



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

THIRD SECTION

CASE OF CAMPAGNANO v. ITALY

(Application no. 77955/01)

JUDGMENT

STRASBOURG

23 March 2006

FINAL

03/07/2006

In the case of Campagnano v. Italy,

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

Boštjan M. Zupančič, *President*,

Lucius Caflisch,

Margarita Tsatsa-Nikolovska,

Vladimiro Zagrebelsky,

Egbert Myjer,

David Thór Björgvinsson,

Ineta Ziemeļe, *judges*,

and Vincent Berger, *Section Registrar*,

Having deliberated in private on 5 January and 2 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 77955/01) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mrs Emilia Campagnano (“the applicant”), on 6 September 2001.

2. The applicant was represented before the Court by Mr G. Beatrice, a lawyer practising in Benevento. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, their co-Agent, Mr F. Crisafulli, and their deputy co-Agent, Mr N. Lettieri.

3. The applicant alleged a violation of Articles 8 and 10 of the Convention, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4, Articles 6 § 1 and 13 of the Convention and Article 3 of Protocol No. 1.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 13 May 2004, the Chamber declared the application partly inadmissible and decided to communicate to the Government the complaints under Article 8 of the Convention, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4, Article 13 of the Convention and Article 3 of Protocol No. 1. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

6. On 1 November 2004 the Court changed the composition of its sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1933 and lives in Amorosi (Benevento).

9. In a judgment deposited with the court's registry on 30 June 1997, the Benevento District Court made a winding-up order in respect of the applicant's company, a beverage company, and also declared the applicant personally bankrupt.

10. On 15 October 1997 the trustee in bankruptcy filed a report.

11. On 9 April 1998 the bankruptcy judge ("the judge") checked the statement of liabilities of the bankrupt estate and on 7 June 1999 declared it judicially established (*esecutivo*).

12. On 1, 5 and 9 July 1999 respectively the companies C.D.O., C.C.C. and F.C. instituted proceedings contesting the statement of liabilities.

13. At a hearing held on 14 April 2000, the judge ordered the striking out of the action brought by the company F.C. as being out of time.

14. On 18 December 2000 the trustee in bankruptcy requested the creditors' committee to give its opinion on the possible sale of two lorries in very poor condition which were listed in the statement of assets.

15. On 8 January 2001 the trustee in bankruptcy requested the judge to declare the lorries unfit for sale (*illiquidabili*) so that the proceedings could be terminated.

16. On 5 February 2001 the trustee in bankruptcy filed the revenue and expenditure account, which the judge approved on 12 March 2001.

17. By a decision deposited with the registry on 20 March 2001, the judge terminated the bankruptcy proceedings for lack of any further assets to distribute.

18. The decision was posted in the District Court on 23 March 2001. It became final on 7 April 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The Bankruptcy Act (Royal Decree no. 267 of 16 March 1942) provides, *inter alia*:

Section 26

“An appeal shall lie against the decisions of the bankruptcy judge ... to the district court within three days of their adoption, and may be lodged by the trustee in bankruptcy, the bankrupt, the creditors' committee or any other person with an interest.

The district court shall deliberate in private and give a reasoned decision.

The appeal shall not have suspensive effect in relation to the impugned decision.”

Section 36

“An appeal shall lie against measures taken by the trustee in bankruptcy. Such appeals may be lodged by the bankrupt, or any other person with an interest, with the bankruptcy judge, who shall give a reasoned decision.

An appeal against that decision may be lodged within three days with the district court. That court shall give a reasoned decision after hearing evidence from the trustee in bankruptcy and the appellant.”

Section 42

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

Section 48

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

Section 49

“The bankrupt may not leave his place of residence without the authorisation of the bankruptcy judge and must report to that judge, the trustee in bankruptcy or the creditors' committee each time he is duly summoned, except where he is unable to appear on legitimate grounds and the judge gives him leave to send a representative.

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

Section 50

“A public register of the names of bankrupts shall be held at the registry of each district court. Names shall be deleted from the register by order of the district court. A bankrupt shall be subject to the restrictions laid down by law until such time as his name is deleted from the register.”

Section 119

“The bankruptcy proceedings shall be terminated by means of a reasoned decision of the court ...

An appeal against that decision may be lodged with the court of appeal within fifteen days of its being posted in the court ...”

Section 143

“Rehabilitation may be granted to bankrupts who

1. have paid in full the debts included in the bankruptcy, including interest and expenses;

2. have complied with the terms of the composition with creditors if the court considers them eligible for such a measure, taking into account the causes and circumstances of the bankruptcy, the terms of the composition and the percentage agreed. Rehabilitation may not be granted in cases where the percentage agreed for unsecured creditors is below 25% ...;

3. have shown proof of effective and consistent good conduct for at least five years following the end of the bankruptcy proceedings.”

20. Article 2 § 1 (a) of Presidential Decree no. 223 of 20 March 1967, as amended by Law no. 15 of 16 January 1992, provides essentially for the suspension of the bankrupt's electoral rights for the duration of the bankruptcy proceedings and, in any event, for a period not exceeding five years from the date of the bankruptcy order.

21. Legislative Decree (*decreto legislativo*) no. 5 of 9 January 2006 on the reform of the Bankruptcy Act provides, *inter alia*, as follows:

Article 45 – Replacement of Article 48 of Royal Decree no. 267 of 16 March 1942

“Article 48 of Royal Decree no. 267 of 16 March 1942 is hereby replaced by the following:

'Article 48 (correspondence addressed to bankrupts): Entrepreneurs who are declared bankrupt and the directors or liquidators of companies or corporations which are the subject of bankruptcy proceedings shall be required to hand over to the trustee in bankruptcy all correspondence, and in particular electronic correspondence, concerning property interests [*rapporti*] included in the bankruptcy.' ”

Article 46 – Replacement of Article 49 of Royal Decree no. 267 of 16 March 1942

“Article 49 of Royal Decree no. 267 of 16 March 1942 is hereby replaced by the following:

'Article 49 (obligations of bankrupts): Entrepreneurs who are declared bankrupt and the directors or liquidators of companies or corporations which are the subject of bankruptcy proceedings shall be required to inform the trustee in bankruptcy of any change of residence or address.

Where information or clarification is needed for the conduct of the proceedings, the above-mentioned individuals must report in person to the bankruptcy judge, the trustee in bankruptcy or the creditors' committee.

If they are unable to do so, the judge may give leave to the entrepreneur or the legal representative of the company or corporation which is the subject of the bankruptcy proceedings to send a representative.' ”

Article 47 – Repeal of Article 50 of Royal Decree no. 267 of 16 March 1942

“Article 50 of Royal Decree no. 267 of 16 March 1942 is hereby repealed.”

Article 152 – Repealing provisions concerning personal restrictions imposed on bankrupts

“The following provisions are hereby repealed:

(a) Article 2 § 1 (a) ... of Presidential Decree no. 223 of 20 March 1967;

...”

22. According to legal commentators, the institution of bankruptcy has its origins in the Middle Ages (thirteenth century), an era when merchants (in the broad sense, encompassing traders, entrepreneurs and bankers) formed the nucleus of a new social class. In this context, in which the public interest coincided at times with the interests of the merchant class, bankruptcy was designed to impose stringent measures on insolvent merchants. Hence, bankruptcy was subject to criminal penalties (such as banishment, arrest and, in some cases, torture or death) or civil penalties such as the entry of the bankrupt's name in a register, forcing bankrupts to wear distinguishing marks (such as a green beret), loss of citizenship, and other restrictions (see A. Jorio, *La crisi d'impresa, il fallimento*, Guiffré, 2000, p. 364; S. Bonfatti and P.F. Censoni, *Manuale di diritto fallimentare*, Cedam, 2004, pp. 1-2 and 72-73; and L. Guglielmucci, *Lezioni di diritto fallimentare*, G. Giappichelli, Turin, 2004, p. 122).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (AS REGARDS RESPECT FOR THE APPLICANT'S CORRESPONDENCE), ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 2 OF PROTOCOL No. 4

23. Relying on Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 respectively, the applicant complained of a violation of her right to respect for her correspondence and her right to the peaceful enjoyment of her possessions, and of the restrictions placed on her freedom of movement, notably on account of the length of the proceedings.

24. The Articles in question provide:

Article 8 of the Convention

“1. Everyone has the right to respect for his ... correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

“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.”

Article 2 of Protocol No. 4

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

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

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

prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

...”

A. Admissibility

25. The Government submitted first of all that the applicant had failed to exhaust domestic remedies. As her complaints related to the length of the proceedings, she should have lodged an appeal with the relevant appellate court in accordance with Law no. 89 of 24 March 2001 – “the Pinto Act”.

26. The Government further referred to Court of Cassation judgment no. 362 of 2003 upholding a Venice Court of Appeal decision on an appeal under the Pinto Act concerning the length of bankruptcy proceedings. In its judgment, the Court of Cassation had stated that “the non-pecuniary damage results from the distress suffered by the appellant owing to the fact that his bankrupt status, with the attendant restrictions on his freedom of movement, electoral rights and possibility of practising a profession, continued beyond the time which could be considered reasonable for the proceedings. Compensation for this damage can be afforded only by means of an equitable assessment which takes account not just of the length of the proceedings but also of the particular nature of the personal rights which were infringed wholly or in part.”

27. The applicant maintained that the Government's observations had been submitted out of time for the purposes of Rule 38 of the Rules of Court.

28. The Court notes firstly that it set an initial deadline of 9 August 2004 for submission of the Government's observations. At the latter's request, it subsequently extended the deadline until 17 September 2004. The Government's observations were sent on that date.

29. Secondly, it observes that the Court of Cassation, in its judgment no. 362 of 2003 deposited with the registry on 14 January 2003, acknowledged for the first time that compensation for non-pecuniary damage resulting from the length of bankruptcy proceedings must take into account, *inter alia*, the prolongation of the restrictions arising out of the person's bankrupt status.

30. As to the complaint under Article 1 of Protocol No. 1, the Court points out that in *Mascolo v. Italy* ((dec.), no. 68792/01, 16 October 2003) it found that the violation of the applicant's right of property had been “linked specifically to the length of the proceedings, of which it [was] an indirect consequence” and that therefore “the same remedy under the Pinto Act provide[d] the most likely means by which applicants [could] raise their claims concerning the financial effects of the excessive length of the proceedings on their right of property”. Furthermore, in *Provvedi v. Italy*

((dec.), no. 66644/01, 2 December 2004), the Court found that “an action under the 'Pinto Act' constitutes a remedy of which applicants must avail themselves ... in order to satisfy the requirements of Article 35 § 1 of the Convention, not only in respect of allegations under Article 6 § 1 but also in respect of those under Article 1 of Protocol No. 1”.

31. The Court reiterates its previous finding that, from 14 July 2003 onwards, the public should have been aware of the existence of judgment no. 362 of 2003, and that it was from that point on that applicants should be required to avail themselves of the remedy in question for the purposes of Article 35 § 1 of the Convention (see *Sgattoni v. Italy*, no. 77132/01, § 48, 6 October 2005).

32. The Court notes that the decision terminating the bankruptcy proceedings became final on 7 April 2001, fifteen days after it had been posted in the District Court, in accordance with section 119 of the Bankruptcy Act. The applicant had six months from that date, that is, until 7 October 2001, to lodge an appeal under the Pinto Act.

33. In view of the above considerations, the Court observes that, at that time, the applicant could not have complained effectively of the restrictions arising out of her bankruptcy, notably on account of the length of the proceedings. The Government's preliminary objection should therefore be dismissed (see *Sgattoni*, cited above, §§ 44-49).

34. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

35. The Government considered that the restrictions imposed on the applicant's right to the peaceful enjoyment of her possessions, her right to respect for her correspondence and her freedom of movement were proportionate to the need to protect her creditors.

36. They observed that, in any event, the duration of the bankruptcy proceedings, namely three years and nine months, could not be considered excessive.

37. In the applicant's submission, the application related not to the length of the proceedings but to the disproportionate nature of the State's interference with her right to respect for her correspondence, her right to the peaceful enjoyment of her possessions and her freedom of movement, notably on account of the proceedings.

38. The Court observes that the bankruptcy proceedings commenced on 30 June 1997 and ended on 20 March 2001, the date on which the decision terminating the proceedings was deposited with the registry. They therefore lasted for over three years and eight months. In the Court's view, this length

of time did not upset the balance to be struck between the general interest in ensuring that the applicant's creditors were paid and the applicant's interest in securing respect for her correspondence, the peaceful enjoyment of her possessions and her freedom of movement, particularly in view of the fact that the Court sees no evidence of any delay on the part of the judicial authorities in dealing with the case (see, *mutatis mutandis*, *Luordo v. Italy*, no. 32190/96, ECHR 2003-IX, and *Sgattoni*, cited above, §§ 63-65).

39. Accordingly, there has been no violation of Article 8 of the Convention (as regards the applicant's right to respect for her correspondence), Article 1 of Protocol No. 1 or Article 2 of Protocol No. 4.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

40. The applicant complained of the restriction of her electoral rights, arguing that it constituted a repressive and outdated measure which had no legitimate justification and was designed to punish and marginalise bankrupts. She relied on Article 3 of Protocol No. 1, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

42. The Government argued that States were left a wide margin of appreciation in laying down the conditions governing the electoral rights guaranteed by Article 3 of Protocol No. 1 and that, in any event, the restriction in question was limited to five years following the bankruptcy order.

43. The applicant considered that the restriction of bankrupts' electoral rights was based on the notion that the bankrupt was criminally liable for his or her bankruptcy. The measure, which had no purpose other than to punish the bankrupt, was anti-democratic in a modern context and diminished the human dignity of the person concerned.

44. The Court reiterates that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 51, Series A no. 113), which it

considers crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 58, ECHR 2005-IX). It further reiterates that, as important as those rights are, they are not, however, absolute. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Gitonas and Others v. Greece*, 1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV; *Aziz v. Cyprus*, no. 69949/01, § 25, ECHR 2004-V; and *Hirst*, cited above, § 62).

45. In the instant case the Court observes that the impugned measure was in accordance with the law, namely Article 2 § 1 (a) of Presidential Decree no. 223 of 20 March 1967 – as amended by Law no. 15 of 16 January 1992 – which provides essentially for the suspension of the bankrupt's electoral rights for the duration of the bankruptcy proceedings and, in any event, for a period not exceeding five years from the date of the bankruptcy order.

46. It is quite clear that this measure amounted to interference with the applicant's electoral rights guaranteed by Article 3 of Protocol No. 1.

Further personal restrictions flow from the restriction of electoral rights, for instance a prohibition on occupying public-sector posts.

47. The Court also notes that the applicant's electoral rights were suspended from 30 June 1997 to 30 June 2002 and that the elections of 13 May 2001 were held during that period.

48. As to the aim pursued by the measure, the Court reiterates that Article 3 of Protocol No. 1 does not, like other provisions of the Convention, specify or limit the aims which a measure must pursue. A wider range of purposes may therefore be compatible with Article 3 (see *Hirst*, cited above, § 74, and, by way of example, *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II).

The Court also notes that, in *Hirst* (loc. cit.), the Grand Chamber found that the restriction of prisoners' voting rights could be said to pursue the aim of preventing crime and enhancing civic responsibility and respect for the rule of law.

The Court emphasises that the bankruptcy proceedings in question fell within the sphere of civil and not criminal law. As a result, the facts of the case do not imply any deceit or fraud on the part of the person declared bankrupt; were this not the case, the issue at stake would be the offence of

negligent or fraudulent bankruptcy under sections 216 and 217 of the Bankruptcy Act. The Court further observes that the restriction of bankrupts' electoral rights is an essentially punitive measure designed to belittle and punish the persons concerned, demeaning them as individuals for no other reason than their having been the subject of civil bankruptcy proceedings.

49. In view of these considerations, the Court takes the view that the measure provided for by Article 2 of Presidential Decree no. 223 of 20 March 1967 has no purpose other than to belittle persons who have been declared bankrupt, reprimanding them simply for having been declared insolvent, irrespective of whether they have committed an offence (see, *mutatis mutandis*, *Sabou and Pircalab v. Romania*, no. 46572/99, § 48, 28 September 2004). It does not therefore pursue a legitimate aim. The Court also stresses that voting is not a privilege but a right guaranteed by the Convention (see *Hirst*, cited above, § 75).

This conclusion renders it unnecessary for the Court to consider in the instant case whether the means of achieving the aim pursued were disproportionate.

There has therefore been a violation of Article 3 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AS REGARDS THE APPLICANT'S RIGHT TO RESPECT FOR HER PRIVATE LIFE

50. Relying on Article 8 of the Convention, the applicant complained that her right to respect for her private life had been infringed, as she was unable to engage in any professional or business activity on account of the entry of her name in the bankruptcy register. She further complained of the fact that under section 143 of the Bankruptcy Act an application for rehabilitation, putting an end to the personal restrictions, could not be made until five years after termination of the bankruptcy proceedings.

51. Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private ... life ...

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

52. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for

declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. Applicability of Article 8 of the Convention

53. The Court observes that private life “encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature” (see *C. v. Belgium*, 7 August 1996, § 25, *Reports* 1996-III). It also considers that Article 8 of the Convention “protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world” (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III) and that the notion of “private life” does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). Finally, the Court refers to its recent finding that a far-reaching ban on taking up private-sector employment did affect “private life” (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 47, ECHR 2004-VIII), particularly in view of Article 1 § 2 of the European Social Charter, which came into force in respect of Italy on 1 September 1999, and which states “[w]ith a view to ensuring the effective exercise of the right to work, the Parties undertake ... to protect effectively the right of the worker to earn his living in an occupation freely entered upon”.

54. In the instant case the Court notes that the entry of a person's name in the bankruptcy register entails a series of personal restrictions prescribed by law, such as a prohibition on being appointed as a guardian (Article 350 of the Civil Code), a prohibition on being appointed as the director or trustee in bankruptcy of a commercial or cooperative company (Articles 2382, 2399, 2417 and 2516 of the Civil Code), exclusion *ex lege* from membership of a company (Articles 2288, 2293 and 2318 of the Civil Code), and the prohibition on carrying on the occupations of trustee in bankruptcy (Article 393 of the Civil Code), stockbroker (section 57 of Law no. 272 of 1913), auditor (Article 5 of Royal Decree no. 228 of 1937), or arbitrator (Article 812 of the Code of Civil Procedure). Further restrictions flow from the fact that the bankrupt, since he or she no longer enjoys full civil rights, cannot be registered as a member of certain professions (for instance as a lawyer, notary or business adviser). In the Court's view, restrictions of this kind, which would have affected the applicant's ability to develop relationships with the outside world, undoubtedly fall within the sphere of her private life (see, *mutatis mutandis*, *Sidabras and Džiautas*,

cited above, § 48). Article 8 of the Convention is therefore applicable in the instant case.

2. *Compliance with Article 8 of the Convention*

55. The Government submitted that the restrictions resulting from entry in the bankruptcy register related solely to the exercise of the functions of guardian and company director and certain public-sector posts. It was not desirable for bankrupts to be in charge of managing other people's possessions unless they had been rehabilitated and thus demonstrated themselves fit for the task (*meritevole*). With that in mind, rehabilitation was granted by the courts only on condition that the information gathered by the police was favourable and there had been no judgments or legal proceedings against the bankrupt person.

56. The applicant contended that the entry of her name in the bankruptcy register and the obstacles to her rehabilitation had been disproportionate to the aim of protecting her creditors. Entry in the bankruptcy register and the numerous restrictions arising out of it dated back to Renaissance times, when a declaration of bankruptcy had been of an essentially criminal nature.

57. The Court observes that interference with the exercise of an Article 8 right will not be compatible with paragraph 2 unless it is “in accordance with the law”, has an aim or aims that is or are legitimate under that paragraph and is “necessary in a democratic society” for the aforesaid aim or aims (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 43, Series A no. 45).

58. In view of the above considerations, the Court observes that the restrictions in question quite clearly amounted to interference with the applicant's right to respect for her private life. It notes that this interference was in accordance with the law, namely section 50 of the Bankruptcy Act and the specific legislation set forth in part above.

59. As to the aim pursued, the Court has doubts as to the legitimacy of the specific legislation, as most of the restrictions referred to amount to moral sanctions, a fact implicitly acknowledged by the Government.

60. At the same time, the Court accepts that some of the restrictions pursue the aim of protecting the rights of others. This is the case, for example, for the exclusion *ex lege* from a company of a bankrupt member, a measure designed to protect a company which is solvent against the effects of the personal insolvency of one of its members (see Court of Cassation judgment no. 75 of 1991).

61. The Court considers that the large volume of specific legislation in this sphere makes it difficult to conduct an exhaustive analysis of the objectives of each restriction.

62. Even if it is assumed that the aims of section 50 of the Bankruptcy Act and the specific legislation in this sphere are legitimate, the interference

in question must be “necessary in a democratic society” within the meaning of Article 8 § 2 of the Convention.

63. The Court notes that the restrictions in question do not result from a court decision but are the automatic consequence of the bankruptcy.

Furthermore, in contrast to certain restrictions aimed at protecting the bankrupt's creditors (such as restrictions on the rights to the peaceful enjoyment of one's possessions, respect for one's correspondence and freedom of movement) which begin with the bankruptcy order and cease once the proceedings are terminated, the restrictions arising out of entry in the bankruptcy register do not cease until such time as the bankrupt's name is removed from the register.

64. Removal from the register occurs when the bankrupt is granted rehabilitation. In addition to the requirement for the bankrupt to have paid his or her debts in full and to have complied with the terms of the composition with creditors, an application for rehabilitation can be made only by a bankrupt who has shown proof of “effective and consistent good conduct” for at least five years after termination of the proceedings (section 143 of the Bankruptcy Act).

In the latter case, which applied to the applicant, the aim is not to protect creditors, but rather to make good the damage to the public welfare caused by the bankruptcy. The expression “good conduct” should be taken to mean morally correct conduct on the part of the bankrupt *vis-à-vis* society (see *La crisi d'impresa, il fallimento*, cited above, p. 748).

The removal of the personal restrictions on the applicant therefore depended on an essentially moral judgment as to her worthiness.

65. While reiterating that the bankruptcy proceedings in question fell within the sphere of civil law and not criminal law, the Court notes that it has in the past found a violation of Article 8 of the Convention with regard to the right to respect for family life on account of the automatic and absolute nature of an ancillary penalty – in the form of a prohibition on exercising parental rights – imposed on all persons serving a prison sentence without there being any possibility of review by the courts (see *Sabou and Pircalab*, cited above, § 48).

Furthermore, in the *Hirst* case (cited above, § 82), the Court criticised the measure depriving prisoners of the right to vote on the ground that it amounted to a general, automatic and indiscriminate restriction on a Convention right.

Lastly, the Court refers to the case of *P.G. v. Italy* (no. 22716/93, Commission's report of 26 June 1996, unpublished) concerning the bankruptcy of a company existing *de facto* between a father and his son, who was a minor at the time. In its report, the Commission concluded that there had been a violation of Article 8 of the Convention with regard to the child's right to respect for his private life. It took the view that the fact that the court had rejected his application for rehabilitation on the sole ground

that the period of five years following termination of the bankruptcy proceedings had not elapsed amounted to interference which was disproportionate to the aim of protecting creditors. The Commission considered that the court should have taken account of the specific circumstances of the case, in particular the fact that the applicant had been a minor at the time and that his father had run the business which was subsequently declared bankrupt.

66. The Court therefore considers that, on account of the fact that entry in the bankruptcy register was automatic and that the application of the resulting restrictions was not examined or reviewed by the courts, and given the length of time before rehabilitation could be obtained, the interference under section 50 of the Bankruptcy Act with the applicant's right to respect for her private life was not "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

There has therefore been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

67. Relying on Article 13 of the Convention, the applicant complained that she had had no effective remedy by which to complain of the restrictions on her property and personal rights which were imposed throughout the bankruptcy proceedings and remained in force until she had been rehabilitated. Article 13 provides:

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

A. Admissibility

68. In the Government's submission, the applicant could have applied under section 18 of the Bankruptcy Act to have the bankruptcy order set aside and thus challenged the resulting restrictions on her property and personal rights. She could also have lodged an appeal under section 26 or section 36 of the Bankruptcy Act.

69. The applicant submitted that an application to have the judgment set aside did not constitute an effective remedy by which to complain of the prolonged restrictions on bankrupts' personal and property rights.

70. The Court reiterates that it has consistently interpreted Article 13 as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention. Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. This Article therefore requires the

provision of a domestic remedy allowing the “competent national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The remedy must be “effective” in practice as well as in law (see *Soering v. the United Kingdom*, 7 July 1989, § 120, Series A no. 161, and *Rotaru v. Romania* [GC], no. 28341/95, § 67, ECHR 2000-V).

71. As to the part of the complaint relating to the prolonged restriction of the applicant's right to respect for her correspondence (Article 8 of the Convention), her right to the peaceful enjoyment of her possessions (Article 1 of Protocol No. 1) and her freedom of movement (Article 2 of Protocol No. 4), the Court refers to its finding that there has been no violation. Accordingly, it takes the view that, since these are not “arguable” complaints under the Convention, this part of the application must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

72. As to the part of the complaint concerning the personal restrictions which arise out of entry in the bankruptcy register and are maintained until rehabilitation, the Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

73. The Court refers to its finding of a violation of Article 8 of the Convention with regard to the applicant's right to respect for her private life on account of the personal restrictions which stemmed from the entry of her name in the bankruptcy register and lasted until she had been granted rehabilitation. This complaint is therefore unquestionably “arguable” under the Convention. Accordingly, the applicant was entitled to have available to her an effective domestic remedy within the meaning of Article 13 of the Convention.

74. The Court observes that an application to have the bankruptcy order set aside under section 18 of the Bankruptcy Act allows the bankrupt to apply to the court within fifteen days of being properly apprised of the judgment in question in order to challenge its legitimacy and have it overturned. In the Court's view, this does not constitute an effective remedy by which to complain of the personal restrictions which remain in place until rehabilitation has been granted, particularly in view of the length of time allowed for lodging such an application (see *Neroni v. Italy*, no. 7503/02, § 35, 22 April 2004).

75. Moreover, the Court observes that, although section 26 of the Bankruptcy Act allows the bankrupt to lodge an appeal with the courts, such an appeal can relate only to the decisions of the bankruptcy judge. Accordingly, it cannot constitute an effective remedy against the

maintenance of the restrictions, which are a direct consequence not of any decision by the bankruptcy judge but of the bankruptcy order or the entry of the person's name in the bankruptcy register.

Section 36 of the Bankruptcy Act, meanwhile, makes it possible to apply to the bankruptcy judge to complain of measures taken by the trustee in bankruptcy. However, the Court observes that this remedy concerns the administration of the bankrupt's assets by the trustee in bankruptcy until the assets have been sold and creditors' claims have been met. It is not therefore in any sense capable of remedying the prolongation of the restrictions on the bankrupt (see *Bottaro v. Italy*, no. 56298/00, § 45, 17 July 2003, and *Ceteroni and Magri v. Italy*, nos. 22461/93 and 22465/93, Commission decision of 17 October 1994, unreported).

76. The Court also observes that it has in the past found a violation of Article 13 of the Convention on account of the absence in domestic law of an effective remedy by which to complain of the prolonged monitoring of a bankrupt's correspondence (see *Bottaro*, cited above, §§ 41-46).

77. In view of the foregoing, the Court concludes that there has been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant submitted an expert report assessing pecuniary damage at 25,847.05 euros (EUR), corresponding to the minimum wage (*pensione sociale*) which she should have been paid since the date of the bankruptcy order. She also claimed EUR 500,000 for non-pecuniary damage.

80. The Government contested these claims.

81. As it fails to perceive any causal link between the findings of violations and the pecuniary damage alleged, the Court dismisses the first claim. As to non-pecuniary damage, it considers that, regard being had to all the circumstances of the case, the findings of violations in the present judgment constitute in themselves sufficient just satisfaction.

B. Costs and expenses

82. The applicant claimed EUR 19,979.39 for costs and expenses before the Court and EUR 1,757.55 for experts' expenses.

83. The Government objected to these claims.

84. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the instant case, on the basis of the information in its possession and the aforementioned criteria, the Court considers the sum of EUR 2,000 for costs and expenses for the proceedings before the Court to be reasonable and awards the applicant that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible in respect of the complaints under Article 8 of the Convention, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4, Article 3 of Protocol No. 1 and, as regards the personal restrictions resulting from the entry of the applicant's name in the bankruptcy register, Article 13 of the Convention, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 8 of the Convention (with regard to the applicant's right to respect for her correspondence), Article 1 of Protocol No. 1 or Article 2 of Protocol No. 4;
3. *Holds* that there has been a violation of Article 8 of the Convention (with regard to the applicant's right to respect for her private life), Article 3 of Protocol No. 1 and Article 13 of the Convention;
4. *Holds* that the findings of violations constitute in themselves sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

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, EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 23 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger
Registrar

Boštjan M. Zupančič
President