AS TO THE ADMISSIBILITY OF

Application No. 34805/97
by SKANDINAVISK METALLFÖRMEDLING AB
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 17 June 1994 by SKANDINAVISK METALLFÖRMEDLING AB against Sweden and registered on 11 February 1997 under file No. 34805/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish limited liability company. Before the Commission it is represented by Mr Göran Ravnsborg, Lund.

The facts of the case, as submitted by the applicant, may be summarised as follows.

In 1989 the applicant company, which traded in gold, was subjected to a tax audit by the County Tax Authority (länsskatte-myndigheten) of the County of Malmöhus. In the course of this audit the tax authority came to the conclusion that the applicant was not entitled to certain deductions claimed by it in its VAT declarations for - in so far as relevant to the present application - the periods May-June and July-August 1989.

On 29 September 1989 the tax authority applied to the County Administrative Court (länsrätten) of the County of Malmöhus for a permission to freeze (betalningssäkring) the applicant's assets up to the amount of 2,304,047 SEK which, as a consequence of the refused deductions, corresponded to the applicant's VAT debt for the two above-mentioned periods.

By an interim decision of 9 October 1989, the County Administrative Court temporarily granted the tax authority's request. In accordance with the applicable legislation, the decision was taken without the applicant having been heard or even informed of the request. Moreover, the court ordered that the decision be immediately enforceable.

On 12 October 1989, at the tax authority's request, the Enforcement Office (kronofogdemyndigheten) enforced the court's decision by freezing the applicant's assets, totalling about 890,000 SEK. The Enforcement Office later seized the assets.

Following the conclusion of the tax audit, the tax authority, on 7 November 1989, issued an audit report.

By decision of 27 February 1990, the tax authority refused the applicant the above-mentioned VAT deductions for the periods May-June and July-August 1989. By decision of 14 May 1990, the tax authority further found that the applicant was not entitled to the deductions claimed in its VAT declaration for the period September-October 1989. The refused deductions for the three periods totalled 3,962,857 SEK. In addition, the tax authority found the applicant liable to pay 792,570 SEK in tax supplements (skattetillägg), as it was deemed to have supplied false information in the VAT declarations. The tax authority also imposed late payment charges (restavgifter) totalling 239,038 SEK on the applicant. The applicant appealed against the decisions to the County Administrative Court.

By judgment of 4 May 1990, the County Administrative Court, after having heard the applicant in writing, granted the tax authority's application to freeze the applicant's

assets. However, the amount in question was fixed at 890,000 SEK, i.e. the amount which had already been seized by the Enforcement Office, as the applicant was deemed not to have any further assets. On 15 November 1990 the amount (at that time 947,399 SEK including interests) was transferred to the tax authority.

On 19 May 1992 the County Administrative Court held an oral hearing in the VAT case. Following the hearing the court, by judgment of 9 June 1992, upheld the tax authority's decisions of 27 February and 14 May 1990. The applicant appealed to the Administrative Court of Appeal (kammarrätten) in Göteborg by letter of 30 July 1992.

On application by the Enforcement Office, the District Court (tingsrätten) of Landskrona, on 17 June 1992, declared the applicant bankrupt. The company was considered insolvent as it was unable to pay its tax debt which, according to the Enforcement Office, amounted to about 4.2 million SEK.

On 14 September 1992, after refusing the applicant's request for an oral hearing, the Court of Appeal (hovrätten) of Skåne and Blekinge upheld the District Court's bankruptcy order. On 22 December 1993 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

By signing an agreement with the applicant company's sole share holder on 5 October 1992, the appointed bankruptcy receiver declared that he waived his right to take part in the VAT proceedings on behalf of the bankruptcy estate. Consequently, the proceedings were continued by the applicant company in liquidation.

Following the applicant's appeal to the Administrative Court of Appeal on 30 July 1992, the tax authority replied on 1 April 1993. By letter of 12 May 1993, the applicant made several procedural claims. It requested, firstly, that the appellate court quash the County Administrative Court's judgment of 9 June 1992 and refer the case back to that court for re-examination or, secondly, that the appellate court hold a full re-hearing in the case. In any event, the applicant claimed that the proceedings should be governed by the rules of criminal procedure, as the tax supplements imposed were comparable to criminal sanctions and that, therefore, Article 6 of the Convention was applicable. Thus, not only the rules of the Administrative Procedure Act (Förvaltningsprocesslagen, 1971:291) but also the provisions of the Code of Judicial Procedure (Rättegångsbalken) should be applied. As a consequence thereof, the tax authority, being the body which had taken the appealed decisions, should be dismissed as the representative of the State in the case. Furthermore, a public defence counsel and a tax expert should be appointed. The expert should assist the applicant in submitting a written opinion to the court and in giving evidence at the court's hearing. Also, certain rules of evidence, laid down in the Code of Judicial Procedure, should be applied in the proceedings.

On 22 June 1993 the Administrative Court of Appeal requested the tax authority's opinion on the above claims. The applicant made further written submissions in this regard on 26 September and on 7 and 8 October 1993. After an extension of the time-limit fixed for that purpose, the tax authority's opinion was received by the court on 7 October 1993.

On 13 October 1993 the Administrative Court of Appeal decided on the applicant's claims. The court found that the proceedings should follow the rules of the Administrative Procedure Act and that the provisions of the Code of Judicial Procedure could be applied only in so far as the former Act referred to those provisions. As the proceedings in the County Administrative Court had been conducted in accordance with the applicable rules, there was no reason to refer the case back to the latter court. Further, the tax authority could not be dismissed from the case, as it was the proper representative of the State in tax proceedings. The appellate court also stated that it would hold an oral hearing in the case and that it would later decide whether to appoint an expert.

On 7 November 1993 the applicant appealed against the appellate court's decision. The applicant completed the appeal on 20 November 1993. On 2 February 1994 the Supreme Administrative Court (Regerings-rätten) refused leave to appeal. The court further refused the applicant legal aid.

In a letter of 22 June 1994 to the Administrative Court of Appeal, the applicant reiterated its requests that a public defence counsel and a tax expert be appointed. By decision of 30 June 1994, the appellate court rejected the requests. On 8 November 1994 the Supreme Administrative Court refused leave to appeal.

By two decisions of 27 December 1994, the Court of Appeal of Skåne and Blekinge rejected the applicant's request to intervene in a case pending before the District Court of Helsingborg and its request for restoration of an expired time-limit (återställande av försutten tid) in another case. On 17 August 1995 the Supreme Court refused leave to appeal against these decisions.

The Administrative Court of Appeal held an oral hearing in the VAT case on 27 March 1995. In the course of the hearing, the applicant, invoking Article 6 of the Convention, claimed that the court was not competent to deal with the case - which allegedly concerned criminal sanctions - as it did not follow the procedure prescribed for criminal cases under the Code of Judicial Procedure. During the hearing the court rejected the applicant's claim, noting that Article 6 did not indicate which tribunal should examine cases concerning tax supplements and considering that the procedure followed by the court met the requirements of that provision. Stating that the court thereby violated the Convention, the applicant then challenged the impartiality of the three judges participating in the case. This challenge was immediately rejected by the court, sitting with three different judges. The hearing continued with the three original judges. The applicant later appealed against the decision not to disqualify these judges but, on 13 June 1995, the Supreme Administrative Court refused leave to appeal.

In letters to the Supreme Administrative Court dated 28 January, 2, 25 and 28 February and 1, 5, 12, 15 and 27 March 1995, the applicant demanded written information as to the court's reasons for its decision of 2 February 1994 to refuse the applicant legal aid and directions on how, in these circumstances, it could finance its litigation before the Administrative Court of Appeal. It further requested that the Supreme Administrative Court confirm that its decision was unlawful. The applicant

claimed that the decision constituted a serious procedural error as, allegedly, it had not applied for legal aid and as the question of legal aid, in any event, had not been determined by the Administrative Court of Appeal in its decision of 13 October 1993 and, thus, could not be reviewed by the Supreme Administrative Court. The applicant maintained that the latter court had an obligation to produce documentation in respect of the above claims (editionsplikt). It also complained about the way in which the above letters had been registered with the court.

In an application lodged with the District Court of Stockholm on 24 March 1995, the applicant further claimed that the Supreme Administrative Court should be ordered to produce the above documentation on penalty of a fine (vite). The applicant made further submissions in this respect on 30 March 1995.

On 3 April 1995 the District Court dismissed the application, finding that it was not competent to examine it. Following the applicant's appeal, the Svea Court of Appeal (Svea hovrätt), on 14 September 1995, upheld the District Court's decision. On 16 February 1996 the Supreme Court refused leave to appeal.

On 14 June 1995 the Supreme Administrative Court found that the claims made by the applicant in the letters submitted in January-March 1995 did not merit the court's consideration. Accordingly, the matter was struck out of the court's list of cases.

By judgment of 21 June 1995, the Administrative Court of Appeal found in favour of the applicant in the VAT case. Thus, the applicant was allowed to make the deductions originally claimed in its VAT declarations and the decisions to impose tax supplements and late payment charges were quashed. The court rejected, however, the applicant's claim that it be compensated for its litigation costs. In this respect, the court, recalling that the applicable legislation - the Act on Compensation for Costs in Tax Matters (Lagen om ersättning för kostnader i ärenden och mål om skatt, m.m.; 1989:487) - provided for such compensation only in exceptional cases, considered that it was not unreasonable that the applicant had to bear its own costs.

On 25 July 1995 the National Tax Board (Riksskatteverket) appealed against the appellate court's judgment to the Supreme Administrative Court and requested that the enforcement of the judgment be stayed, i.e. that the seized amount should not be returned to the company. The Board further claimed that the applicant company could no longer be a party to the case in question as the bankruptcy proceedings had been finalised and the company dissolved on 18 April 1994.

On 14 August 1995 the applicant appealed against the judgment in so far as it concerned the litigation costs. In the event of the National Tax Board being granted leave to appeal, the applicant also made claims similar to those previously made before the appellate court, i.e. inter alia the observance of the procedure prescribed in the Code of Judicial Procedure, the dismissal of the tax authorities as representatives of the State and the appointment of a public defence counsel and a tax expert. The applicant further requested that the State be ordered to pay the applicant's litigation costs in the Supreme Administrative Court.

On 30 August 1995 the Supreme Administrative Court granted the National Tax Board leave to appeal and stayed the enforcement of the appellate court's judgment. However, it refused the applicant leave to appeal as regards the question of litigation costs. Thus, in this respect, the appellate court's judgment gained legal force.

The applicant made submissions to the Supreme Administrative Court on 5, 6 and 22 October 1995 in which it challenged the impartiality of all members of the court. In support of the challenge, the applicant argued, inter alia, that the court had continuously violated the Convention. The applicant requested that the question of impartiality be referred to the Supreme Court for determination. On 23 October 1995 the applicant also lodged an application directly with the Supreme Court, requesting that court to disqualify all members of the Supreme Administrative Court from participating in the VAT case. Following further submissions by the applicant, the Supreme Court, by decision of 23 January 1996, dismissed the application, finding that it had no competence to deal with the matter.

On 11 December 1995 the National Tax Board replied to the applicant's various submissions to the Supreme Administrative Court. After having been granted a respite, the applicant made further submissions on 12 February and 10 and 27 March 1996. On the latter date the applicant demanded that the Supreme Administrative Court obtain the opinion of the EC Court under Article 177 of the EEC Treaty in regard to the question of disqualification of the members of the Supreme Administrative Court.

Further submissions were made by the National Tax Board on 28 March 1996 and by the applicant on 26 April and 3, 13 and 22 May 1996.

On 24 May 1996 the applicant lodged further complaints against members of the Supreme Administrative Court to the Parliamentary Ombudsman (Justitieombudsmannen) and the Chancellor of Justice (Justitiekanslern). On 5 June and 9 July 1996, respectively, the Ombudsman and the Chancellor decided to take no action.

On 3 July 1996 the Supreme Administrative Court delivered its judgment in the VAT case. It rejected the National Tax Board's claim that the applicant company could not be a party to the case. It also rejected all the applicant's procedural claims. As regards the principal issues in the case, the Supreme Administrative Court upheld the Administrative Court of Appeal's judgment of 21 June 1995. Thus, the VAT deductions claimed by the applicant were allowed and the tax supplement and late payment charge were annulled. The applicant's claim regarding the litigation costs in the Supreme Administrative Court was rejected, however. In this regard, the Supreme Administrative Court, like the appellate court, found that it was not unreasonable for the applicant to bear its own costs.

On 7 July 1997 the Supreme Court reopened the bankruptcy proceedings and quashed the Court of Appeal's bankruptcy order of 14 September 1992. The Supreme Court found that, following the judgment of the Supreme Administrative Court, it was

established that the VAT debt, on the basis of which the applicant company had been declared bankrupt, did not exist.

COMPLAINTS

1. Invoking Article 6 of the Convention in extenso which, allegedly, is applicable to the present case as the proceedings partly concerned the "determination of a criminal charge" - the imposition of tax supplements - the applicant company claims that it did not have a fair hearing by an independent and impartial tribunal. Complaining about all the decisions and judgments issued, it maintains that they create an irrefutable picture of a punitive, deterrent, humiliating and discriminating "lynch justice" procedure before the administrative courts, which intentionally violated the applicant's rights under the Convention. In particular, the applicant contends that, unlike criminal proceedings where the prosecutor has to prove the accused's guilt, it had to prove its innocence in the tax proceedings in question as it had to show that the appealed decisions by the tax authorities were wrong or unlawful. Thus, the applicant was not presumed innocent until proven guilty. The applicant also asserts, inter alia, that the principle of "equality of arms" was not respected, as it - a company declared bankrupt - was not given the assistance of a defence counsel or an independent tax expert whereas the tax authorities - with all their tax expertise - represented the State, the opposing party in the case. Allegedly, the applicant's litigation was made even more difficult by the refusal to produce certain documents relevant to the case. Moreover, in refusing to appoint a defence counsel or an expert, the courts showed that they were partial in favour of the State. Furthermore, the applicant states that the courts' decisions in regard to its request for disqualification of the members of the Supreme Administrative Court constituted a miscarriage of justice.

2. The applicant further complains that the VAT case was not determined within a reasonable time as required by Article 6 of the Convention. It contends that the proceedings started in August 1989 and ended in July 1996 and thus lasted six years and eleven months. As regards its own conduct in the case, the applicant maintains that it made a series of justified procedural requests in order to bring the proceedings in line with the requirements of Article 6.

3. As regards the two decisions of the Supreme Court of 17 August 1995 and its decisions of 23 January and 16 February 1996 and the decisions of the Parliamentary Ombudsman and the Chancellor of Justice, the applicant claims that it was denied access to court in accordance with Article 6 of the Convention.

4. The applicant also contends that the refusal to grant it compensation for its litigation costs violated its property rights under Article 1 of Protocol No. 1 to the Convention.

5. Finally, in regard to all the above complaints, the applicant asserts violations of its rights under Articles 3, 4 para. 2, 7, 13, 14 and 17 of the Convention, Article 1 of

Protocol No. 1 to the Convention and - with reference to Article 60 of the Convention - Article 177 of the EEC Treaty and Article F of the Maastricht Treaty.

THE LAW

1. The applicant company claims that it did not have a fair hearing by an independent and impartial tribunal and that it was not presumed innocent until proven guilty. It invokes Article 6 of the Convention which, in so far as relevant, provides the following:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
...
b. to have adequate time and facilities for the preparation of his defence;
c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
..."

The Commission considers that it need not determine whether Article 6 is applicable to the present case as, in any event, the applicant's complaints are inadmissible for the following reasons.

It is recalled that, on 3 July 1996, the Supreme Administrative Court gave judgment in favour of the applicant as regards the principal issues in the case - i.e. the VAT deductions, the tax supplements and the late payment charges. Thus, with respect to these issues the outcome of the proceedings could not have been more favourable to the applicant. Consequently, in so far as any alleged defects of the proceedings might have affected the determination of the principal issues, the applicant can no longer claim to be a victim, within the meaning of Article 25 of the Convention, of a violation of its rights under Article 6.

The only remaining issue to be determined by the administrative courts was whether the applicant should be compensated for its litigation costs. As a consequence of the Supreme Administrative Court's decision of 30 August 1995 to refuse the applicant leave to appeal and its judgment of 3 July 1996, the applicant's requests in this respect were rejected. Thus, the applicant had to defray its own expenses.

The Commission notes that the decisions taken by the Administrative Court of Appeal and the Supreme Administrative Court in this respect were in conformity with national legislation which provides that compensation is given only in exceptional circumstances. Having regard to the circumstances of the case, the courts considered that it was not unreasonable that the costs be paid by the applicant. The Commission finds that it is primarily for the national courts to determine this issue. It cannot find that the courts' decisions in the present case were arbitrary or unreasonable. Thus, the decisions as such did not violate the applicant's rights under the Convention, including the right to a fair hearing. Furthermore, there is nothing to indicate that the determination of this issue was affected by any irregularities in the proceedings in the case.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant further complains that the VAT case was not determined within a reasonable time as required by Article 6 of the Convention.

As regards the period to be considered the Commission finds that it commenced on 29 September 1989 when the tax authority applied to the County Administrative Court for a permission to freeze the applicant's assets and ended on 3 July 1996 when the Supreme Administrative Court delivered its judgment. The proceedings thus lasted about six years and nine months.

The Commission recalls that from a general point of view the reasonableness of the length of the proceedings must be assessed with reference to the complexity of the case, the conduct of the applicant
and that of the authorities before which the case was brought (cf., e.g., Eur. Court HR, Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D, p. 82, para. 36).

The Commission considers that the proceedings, which concerned the question whether the applicant company was entitled to make certain deductions in its VAT declarations, involved issues of some complexity.

As regards the conduct of the applicant, the Commission notes that it made extensive submissions to the courts and, on several occasions, completed the appeals lodged with the Administrative Court of Appeal and the Supreme Administrative Court. Furthermore, throughout the proceedings, the applicant lodged numerous procedural claims which the courts had to determine before the examination of the subject-matters of the case could continue. It is true that the applicant had a right to submit the claims in question - some of which had a basis in law - but it is clear that in so doing the applicant delayed the proceedings considerably.

In the Commission's view, the facts of the case do not give reason to criticise the conduct of the authorities.

In view of the above, the Commission considers that, on account of its litigation, the applicant must be held responsible for the length of the proceedings. Consequently,

they did not, in the Commission's view, go beyond what may be considered reasonable in the particular circumstances of the case.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. As regards the two decisions of the Supreme Court of 17 August 1995 and its decisions of 23 January and 16 February 1996 and the decisions of the Parliamentary Ombudsman and the Chancellor of Justice, the applicant claims that it was denied access to court in accordance with Article 6 of the Convention.

The Commission recalls that, on 17 August 1995 and 16 February 1996, the Supreme Court refused the applicant leave to appeal against certain decisions taken by the courts of appeal and that, on 23 January 1996, it dismissed the applicant's application for disqualification of the members of the Supreme Administrative Court as it had no competence to deal with the matter. Further, the decisions of the Parliamentary Ombudsman and the Chancellor of Justice were also taken in regard to complaints directed against members of the Supreme Administrative Court.

Noting that the issue of disqualification was examined by the Supreme Administrative Court on 3 July 1996, the Commission finds that there is nothing to indicate that the impugned decisions involved a determination of the applicant's civil rights or obligations or of any criminal charge against the applicant. Consequently, Article 6 of the Convention is not applicable to the present complaint.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 of the Convention.

4. The applicant also contends that the refusal to grant it compensation for its litigation costs violated its property rights under Article 1 of Protocol No. 1 to the Convention.

However, having regard to its findings under 1 above, the Commission considers that the present complaint does not disclose any appearance of a violation of the Article invoked.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. Finally, in regard to all the above complaints, the applicant asserts violations of its rights under Articles 3, 4 para. 2, 7, 13, 14 and 17 of the Convention, Article 1 of Protocol No. 1 to the Convention and - with reference to Article 60 of the Convention - Article 177 of the EEC Treaty and Article F of the Maastricht Treaty.

The Commission recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. Accordingly, it is not competent to deal with complaints submitted under

the EEC Treaty and the Maastricht Treaty. Further, the Commission finds that the applicant's submissions in respect of the present complaints fail to substantiate any violations of the Convention Articles invoked.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber