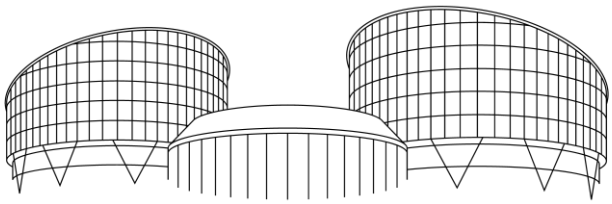

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROUSK v. SWEDEN

(Application no. 27183/04)

JUDGMENT

STRASBOURG

25 July 2013

FINAL

25/10/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rousk v. Sweden,

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

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 July 2013,

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

PROCEDURE

1. The case originated in an application (no. 27183/04) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swedish national, Mr Jim Rousk ("the applicant"), on 22 July 2004.

2. The applicant was represented by Mr J. Thörnhammar, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms I. Kalmerborn, of the Ministry for Foreign Affairs.

3. The applicant alleged that the Enforcement Authority's measures had caused violations of his right to the peaceful enjoyment of his property contrary to Article 1 of Protocol No. 1 of the Convention as well as his right to respect for his private and family life and home, contrary to Article 8 of the Convention.

4. On 6 June 2007 the application was communicated to the Government.

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed Fifth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and died in June 2011. His wife and sole heir, Mrs Julia Rousk, decided to pursue the application. She lives in Hässelby.

A. General background

7. The applicant was the owner of a close company and was under a statutory obligation to submit a special income tax return every year. For the tax assessment year 2002 (income earned during 2001), he was obliged to submit the tax return no later than 31 March 2002. However, having failed that, in July 2002, the Tax Authority (*Skattemyndigheten*) in Stockholm ordered him to submit his tax return within two weeks from receiving the order. As he did not comply with the order, the Tax Authority informed him that it would make a discretionary assessment of his income and, in October 2002, sent him a proposal for a discretionary assessment. The applicant was given two weeks to comment on it, but did not do so. In November 2002, the Tax Authority decided to maintain the proposal and, as it found no grounds for exemption, imposed tax surcharges on him. The applicant was informed that the taxes, tax surcharges and a delay charge amounted to, in total, SEK 232,572 (approximately EUR 27,000). This amount was to be paid by 26 February 2003. The Tax Authority's decision included information about how to request reconsideration or appeal against it. However, at that time the applicant did neither, nor did he request respite from paying the taxes.

8. Since tax debts to the State are immediately enforceable, the Tax Authority, after having reminded the applicant of his obligation to pay the tax debt, passed the claim for collection to the Enforcement Authority (*Kronofogdemyndigheten*) in Stockholm where it was registered in April 2003.

B. The writ of execution

9. On 28 May 2003 the Enforcement Authority issued a writ of execution (*beslut om utmätning*) attaching the applicant's site-leasehold right (*tomträtt*) and the house on the site where the applicant and his wife lived (hereafter referred to as his property). It noted that the applicant's total enforceable debts amounted to SEK 255,329 and that his property's taxation value for 2002 was SEK 1,372,000, with his mortgage amounting to

SEK 960,200. On 29 April 2003, an Enforcement Officer had been to the applicant's home for a pre-planned visit to investigate whether he had any assets that could be attached. However, the applicant had not been at home. The Enforcement Officer had left a note for the applicant, requesting him to contact the Enforcement Authority. It would appear that he did not do so. According to an investigation report of the applicant's assets dated 4 July 2003, and carried out by the Enforcement Authority, no other assets to cover the applicant's debts than his property was accounted for. The writ of execution of 28 May 2003 was sent to the applicant but it would appear that he only became aware of it some time in July 2003 and on 4 August 2003, upon request by the applicant, the Enforcement Authority sent him a copy of the writ.

10. On 10 August 2003 the applicant appealed against the writ of execution to the District Court (*tingsrätten*) of Stockholm and requested that it be repealed as his tax debt had not been finally decided. He noted that he had not been served the decision to attach his property and thus had been prevented from appealing against it sooner. He then stated that he would submit his tax return for the tax assessment year 2002 to the Tax Authority immediately and that he had also requested respite from payment of his taxes although the Tax Authority had not dealt with this request yet. Moreover, he claimed that it was utterly disproportionate to sell his home, which would entail serious economic, social and medical consequences for him and his wife. He had suffered from serious depression for some years, for which he had sought medical help in October 2002, and in February 2003 he had begun treatment. Only lately had he begun to feel better and been able to deal with his situation. He submitted a medical certificate which stated that he had been in contact with a psychiatric care centre since February 2003 and that he suffered from depression and was taking antidepressants. Lastly, he informed the court that another of his debts, to the Traffic and Property Management Department (*Gatu- och Fastighetskontoret*; hereafter the "TPMD"), had been cancelled as he had paid it.

11. On 28 August 2003 the District Court rejected the appeal. It found no reasons to repeal the decision as there was an enforceable debt against the applicant for which the creditor, the State, demanded payment. The court was notified by the Enforcement Authority that, to the latter's knowledge, the Tax Authority had not granted the applicant respite from the payment of his taxes.

12. The applicant appealed to the Svea Court of Appeal (*hovrätten*) on 15 September 2003 and requested an extension of three weeks to submit his appeal since he had asked for certain documents from the Enforcement Authority but had not yet received them.

13. On 5 November 2003 the Court of Appeal, having received no further communications from the applicant, refused leave to appeal. The applicant made no further appeal to the Supreme Court (*Högsta domstolen*).

C. Request for respite from payment of the taxes and re-assessment of the applicant's income for 2002

14. On 28 July 2003, by fax and letter, the applicant, referring to an order to submit his tax return, stated that due to illness he had not submitted his tax returns for the tax assessment years 2002 and 2003. He requested the Tax Authority to grant him respite from the payment of his taxes until a new tax assessment had been made, as he intended to submit his tax returns shortly. Apparently, the fax and letter were sorted wrongly in the incoming mail to the Tax Authority and thus it was not until the applicant renewed his request one month later, on 28 August 2003, that the Tax Authority dealt with it. At this time, he also submitted his tax return for the tax assessment year 2002. He invoked his illness and submitted a medical certificate confirming that he suffered from depression. Lastly, he noted that it was extremely important for him that the request be dealt with as soon as possible. He reiterated his request for respite in a fax to the Tax Authority on 1 September 2003, noting that it was of highest importance to him that the request be dealt with promptly.

15. On 3 September 2003 the Tax Authority granted him respite from payment of the taxes and tax surcharges imposed on him as a result of the discretionary tax assessment. This decision was registered on the same day in the applicant's tax account in the Tax Authority's database. However, the Tax Authority did not inform the Enforcement Authority about the respite directly by fax or in any other way.

16. On 30 September 2003 the Tax Authority sent the applicant a preliminary re-assessment of his income for the tax assessment year 2002 and gave him two weeks to comment on it. In its re-assessment, the Tax Authority first noted that since the applicant had submitted a tax return, the discretionary assessment, including the tax surcharges, should be repealed. However, it then found that the applicant's tax return lacked essential information, for which reason it accepted only part of it and supplemented the remainder with its own assessment. It further imposed tax surcharges on the part where it had made a discretionary assessment, resulting in a total amount for taxes and tax surcharges of SEK 78,866 (approximately EUR 9,150).

17. On 26 November 2003 the Tax Authority confirmed its preliminary consideration and the respite from the payment, which had been granted on 3 September 2003, lapsed. Instead, the applicant's tax debt to the State, based on the new decision, became enforceable. However, on 30 April

2004, upon request by the applicant, the Tax Authority granted him respite from payment of the tax surcharges (SEK 17,469).

18. Upon request by the applicant, the Tax Authority, on 29 June 2004, reconsidered its decision in the light of his further submissions in the case but decided not to change the decision.

19. On 2 December 2007 the applicant appealed against the Tax Authority's decision to the County Administrative Court (*länsrätten*). On 17 January 2008 the Tax Authority decided not to alter its decision and forwarded the appeal to the County Administrative Court. No further decisions or judgments have been submitted by the parties and, consequently, the outcome of these proceedings is unknown to the Court.

D. The request for stay of the sale of the applicant's property at public auction and the actual sale

20. In the meantime, on 23 June 2003, the Enforcement Authority decided that the applicant's property should be sold at public auction to pay his debts and he was informed of this decision by a letter of 4 July 2003. Moreover, in a letter of 31 July 2003, he was informed that the public auction would take place on 3 September 2003.

21. On 28 July 2003, an evaluation of the applicant's property was carried out by an independent company at the request of the Enforcement Authority. The company valued the property to between SEK 1,850,000 and SEK 2,150,000.

22. On the same day, 28 July 2003, the applicant requested the Enforcement Authority to stay the sale of his property for a period of two months, stating that he had not been able to submit his tax return in time due to personal reasons. He further stated that he had paid another of his debts, namely that to the TPMD, which should therefore be removed from the Enforcement Authority's list of his debts. According to the applicant, he had telephoned the Enforcement Authority earlier and informed them that he was suffering from serious depression for which he was being treated.

23. On 30 July 2003 the Enforcement Authority rejected the applicant's request. It noted that the State, as petitioner, had opposed a stay of execution. Moreover, the personal reasons invoked by the applicant were not such special circumstances that a stay could be granted. Thus, there were no reasons to stay the enforcement proceedings.

24. On 4 August 2003 the applicant appealed against the decision to the District Court, invoking the same grounds as in his appeal against the writ of execution (see above § 10), namely his illness, the fact that the debt to the TPMD had been paid, that he would submit his tax return and had requested respite from the payment. He also submitted a copy of the medical certificate.

25. In reply to the applicant's appeal, the Enforcement Authority submitted, *inter alia*, that the fact that the applicant had now submitted a letter from the TPMD confirming that his debt in that respect had been paid did not alter the fact that his tax debt remained and was enforceable and that the State, as petitioner represented by the Enforcement Authority, required payment. There is no information whether the Tax Authority was consulted on this issue.

26. On 28 August 2003 the District Court rejected the appeal. It noted that the petitioner, the State, had not agreed to stay the sale and that there were no special reasons in the applicant's case to justify a stay on the sale.

27. On 3 September 2003 at 1.45 p.m. the public auction to sell the applicant's property took place. From the Enforcement Authority's protocol of the auction it appears that a first bid in the amount of SEK 1,475,000 was rejected by the Enforcement Authority as being too low. However, after a second round of bids, the Enforcement Authority accepted the highest bid in the amount of SEK 1,600,000 (approximately EUR 186,000) as it considered it unlikely that a higher sum could be obtained. The date of accession to the property for the new owner, a private person, was set for 1 October 2003 and, consequently, the applicant was informed that he had to vacate his home before that date. The protocol further noted that the direct costs for the public auction amounted to SEK 45,660.

28. On 15 September 2003 the applicant appealed to the Court of Appeal against the District Court's decision not to stay the sale of his property. On 5 November 2003 the appellate court struck the case out of its list of cases as the property had already been sold when the appeal was lodged with the court.

29. On 17 September 2003 the applicant appealed against the sale to the District Court, demanding that it be declared null and void since the Tax Authority, on the same day the auction was held, had granted him respite from the payment of his tax debt and, therefore, the writ of execution should have been revoked. In the alternative, he requested that a new auction be held in order to obtain a higher price for the property since, in his view, it had been sold for a price far lower than its real value. In this respect, he noted that the independent company had valued the property at around SEK 2 million.

30. In reply, the Enforcement Authority submitted that it had not been shown that the Tax Authority's decision granting the applicant respite from payment of his tax debt had been taken before the public auction had taken place at 1.45 p.m. According to information from the Tax Authority, the decision had been made in the afternoon of 3 September. In any event, the applicant had other debts to the State amounting to SEK 23,775 (approximately EUR 2,800) which warranted the sale of the property. It further noted that only two persons had made bids for the property at the auction and that it had refused the first offer and accepted the second one,

which amounted to 80% of the estimated market value. It pointed out that buying a property at public auction entailed more risks for the buyer, for which reason the sale price was normally below market value. For example, there were no guarantees that the state of the property was the same on the day of accession to the property as when the property had been inspected prior to the sale.

31. The applicant commented on the Enforcement Authority's submission and pointed out that the remaining enforceable debt after he had been granted respite from his tax debt amounted only to around SEK 7,500 and not SEK 23,775 as claimed by the Enforcement Authority. He further noted that the Tax Authority's decision on respite was registered at 2.02 p.m. on 3 September and that the Enforcement Authority thus could have verified this during the pause between the two bidding rounds. In this regard, he pointed out that he had informed the Enforcement Authority of his request for respite from paying his taxes and that it therefore should have verified directly with the Tax Authority before beginning the public auction. This was especially so as both authorities represented the State, which was the petitioner in the case.

32. On 15 October 2003 the District Court rejected the appeal. It noted that the writ of execution had not been annulled and that the grounds invoked by the applicant for why the writ should have been annulled did not give reason to annul the sale of the property. As concerned the price obtained for the property at auction, the court shared the Enforcement Authority's assessment. The applicant's further submissions did not give cause to grant his appeal.

33. On 4 November 2003, the applicant appealed to the Court of Appeal, invoking Article 1 of Protocol No. 1 to the Convention, and claiming that it was clearly disproportionate to sell his property for a debt which, according to his calculation, amounted to no more than SEK 6,721 (approximately EUR 800).

34. On 12 December 2003 the Court of Appeal refused leave to appeal. The applicant appealed against the decision on 2 January 2004 and reiterated his claims. However, on 23 January 2004, the Supreme Court refused leave to appeal.

E. The decision to evict the applicant and its consequences

35. Although the applicant had been ordered to move out of his house before 1 October 2003, he refused to do so. As a result, on 6 October 2003 the Enforcement Authority, at the request of the buyer of the property, decided to evict the applicant, unless he moved out before 14 October 2003.

36. On 10 October 2003 the applicant requested respite from the eviction, invoking his and his wife's poor health and the fact that they had no alternative housing. Moreover, he stated that the sale had not yet gained

legal force, as he had appealed against it, for which reason he was still the rightful owner of the property.

37. On the same day, the Enforcement Authority rejected the request as it considered that the applicant's situation was not likely to change within the next few weeks, as it was not a question of a sudden illness, and respite could only be granted for a maximum of four weeks and if there were exceptional reasons.

38. On 11 October 2003 the applicant appealed against both decisions to the District Court, disputing the eviction decision and insisting that, at the very least, the eviction should be postponed. He maintained his arguments and pointed out that while he was obliged to leave his home before the sale had gained legal force, he would not receive the money from the sale until after that, which effectively prevented him from buying a new home. He added that both he and his wife had suffered a crisis reaction due to their situation which made it impossible for him to deal with the situation and search for a new home for them. He furnished a medical certificate, dated 13 October 2003, by a chief physician and specialist in psychiatry, which stated that the applicant suffered from depression, the symptoms being a generally low mood, difficulties taking initiatives and getting things done and poor concentration. His state had fluctuated somewhat, but overall there had been an improvement. He was in need of continued medication and a calm and secure situation.

39. On 13 October 2003 the District Court decided not to postpone the eviction set for the following day and, on 5 November 2003, it rejected the appeal, stating that it shared the Enforcement Authority's reasoning.

40. Upon further appeal by the applicant, in which he maintained his claims, the Court of Appeal refused leave to appeal on 23 December 2003, as did the Supreme Court on 27 May 2004.

41. Meanwhile, on 22 October 2003, the eviction was enforced by the Enforcement Authority. The applicant and his wife were present, as were two police officers. The house was emptied by professional movers and the contents stored by them. The applicant's cat was taken to a cattery and his car was taken to a pound. However, a number of items, listed by the Enforcement Authority, were thrown away as they were considered to be either impossible to store (such as flowers and food from the fridge/freezer) or rubbish. A bed which could not be removed from the house in one piece due to its size was also, by special decision of the Enforcement Authority, destroyed and thrown away. According to a letter from the Enforcement Authority to the applicant, dated 18 May 2004, the cost of the eviction amounted to SEK 71,115.

42. The applicant complained against these measures to the District Court and, at the same time, appealed against the Enforcement Authority's decision concerning the bed. He stated that he considered it to be a violation of his right to property to evict him and to throw some of his belongings

away, having regard in particular to the fact that the sale of his property had not yet gained legal force and that, consequently, he was still its lawful owner. He further submitted a detailed list of all items which he claimed had been thrown away or had "disappeared" and demanded compensation for the loss of these items. He further complained that a flag pole which belonged to his brother had been considered as part of the property.

43. On 26 November 2003 the District Court found that no mistakes had been made during the eviction in relation to the decision to destroy the bed and therefore rejected the applicant's complaint. The applicant did not appeal against this decision to the Court of Appeal.

44. Moreover, on 23 December 2003, the District Court rejected the applicant's complaint concerning other measures taken during the eviction and dismissed the claim for compensation for items destroyed or thrown away as it had to be tried in separate proceedings.

45. The applicant appealed further to the Court of Appeal which, on 29 January 2004, refused leave to appeal. The applicant did not make any further appeal to the Supreme Court.

F. The distribution of the money obtained from the sale of the property

46. On 1 October 2003 the Enforcement Authority held a distribution session (*fördelningssammanträde*) to divide the money obtained from the sale of the property among the creditors. From the protocol of the session it appears that it was decided that the applicant's mortgage (SEK 881,788) should be repaid to his bank immediately, while the costs and fees involved in the proceedings of the public auction (SEK 45,660), the debt to the Tax Authority and the remaining money left for the applicant should be paid once the sale gained legal force. The debt to the Tax Authority was noted in the protocol as amounting to SEK 256,352.

47. The applicant appealed against the Enforcement Authority's distribution decision, claiming that it should be declared null and void since he had been granted respite from payment of most of his tax debt and it therefore should not have been included in the protocol, except for the sum of SEK 6,721. The Enforcement Authority had been informed about the respite on 8 September 2003, and had therefore known about it at the time of the distribution session.

48. The Enforcement Authority submitted in reply that its computer system was updated on the first Saturday of every month and that the respite granted by the Tax Authority thus had not yet been registered on 1 October 2003 when the distribution session had been held. However, since then, the registration had been made and the enforceable tax debt had been reduced to SEK 6,721, which would be taken into account when the money was paid to the different parties.

49. On 19 November 2003 the District Court decided that the protocol from the distribution session should be corrected to reflect the correct amount (SEK 6,721) due to the State at the time of the distribution session, since the Enforcement Authority had known about the respite from payment at the time, even though it was not formally registered in its database. This decision gained legal force.

50. On 27 January 2004, the Enforcement Authority paid the applicant SEK 524,343 (approximately EUR 61,000), namely the amount of money which remained from the sale of the property after all debts as well as costs relating to the sale on public auction and the eviction had been paid. The State received SEK 6,721 as payment for the applicant's enforceable debts to the State (apparently these were debts relating to vehicle tax and television licence fees).

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. Domestic provisions of relevance to the present case are found mainly in the Tax Assessment Act (*taxeringslagen*; 1990:324), the Act on the Filing of Income Tax Returns and Statements of Income (*lagen om självdeklarationer och kontrolluppgifter*, 1990:325; replaced by 2001:1227; hereafter "the Tax Return Act"), the Tax Payment Act (*skattebetalningslagen*, 1997:483), the Act on the Collection of Debts to the State (*lagen om indrivning av statliga fordringar m.m.*, 1993:891; hereafter "the Debt Collection Act"), the Ordinance on the Collection of Debts to the State (*indrivningsförordningen*, 1993:1229), the Enforcement Code (*utsökningsbalken*, 1981:774) and the Enforcement Ordinance (*utsökningsförordningen*, 1981:981).

52. The Tax Authority is the central authority responsible for tax assessment and collection. It has close administrative ties to the Enforcement Authority which has as its main task to ensure collection of enforceable private and public debts. According to the Enforcement Code, Chapter 2, section 30, the Enforcement Authority represents the State in public cases (*allmänna mål*) before the Authority, which includes payment of taxes (Chapter 1, section 6).

A. Obligation to file an income tax return and discretionary assessment

53. According to Chapter 2, section 7, and Chapter 4, section 5, of the Tax Return Act, owners of close companies are obliged to submit a special income tax return every year, before a specified date. Chapter 4, section 2, of the Tax Assessment Act stipulates that the Tax Authority has to make its subsequent tax assessment decision before the end of November. A taxpayer who for exceptional reasons cannot submit an income tax return in due time,

may be granted a short respite upon application (Chapter 16, section 1, of the Tax Return Act).

54. In specific circumstances specified in Chapter 4, section 3, of the Tax Assessment Act, such as when the person liable for taxes has failed to submit an income tax return or the income tax return is incomplete, the Tax Authority will estimate the tax or the basis for levying tax at an amount that appears reasonable in view of what has come to light in the matter. This is known as "discretionary assessment" (*skönstaxering*).

55. If the person concerned is dissatisfied with the decision of the Tax Authority, he or she has a right to reconsideration of the tax assessment decision or may appeal against it to a county administrative court. A request for reconsideration or an appeal must be submitted to the Tax Authority before the end of the fifth year following the tax assessment year (Chapter 4, section 9, and Chapter 6, sections 1 and 3 of the Tax Assessment Act). Further appeal lies to an administrative court of appeal and, subject to compliance with the conditions for obtaining leave to appeal, the Supreme Administrative Court.

B. Payment and collection of tax debts

56. Tax that is payable under a basic decision on final tax must have been paid no later than the next due date occurring after 90 days have passed since the date of the decision (Chapter 16, section 6, of the Tax Payment Act). If special reasons exist, the Tax Authority may decide on another date as the final date for payment (ibid.).

57. Chapter 23, sections 7 and 8, of the Tax Payment Act provides that a request for reconsideration or an appeal against a decision concerning taxes has no suspensive effect on the obligation to pay the tax and a taxation decision may be enforced even if it has not become final.

58. However, the Tax Authority may grant respite from the payment of taxes and tax surcharges in accordance with the provisions laid down in Chapter 17, sections 2, 2a and 3 of the Tax Payment Act. Respite may be granted in three different situations: (1) if it may be assumed that the tax imposed will be remitted or reduced, (2) if the person liable for taxes has requested a reconsideration of the tax assessment decision or filed an appeal against it and it is uncertain whether he or she will have to pay the tax, and (3) if the person liable for taxes has requested a reconsideration or filed an appeal and payment of the tax would result in considerable damage for him or her or would otherwise appear unreasonable.

59. There are no legal provisions stipulating that an application for respite should be dealt with promptly or within certain time-limits. However, the National Tax Board (*Riksskatteverket*) has recommended that such applications should normally be dealt with within two weeks (RSV S 1998:13).

60. Chapter 17, section 10, of the Tax Payment Act provides that no request may be made for collection of an amount covered by respite. Moreover, according to Chapter 3, section 21, of the Enforcement Code, enforcement may not take place if the defendant claims, for example, that he or she has paid the debt or that some other condition concerning the relations between the defendant and the other party amounts to an obstacle against enforcement and this objection cannot be ignored. In such a case, if an enforcement measure has already taken place, it shall lapse, if possible.

61. Chapter 20, section 1, of the Tax Payment Act provides that, if a tax amount has not been paid in time, the debt shall be transferred to the Enforcement Authority for collection unless there are special reasons to refrain from such a demand. However, before the debt is transferred, the debtor shall, unless there are special reasons, be requested to pay the debt (Chapter 20, section 3). According to Chapter 20, section 4 of the same Act, collection may be enforced under the Enforcement Code and further provisions on the collection of tax debts are to be found in the Debt Collection Act. Section 6 of the latter Act states that the Enforcement Authority shall carry out an investigation of the debtor's assets with a view to deciding on appropriate collection measures.

62. According to sections 7 and 8 of the Debt Collection Act, the Enforcement Authority may grant a deferment of payment in certain circumstances, for instance, while awaiting a decision from the competent authority concerning respite for payment or if it is called for due to the debtor's personal situation. Moreover, section 18 of the Debt Collection Act stipulates that the Enforcement Authority may suspend collection until further notice if further collection measures appear futile or are not justifiable in view of the costs, and the public interest does not require collection. This section further authorises the Government to give more detailed instructions on the application of this provision.

63. Consequently, in the Ordinance on the Collection of Debts to the State, the Government has specified that if the debtor's obligation to pay a tax debt has lapsed or been reduced, the Tax Authority must promptly (*skyndsamt*) notify the Enforcement Authority of this (section 8). This also applies if the debtor has been granted respite for payment or if it has been discovered that collection should not have been requested.

C. Attachment, sale by public auction and eviction

64. All references in this section are to the Enforcement Code unless otherwise specified.

65. According to Chapter 2, section 19, decisions by the Enforcement Authority are immediately enforceable and enforcement measures are to continue even if the Authority's decision is appealed against. As concerns enforcement titles in public cases, Chapter 3, section 23, states that these

may be enforced before they have gained legal force, if this has been specially prescribed. However, if the enforcement title has been revoked, the attachment shall be cancelled immediately. Chapter 1, section 6, specifies that public cases include cases concerning payment of taxes. Writs of execution shall be formally served on the debtor according to the main rule laid down in section 9 of the Enforcement Ordinance.

66. In the first instance, such assets shall be attached as may be used for payment of the claim with the least cost, loss or other inconvenience for the debtor (Chapter 4, section 3). According to the *travaux préparatoires*, real property, site-leasehold rights and registered ships and aircraft should, as a rule, be attached last (Government Bill 1980/81:8, p. 359 *et seq*.).

67. According to Chapter 4, section 10, attachment shall take place as soon as possible after the necessary documents have been received by the Enforcement Authority. Section 12 of the same chapter provides that notification shall, with some exceptions, be sent to the debtor by post or given to him or her in another appropriate manner before attachment takes place.

68. In public cases the sale of attached property shall take place without delay, unless there is an impediment to the sale or respite is granted by the Enforcement Authority (Chapter 8, section 19). Upon request by the debtor, respite from the sale may be granted by the Enforcement Authority only if the petitioner accepts it or there are special reasons (Chapter 8, section 3). As concerns attached real property and site-leasehold rights, they are normally sold by public auction (Chapter 12, section 1) and the sale should take place within four months of the attachment unless there is an impediment to the sale or respite is granted (Chapter 12, section 11). Public notice of the auction is to be given in good time and in an appropriate manner (Chapter 12, section 20). The applicant and the owner of the property, as well as known holders of claims and rights that should be taken into account at the auction, are to be given separate notice of the auction in good time (Chapter 12, section 21).

69. According to Chapter 12, section 46, a purchaser who has fulfilled his or her obligation to pay the purchase sum obtains access to the property on the day that has been decided for the distribution of the purchase sum. Moreover, Chapter 12, section 48, states that, notwithstanding any appeal against the auction, the purchaser obtains access to the property on that day, unless otherwise ordered by the court where the appeal is pending.

70. When attached property has been sold, the purchaser is entitled to receive, if necessary, enforcement assistance from the Enforcement Authority in order to take possession of the property (Chapter 8, section 18). However, before eviction takes place, the defendant shall be afforded an opportunity to express his or her views (Chapter 16, section 2). Moreover, the eviction shall be implemented so that reasonable regard is had to both

the purchaser's interests and the defendant's situation (Chapter 16, section 3).

71. In line with Chapter 16, section 3, eviction shall, if possible, take place within four weeks from receipt of the necessary documents by the Enforcement Authority but no sooner than one week from when the defendant is afforded an opportunity to express his views. However, Chapter 16, section 4, allows the Enforcement Authority to grant respite from eviction for a maximum of two weeks from the expiry of the four-week time-limit referred to in section 3 if it is necessary with regard to the defendant. If there are extraordinary reasons, this respite may be extended to a maximum of four weeks.

72. Chapter 16, section 6, provides that the Enforcement Authority shall, if needed, attend to the transport of the property that shall be removed, rent space for storage of the property and take other similar measures arising from the eviction.

73. It follows from Chapter 18, section 14, of the Enforcement Code, that if an appeal against a decision on attachment is granted, later decisions in the case, such as decisions to sell property and to evict the owner, may also be revoked, provided these decisions are connected with the decision on attachment and that they had not gained legal force when the appeal was lodged.

D. Access to databases

74. According to "Information about the activities of the Swedish Enforcement Authority"[1], the Authority has a nationwide computerised Enforcement Register which contains both public and private claims. All payments and actions taken in relation to debtors are recorded in the register. Moreover, the Tax Authority administers a Tax Register for taxation purposes, which contains records of all taxpayers, and to which the Enforcement Authority has direct access (see also, Chapter 2, section 8 of the Act on handling of information within the Tax Authority's taxation activities [*lag om behandling av uppgifter i Skatteverkets beskattningsverksamhet*, 2001:181], specifying which information the Enforcement Authority has direct access to). In accordance with Chapter 2, section 27, of the Act on handling of information within the Enforcement Authority's activities (*lag om behandling av uppgifter i Kronofogdemyndighetens verksamhet*, 2001:184) the Tax Authority also has direct access to the Enforcement Authority's databases in so far as concerns

[1]Information document created by the Enforcement Authority and available on their internet site (downloaded on 1 November 2012):
http://www.kronofogden.se/download/18.4c1b677f134cb6b828f80003252/kronofogden_in_english.pdf

the former's taxation activities and where, according to Chapter 2, sections 2 and 5, they include enforcement procedures relating to tax debts.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE APPLICATION OUT OF THE LIST UNDER ARTICLE 37 OF THE CONVENTION

75. On 23 June 2008 the Government submitted a unilateral declaration in which they stated that they regretted the inconvenience caused to the applicant by the sale of his property by public auction and the ensuing eviction of the applicant and his wife and offered to pay him EUR 80,000. On this basis, the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 § 1 (c) of the Convention.

76. The applicant objected to the case being struck out and requested that the Court pursue its examination of the admissibility and merits of the case.

77. The Court notes that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, § 75, ECHR 2003-VI, and *Angelov and Others v. Bulgaria*, no. 43586/04, § 12, 4 November 2010).

78. In this respect, the Court notes that the Government have not admitted that there has been a violation of the Convention. Regretting the inconvenience caused to the applicant by the sale of his property at public auction and the ensuing eviction cannot, in the Court's view, be considered equivalent to an acknowledgment of a violation of the Convention. Moreover, although the measure proposed by the Government to remedy the situation, namely, paying an appropriate amount of money to the applicant, appears reasonable and sufficient, it cannot outweigh the absence of an acknowledgment of a violation having regard to the specific context in which unilateral declarations are intended to be used.

79. Thus, having regard to what has been stated above and the facts of the present case, the Court finds that the unilateral declaration does not offer satisfactory redress to the applicant and that, consequently, the Government have failed to establish a sufficient basis for finding that respect for human

rights as defined in the Convention does not require the Court to continue its examination of the case (see, *Prencipe v. Monaco*, no. 43376/06, § 63, 16 July 2009; see also, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI, and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

80. This being so, the Court rejects the Government's request to strike the application out under Article 37 § 1 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

81. The applicant complained that his property rights had been violated because the sale of his property at public auction and the ensuing eviction were completely disproportionate to the aims pursued and because a number of his belongings had been destroyed or discarded during the eviction. Moreover, the property had been sold for a price far below market value, causing him substantial financial loss. He invoked Article 1 of Protocol No. 1 to the Convention, which 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. Admissibility

82. The Government submitted that the application should be declared inadmissible for non-exhaustion of domestic remedies. They noted that the applicant had failed to appeal against the Court of Appeal's decision to the Supreme Court in the proceedings relating to the issuance of the writ of execution. Moreover, he had given no reasons for his appeal to the Court of Appeal in those proceedings. The Government observed that when the District Court had examined the appeal, the Tax Authority had not yet granted the respite from payment of the tax debt although that had been granted at the time of the Court of Appeal's examination of the appeal. However, since the applicant did not inform the appellate court about it, the court was unaware of this fact. In the Government's opinion, the Court of Appeal might have granted leave to appeal and revoked the decision to issue

the writ of execution if it had known about the respite. Had this occurred, the decision to sell the property and the ensuing eviction could also have been revoked in accordance with Chapter 18, section 14, of the Enforcement Code.

83. The Government further observed that the applicant had not exhausted domestic remedies in relation to the proceedings concerning the destruction and throwing away of some of his belongings, including the bed, in connection with the eviction. The District Court's decision concerning the bed was not appealed against to the Court of Appeal, and the Court of Appeal's decision concerning other belongings was not appealed against to the Supreme Court. Moreover, the applicant could have sued the State for compensation in civil proceedings under the Tort Liability Act.

84. The applicant claimed that he had exhausted domestic remedies as it was not likely that the Court of Appeal or the Supreme Court would have granted leave to appeal and revoked the writ of execution. He also disagreed that a revocation of the writ of execution would automatically have entailed a revocation of the decisions to sell the property and to evict him. The applicant further stressed that his belongings had been put in storage when he was evicted and thus he had not had access to all his documents to be able to appeal properly. In his view, the national courts should have ordered the Enforcement Authority to complete the case with the relevant documents. In any event, the Court of Appeal had all the information necessary to make a proper examination of his case.

85. The Court first notes that, as concerns the proceedings relating to the destruction of the bed, the applicant did not appeal against the District Court's decision to the Court of Appeal, despite having been informed of this possibility in the District Court's decision. The Court also observes that if the applicant had appealed to the Court of Appeal and its decision had been negative, he could have lodged a further appeal to the Supreme Court. Both the Court of Appeal and the Supreme Court had full jurisdiction to overturn the lower court's decision. In the Court's opinion, these were effective remedies which the applicant should have exhausted.

86. As concerns the proceedings relating to other belongings allegedly destroyed or thrown away, the Court observes that the applicant failed to appeal against the Court of Appeal's decision to the Supreme Court. Just as for the proceedings above, the Court finds that an appeal to the Supreme Court constituted an effective remedy which the applicant was obliged to exhaust in order to fulfil the requirement of Article 35 § 1 of the Convention.

87. Likewise and for the same reasons as above, the Court notes that the applicant failed to appeal against the Court of Appeal's decision to the Supreme Court in the proceedings concerning the writ of execution and that he thereby did not exhaust domestic remedies in respect of this set of proceedings either.

88. It follows that the Government's objection in this respect must be accepted and the applicant's complaints relating to these three sets of proceedings be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

89. However, the Government have also claimed that if the applicant had exhausted domestic remedies in the proceedings relating to the issuance of the writ of execution, the decision to sell the property and the ensuing eviction could have been revoked in accordance with Chapter 18, section 14, of the Enforcement Code and that, consequently, the applicant's failure to exhaust domestic remedies in this respect meant that he lost a possible chance to avoid the sale of his property and the ensuing eviction. The applicant contested this.

90. The Court reiterates that by virtue of Article 35 § 1 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 66, and *Čonka v. Belgium*, no. 51564/99, § 43, ECHR 2002-I).

91. In the present case, the Court observes that the applicant's property was sold and he was evicted while the proceedings concerning the writ of execution were still pending before the Court of Appeal. Thus, even if the applicant had been successful in those proceedings, it is difficult to see how the sale and, in particular, the eviction could have been undone. It would appear to the Court that, at best, the applicant would have been financially compensated for the loss of his home. However, even this is not certain since the provision referred to above by the Government states that later decisions *may* be revoked, indicating that it is an option for the authorities but not an obligation. In these circumstances, the Court finds that the fact that the applicant did not exhaust the remedies indicated by the Government in relation to the writ of execution cannot lead to the conclusion that the applicant's complaints relating to the sale of his property and the eviction from his home are also automatically inadmissible for non-exhaustion. In fact, the Court notes that the applicant did appeal against the decisions to sell his property and to evict him, all the way to the Supreme Court. The Government's objection in this respect must therefore be dismissed.

92. The Court further notes that the complaints concerning the sale of the applicant's property on public auction and the ensuing eviction are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. This part of the application must therefore be declared admissible.

B. Merits

1. The applicant's submissions

93. The applicant submitted that his right to the peaceful enjoyment of his possessions had been violated when his property was sold at public auction, and he was subsequently evicted, for an enforceable debt amounting to no more than SEK 6,721 on the day of the sale. In his view, this measure constituted an irrevocable and definite deprivation of his property and was completely disproportionate to the aims pursued, in particular as the decision to sell the property had not gained legal force when the property was sold and when he was evicted.

94. He stressed that he had been suffering from severe depression at the time of the events and that this was the single reason for his failure to submit his tax return in time and for not having applied sooner for respite to submit his tax return.

95. According to the applicant, his case concerned to a large extent the lack of procedural safeguards. Although he agreed that States should be afforded a wide margin of appreciation when adopting laws in order to secure, *inter alia*, the payment of taxes, the same should not apply to the right to procedural safeguards when applying and interpreting those laws. In such cases, the States' margin of appreciation should be very narrow. This was in particular so when the creditor demanding payment was the State itself.

96. The applicant further argued that the Tax Authority had failed to comply with section 8 of the Ordinance on the Collection of Debts to the State when it did not promptly notify the Enforcement Authority that it had granted him respite from the payment of the tax debt. The Tax Authority ought to have known that there was an impending risk of his property being sold since it was the Tax Authority that had sought the enforcement in the first place. Moreover, the Tax Authority also failed to treat his request for respite promptly, granting it only on 3 September 2003, more than a month after he had submitted the first request and despite him having informed the Authority about the urgency of the matter and having submitted his tax return. To the applicant this revealed a flaw in the system which weighed heavily when considering the proportionality of the measure.

97. As concerned the proportionality of the enforcement measures against him, the applicant submitted that when using a system of early enforcement of tax debts as applied in Sweden, the State had to provide extra safeguards especially if, as in his case, there were indications prior to the *fait accompli* that the debt should not be enforced. He pointed out that, according to the Court's case-law, proceedings leading to a possible interference with a person's property rights must afford the individual a reasonable opportunity of putting his or her case to the responsible

authorities for the purpose of effectively challenging the measures (*Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV). In the present case, a tax debt had been enforced after the Tax Authority had granted respite from payment. Although the remaining debt amounted to no more than SEK 6,721, he was never given the chance to pay that sum even though he had assets, such as a car, to cover it.

98. Furthermore, the applicant had assumed that the Tax Authority and the Enforcement Authority, both representatives of the State, communicated properly with each other. He had also expected the authorities to inform him of his rights and guide him towards other possibilities to pay his debt, as public authorities in Sweden have a "service obligation" (*serviceskyldighet*) towards private individuals (section 4 of the Public Administration Act, *förvaltningslagen*, 1986:223). They were also aware that his property had a taxation value of SEK 1,372,000 while his mortgage amounted to SEK 960,000, leaving room for him to take a supplementary loan to cover the debt. By not guiding him to find a solution and having ignored the seriousness of his illness, of which it was aware, the Enforcement Authority had not acted in good faith.

99. Even if the authorities could not be blamed for what happened before the property was sold, the applicant held that they could have rectified the situation immediately when they were informed of it, by annulling the sale and thereby avoiding the eviction. According to the applicant, the Swedish system obviously lacked sufficient procedural safeguards to correct an erroneous enforcement after it had been executed.

100. In conclusion, the applicant claimed that the early enforcement of the tax debt under such rare circumstances as in his case was not essential for the State in order to justify the serious consequences suffered by him. Thus, the measures taken had failed to strike a fair balance and he had to bear an excessive burden in violation of Article 1 of Protocol No. 1 to the Convention.

2. The Government's submissions

101. The Government recognised that the sale of the applicant's property and the eviction constituted an interference with his right to the peaceful enjoyment of his possessions. However, they submitted that the sale served the purpose of securing the payment of taxes and therefore, in accordance with the Court's case-law (*J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, §§ 65-66, ECHR 2007-III, and *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 59, Series A no. 306-B), should be considered as a control of use of the applicant's property not as a deprivation of it. Following this case-law, the State should be allowed a wide margin of appreciation when passing laws for the purpose of securing the payment of taxes and the Court would respect the legislature's

assessment in such matters unless it was devoid of reasonable foundation (*Gasus*, § 60).

102. Moreover, they submitted that the measures taken in the present case were clearly in the general interest, as they aimed at collecting a tax debt and they had a basis in domestic law, in particular the Tax Payment Act, the Act on the Collection of Debts to the State and the Enforcement Code.

103. As concerned the proportionality of the interference, the Government noted that according to Swedish law, taxpayers are entitled to appeal against decisions on taxes and tax surcharges or request that they be reconsidered until the end of the fifth year following the tax assessment year. In view of that, they submitted that it would be unreasonable if enforcement could not take place until a tax debt had become final and that this was one reason that taxes and tax surcharges could be enforced before they had gained legal force in Sweden. Moreover, under certain circumstances, the Tax Authority had the possibility to grant respite from payment, defer payment or suspend collection.

104. The Government further contended that the applicant had had plenty of time and opportunity to eliminate the risk of his property being sold at public auction. They noted that he had not submitted his tax return by 31 March 2002 and had not asked for respite and that he had remained passive despite numerous actions taken by the Tax Authority and its efforts to make him comply with his obligations during 2002 and the first half of 2003. Moreover, when he had finally submitted his tax return on 28 August 2003, he had not informed the Tax Authority that his property would be sold on 3 September 2003 even though he knew about it. Furthermore, the Government argued that the applicant could easily have avoided the sale of his property by paying the tax debt, using his property as security for a loan. In their view the Enforcement Authority's service duty could not be considered as far-reaching as the applicant had suggested.

105. As regards the actions of the Enforcement Authority, the Government noted that it had carried out an investigation into the applicant's assets and found that his property was the only asset of sufficient value to cover the debts that were payable and enforceable. It thus had had regard to the principle of proportionality contained in Chapter 4, section 3, of the Enforcement Code. Moreover, the Enforcement Authority had verified that no respite from payment had been granted before the public auction took place. However, the Government acknowledged that the Tax Authority had failed to deal with the applicant's first request for respite from payment dated 28 July 2003 because the letter had been wrongly sorted in the incoming mail. They assumed that, had the application been dealt with in due time and granted, the Enforcement Authority would have been notified of the respite before the public auction. Still, the Government claimed that it was impossible to know the outcome of such a first request

since, at that point, the applicant had not yet submitted his tax return or requested reconsideration of the tax assessment decision, nor had he appealed against it. They did note though that, if a first request had been refused, the applicant might have submitted his tax return sooner and then been granted respite sooner, which could have influenced the Enforcement Authority's decision to sell the property.

106. Turning to the applicant's second request for respite, the Government observed that the Tax Authority's decision was taken, and the public auction took place, on the same afternoon. Since the applicant had not informed the Tax Authority that the sale would take place on 3 September, despite having been informed of this fact at the end of July, the Tax Authority was not aware of it and, thus, could not have been expected to notify the Enforcement Authority immediately. Even if the Tax Authority had known about the sale, it was not certain that a notification would have been prompt enough to stop the sale. In view of this, the Government contended that the second request for respite had been decided with sufficient promptness by the Tax Authority as the responsible office had dealt with it within two days of receipt. Moreover, the Enforcement Authority was officially notified of the respite on Monday 8 September, five days after the decision had been taken, on Wednesday 3 September. The Government observed, however, that if the Enforcement Authority had known about the respite, it was quite possible that it would have postponed the sale in order to try to find out whether the part of the debt that was still enforceable could be paid by the applicant or obtained through the sale of some other assets belonging to the applicant.

107. In conclusion, the Government submitted that the sale at public auction of the applicant's property, and the ensuing eviction, had been justified in the public interest to secure the payment of taxes and proportionate to the aim pursued. However, in view of the fact that the Tax Authority, by mistake, had not dealt with the applicant's first request for respite and considering that there was a chance that a decision based on that application and taken in due time could have led to the postponement of the sale, the Government preferred to leave it to the Court's discretion whether this complaint revealed a violation of Article 1 of Protocol No. 1 to the Convention.

3. The Court's assessment

108. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right to property. It contains three distinct rules which have been frequently repeated in the Court's case-law since being set out in the case of *Sporrong and Lönnroth v. Sweden* (judgment of 23 September 1982, § 61, Series A no. 52):

> "... The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The

second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph."

(a) Whether there has been an interference and the applicable rule

109. The Court notes that it is common ground that there has been an interference with the applicant's right to the peaceful enjoyment of his possessions through the sale at public auction of his property and his ensuing eviction. However, while the applicant has argued that he was deprived of his property contrary to the second rule mentioned above, the Government have claimed that the interference should be considered under the third rule.

110. The Court notes that, on 28 May 2003 after the Tax Authority had passed its claim for collection of the applicant's unpaid taxes to the Enforcement Authority, the latter issued a writ of execution attaching the applicant's site-leasehold and the house on the site where the applicant and his wife lived. The Enforcement Authority then decided to sell the property, informing the applicant of this on 4 July 2003, and a few weeks later decided that the public auction should take place on 3 September 2003. The applicant was informed of this by letter dated 31 July 2003. In the Court's opinion, these two decisions were the logical consequences of the first, in particular in the absence of any action on the part of the applicant to halt the procedure. Moreover, the Court observes that the Enforcement Authority's procedure and all of the above decisions had their basis in Swedish legislation regulating the collection and enforcement of tax debts to the State, namely in the Tax Payment Act (Chapter 20, section 1, and Chapter 23, sections 7 and 8) and the Enforcement Code (Chapter 3, section 23, Chapter 4, section 10, Chapter 8, section 19, and Chapter 12, sections 1 and 11). Thus, it was in the exercise of these powers that the Enforcement Authority issued the writ of execution attaching the applicant's property and then sold it with the purpose of enforcing his unpaid tax debts.

111. Against this background, the Court finds that it is most appropriate to examine the applicant's complaints under the head of "control the use of property ... to secure the payment of taxes", which comes under the third rule contained in the second paragraph of Article 1 of Protocol No. 1. That paragraph explicitly reserves the right of Contracting States to pass such laws as they may deem necessary to secure the payment of taxes (see *Gasus*, cited above, § 59). It is clear to the Court that measures of that kind, taken in order to facilitate the enforcement of tax debts and secure tax revenue to the State, are in the general interest. Moreover, the measures taken by the Enforcement Authority were in accordance with national legislation, as specified above.

(b) Compliance with the conditions laid down in the second paragraph

112. According to the Court's well-established case-law, the three rules set out above are connected. In *James and Others v. the United Kingdom* (judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37), the Court explained the relationship between them as follows:

> "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."

113. Consequently, 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 of Protocol No. 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*, cited above, §§ 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*, cited above, p. 34, § 50).

114. As to the present case, the Court notes from the outset that the applicant complains that his property was sold at public auction for a price far below market value, causing him substantial financial loss in violation of his property rights. However, the Court observes that the documents submitted by the applicant in support of his claim are not sufficiently specific to substantiate that the evaluation of the market value of his property by an independent company in July 2003 was incorrect or inaccurate. Moreover, it notes that the Enforcement Authority rejected a first round of bidding, as the final bid was considered too low, and that in the second round of bidding, the final bid which was accepted amounted to 80% of the estimated market value. To the Court, taking into account also the higher risk for the buyer of the property under these circumstances compared to a sale on the open market, this must be considered to be within an acceptable margin, not raising an issue under Article 1 of Protocol No. 1.

115. As concerns the proportionality of the actual sale of his property on public auction and the ensuing eviction, the Court notes on the one hand that the applicant failed to fulfil his legal obligation to submit his tax return for the tax assessment year 2002 by the prescribed deadline of 31 March 2002. Moreover, he did not respond in any way to the repeated actions by the Tax Authority between July 2002, when it first ordered him to submit his tax return, and April 2003, when it reminded him of his duty to pay the tax debt established by the Tax Authority's discretionary assessment. The Court further observes that the applicant continued to remain passive after the tax debt had been transferred to the Enforcement Authority, of which the

applicant was aware at least as from the end of April 2003 when an enforcement officer had come to his home for a pre-planned visit and he was absent. On this occasion, the officer had left a note for the applicant requesting him to contact the Enforcement Authority, which he failed to do.

116. Here the Court notes the applicant's submission that he had been suffering from serious depression and therefore had not been capable of acting to protect his interests. In this respect, the Court observes that his tax return was due in March 2002 and that the applicant only sought help for his depression seven months later, in October 2002, and did not start treatment for it until February 2003. Thus, for more than one year, he neither sent a letter to the Tax Authority informing it of his illness, nor did he ask his wife to help him do so. He also did not contact a lawyer or accountant to deal with the matter on his behalf. It should be recalled that the applicant was the owner of a close company and thus it must be expected that he was aware of his statutory obligations and the likely consequences if he failed to fulfil them. The Court therefore agrees with the Government that the applicant had time and the opportunity to avoid enforcement measures being taken against him to ensure the payment of his tax debts.

117. On the other hand the Court notes that tax debts to the State are enforceable following the Tax Authority's decision on final tax even if there has been a request for reconsideration or an appeal to the administrative courts (Chapter 23, sections 7 and 8, of the Tax Payment Act). Likewise, enforcement measures are not automatically suspended when a debtor appeals against such measures (Chapter 2, section 19, of the Enforcement Code). While such mechanisms must be considered acceptable and falling within the State's wide margin of appreciation under the second paragraph of Article 1 of Protocol No. 1, the Court considers that it is necessary that they are accompanied by procedural safeguards to ensure that individuals are not put in a position where their appeals are effectively circumscribed and they are unable to protect correctly their interests. The Court observes that such safeguards exist under Swedish law, *inter alia*, through the possibility to request the Tax Authority to grant respite from the payment of taxes (Chapter 17, sections 2, 2(a) and 3, of the Tax Payment Act). If such a request has been granted, no enforcement measures may be taken for the amount covered by the respite (Chapter 17, section 10, of the Tax Payment Act). Moreover, a debtor may request the Enforcement Authority to grant deferment of payment (sections 7 and 8 of the Debt Collection Act) or a stay on the enforcement measure (Chapter 8, section 3, of the Enforcement Code).

118. In the present case, the applicant used some of these possibilities. Hence, on 28 July 2003, after he had been informed that the Enforcement Authority had decided to sell his property at public auction, he requested it to stay the sale for a period of two months on the ground that he had not been able to submit his tax return in time due to personal reasons. On the

same day, he also requested the Tax Authority to grant him respite from the payment of his tax debt as he intended to submit his income tax return for 2002. The applicant further asked the Enforcement Authority to provide him with a copy of the writ of execution so that he could appeal against it to the District Court, which indeed he did on 10 August 2003, after having received the decision. Thus, in the Court's opinion, at this point in time, the applicant took advantage of the procedural safeguards provided by law to protect his interests.

119. As to the authorities' handling of these requests, the Court first notes that nothing indicates that the writ of execution was ever formally served on the applicant but sent to him by ordinary mail and allegedly not received by him. The Court finds this rather remarkable, considering the obligation laid down in section 9 of the Enforcement Ordinance and the importance of the decision and the effects on the applicant's possibilities to appeal against it. This is particularly so as Chapter 12, section 11, of the Enforcement Code stipulates that property should be sold within four months of the decision to attach it. In any event, as noted above, the applicant was made aware of the writ of execution in July 2003 and received a copy of the decision at the beginning of August 2003, at which point he appealed against it. The Court observes that the District Court rejected the appeal on 28 August 2003. It thereby ensured that the writ of execution benefitted from judicial review before the public auction took place. The Court has regard though to the fact that the writ of execution had not gained legal force when the property was actually sold and that, on 15 September 2003, within the statutory time-limit, the applicant made a further appeal to the Court of Appeal.

120. With regard to the request for a stay on the sale at public auction, the Court notes that the Enforcement Authority rejected the request two days after receiving it, finding that there was an enforceable debt, that the petitioner (the State) opposed a stay on execution and that there were no special circumstances to justify a stay. Upon appeal to the District Court, where the applicant submitted a medical certificate and stated that he had requested respite from the payment of his tax debt and would submit his tax return, the court, on 28 August 2003, upheld the Enforcement Authority's decision in full. Thus, the Court considers that the applicant's request was dealt with expeditiously by the Enforcement Authority and the District Court, guaranteeing him access to court before the decision to sell the property was enforced by the public auction. Again, however, even though the law provides for further appeal to the Court of Appeal and the Supreme Court, the applicant was effectively deprived of this right since the enforcement took place before the Court of Appeal could consider the appeal and it therefore struck the case out of its list of cases.

121. Turning to the request for respite from the payment of his tax debts, the Court observes that the applicant sent this to the Tax Authority by fax

and letter on 28 July 2003 but that, apparently, it was sorted wrongly or lost in the incoming mail and therefore not dealt with by the Authority. The Government have acknowledged that, if the request had been dealt with, it might, directly or indirectly through further actions by the applicant, have influenced the Enforcement Authority's decision to sell the property. The Court does not consider that it is in a position to speculate about whether such a request would have been granted or not, or what a positive or negative decision would have led the applicant to do or how it might have influenced the Enforcement Authority in its decision to proceed with the public auction. It suffices for the Court to note that this error may have had an impact on how the case developed and showed a lack of due diligence on the part of the authorities.

122. In any event, it notes that the applicant reiterated his request to the Tax Authority for respite from the payment of his taxes on 28 August 2003 and, at the same time, submitted his tax return for 2002 and a medical certificate concerning his illness. He also informed the Tax Authority of the urgency of the matter, albeit without stating that the date for the public auction had been set for 3 September 2003. A few days later, on 1 September, he sent another fax to the Tax Authority stressing that it was of the highest importance to him that the request be considered promptly. The Court finds that these repeated requests within a few days of each other and stating the urgency must be considered enough for the Tax Authority to have realised the importance of treating the request without delay. This is particularly so since the Tax Authority knew about the enforcement proceedings and since, according to Chapter 12, section 11, of the Enforcement Code, the sale of real property and site-leasehold rights should take place within four months of the attachment. Moreover, the Court observes that the Tax Authority and the Enforcement Authority have access to each other's databases (see above § 74) and the Tax Authority could therefore easily have verified the status of the enforcement proceedings concerning the applicant in the Enforcement Authority's database. It would then have seen that the public auction to sell the applicant's property was scheduled for 3 September 2003. The Tax Authority does not appear to have done so. As it was, the Tax Authority took two days to grant respite which, in the Court's opinion, under normal circumstances may be acceptable but in the particular circumstances of the present case, as set out above, was not sufficiently prompt, noting that the request was only granted on the same day that the public auction took place.

123. The Court does not find it necessary to establish whether the public auction took place just before respite was granted or just after, which is in dispute between the parties. It considers that, since the Tax Authority was not aware that the public auction was taking place on 3 September 2003, there was no special reason for it to inform the Enforcement Authority of its decision the same day by fax or a telephone call. As it was, the Enforcement

Authority was officially informed of the decision on 8 September 2003. However, the Court stresses that, on the day of the decision, the Tax Authority registered the respite in the applicant's tax account in its database to which the Enforcement Authority had access. Consequently, the Enforcement Authority could have seen that respite had been granted if it had verified that account late on 3 September or the next day. In any event, it would have been after the sale had taken place. Here, the Court points out that the petitioner in the present case was the State, represented by the Enforcement Authority, following an enforceable tax debt submitted by the Tax Authority to the Enforcement Authority. In such a situation, the Court considers that it is not unreasonable to expect the authorities involved to keep each other informed about developments of direct relevance to the enforcement proceedings, such as a request for, and the grant of, respite. In the present case, there appears to the Court to have been a lack of effective communication between the two authorities. Moreover, the Court observes that the applicant, in his appeal to the District Court dated 3 August 2003 against the Enforcement Authority's decision not to stay the sale of his property, stated that he had requested respite from the payment of his tax debt. Thus, the Enforcement Authority was aware of this circumstance well before the public auction took place and could therefore reasonably have been expected to verify its state of proceedings and/or outcome directly with the Tax Authority before selling the applicant's property.

124. The Court further observes that the Enforcement Authority was informed that the applicant had paid some of his other debts (to the TPMD) in July 2003, a fact it acknowledged in its submission to the District Court in reply to the applicant's appeal concerning the request for a stay on the sale of his property at the beginning of August 2003, before the public auction took place. Still, in its reply of 17 September 2003 to the District Court, in the proceedings relating to the applicant's appeal against the actual sale of his property at public auction, the Enforcement Authority included these previously discharged debts to justify the sale of the property despite the respite from payment of the tax debt. The Court finds that this conduct on the part of the Enforcement Authority showed a serious lack of diligence having regard to the very grave consequences that the sale and later the eviction entailed for the applicant.

125. Furthermore, the Court observes that in accordance with Chapter 3, section 21, of the Enforcement Code a measure for enforcement already taken shall lapse, if possible, if respite from payment has been granted. Since the Enforcement Authority was officially informed about the respite on 8 September 2003, less than one week after the sale of the property and over one month before the eviction took place, and knew that the applicant's enforceable debt then amounted to only SEK 6,721, the Court notes that the Enforcement Authority could have repealed the sale, as could the domestic courts upon appeal by the applicant. To the Court, both the decision to

uphold the sale and the ensuing eviction of the applicant appear excessive and disproportionate, especially since the applicant had other assets, such as a car, which could have been seized and sold to cover what little remained of his enforceable debts. This is particularly so because the authorities knew that the proceedings concerning the writ of execution were still ongoing and thus had not yet gained legal force.

126. Therefore, having regard to all of the circumstances set out above, the Court concludes that the sale of the applicant's property at public auction, and the ensuing eviction of the applicant from his home, for an enforceable debt that amounted to only SEK 6,721 on the day of the public auction, imposed an individual and excessive burden on the applicant.

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

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

128. The applicant complained that the sale of his home and the ensuing eviction had also violated his right to respect for his private and family life and his home. He relied on Article 8 the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

129. For the same reasons as set forth above (§§ 90-92), the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

130. The applicant relied on the same circumstances and arguments as under Article 1 of Protocol No. 1 (see above, §§ 93-100) and stressed that the fact that he had been deprived of his home made the situation far more serious than if he had been deprived of any other possession.

131. The Government admitted that the sale of the applicant's home and the ensuing eviction constituted an inference with the applicant's right to respect for his private and family life. However, they argued that it was in accordance with domestic law, in particular the Enforcement Code, and pursued two legitimate aims, namely the "economic well-being of the country" and "the protection of the rights and freedoms of others". As to whether the measures had been necessary in a democratic society, the Government referred to their submissions in relation to Article 1 of Protocol No. 1 (see above, §§ 101-107). They added that it was important that property which had been attached be sold as soon as possible to avoid depreciation of its value. Moreover, once the property had been sold, regard should also be had to the purchaser's legitimate interest in obtaining access to the property which he or she had acquired and paid for.

132. In the Government's view, the applicant had had plenty of time and opportunity to eliminate the risk of the property being sold as well as the risk of eviction. They noted that the applicant had been aware that the purchaser was entitled to have access to the property on 1 October 2003 and that the Enforcement Office, upon request for enforcement assistance by the purchaser, in a letter of 6 October had given the applicant the chance to move out by 14 October. Finally, the eviction had taken place on 22 October 2003. Thus, the applicant had had time to move and to avoid the cost of the eviction.

133. Consequently, the Government maintained that the sale and the eviction *per se* constituted interferences which were justified and proportionate to the legitimate aims pursued. However, when considering the measures in a wider perspective, they reached the same conclusion regarding the complaint under Article 8 as in respect of the complaint under Article 1 of Protocol No. 1.

2. The Court's assessment

134. The Court notes that the sale of the applicant's property and the ensuing eviction interfered with his right to respect for his private and family life and deprived him of his home within the meaning of Article 8 § 1 of the Convention. As in the case of *Zehentner v. Austria* (no. 20082/02, § 54, 16 July 2009), the sale at public auction deprived the applicant legally of his home, and was a necessary pre-condition for the eviction, which factually deprived him of his home.

135. Next, the Court observes that the interference was in accordance with the law, primarily the Enforcement Code, and had the legitimate aims of protecting the rights and freedoms of others, namely that of the purchaser of the property, as well as the economic well-being of the country, by ensuring the collection of taxes.

136. However, the Court reiterates that for an interference to be considered "necessary in a democratic society", it needs to be proportionate

to the legitimate aims pursued and answer to a "pressing social need". While it is for the national authorities to make the initial assessment of necessity, the final evaluation of whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, *Zehentner*, cited above, § 56, with further references). Moreover, States enjoy a certain margin of appreciation since the national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate local needs and conditions. However, this margin will vary according to the nature of the Convention right at stake, its importance for the individual as well as the public interest. Thus, the margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (ibid. § 57).

137. In this respect, the Court has held that the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention (ibid. § 59, and *McCann v. the United Kingdom*, no. 19009/04, § 50, ECHR 2008). The decision-making process leading to the measures of interference must also have been fair. The Court will therefore attach particular weight to the existence of procedural safeguards.

138. Thus, while the Court accepts that it will sometimes be necessary for the State to attach and sell property, including an individual's home, in order to secure the payment of taxes due to the State through enforceable debts, it emphasises that these measures must be enforced in a manner which ensures that the individual's right to his or her home is properly considered and protected.

139. Turning to the present case, the Court reiterates its findings above under Article 1 of Protocol No. 1 to the Convention (§§ 117-127) in relation to the various domestic proceedings and stresses that none of those proceedings were finally adjudicated before the sale at public auction and the ensuing eviction of the applicant from his home took place. While this may have been in the interest of efficient enforcement proceedings, the Court is not convinced that the applicant's interests were adequately protected in view of this most extreme form of interference with his right to respect for his home. It notes that, on 6 October 2003, when the Enforcement Authority decided that the applicant should be evicted, it knew that the applicant had been granted respite from payment of his enforceable tax debt and that only a very minor debt remained enforceable. Furthermore, it knew that the applicant's appeal against the writ of execution was still pending before the Court of Appeal and that his appeal against the actual sale of the property was pending before District Court. Although the District

Court rejected the appeal on 15 October 2003, a week before the actual eviction took place, the Court notes that this decision did not become final since the applicant appealed against it to the Court of Appeal within the statutory time-limit. Thus, the Court considers that, in order to ensure that the remedies and procedural safeguards existing in domestic law were in fact available and sufficient, not only in theory but also in practice (see, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII), the eviction should have been postponed until the underlying contentious issues had been resolved.

140. In relation to this, the Court observes that although the applicant was under an obligation to move out of his home by 1 October 2003, he was only paid the amount of money which remained from the sale of the property, after all debts and costs had been paid, on 27 January 2004 when the sale of the property gained legal force. In the Court's view, this placed an additional financial burden on the applicant which, in the circumstances of the case, appears excessive, in particular with regard to his need to find a new home.

141. As regards the interests of the purchaser, the Court acknowledges that he had a legitimate interest in having access to the purchased property within a reasonable time and gaining legal certainty that the purchase was final. However, as noted above (§ 114), the purchaser can often buy a property at public auction at a somewhat lower price compared to buying on the open market, partly because of the increased risks involved, of which he or she should clearly be aware. Moreover, the Court notes that the purchaser had to pay only 10% of the purchase price on the day of the public auction (the remainder appears to have been paid on 1 October 2003 at the distribution meeting), thereby limiting his immediate financial investment.

142. Having regard to all of the above, and in particular the lack of effective procedural safeguards for the applicant to protect his interests, the Court considers that neither the purchaser's interests nor the State's general interests outweigh those of the applicant in present case. It follows that there has been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. Article 41 of the Convention provides:

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

A. Damage

144. The applicant claimed SEK 2,781,539 (approximately EUR 323,600) in respect of pecuniary damage. He argued that he should be compensated as if the violation of the Convention had never occurred, that is, as if his property had never been sold. In his view, this meant that he should be compensated by the cost today of the replacement of his property. Referring to statistics from the Tax Authority concerning annual real estate taxation, the applicant argued that his property would have increased in value by 10%. Since there were many similar properties in the area where the applicant's property had been situated it was possible to refer to comparable sales. Thus, by October 2007, the property would have been worth at least SEK 3,5 million. With deductions for amounts he had already received from the sale and the loans he had at the time of the sale, approximately SEK 2 million remained which he should receive as compensation. However, in the sum claimed, he also included the following:

(i) SEK 55,194 for costs directly linked to sale;
(ii) SEK 11,381 for legal fees;
(iii) SEK 71,115 for costs for the eviction;
(iv) SEK 43,190 for assets lost or destroyed during the eviction;
(v) SEK 2,470 for prepaid cable TV and internet which could not be reimbursed;
(vi) SEK 25,160 for increased living expenses for 27 days following the eviction until he found new permanent housing;
(vii) SEK 80,250 for interest on the above amounts calculated at a rate of 8%;
(viii) SEK 336,000 for a more expensive and smaller house that he had rented after the eviction (SEK 7,000 more expensive in monthly charges for a period of 48 months); and
(ix) SEK 100,000, as a global sum, for costs involved in the future purchase of a new property.

145. In the alternative, the applicant submitted that if the Court did not accept the calculation of the value of the property, it was at least possible to conclude from sales of equivalent properties between January and July 2002 that his property should have been sold for not less than SEK 2,4 million. Since it was sold for SEK 1,6 million, he had suffered an unnecessary loss of approximately SEK 800,000. Adding the above costs to this calculation would mean that he suffered pecuniary damage of at least SEK 1,566,082 (approximately EUR 182,200).

146. Moreover, the applicant sought EUR 15,000 by way of compensation for non-pecuniary damage on account of mental suffering and anxiety that the sale of his property and the eviction had caused him.

147. The Government contested both the primary and alternative claim for pecuniary damage. In their view, both sums were excessive and they considered that compensation for pecuniary damage should not exceed SEK 600,000 (approximately EUR 70,000). They first noted that the applicant's tax debt had not been cancelled but that he only had been granted respite from the payment on 3 September 2003. This respite had lapsed in November 2003, after the Tax Authority had reconsidered its decision on the basis of the income tax return submitted by the applicant and calculated the applicant's taxes to SEK 78,000. Thus, the sale might still have taken place after this. Moreover, the Government considered that the property's value should be calculated on the basis of the evaluation made by an independent company at the time of the sale.

148. The Government did not object to the applicant's claim for compensation for the costs directly linked to the sale but noted that they had amounted to SEK 45,660. They contended that the remaining claims were either unsubstantiated or lacked a causal link. Thus, the bill from the law firm for legal fees did not specify what legal costs were covered nor that the applicant had paid the bill. As concerned the hotel bills, the Government observed that they were addressed by the hotel to the local social authorities (*Spånga-Tensta Stadsdelsförvaltning*), not to the applicant. Turning to the eviction costs, the Government did not consider that there was a causal link, since the applicant had been informed of the date of the eviction in good time and could have avoided it by moving out of his own accord. As concerned the interest claimed, they noted that it had not been explained by the applicant and, in any event, they found that 8% was excessive. Moreover, the Government disputed in its entirety the applicant's claim for extra costs for the new property that he was renting since he had proved neither the monthly charges for his old property nor those of his new home. Lastly, they found the sum claimed for the future purchase of a new property to be unsubstantiated.

149. As concerned non-pecuniary damage, the Government did not object to the applicant being awarded some compensation but considered the applicant's claim in this regard to be excessive having regard to the Court's case-law and the fact that the applicant had had plenty of time and opportunity to eliminate the risk of his property being attached. Hence, the Government submitted that EUR 8,000 would be sufficient compensation for non-pecuniary damage.

150. The Court reiterates that it has found a violation of Article 8 of the Convention as well as of Article 1 of Protocol No. 1 to the Convention in respect of the sale of the applicant's property at public auction and the ensuing eviction. The applicant is therefore entitled to compensation for pecuniary damage in so far as there is a causal link between the violations and the damaged suffered. The applicant must also substantiate the value of the damage suffered and costs incurred. For its part, the respondent State is

under a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

151. In the present case, the Court first notes that the applicant argues that he should be compensated for the cost of a replacement property today. The Government has disputed this. The Court observes that, in cases where the interference in question has satisfied the condition of lawfulness and was not arbitrary, it has considered that compensation at the level of the market value of the property at the time of the interference was appropriate (see, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 148 and 257-258, ECHR 2006-V). It sees no reason to make another assessment in the present case. Since the applicant's property was inspected by an independent company before the sale and at that point valued at between SEK 1,850,000 and SEK 2,150,000, the Court finds that the market value can reasonably be estimated at SEK 2 million. The reference made by the applicant to sales of equivalent properties between January and July 2002 is, in the Court's view, not reliable since none of those properties were the same as the applicant's property in size, age, condition or situation. It follows that the applicant should be compensated for the difference between the market value, SEK 2 million, and the price at which the property was sold, SEK 1,6 million, that is SEK 400,000.

The applicant has also claimed compensation for certain costs, as specified above. Taking them in order the Court finds as follows:

(i) the costs directly linked to the sale have been substantiated by the Enforcement Authority protocol from the sale in the amount of SEK 45,660;

(ii) the costs for legal fees have not been substantiated as the bill from the law firm does not state what the legal fees covered. Moreover, the applicant has not submitted proof that he has paid the bill;

(iii) the costs for the eviction have been disputed by the Government on the ground that the applicant had time to move out of his own accord. The Court notes that it has found that the eviction took place in violation of Article 8 and the applicant is therefore entitled to reimbursement for costs in this respect. Moreover, the costs directly linked to the eviction have been substantiated by the Enforcement Authority's letter to the applicant, dated 18 May 2004, in the amount of SEK 71,115;

(iv) since the complaints relating to the destruction and loss of various possessions, including the bed, have been declared inadmissible for non-exhaustion of domestic remedies, no award can be made for these items;

(v) the applicant has submitted the bills but no proof of payment for the prepaid cable television and internet, for which reason the Court finds that he has not substantiated that he has actually paid these bills;

(vi) as noted by the Government, the hotel bills were all addressed to the social authorities and stamped as received by them. Thus, there is no indication that the applicant was even requested to pay these bills. Moreover, he has submitted no proof of other "increased living expenses" during the 27 days following the eviction;

(vii) the Court notes that the applicant has not specified why he has calculated the interest rate at 8%. In any event, most of the costs included have been rejected by the Court, for which reason the sum must be substantially reduced;

(viii) the applicant has not substantiated that his new home after the eviction was more expensive in monthly charges than his property had been, as he has only submitted a copy of the rental contract for his new home and no other supporting documents. Thus, he has failed to show a causal link between these alleged costs and the violation found;

(ix) the Court notes that the claim for costs involved in a future purchase of a new property is purely hypothetical and, moreover, unsubstantiated.

152. Thus, making an overall assessment on the above considerations, the Court finds it appropriate to award the applicant, for pecuniary damage, the sum of EUR 65,000, plus any tax that may be chargeable on that amount.

153. As regards the applicant's claim for non-pecuniary damage, the Court considers that the applicant must have suffered considerable non-pecuniary damage, in particular feelings of anxiety and distress, as a result of the sale of his property and the ensuing eviction from his home. It therefore awards him the full amount sought, namely EUR 15,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

154. The applicant also claimed SEK 72,000 (approximately EUR 8,400), excluding value-added tax (VAT), for the costs and expenses incurred before the Court. This amount corresponded to 40 hours work at an hourly rate of SEK 1,800.

155. The Government were willing to accept compensation for 40 hours of work. However, in their view, the hourly rate was excessive, noting that the Swedish hourly legal aid rate for 2008 was SEK 1,351, including VAT.

The Government found an hourly rate of SEK 1,400, including VAT, to be acceptable. Thus, in total, they accepted the sum of SEK 56,000 (approximately EUR 6,500), including VAT.

156. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the complexity of the case, the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,300, including VAT, for the proceedings before the Court.

C. Default interest

157. The Court considers it appropriate that the default interest rate 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. *Rejects* the Government's request to strike the case out of the Court's list of cases;

2. *Declares* the complaints concerning the sale of the applicant's property at public auction and the ensuing eviction admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 8 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 in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

      (i) EUR 65,000 (sixty five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

      (ii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 8,300 (eight thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President