



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

FIFTH SECTION

CASE OF VALENTIN v. DENMARK

(Application no. 26461/06)

JUDGMENT

STRASBOURG

26 March 2009

FINAL

26/06/2009

This judgment may be subject to editorial revision.

In the case of Valentin v. Denmark,

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

Rait Maruste, *President*,

Peer Lorenzen,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008 and on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 26461/06) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Danish national, Mr James Valentin (“the applicant”), on 15 June 2006.

2. The applicant was represented by Mr Anders Ørgaard, an Associate Professor Ph.D. at the University of Aarhus. The Danish Government (“the Government”) were represented by their Agent, Mrs Nina Holst-Christensen.

3. The applicant alleged, in particular, that the bankruptcy proceedings against him were not terminated within a reasonable time.

4. By a decision of 22 January 2008, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1944 and lives in Copenhagen.

7. He was a partner in a commercial partnership, a banking and stockbroking firm called Vekselerfirmaet Hugo Petersen I/S (hereafter “the Partnership”). In addition to the applicant, the Partnership had five other partners: VL, FVM, CHN, and two private limited companies, namely Hugo Petersen Børsmæglerselskab A/S and Kejpe A/S. Subsequently, in legal proceedings it was established that a further partner, CEN, had not formally resigned from the Partnership and therefore was also to be considered a partner.

8. On 29 March 1988, due to financial difficulties, proceedings were initiated before the Bankruptcy Court (*Skifteretten under Sø- og Handelsretten*) concerning the Partnership and the partners for suspension of payments.

9. On 29 August 1988, the Bankruptcy Court decided to discontinue the suspension of payments. At the same time, having heard two bankruptcy petitions against the applicant, who did not object to the claim that the bankruptcy conditions had been met, the Bankruptcy Court commenced bankruptcy proceedings against his estate. A trustee in bankruptcy was appointed to sort out the estate and to settle the accounts and the applicant was divested of the right to administer or to deal with his assets.

10. The Bankruptcy Court formally commenced the examination of claims on 17 November 1988, but found that it was appropriate to wait until the claims against the Partnership had been lodged and examined.

11. On 8 December 1988, bankruptcy proceedings commenced against the Partnership and by the end of 1988 bankruptcy notices regarding all the co-partners had been issued as well. The Partnership’s assets, including the individual partners’ assets, were estimated at about 8 million Danish kroner (DKK), while its liabilities were estimated at DKK 15 million. The Partnership estate was closed on 5 December 1995 with distribution of dividends.

12. In the meantime, as regards the applicant’s bankruptcy estate, in the period between 1988 and 1990 various court sessions were held with a view to determining the applicant’s assets and considering creditor claims.

13. In the beginning of 1991 a new trustee was appointed. Court hearings were held in April and December 1991.

14. Moreover, the trustee held several meetings with the applicant and the partners in 1991 and 1992.

15. During 1993 and 1994 it appears that no court hearings as such were held. Nevertheless the Bankruptcy Court and the trustee regularly examined claims in this period.

16. In a report of 9 February 1995, the trustee stated, *inter alia*, that the applicant's estate could not be dealt with until the closure of the Partnership estate.

17. Court sessions were held on 6 November, 6 and 21 December 1995, 14 February and 17 April 1996. On the latter date, the Bankruptcy Court adjourned the proceedings pending the preparation of accounts.

18. In a report of 5 November 1996, the trustee stated that full coverage for the Partnership creditors was expected in connection with the closing of the partners' estates. He was therefore endeavouring to obtain a compulsory composition so that the bankruptcy proceedings could be finalised pursuant to section 144 of the Bankruptcy Act. The accounts of the applicant's bankruptcy estate could not be prepared, however, until formal accounts were available in the estates of the co-partners Hugo Petersen's Børsmæglerselskab A/S, CHN and FVM. At the relevant time, those accounts were being prepared, but could not be completed until, *inter alia*, the outcome of proceedings initiated by the Ministry of Taxation against Hugo Petersen's Børsmæglerselskab A/S in bankruptcy was known. The latter proceedings were finalised in 1999.

19. On 4 April 1997, the trustee informed the Bankruptcy Court that the draft accounts and report had been prepared and sent to the applicant for his comments. On 29 August 1997 the trustee reminded the applicant that his comments were awaited.

20. On 2 September 1997, a hearing was held at the Bankruptcy Court during which a representative for the applicant stated that before the accounts could be approved, the applicant needed to examine certain matters in detail. Accordingly, the Bankruptcy Court decided to postpone the approval of the accounts. Moreover, it appointed a lawyer as counsel for the applicant to help him with the matters raised.

21. In a letter of 22 September 1997 to the creditors, the trustee stated that the approval could not be given pending the review of various matters by the applicant's counsel and clarification of the applicant's tax affairs.

22. By 1997 the bankruptcy proceedings against the other partners of the Partnership were terminated.

23. On 6 February 1998 having received several reminders, the applicant's counsel replied as to the matters that needed to be examined and he recommended that resources be applied to seek a settlement with both the creditors of the bankruptcy estate and the tax authorities.

24. By letter of 4 March 1998, the trustee requested that the Bankruptcy Court schedule another meeting of creditors to close the estate. He referred to the fact that no objections had been filed against the accounts and that the

applicant's dispute with the tax authorities did not affect the assets available for distribution.

25. On 26 March 1998, the Bankruptcy Court declared that the estate would be closed.

26. At a hearing on 5 May 1998, the Bankruptcy Court approved the accounts of the applicant's bankruptcy estate. Thereafter, the proceedings were adjourned pending the preparation of draft distribution accounts to be presented at a meeting of creditors on 14 July 1998. On that day, due to lack of agreement between the trustee and the Bankruptcy Court, the proceedings were adjourned. Another hearing was held on 22 July 1998.

27. In accordance with the draft distribution accounts, preferential claims would be fully covered. Moreover, an amount of approximately DKK 5.4 million remained for distribution to so-called section 98 claims (section 98 of the Bankruptcy Act, which included deferred claims for interest).

28. On 25 August 1998, a distribution on account was made in respect of the ordinary claims. During the period between November 1998 and October 1999 an amount of DKK 750,000 was made available to the applicant.

29. Before the final deadline for notifying claims in the estate, which the Bankruptcy Court fixed at 1 October 1998, thirty-two Partnership creditors lodged claims for interest in the estate. The applicant's counsel negotiated with the creditors with a view to reaching a settlement on the claims for interest, but in vain.

30. Thus, on 30 August and 5 October 1999 hearings were held at the Bankruptcy Court. On the latter date the deferred claims for interest were examined. The creditors, who appeared before the court, objected to the trustee's recommendation concerning the calculation of the claims for interest, and the parties therefore concluded a litigation agreement on the filing of a pleading to the Bankruptcy Court by 6 December 1999 at the latest.

31. In addition, the applicant objected to the trustee's recommendation concerning certain claims. He and the trustee therefore concluded a litigation agreement to select one or more suitable lead cases.

32. The examination of the other claims, which were not objected to by the creditors, but contested by the applicant, was adjourned pending the outcome of the lead cases. Eight creditors then issued a writ against the bankruptcy estate, and the applicant intervened as a third party.

33. On 2 May 2001, the Bankruptcy Court passed judgment in the eight lead cases, and at a meeting of creditors on 22 May 2001 the creditors declared that they did not wish to appeal against the judgments unless the applicant did so. The applicant subsequently appealed against the judgments to the High Court of Eastern Denmark (*Østre Landsret*), hereafter the High Court.

34. On 26 June 2001, the Bankruptcy Court invited the applicant and the creditors to consider whether the estate could be closed under section 144 of the Bankruptcy Act by setting aside funds to cover the contested claims pursuant to section 149. According to the former provision, the estate could be finalised and the surplus assets handed over to the debtor if the creditors had obtained full payment. The latter provision, however, provided for the possibility of finalising the estate even though there were disputed claims, if an amount equal to those claims had been set aside. At the relevant time it was not legally possible to combine section 144 and section 149, unless the parties agreed to do so.

35. On 20 November 2001, at a hearing at the Bankruptcy Court, the trustee recommended that final distribution accounts be prepared in respect of the deferred claims comprised by section 98 of the Bankruptcy Act, which were not the subject of the pending appeal proceedings. In respect of the disputed claims, the distribution could be postponed until after the closing of the estate, as provided for by section 149 of the Bankruptcy Act. The Bankruptcy Court approved this recommendation and scheduled a meeting of creditors.

36. At the scheduled meeting of creditors, which took place on 29 January 2002, the applicant objected to the Bankruptcy Court closing the estate. In support thereof he argued that “the length of the proceedings had been unreasonable [anyway] and that therefore the closing of the estate ought to await [also] the outcome of the appeal proceedings before the High Court”. Despite the applicant’s objection, the Bankruptcy Court decided to approve the accounts and to make contributions in respect of the claims, which were not the subject of the pending appeal proceedings. It was also decided to make an amount of DKK 100,000 available to the applicant pursuant to section 106 of the Bankruptcy Act, then applicable. Finally, the estate was finalised by setting aside the remaining funds to cover the disputed claims.

37. The applicant appealed against the finalisation of the estate in accordance with section 149 to the High Court, which found against him on 22 March 2002. It appears that the applicant failed to request leave to appeal against this decision to the Supreme Court (*Højesteret*).

38. On 24 January 2003, in the appeal proceedings concerning the disputed deferred claims for interest, the High Court passed judgment against the applicant.

39. On 27 March 2003 the Bankruptcy Court held a meeting of creditors to produce additional distribution accounts concerning the disputed deferred claims for interest. However, since the applicant had requested that the Appeals Permission Board (*Procesbevillingsnævnet*) grant him leave to appeal to the Supreme Court, the Bankruptcy Court adjourned the proceedings.

40. On 14 October 2003, the Appeals Permission Board informed the parties that the applicant would be granted leave to appeal against the judgment to the Supreme Court.

41. On 19 September 2005, the Supreme Court passed judgment finding against the applicant.

42. On 20 December 2005, concluding that all creditors had been satisfied, the Bankruptcy Court closed the estate and approved the handing over of the remaining assets of the estate, minus the costs of administration of the estate, to the applicant pursuant to section 144 of the Bankruptcy Court.

43. Before the Court the applicant submitted that on numerous occasions, in vain, he had requested that the bankruptcy proceedings be expedited. This was disputed by the Government.

44. By letter of 12 October 2006 the Ministry of Justice (*Justitsministeriet*) invited the applicant to raise his complaints about the length of the bankruptcy proceedings before the court, where the case was pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

45. *The Bankruptcy Act*

The Bankruptcy Act (*Konkursloven*), Consolidation Act no. 588 of 1 September 1986, which comprised the rules relevant to the administration of the applicant's bankruptcy estate, stated in as far as relevant:

Section 29

Upon the pronouncement of the bankruptcy order, the debtor is deprived of his right to assign or to abandon his property, to accept payments and other services rendered, to accept terminations, complaints and similar declarations, to incur debts or to deal in any other way with his property with any effect as regards the estate.

Section 106

(1) Where the debtor is unable to provide for his own and his family's needs by his own work, the estate may award maintenance to the debtor or to his dependents.

(2) The estate may grant the debtor a right of use to real property or chattels.

Section 113

...

(3) Where specific grounds so justify, the Bankruptcy Court may reject the election of a trustee or remove him later. ...

Section 128

Where the trustee or meeting of creditors acts to the detriment of the estate, or where rights vested in mortgagees, the debtor or other parties are infringed upon, the Bankruptcy Court may set aside the decisions made, give directions to the trustee, and take any other requisite steps.

Section 144

(1) Where the debtor obtains a compulsory composition, cf. section 196, and where the creditors of the bankruptcy estate who, under section 158(2), are not comprised by the composition have been satisfied or adequately secured, or where the debtor, after the expiry of the period allowed for proof of claims, produces a consent from all creditors or proof of their having been satisfied, the bankruptcy proceedings must be finalised promptly, and the assets of the estate must be handed over to the debtor, subject to deduction of any costs inclined in connection with the bankruptcy proceedings.

(2) Where the debtor, after the bankruptcy proceedings have been completed, substantiates that the creditors have been satisfied or have waived their claims, the Bankruptcy Court shall issue a certificate to such effect to him.

Section 149

On the basis of a recommendation from the trustee, the bankruptcy court may decide that the preparation of the final accounts, and distribution, if any, of an amount not yet collected, of any amount set aside pursuant to section 147(2), or of any other specifically limited parts of the estate, will be deferred to the period after finalisation of the bankruptcy proceedings.

Section 127(a) of the Bankruptcy Act (Consolidation Act no. 1259 of 23 October 2007), now in force, reads as follows:

The debtor or a creditor may demand that the Bankruptcy Court make use of its authorities set out in section 16, subsection 2, and that it fix a hearing pursuant to section 143 or 150 [with a view to finalising the estate], if such proves necessary due to the requirement in Article 6 of the Convention concerning a fair trial within a reasonable time.

46. *Partnerships (I/S)*

A partnership is an association formed by several natural or legal persons for the purpose of promoting the partners' (members') financial interests through business activities.

A partnership is a form of business enterprise in which all members are liable personally, without limitation and jointly and severally for the obligations of the enterprise (see section 2(1) of Consolidation Act no. 651 of 15 June 2006 on certain business enterprises). This implies that the members are liable with their entire personal property, that the individual member is liable for the entire debt, and that the creditors of the partnership

have a direct claim against the individual member without first having to raise a claim against the partnership.

The partnership and its members are liable to the creditors of the partnership. Under applicable Danish law, it is therefore a prerequisite for administration of the bankruptcy estate of a partnership that all partners are subject to bankruptcy proceedings. A co-partner's bankruptcy estate is thus of importance to the closing of the other co-partners' bankruptcy estates. By contrast, the partnership is not liable to the partners' personal creditors. Hence, personal creditors cannot seek satisfaction from partnership assets, but only in the surplus distributed to the partners.

There are few rules of law regulating partnerships. In the absence of a rule of law regulating the matter, the legal position depends on an interpretation of the partnership agreement and on what may be inferred from non-mandatory rules.

If a member of a partnership is declared bankrupt, section 61 of the Bankruptcy Act applies. This provision enables the estate to release the relevant partner's share of the net assets of the partnership with a suitable notice so that all his assets are applied to satisfy his creditors.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

47. The applicant complained under Article 6 § 1 of the Convention that the bankruptcy proceedings were not terminated within a reasonable time. The relevant part of the provision reads as follows:

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

Period to be taken into consideration

48. It is not in dispute that the bankruptcy proceedings against the applicant commenced on 29 August 1988.

49. In the Government's view the bankruptcy proceedings ended on 29 January 2002, when the Bankruptcy Court finalised the estate in accordance with section 149 of the Bankruptcy Act by setting aside the remaining funds to cover the disputed claim. Subsequently, the Bankruptcy Court reopened the estate and approved the handing over of the remaining assets of the estate less the costs of administration of the estate to the applicant pursuant to section 144 of the Bankruptcy Act, but the reopening of the estate had to be viewed as a second set of proceedings.

50. The applicant maintained that the bankruptcy proceedings ended on 20 December 2005, when the Bankruptcy Court closed the estate.

51. The Court agrees with the applicant that the proceedings ended on 20 December 2005 and that the total length of the proceedings thus lasted seventeen years and four months.

Reasonableness of the length of the proceedings

The Parties' submissions

52. In the applicant's view, the bankruptcy proceedings were not complex at all and they were not delayed due to his conduct. He contended that there was a significant inactive period from the change of trustees on 31 January 1991 until the examination of claims on 6 November 1995. In addition, he stated that there was an inactive period from 17 April 1996, when the proceedings were adjourned pending the preparation of accounts, until the hearing on 2 September 1997, when accounts were produced. Finally, the applicant submitted that the period from 5 October 1998, when it was decided to institute certain lead cases about the deferred claims for interest, until the Supreme Court judgment of 19 September 2005 was also an inactive period.

53. The Government found, notably due to the particularly complex nature of the case and the applicant's conduct during the proceedings, that no violation of Article 6 § 1 of the Convention had occurred. They noted that the applicant himself had chosen to enter into a partnership, which would render any bankruptcy proceedings complex because it was a prerequisite for the administration of the partners' estates that the partnership estate be administered and closed. Moreover, for some time the applicant contemplated whether or not to initiate compensation claims against the previous trustee and wanted to have the cases on the deferred claims reviewed by both the High Court and the Supreme Court. Thus, the proceedings were prolonged by at least five years, which could not be attributed to the authorities. In fact, since 1997 when the other partners' estates were closed, the Bankruptcy Court had tried to close the applicant's bankruptcy estate, but the applicant repeatedly objected. Nevertheless, the Bankruptcy Court did close the administration of the estate to the widest possible extent at several stages, first in 1998 and formally in 2002, so that distribution was effected in respect of the undisputed claims, and funds were set aside for the disputed claims for interest.

The Court's assessment

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case

and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

55. The Court considers that the proceedings were complex and time-consuming, notably because it was a prerequisite for the administration of the partners' estate that the partnership estate was administered and closed. Moreover, the proceedings were prolonged by at least four years due to the dispute which arose concerning deferred claims, and which the applicant brought before the High Court and the Supreme Court. Finally, it does not appear that any unjustified delays as such occurred.

56. Nevertheless, having regard to the overall length of the proceedings, and the Court's case-law on the subject (see, *inter alia*, *Frydlender*, cited above), the Court finds that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

57. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

58. The applicant further complained that he had not had an effective remedy in respect of his complaint about the excessive length of the proceedings at the Bankruptcy Court. He relied on Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

59. The applicant maintained that he was a victim of a violation of Article 13 of the Convention. He alleged that as a rule he had not been summoned to the meetings at the Bankruptcy Court but that nevertheless several times, in vain, he had complained orally against the excessive length of proceedings. He pointed out that at the relevant time the Bankruptcy Act did not contain a provision equivalent to section 127 (a), now to be found in the act currently in force, according to which a debtor may demand that the Bankruptcy Court make use of specific measures in order to comply with the reasonable-time requirement set out in Article 6 of the Convention. The Bankruptcy Act applicable during the applicant's bankruptcy proceedings did not grant a debtor any rights of that kind or any powers to influence the administration of his estate. Nor could he bring such a complaint before the relevant appeal instance, namely, the High Court of Eastern Denmark.

60. The Government contended that either the applicant could not be considered to be a victim of a violation of Article 13 of the Convention or the complaint was manifestly ill-founded, because the applicant had access to an effective remedy as required by Article 13 of the Convention, but

chose not to make use of it. The Government noted that the Bankruptcy Court had a supervisory duty and could set aside decisions made, or give the trustee directions, or do whatever else was necessary if the debtor's rights were infringed, (see section 128 of the Bankruptcy Act then applicable). Thus, the Bankruptcy Court could have given the trustee directions about the administration of the estate, ordered the trustee to complete the accounts, or removed the trustee pursuant to section 113(3) of the Bankruptcy Act then applicable, *inter alia*, due to slow or otherwise incompetent administration of the estate. It could also have fixed an ultimate date for the final meeting of creditors in the estate or decided to apply section 144 of the Bankruptcy Act at an earlier stage of the proceedings, even if all the parties to the case, including the applicant, objected. Accordingly, regardless of whether the courts could have provided the applicant with adequate redress for delays that had already occurred, the remedies which could have expedited the decisions taken during the proceedings had to be considered "effective".

61. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy 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 to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" both in law and in practice (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

62. In the present case, the Government have referred to various measures which the Bankruptcy Court could have taken if a debtor's right was infringed and which, in their view, constituted an effective remedy within the meaning of Article 13 of the Convention. They did not submit any domestic case-law in support thereof.

63. Moreover, as opposed to the Bankruptcy Act, now in force, at the relevant time Danish law contained no provisions which were specifically designed or developed to provide a remedy in respect of complaints of length of bankruptcy court proceedings, whether preventive or compensatory in nature.

64. In addition, the length of the applicant's bankruptcy proceedings was primarily due to the fact that the proceedings had to await the outcome of the bankruptcy proceedings against the Partnership and the co-partners, and the proceedings concerning the disputed deferred claims for interest.

65. In these circumstances, the Court does not find it proven by the Government that, in the present case before the Bankruptcy Court, the applicant had an effective, sufficient and accessible remedy in respect of his

complaint that the length of the proceedings had been excessive (see, *inter alia*, *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, § 41, 23 September 2004 and *Nalbantova v. Bulgaria*, no. 38106/02, § 36, 27 September 2007). The Government have not pointed to any other remedy which in their view would have been effective within the meaning of the invoked Article.

66. It follows that there has been a violation of Article 13 of the Convention.

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

67. The applicant also invoked Article 1 of Protocol No. 1 to the Convention relating to the length of the bankruptcy proceedings during which he was divested of the right to administer or to deal with his assets. The 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.”

68. The Government submitted that in the light of the amounts made available during the proceedings (see §§ 28 and 36) it was justified to restrict the applicant’s right to the peaceful enjoyment of his possessions for the full duration of the proceedings and that the interference did not place an individual and excessive burden on the applicant.

69. The applicant disagreed.

70. The Court reiterates that a similar issue was dealt with in *Luordo v. Italy* (no. 32190/96, ECHR 2003-IX), in which the Court found a violation and stated, among other things, (see §§ 67-71):

“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. ... 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 [fourteen years and eight months] 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. Likewise in the present case, although noting that an amount of DKK 750,000 was made available to the applicant in the period from November 1998 to October 1999 and that DKK 100,000 was made available to him in the beginning of 2002, nevertheless, having regard to the above finding under Article 6 of the Convention, the Court considers that divesting the applicant of the right to administer or to deal with his assets for almost seventeen years and four months was disproportionate to the aim pursued.

72. It follows that there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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. Pecuniary damage

74. The applicant claimed compensation for pecuniary damage, including his alleged expenses for legal fees in the domestic proceedings amounting to DKK 1,734,000 and a tax claim in the amount of DKK 3,573,275. The claim also comprised an alleged loss of pension, about which he was unable to give details at the relevant time. Subsequently, on 9 June 2008 the applicant added that he had suffered a loss of DKK 10,000,000.

75. The Government contested the claims. From the outset, they noted that the applicant had failed to provide any documentation for his claim. In addition, they noted that the legal fee mentioned by the applicant was the fee awarded to the trustee by the Bankruptcy Court for the administration of all the estates, including the estate of the partnership and each partner. Finally, they noted that the part of the application concerning the tax claim had been declared inadmissible and that the applicant had failed to elaborate further on the alleged loss of pension.

76. The Court reiterates that only legal costs and expenses 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, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). Moreover, the costs of the domestic proceedings may be awarded

if they are incurred by an applicant in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium* (Article 50), judgment of 18 October 1982, § 17, Series A no. 54). However, in so far as the applicant incurred expenses in the proceedings before the domestic courts which were actually and necessarily incurred in order to prevent or to have redressed a breach of the Convention, he has failed to submit relevant supporting documents as required by Rule 60 § 2 of the Rules of Court. Moreover, in so far as substantiated, the said tax claim and alleged loss of pension cannot be considered related to the violation found. Accordingly, the Court makes no award in respect of the costs of the domestic proceedings.

B. Non-pecuniary damage

77. The applicant claimed 500,000 Danish kroner (DKK), equal to 67,090 euros (EUR)¹, in compensation for non-pecuniary damage.

78. Subject to the Court finding a violation, the Government agreed that generally compensation should be awarded. They found, however, that the applicant's claim was excessive and disproportionate.

79. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to its finding above, notably as to the complexity of the case and the conduct of the applicant (see, for example, *Kyriakidis and Kyriakidou v. Cyprus*, no. 2669/02, §§ 29 and 38, 19 January 2006), and ruling on an equitable basis, it awards him EUR 16,000.

C. Costs and expenses before the Court

80. The applicant also requested reimbursement of legal fees and expenses incurred in the proceedings before the Court, without specifying an exact amount.

81. The Government submitted that the applicant had already received DKK 40,000 under the Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*), which in their view was sufficient to cover his costs and expenses before the Court.

82. The Court notes the existence in Denmark of a Legal Aid Act by virtue of which applicants may be granted free legal aid for the lodging of complaints before international institutions under human rights conventions and for the procedure. The applicant has received EUR 5,365 (equal to DKK 40,000) by virtue of the said Act. In these circumstances, and having

¹ On 17 December 2006, when the claim was lodged

regard to the nature of the present case, the Court is satisfied that the applicant has been reimbursed sufficiently under domestic law, and it sees no reason to award him further compensation for costs and expenses (see, among others, *Vasileva v. Denmark*, no. 52792/99, § 50, 25 September 2003).

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 of the Convention;
2. *Holds* that there has been a violation of Article 13 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President