regards the above-mentioned Supreme Court decision of 6 April 1998, the Government pointed out that it had been taken after the proceedings in the applicant's case and that, in that case, the Supreme Court had quashed the bankruptcy decision due to procedural errors and not, as in the applicant's case, because it had made a different assessment regarding the applicant's insolvency than that made by the lower courts. As the Supreme Court's decision should be deemed to be limited in scope, it had no relevance in the present case. Consequently, in the Government's opinion, there was in the present case no "right" at stake within the meaning of Article 6 § 1 of the Convention.

59. Furthermore, the Government maintained that the alleged right and the obligation to pay the receiver's fee fell outside the ambit of Article 6 § 1 of the Convention for not being "civil" in character. The Government claimed that the present case involved rather strong public-law features. They pointed out that the bankruptcy legislation was meant to provide a certain security to creditors in general and thereby contribute to the creation of a well-functioning credit system. Another important function of the

bankruptcy institution was to prevent economic crime. Furthermore, a bankruptcy receiver could, in certain circumstances, take into account the interests of the debtor's employees in keeping their jobs and those of society in combating unemployment. Also, the general courts and the Enforcement Office performed important supervisory and other functions in the administration of bankruptcies.

60. Should the Court find that the payment liability fell within the scope of Article 6 § 1 of the Convention, the Government – noting the applicant's contention that its obligation to pay the receiver's fee had in fact been determined by the District Court and the fact that the right of access to court under that Article did not include a right to have civil rights and obligations determined by a higher court – were inclined to consider that the payment liability had already been determined by a tribunal in conformity with Article 6 § 1.

61. Furthermore, the Government maintained, as they had done in their preliminary objection, that the applicant could have had the issue determined by instituting court proceedings under Chapter 3, Section 2 of the Tort Liability Act.

B. The Court's assessment

62. The Court reiterates that for Article 6 § 1, in its "civil" limb, to be applicable there must be a dispute over a "right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

63. Turning to the present case, the Court notes that under Swedish law, in particular chapter 2, section 25 and chapter 14, section 2 of the Bankruptcy Act, the assets of a bankruptcy estate are restored to the debtor following the quashing of the declaration of bankruptcy only after the bankruptcy costs – including the receiver's fee – have been paid. The Bankruptcy Act does not provide for any exception to this payment liability. According to the preparatory works to the Bankruptcy Act (paragraph 32 above), even if a declaration of bankruptcy is quashed for being factually erroneous, this payment liability remains. It is true that, following the Supreme Court's decision of 6 April 1998, the State – rather than the bankruptcy debtor – may be held liable to pay the bankruptcy costs when the declaration of bankruptcy is quashed due to a grave procedural error. However, this decision was taken after the conclusion of the bankruptcy proceedings in the present case. Furthermore, it provides for an exception to the main rule on payment liability for bankruptcy costs only in very specific

circumstances. In the light of the unconditional wording of the relevant provisions of the Bankruptcy Act and the preparatory works, the exception established by the Supreme Court's decision must be construed as having a limited scope, only being relevant in the situations to which it refers, that is, instances where the declaration of bankruptcy is quashed due to a grave procedural error. In the present case, the declaration of bankruptcy was not quashed due to such an error but on account of the Supreme Court making a different assessment than the lower instances in regard to the applicant's insolvency. Thus, the applicant could not rely on any exception to the main rule that the bankruptcy estate should defray the receiver's fee in question.

64. In these circumstances, the Court finds that the applicant cannot be considered to have had an arguable right under Swedish law to have the bankruptcy estate, and consequently itself, relieved of the liability to pay the receiver's fee. Article 6 § 1 was therefore not applicable in the present case.

There has accordingly been no breach of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The applicant, claiming that it had had no effective remedy for the determination of the violations of its rights under the Convention, further alleged a breach of Article 13 of the Convention, which reads as follows:

“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.”

A. The submissions of the parties

1. The applicant

66. The applicant asserted that a claim for damages against the State, whether before the Chancellor of Justice or the courts, would not have provided a remedy against the violation of the Convention and therefore could not be considered effective for the purposes of Article 13. In this respect, the applicant referred to the Supreme Court's judgment of 21 November 1994.

2. The Government

67. The Government submitted that the applicant had had at its disposal several effective remedies before national authorities for the determination of the alleged violations of the Convention. They referred to the possibility of claiming damages from the State under the Tort Liability Act, either by petitioning the Chancellor of Justice or by bringing a civil action in the courts. In so doing, the applicant could have relied on the provisions of the Convention, as the Convention formed part of Swedish law.

B. The Court's assessment

68. Article 13 of the Convention guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent “national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under Article 13 (see, for instance, *M.S. v. Sweden*, judgment of 27 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1452, § 54). However, Article 13 requires a remedy in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among other authorities, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 54).

69. The Court recalls its conclusion above (paragraph 54) that the applicant's rights under Article 1 of Protocol No. 1 to the Convention had been breached, as its obligation to defray part of the bankruptcy costs could not be justified by the “public interest” in the case. It further recalls its conclusion (paragraph 64 above) that Article 6 § 1 of the Convention was not applicable in the present case. In these circumstances, the Court considers that a separate issue arises with regard to the complaint under Article 13 and that the applicant had an arguable claim for the purposes of that provision.

70. It should be noted that the applicant, in its appeal against the District Court's decision of 4 December 1996, made essentially the same claim under Article 1 of Protocol No. 1 as it did in the present proceedings, namely that the application of chapter 2, section 25 of the Bankruptcy Act, in the particular circumstances of the case, had been unreasonable and had involved a violation of its property rights. The appeal was dismissed by the Court of Appeal without an examination on the merits and there was thus, in the bankruptcy proceedings, no final examination of the applicant's grievances under the Convention.

71. The question remains whether there was another remedy available to the applicant which was capable of providing an examination satisfying the requirements of Article 13 of the Convention. The Government have asserted that a claim for damages from the State under the Tort Liability Act, presented either to the Chancellor of Justice or to the courts, would have provided such an examination. In this respect, the Court reiterates that it has dismissed the Government's preliminary objection (paragraph 39 above) as the Government had failed to show that, in the particular circumstances of the present case, such a claim would have constituted an effective remedy for the applicant's grievances. The Court could not find

any indication that the courts involved in the case had committed wrongful acts or omissions which could have incurred liability for the State under that legislation. For the same reason, the remedy proposed by the Government cannot be considered to have been capable of providing relief, for the purposes of Article 13, for the applicant's grievances under Article 1 of Protocol No. 1 to the Convention. There is no evidence of any other remedy available under Swedish law which could have provided such relief.

There has accordingly been a breach of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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. Legislative amendment

73. The applicant asked the Court to order the Swedish Government to undertake a reform of the law by which it should “take measures to preclude the occurrence of breaches of the Convention, such as occurred in respect of the applicant, in the future”.

74. The Government maintained that legislative measures did not fall within the scope of Article 41 of the Convention.

75. The Court notes that the Convention does not empower it to order a State to alter its legislation; the Court's judgment leaves to the State the choice of the means to be used in its domestic legal system to give effect to its obligation under Article 46 § 1 (see, among other authorities, *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 33, § 78). It must therefore reject this request by the applicant.

B. Damage

76. The applicant claimed pecuniary damage of SEK 1,597 (i.e. about EUR 172) plus interest in accordance with the Swedish Interests' Act (*Räntelagen*, 1975:635).

77. In the event of the Court finding a violation of Article 1 of Protocol No. 1 to the Convention, the Government accepted the applicant's claim.

78. The Court notes that the amount of SEK 1,597 corresponds to the bankruptcy costs which the applicant had to pay in the domestic proceedings and which form the basis for the violation found under Article 1 of Protocol No. 1. As regards the claim for interest, the Court finds that the applicant should be reasonably compensated for loss due to inflation. In

these circumstances, the Court awards the applicant by way of pecuniary damage the sum of EUR 200.

C. Costs

79. The applicant claimed SEK 35,000, including value-added tax (VAT), in legal fees for the domestic proceedings and SEK 221,250, including VAT, in legal fees for the proceedings before the Commission and the Court. The fees corresponded to 28 hours of work at an hourly rate of SEK 1,250 in the domestic proceedings, and 118 hours of work at an hourly rate of SEK 1,875 in those before the Convention organs.

80. The Government maintained that the number of hours of work stated by the applicant was excessive and that there was no reason for a higher hourly rate in the proceedings before the Commission and the Court. They considered that, in the event that all the complaints lodged by the applicant should be successful, a total sum not exceeding SEK 87,500 would be appropriate in respect of legal costs, corresponding to 10 hours of work in the domestic proceedings and 60 hours of work in the proceedings before the Convention organs, at an hourly rate of SEK 1,250.

81. The Court reiterates that only legal costs found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, 10 May 2001, § 120). Moreover, compensation for costs incurred in the domestic proceedings may only be granted in so far as they were necessary in trying to prevent the violation found (see *König v. Germany* (Article 50), judgment of 10 March 1980, Series A no. 36, p. 17, § 20). In the present case, the Court considers that the hours of work stated by the applicant are somewhat excessive, having regard, *inter alia*, to the rather limited extent of the domestic proceedings relating to the question of bankruptcy costs and the fact that the proceedings before the Convention organs did not involve an oral hearing. It further takes into account that one of the applicant's three complaints was unsuccessful. Making an overall assessment, the Court awards the applicant by way of costs the global sum of EUR 12,500, including VAT.

D. Default interest

82. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 200 (two hundred euros) in respect of pecuniary damage;
 - (ii) EUR 12,500 (twelve thousand five hundred euros) in respect of costs, including VAT;
 - (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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President