REGERINGSKANSLIET

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Ministry for Foreign Affairs
Sweden
Department for International Law,
Human Rights and Treaty Law (FMR)

Ms S. Dollé
Section Registrar
European Court of Human Rights
Council of Europe
F-67075 STRASBOURG CEDEX
France

Application no. 73841/01
KLEMECO NORD AB v. Sweden

Dear Madam,

I. Introduction

1. With reference to your letter of 24 June 2005, in which the Swedish Government is invited to submit by 15 September 2005 written observations on the admissibility and merits of two of the applicant company's complaints under Article 6 § 1 of the Convention, I have the honour to submit the following on behalf of the Government.

II. The Facts

2. The statement of facts contained in the partial decision as to the admissibility of the present application seems to be essentially correct. However, the Government finds it appropriate to make some clarifications and additions concerning the circumstances of the case as well as to submit some information on relevant domestic law.

The circumstances of the case

3. For the proper understanding of what has occurred in the proceedings at issue further details are called for. For that purpose and for easy reference, a chronological outline of the proceedings relevant to the present application is enclosed as Appendix 1. The outline, prepared by the Ministry of Justice and submitted only in a Swedish version, will be referred to in the following.

4. In the District Court the applicant company was initially represented by legal counsel. Following the revocation of the power of attorney in May 1995, it was represented by Mr Burström, its sole owner and representative.

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5. The District Court held three preparatory meetings (on 21 January 1994, 1 September 1994 and 27 April 1995). At the third meeting the court raised the question of a separate judgment. Moreover, the applicant company requested that the court should render such a judgment. During the following months both parties proposed themes for a separate judgment and submitted comments regarding this issue on several occasions. They could not, however, agree on a suitable theme and the question of a separate judgment was eventually dropped.

6. On 11 September 1995, the applicant company sent a letter to the District Court, in which it argued that the witnesses invoked by both parties were all irrelevant to the examination of the case and requested that the defendant should not be permitted to invoke her witnesses at the main hearing. In submissions to the court from October to December 1995, both parties revoked their witnesses. Thus, the only oral evidence left for the main hearing was an examination of the applicant company's representative and the defendant.

7. In its appeal against the District Court's judgment, the applicant company requested the Court of Appeal to order a stay in the execution of the judgment in respect of the court's order that it should compensate the defendant for her legal costs in the proceedings. In a decision of 22 March 1996, the Court of Appeal found that there was no legal ground for the applicant company's request and accordingly rejected it.

8. The Court of Appeal's decision concerning the applicant company's request for legal aid was delivered on 14 May 1996 (and not in June 1996). Furthermore, its decision concerning the applicant company's request that it should remit the case to the District Court as well as accept certain new evidence was delivered on 10 July 1997 (and not in June 1997). The reason for accepting the new evidence was that the applicant company was considered to have had a valid excuse for not invoking it in the District Court. The decision is enclosed as Appendix 2.

9. The applicant company made further written submissions to the Supreme Court also on 17 August 2000.

10. As indicated in the Court's partial decision, both the District Court and the Court of Appeal submitted written statements to the Chancellor of Justice

in reply to the applicant company's complaint. The Court of Appeal's statement has been submitted to the Court by the applicant company. The District Court's statement is enclosed as Appendix 3. The District Court concluded that, in view of the very special circumstances of the case, the proceedings had not been unreasonably long. The court was of opinion that the case was fairly complicated from a legal point of view and stated that the preparation of the case for the main hearing had been demanding. The court's statement will be referred to below when dealing with the merits of the application.

Relevant domestic law

11. Proceedings before the general courts in civil disputes are chiefly governed by the 1942 Code of Judicial Procedure (*rättegångsbalken*; hereinafter "the Code") with amendments.

12. In civil cases amenable to out of court settlement, such as cases concerning damages, it is the parties who determine the framework of the proceedings, which means that they decide which evidence and which facts and circumstances shall be examined by the court (see, *inter alia*, chapter 17, section 3 and chapter 35, sections 3 and 6 of the Code).

13. When a main hearing is held in a civil case, the judgment shall be based solely on the material presented at the hearing (chapter 17, section 2 of the Code).

14. Evidence and circumstances on which a party wants to rely shall be invoked, to the extent possible, already in the district court. In civil cases amenable to out of court settlement, evidence and circumstances not previously presented may be invoked in the court of appeal only if the party shows probable cause for not having been able to invoke the evidence or circumstance in the district court or if otherwise he has a valid excuse for not having done so (chapter 50, section 25 of the Code).

15. The Code does not contain any provisions stipulating that civil cases must be determined within certain time-limits. Nevertheless, a general aspiration to handle cases speedily permeates the provisions of the Code. To give an example, it is stipulated that a district court shall proceed with the preparation in the aim of a speedy adjudication of the case (chapter 42, section 6 of the Code).

16. If deemed appropriate, the court may give a separate judgment (*mellandom*) on one of several circumstances that are each of immediate importance to the outcome of a civil case or on how a certain issue raised in the case and primarily relating to the application of law is to be judged when determining the matter at issue (chapter 17, section 5 of the Code). For example, in a case concerning an action for damages, the court may examine in a separate judgment the question of whether a tortious act has been committed, while leaving aside questions relevant to the damage and the level of compensation until the first issue has been determined. By means of a separate judgment it is sometimes possible to achieve a speedier determination of the dispute, since it may not be necessary for the court to examine all the issues involved in the case.

17. A judgment in a civil case shall specify in separate sections: the court, time and place of pronouncement of the judgment; the parties and their attorneys or counsel; the final judgment (*domslutet*); the parties' claims and objections and the circumstances on which they are founded; and the reasoning in support of the judgment (*domskälen*), including a statement of what has been proved in the case (chapter 17, section 7 of the Code).

18. In certain cases the courts may render a judgment in a so-called simplified form (*förenklad form*). One relevant example is a judgment by a higher court confirming the judgment of a lower court (chapter 17, section 8 of the Code). In such a case the appellate court has to state the reasons in support of its judgment only when they differ from those given in support of the appealed judgment (section 22 of the Ordinance concerning Cases and Matters before the General Courts; *förordningen om mål och ärenden i allmän domstol*; 1996:271). If the appellate court confirms the lower court's judgment, it means that it shares the assessment of the lower court with regard to both the final judgment and the reasoning. On the other hand, if the appellate court confirms the lower court's final judgment, it means that the outcome of the case is supported – in whole or in part – by other reasons, in which case those reasons have to be expressly stated.

III. On the Admissibility

19. The Government has no objection as far as the six-month rule is concerned. Nor has the Government any objection as regards exhaustion of domestic remedies with respect to the complaint under Article 6 § 1 of the

Convention concerning the absence of reasoning in the Court of Appeal's judgment. On the other hand, as regards the complaint under Article 6 § 1 concerning the length of the civil proceedings before the national courts, the Government maintains that domestic remedies have not been exhausted. In support of this contention the following is submitted.

20. The Court's attention is drawn to a recent judgment by the Supreme Court in a case concerning a claim for damages brought by an individual against the Swedish State, *inter alia* on the basis of an allegation of a violation of Article 6 of the Convention on account of the excessive length of criminal proceedings (judgment of 9 June 2005, case no. T72-04). In its judgment the Supreme Court held that the plaintiff's right under Article 6 of the Convention to have the criminal charges against him determined within a reasonable time had been violated. Based on this finding, and with reference, *inter alia*, to Articles 6 and 13 of the Convention and the Court's case-law under these provisions, the Supreme Court concluded that the applicant was entitled to compensation under Swedish law for both pecuniary and non-pecuniary damage. In respect of the level of compensation for non-pecuniary damage, the Supreme Court took note of the criteria established by the Court in the case of *Zullo v. Italy* (no. 64897/01, 10 November 2004) stating that the Court's practice constituted a natural point of departure in this regard. A copy of the Supreme Court's judgment is enclosed as Appendix 4.

21. It may be recalled that the purpose of the exhaustion rule, contained in Article 35 § 1 of the Convention, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them, before those allegations are submitted to the Court. That rule is based on the assumption, reflected in Article 13 of the Convention with which it has a close affinity, that there is an effective remedy available in the domestic system in respect of the alleged breach. (See, *inter alia*, *Michalak v. Poland* (dec.), no. 24549/03, § 32, 1 March 2005.)

22. In the context of Article 13, the Court has held that remedies available to a litigant at the domestic level for raising a complaint about the length of proceedings are effective within the meaning of the Convention if they prevent the alleged violation or its continuation or provide adequate redress for any violation that has already occurred. Article 13 thus offers an alternative in this respect: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case or to provide the

litigant with adequate redress for delays that have already occurred. (See, *inter alia*, *Krasuski v. Poland*, no. 61444/00, § 66, 14 June 2005.)

23. In view of the Supreme Court's recent judgment, the Government submits that it has been established that Swedish law provides a remedy in the form of compensation for both pecuniary and non-pecuniary damage in cases where an individual's right under Article 6 § 1 to have his civil rights or obligations or a criminal charge against him determined within a reasonable time has been violated. It must be acknowledged, however, that the legal position on this matter under domestic law was less clear prior to the Supreme Court's judgment. In this connection it may be noted that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Michalak v. Poland*, cited above, § 35). Against this background, it may be argued that this type of compensation proceedings against the Swedish State constituted a domestic remedy, which the applicant company was obliged to exhaust prior to the introduction of the complaint before the Court. However, the Government leaves it for the Court to decide whether this was the case.

24. Whereas the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court, this rule is subject to exceptions, which may be justified by the particular circumstances of each case. In particular, it may be noted that the Court has departed from this general rule in cases against Italy, Croatia, Slovakia and Poland concerning remedies against the excessive length of proceedings. (See *Michalak v. Poland*, cited above, § 36 and *Charzynski v. Poland* (dec.), no. 15212/03, § 35, 1 March 2005 and the authorities cited therein.)

25. Should the Court conclude that the remedy referred to above was not available to the applicant company for the purposes of Article 35 § 1 of the Convention at the time when the application was introduced before the Court, the Government maintains that such a remedy must, in any event, be regarded as being currently available to it. With reference to the Court's case-law referred to immediately above, the Government submits that the circumstances of the present case speak in favour of an exception from the above-mentioned rule. In its view, therefore, the applicant company should be required to use the remedy available to it – i.e. pursue compensation proceedings against the Swedish State for the alleged excessive length of the

relevant proceedings – before this aspect of its application may be dealt with by the Court. It follows that the applicant company's complaint under Article 6 § 1 of the Convention concerning the length of the proceedings before the domestic courts should be declared inadmissible for non-exhaustion of domestic remedies.

26. In any event, with reference to what is submitted below on the merits, the Government maintains that both complaints under Article 6 § 1 should be declared inadmissible as being manifestly ill-founded.

IV. On the Merits

27. The Government has been asked to deal in its observations with the following questions:

> "1. Was the absence of reasoning in the Court of Appeal's judgment in the present case in accordance with the right to a fair hearing under Article 6 § 1 of the Convention?
>
> 2. Was the length of the civil proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?"

The Government will limit itself accordingly.

The absence of reasoning in the Court of Appeal's judgment (question no. 1)

28. The applicant company complains that the Court of Appeal failed to give reasons for its judgment in breach of Article 6 § 1 of the Convention. The Government maintains that this part of the application is manifestly ill-founded and submits the following in support of this contention.

29. According to the Court's established case-law, judgments of courts and tribunals should adequately state the reasons on which they are based. However, the extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision.

(See, *inter alia*, *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001). Furthermore, in assessing whether a judgment is adequately reasoned, it is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments (see, *inter alia*, *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003).

30. In the present case, the Court of Appeal confirmed the District Court's judgment. Thereby, it clearly indicated not only that it agreed with the lower court as to the outcome of the case but also that it entirely subscribed to the reasons set out in its judgment, which was appended to its own judgment (cf. para. 18 above). As pointed out by the Court in its partial decision as to the admissibility of the present application, the District Court gave detailed and well-reasoned grounds for its judgment. It is therefore clear on which grounds the Court of Appeal's judgment was based. This distinguishes the present case from, for example, the above-mentioned case of *Hirvisaari v. Finland*, in which the Finnish court had simply endorsed the inadequate reasoning of the lower body (see, in particular, §§ 32 - 33 of the judgment).

31. In addition, the Court of Appeal made it clear that the parties invoked the same circumstances in support of their actions as they had done in the District Court. It further pointed out that the applicant company had declared that one of the five legal grounds on which it based its claim should have a slightly different wording than that which had been reflected in the District Court's judgment. As may be seen from the Court of Appeal's judgment as compared with the District Court's judgment (p. 5), the slight rewording of the legal ground served the purpose of clarification and did not alter its substance. Thus, no need arose for the Court of Appeal to add anything to the lower court's reasoning on account of the rewording of the legal ground.

32. There is no doubt that the technique of drafting and presenting the judgment, which the Court of Appeal used in the present case, was in accordance with Swedish legislation and Swedish legal tradition (cf. para. 18 above).

33. An important function of a reasoned decision is to afford the parties the possibility of appealing in an effective way against the decision and having it reviewed by an appellate body. A perusal of the applicant company's appeal against the Court of Appeal's judgment and the ensuing letters submitted to

the Supreme Court (all available to the Court) shows that it is perfectly aware that the Court of Appeal endorses the reasons for the District Court's judgment. Thus, in its appeal of 1 December 1999, in informing the Supreme Court about which judgment the appeal refers to, it adds "with reasoning according to the District Court's judgment ..." (see bottom of p. 1). Further, in its letter to the Supreme Court dated 13 February 2000, it correctly draws the conclusion that since the judgment does not contain any reasoning the Court of Appeal fully subscribes to the reasons set out in the District Court's judgment and that, consequently, the circumstances and arguments which it put forward in the Court of Appeal must be seen as encompassed by the District Court's reasoning (see p. 14, second para. and p. 16, first para.). It then goes on to criticise at great length the reasons given by the District Court (p. 16 et seq.). It must be concluded that the absence of explicit reasoning did not hinder the applicant company from appealing in an effective way against the Court of Appeal's judgment.

34. It should be added that in its appeal to the Supreme Court, the applicant company did not refer to the absence of reasoning as an independent ground for its appeal. It was instead mentioned in support of the argument that the objectivity and impartiality of the Court of Appeal were open to doubt because of its complaint to the Chancellor of Justice. It should be recalled in this connection that the applicant company's complaint to the Court concerning the issue of impartiality and objectivity was rejected by the Court as being manifestly ill-founded.

35. The Court has repeatedly stated that Article 6 § 1 cannot be understood as requiring a detailed answer to every argument (cf. para. 23 above). Similarly, the Government contends, Article 6 § 1 cannot be understood as obliging the courts to comment in their judgments on every piece of evidence, which the parties to a case submit. The Government notes in this context that the Court has stated that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *inter alia*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

36. The applicant company complains before the Court that the Court of Appeal did not comment in its judgment on the new evidence, which it had been allowed to submit. First of all, it should be observed that this is an issue

that the applicant company did not address in its appeal to the Supreme Court.

37. Furthermore, the new evidence was intended to refute certain detailed information contained in a document, which counsel for the defendant had submitted to the District Court a few days in advance of the main hearing with a view to facilitating the examination of the defendant. The document itself was not considered to be part of the material relevant to the proceedings (see Appendix 2). The District Court was therefore prevented from taking into account the information it contained in its assessment of the case. On the other hand, in so far as the defendant submitted the same information during the main hearing it constituted material which the District Court could not disregard in the determination of the dispute (cf. para. 13 above). It appears from the District Court's judgment, however, that this information was not relevant to the assessment of the case. Apparently, the new evidence, which was intended to refute information that had no bearing on the outcome of the case neither in the District Court nor in the Court of Appeal, was not of such importance that the Court of Appeal found reason to comment on it in its judgment.

38. In sum, the Court of Appeal's incorporation in its judgment of the District Court's reasoning and the fact that it did not comment on the new evidence cannot lead to the conclusion that the applicant company was deprived of its right to a fair hearing in the Court of Appeal. On the contrary, it had the benefit of adversarial proceedings including an oral hearing and was able to submit the arguments and evidence, which it considered relevant to the case. Besides, it had no difficulty in understanding the incorporation technique adopted by the Court of Appeal in drafting and presenting the judgment and it was able to appeal effectively to the Supreme Court.

39. With reference to what has been submitted above, the Government maintains that, in the light of the particular circumstances of the case, the absence of explicit reasoning in the Court of Appeal's judgment was in accordance with the right to a fair hearing under Article 6 § 1 of the Convention. There has accordingly been no breach of the Convention in this respect and this part of the application should be dismissed for being manifestly ill-founded.

The length of the civil proceedings (question no. 2)

40. The applicant company complains that the length of the civil proceedings before the national courts was excessive. The Government maintains that the overall duration of the proceedings was reasonable within the meaning of Article 6 § 1 of the Convention and that this part of the application is manifestly ill-founded. The reasons for this contention are set out in the following.

Period to be taken into consideration

41. To begin with, the period to be taken into consideration must be established. The date that must be seen as the starting-point of the proceedings is 7 June 1993, when the applicant company's petition for a summons reached the District Court. The proceedings must be considered to have ended on 19 October 2000, when the Supreme Court decided not to grant leave to appeal. The overall duration of the proceedings was thus a little more than 7 years and 4 months.

Reasonableness of the length of the proceedings

42. According to the Court's established case-law, the reasonableness of the length of proceedings coming within the scope of Article 6 § 1 of the Convention must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and the competent authorities (see, e.g., *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II, § 67). Other factors may also be taken into account, such as the importance of what was at stake for the applicant in the litigation (see, e.g., *Foley v. the United Kingdom*, no. 39197/98, § 36, 22 October 2002). The Court has underlined that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, e.g., *Ciricosta and Viola v. Italy*, judgment of 4 December 1995, Series A no. 337-A, p. 10, § 28).

43. In addition, the Court has observed that although Article 6 of the Convention requires judicial proceedings to be conducted expeditiously, it also lays down the more general principle of the proper administration of justice (see, e.g., *Pafitis and Others v. Greece*, judgment of 26 February 1998, *Reports* 1998-I, p. 436, § 97).

44. On the issue of complexity, it may be remarked that the case which the national courts had to assess must be considered to have been rather complicated from a legal point of view (cf. the District Court's reply to the Chancellor of Justice, Appendix 3). What in particular contributed to the complexity of the case was the very extensive written material submitted by the parties (especially the applicant company), which was often difficult to grasp. It must also be taken into account that the task of the courts was probably made more difficult by the fact that during the greater part of the proceedings the applicant company was not represented by legal counsel but by its representative Mr Burström. According to the District Court, this did not further an efficient handling of the case (see Appendix 3).

45. When assessing the reasonableness of the length of the proceedings in the present case, it is important to bear in mind that the case did not belong to any of the categories of cases that have to be given special priority by the courts (such as criminal cases where the suspect is in detention while awaiting the trial). Nor were there any special circumstances that motivated a particularly speedy handling of the case (as in cases concerning, e.g., custody of children).

46. The proceedings before the District Court lasted a little more than 2 years and 8 months. Valid explanations may be provided for the length of this part of the proceedings. In view of what is submitted below, the Government contends that the length of the proceedings before the District Court was compatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

47. As may be seen from the chronological outline, there were continuous activities in the handling of the case from the moment the applicant company instituted the civil proceedings until the court rendered its judgment. There is no unjustified period of inactivity on the part of the court. The relative protraction of the proceedings must be attributed to the special circumstances of the case and to the way in which the parties, in particular the applicant company, pleaded its case.

48. As indicated by the District Court in its reply to the Chancellor of Justice, the preparation of the case for the main hearing was demanding and time-consuming. The court found it necessary to hold three preparatory meetings, while one preparatory meeting is normally sufficient in a civil case in order to

prepare the case for the main hearing. In between meetings the parties made frequent and extensive written submissions. In total they submitted nearly 30 letters to the court with about 90 enclosures. The extensive exchange of written submissions was largely related to the fact that the applicant company submitted new claims as well as new grounds for its claims, invoked new evidence and continuously completed and adjusted its action in other respects. It may be added that both parties, and in particular the applicant company, often made written submissions without being requested to do so by the court.

49. As remarked by the District Court, the written submissions, in particular those from the applicant company, were not always easy to understand. The defendant told the court on repeated occasions that she had difficulties understanding and commenting on the opposite party's claims and arguments. For example, in November 1994 counsel for the defendant told the court that commenting on and trying to comprehend the opposite party's different arguments entailed a lot of work and extensive costs and that he did not still understand what it intended to say.

50. Until 17 May 1995 the applicant company was represented by a lawyer. In spite of this, it submitted observations of its own to the court on four occasions (26 October 1993, 7 September 1994, 9 January 1995 and 27 April 1995). 42 enclosures in total were appended to these observations. Naturally, such behaviour does not normally further the progress of court proceedings.

51. The written evidence adduced by the applicant company was very extensive. Moreover, it changed its specification of evidence on a number of occasions. Thus, in May 1994 it invoked 22 documents as evidence. In April 1995 it invoked 3 more documents and later on during the same month 34 more documents. Further documentary evidence was adduced in June 1995 and in November 1995 it submitted a list of evidence with a specification of 82 documents. Finally, at the main hearing the number of documents invoked amounted to 75. The defendant, by comparison, invoked 9 documents.

52. The applicant company also adduced extensive oral evidence. In addition to its representative Mr Burström, it invoked 10 witnesses. However, in September 1995 it suddenly argued that all the oral evidence adduced by the parties, except for its own representative and the defendant herself, was irrelevant and requested the court to dismiss the defendant's witnesses. Both parties eventually revoked their witnesses (cf. para. 6 above).

53. A study of the chronological outline shows that both parties made frequent requests for extensions of time-limits, the applicant company 8 times and the defendant 11 times. The extensions granted totalled about 10 months. The delay thereby caused in the proceedings must be attributed to the parties.

54. By raising the issue of a separate judgment, the court intended to make it possible to simplify and speed up the proceedings. Both parties were in favour of a separate judgment. However, notwithstanding their efforts, they were unable to agree on a suitable theme for such a judgment and the question had to be dropped. As a consequence of the discussions concerning a separate judgment, the pace of the proceedings was somewhat slowed down.

55. Some of the delay in the proceedings was probably caused by the fact that the District Court had to appoint judges from other courts for the preparatory meetings and the main hearing (cf. the District Court's reply to the Chancellor of Justice). The reason for this was the necessity to guarantee the appearance of the court's impartiality, since the defendant worked as a lawyer in the town where the court is located and had practised for a short time at the court in connection with her studies.

56. As previously indicated, while the discussions on a separate judgment were going on, the applicant company, in September 1995, unexpectedly argued that most of the oral evidence invoked by the parties was irrelevant and requested the court to dismiss the defendant's witnesses. During the following months both parties revoked their witnesses and agreed that the case was ready for determination. Shortly afterwards, in January 1996, the District Court held the main hearing and it delivered its judgment a month later. It is thus clear that the proceedings were brought to end with due diligence.

57. The proceedings before the Court of Appeal came to end after a little more than 3 years and 7 months. Although the length of this part of the proceedings may appear excessive, valid explanations may be provided for its duration. To a great extent the length of the proceedings can be attributed to the special circumstances of the case and to the parties themselves, especially the applicant company, which was without legal counsel during the entire proceedings before the Court of Appeal. It is the Government's opinion that the length of this part of the proceedings does not suffice to arrive at the conclusion that Article 6 § 1 has been violated.

58. In this context, the Government notes that the Court has found that a certain delay in the proceedings may be accepted in a court of appeal (see *Hadjikostova v. Bulgaria*, no. 36843/97, §§ 30 and 32, 4 December 2003).

59. It may further be noted that there was a continuous exchange of written observations before the Court of Appeal until the case was ready for the main hearing in April 1997. Even before the preparation of the case had been concluded, the court began to prepare for the main hearing in the spring of 1997. This hearing as well as two subsequent planned hearings had to be cancelled, two of them because one of the parties could not attend and one of them because the court had to hold a main hearing in a criminal case, which had to be given priority. The planning and cancellation of these three main hearings (April 1997, February 1998 and October 1998) undoubtedly contributed to the length of the proceedings. On the third occasion, it was the applicant company which requested that the hearing be postponed to a later date, since it wished to consult legal expertise and find a lawyer to represent it. In spite of this, it later informed the court that it would continue to be represented by Mr Burström. Had it not been for the cancellation of the hearing scheduled for October 1998 at the request of the applicant company, the proceedings before the Court of Appeal would certainly have been brought to an end at a much earlier point in time than was actually the case.

60. In the present case, the Court of Appeal continuously set dates for the main hearing. The cancellation of these hearings, though unfortunate, was deemed necessary. It should be underlined in this connection that it is often a rather cumbersome task for a court to find appropriate dates for a main hearing that fit into the schedule of the parties and other participants as well as that of the court. This is in particular so when a main hearing is cancelled for which the dates have already been fixed, given that usually main hearings have been scheduled for a long time ahead in a large number of other cases and this makes it difficult to promptly find dates for a new hearing. When a hearing is cancelled, the court must therefore be allowed a certain amount of time to schedule a new hearing. The main hearing in the present case required two days. Besides, four judges had to be present at the main hearing, since the case had been adjudicated by three judges in the lower court. As previously mentioned, the case did not enjoy any special priority. In view of these circumstances, the time it took before a main hearing was held cannot be considered unreasonable.

61. It should also be taken into account that in the Court of Appeal the applicant company made several procedural claims which affected the length of the proceedings. Thus, in its appeal it requested that the court should order a stay in the execution of the judgment of the lower court with respect to the legal costs (cf. para. 7 above). This claim was rejected, since it had no legal basis. Further, the applicant company later requested that the District Court's judgment be set aside and the case remitted to that court for re-examination. It also applied for legal aid. At the same time it submitted new written evidence consisting of 11 documents, which made it necessary for the court to decide whether or not to permit this evidence. The request that the case be remitted to the District Court and the presentation of new evidence made it necessary to allow the opposite party to submit comments. The appeal to the Supreme Court regarding the question of legal aid meant that the handling of the case was delayed in the Court of Appeal.

62. In addition, the applicant company and the defendant requested and were granted extensions of time-limits on three occasions each. The extensions amounted in total to about 3 months. It is, of course, the parties themselves who must bear the responsibility for the delay caused by these extensions.

63. The proceedings before the Supreme Court lasted slightly more than 10 months. During this time, the applicant company requested and was granted extensions on two occasions in order to complete its appeal. The total length of the extensions was approximately 2 months. It made supplementary submissions to the court twice, in February 2000 and August 2000. Only 2 months after the last submissions had been made, the Supreme Court adopted its decision not to grant leave to appeal. There is no doubt that the Supreme Court dealt with the case with great diligence. Taking into account the special role and character of this court of last instance, it is obvious that the length of the proceedings before it was reasonable within the meaning of Article 6 § 1 of the Convention.

64. Finally, with regard to what was at stake for the applicant company in the proceedings, the Government does not wish to assert that the outcome of the proceedings was of little importance to it. However, the applicant company's conduct does not demonstrate that it was always particularly anxious for the case to be determined within the shortest time possible. Instead, it seems to have been willing to accept a certain prolongation of the proceedings, apparently with a view to pleading its case more effectively, for example by

asking for extensions of time-limits on a large number of occasions and by requesting a cancellation of a scheduled main hearing in the Court of Appeal.

65. In conclusion and with reference to what has been stated above in paragraphs 40 - 64, the Government maintains that an overall assessment of the present case should lead to the conclusion that the total duration of the proceedings before the three instances did not exceed what can be considered "a reasonable time" within the meaning of Article 6 § 1 of the Convention. The Government is thus of the opinion that this part of the application does not disclose any appearance of a violation of the Convention. Accordingly, the applicant company's complaint under Article 6 § 1 concerning the length of the civil proceedings, if not declared inadmissible for non-exhaustion of domestic remedies, should be declared inadmissible as being manifestly ill-founded.

V. Conclusions

66. The position of the Swedish Government in this case is,

concerning the **admissibility**,

that the complaint relating to the absence of reasoning in the Court of Appeal's judgment should be declared inadmissible as being manifestly ill-founded and that the complaint relating to the length of the proceedings should be declared inadmissible for non-exhaustion of domestic remedies or, in any event, as being manifestly ill-founded and,

concerning the **merits**,

that the case reveals no violation of the Convention.

Yours faithfully,

Inger Kalmerborn
Agent of the Swedish Government