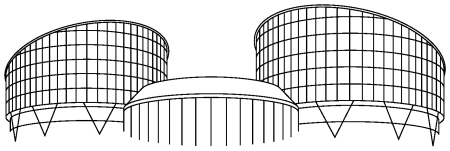

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LINDSTRAND PARTNERS ADVOKATBYRÅ AB v. SWEDEN

(Application no. 18700/09)

JUDGMENT

STRASBOURG

20 December 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lindstrand Partners Advokatbyrå AB v. Sweden,

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

Luis López Guerra, *President,*
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
Johan Hirschfeldt, *ad hoc* judge,
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 29 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 18700/09) 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 law firm, Lindstrand Partners Advokatbyrå AB ("the applicant"), on 3 April 2009.

2. The applicant was represented by Mr C. Lindstrand, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agents, Ms G. Isaksson and Ms H. Kristiansson, Ministry for Foreign Affairs.

3. The applicant alleged that its rights under Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention had been violated.

4. Mrs Helena Jäderblom, the judge elected in respect of Sweden, withdrew from the case (Rule 28). Accordingly, the President of the Section decided to appoint Mr Johan Hirschfeldt to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

5. On 27 April 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Decisions on audit and coercive measureds relating to SNS

6. From 20 January 2006 onwards the Tax Agency (*Skatteverket*) conducted audits of value-added tax, employers' social security contributions (*arbetsgivaravgifter*) and income tax at the three Swedish companies Ergonia Sweden AB, SNS-LAN Trading AB ("SNS") and Mouse Trapper Nordic AB. The audit covered the period June 2001 – June 2005. On 4 March 2008 the Tax Agency applied to the County Administrative Court (*länsrätten*) in Stockholm for permission to take coercive measures in respect of SNS under section 8 of the Act on Special Coercive Measures in Taxation Procedures (*Lagen om särskilda tvångsåtgärder i beskattningsförfarandet*, 1994:466 – hereafter "the Coercive Measures Act"), in particular the search and seizure of certain documents and other material.

7. The Tax Agency's application contained detailed information on what it had been able to establish in regard to the above-mentioned companies during the audits. The Agency stated that it suspected that significant amounts of money had been withheld from Swedish taxation through irregular transactions between SNS and a Swiss company. According to the Agency, the latter company had been established solely in order to evade taxes on some of the business profits in the above-mentioned Swedish companies. While it was considered highly likely that the persons owning or having a decisive influence in the Swedish companies, including a Mr Toivo Jurik, were also running the Swiss company, it had proved impossible to obtain information on ownership and control of the latter company from the persons involved, who claimed that they had no knowledge of these matters. After Mr Jurik had been shown an extract of the Swiss company register, where he was listed as an executive, he had admitted that he and another person involved in the Swedish companies had been present at the establishment of the Swiss company but that he was listed as an executive only for formal reasons. The other person mentioned had since stated that he would not assist the Tax Agency any further in the audit. The Agency therefore considered that it could not continue to investigate the ownership issue and the accuracy of certain business costs unless it obtained access to documents that showed the Swiss company's relationship to the Swedish companies and their owners and leaders as well as the Swiss company's role in the business activities. In the Agency's view, there were no alternative means of review.

8. Not considering it appropriate to order SNS to provide the required documents, the Tax Agency further requested that the application for coercive measures should not be communicated to the company and that it should not be notified of the court's decision before the measures had been undertaken, as there was a risk that the documents to be searched and seized could be withheld or destroyed.

9. As SNS had recently been liquidated and had not had its own business premises, the requested search should be made at two addresses connected to Mr Jurik, who had been responsible for the bookkeeping in all three audited companies and was also representing SNS in its contacts with the Tax Agency, and therefore could be expected to be in possession of the required documentation. Thus, the search should start at the registered premises of the parent company, Draupner Universal AB ("Draupner"), at the address P.O. Hallmans gata 15, Stockholm. This was a flat which, in addition to being owned by Draupner and serving as its registered address, was rented by Mr Jurik and used as a *pied-à-terre*. Draupner was owned by Mr Jurik's children but was represented and run by Mr Jurik himself. If the necessary documents were not found at the first address, the search should continue at the office of Mr Jurik at the applicant law firm (whose name at the time was Hagenfeldt Advokatbyrå AB), at the address Döbelnsgatan 15, Stockholm.

10. By a judgment of 10 March 2008 the County Administrative Court granted the Tax Agency's application and ordered that the judgment was immediately enforceable. Agreeing with the Tax Agency, the court considered that there was a substantial risk that documents could be withheld, corrupted or destroyed and that, having regard to Mr Jurik's connection with SNS and the two addresses in question, there was good reason to assume that the documents relevant to the audit of SNS were to be found at those addresses. While a search and seizure undertaken at a location different from the audited party's business premises involved a particular encroachment on rights of integrity, the court found that, in the case at hand, the importance of the measures outweighed the intrusion caused.

B. Enforcement proceedings

11. The search of the two designated premises took place on 14 March 2008 and was conducted by officials of the Enforcement Authority (*kronofogdemyndigheten*) in Stockholm and several auditors of the Tax Agency. The flat was searched first. Present were Mr Carl Lindstrand, a lawyer of the applicant law firm, representing Mr Jurik (who was at the time in Switzerland), and – towards the end of the search – Mr Roland Möller, who, as an associate of the law firm, had been the liquidator of SNS and who was also the designated person to be served writs on behalf of

Draupner in Sweden. According to the minutes of the proceedings, drawn up by one of the officers of the Enforcement Authority, the persons present were reminded of the possibility to request exemption of documents.

C. Decisions on audit and coercive measures relating to Draupner

12. During the search of the flat, material of interest that belonged to Draupner was found. Since Draupner had been involved in transactions connected with the activities of SNS, a decision to audit the company was taken on site by the audit manager of the Tax Agency. She also took an interim decision to use coercive measures against Draupner, in accordance with section 15 of the Coercive Measures Act. It was decided to search for and seize material relating to the audit of Draupner both at the flat and at the applicant law firm. In the latter respect, the decision referred to the fact that not only Mr Jurik but also Mr Möller had offices there.

13. The need for an immediate decision and enforcement was explained by the substantial risk of corruption of material. The decision referred to sections 7-9 of the Coercive Measures Act and to the County Administrative Court's judgment of 10 March 2008.

D. Continued enforcement proceedings

14. At the flat 19 files with accounting material, an external hard disk drive and a torn document were seized and the hard disk drive of a computer as well as a USB memory stick were copied (mirrored). This was specified in a report drawn up and submitted to the parties concerned the same day by the Enforcement Authority.

15. The premises of the applicant law firm – that is, the offices of Mr Jurik and Mr Möller – were searched thereafter, again in the presence of Mr Lindstrand and Mr Möller. Attending was also a legal representative whom the applicant had appointed. The issue of possible exemption of documents was discussed and the representative was given a list of the officers attending. Cupboards, shelves and computers in the two offices were searched and a safe was opened by Mr Möller, all monitored by the applicant's representative. However, no material of relevance was found on the premises. At the end of the proceedings, the applicant's representative requested that the external hard disk drive and the USB memory stick – seized and copied, respectively, at the flat – be exempted from the audit.

E. Appeals against the coercive measures relating to SNS

16. The applicant and SNS appealed against the County Administrative Court's judgment of 10 March 2008. On 7 April 2008 the Administrative Court of Appeal (*kammarrätten*) in Stockholm dismissed the applicant's

appeal and struck out the case in so far as it concerned SNS. In regard to the applicant, it stated that, while the appealed judgment did indeed allow the use of coercive measures on the premises of the applicant law firm, the reason for this was not that the law firm was the subject of the measures but that it could be assumed that documents relevant to the audit of SNS would be found there. In these circumstances, the appellate court concluded that the applicant was not affected by the appealed judgment in such a way that it was entitled to appeal against it. With respect to SNS, the court considered that, as the coercive measures had already been enforced, it did not have a justified interest in having them examined by a second judicial instance.

17. By a decision of 19 June 2008 the Supreme Administrative Court (*Regeringsrätten*) refused the applicant and SNS leave to appeal. On 3 July 2008 the court dismissed an appeal in the same matter lodged by Mr Jurik, noting that he had not previously been a party to the case and could not therefore join the proceedings at the level of the Supreme Administrative Court.

F. Appeals against the coercive measures relating to Draupner

18. The Tax Agency's interim decision of 14 March 2008 to use coercive measures against Draupner was referred to the County Administrative Court, which received it on 17 March 2008, the following Monday. The Agency stated as reasons for its decision that Draupner had had transactions connected to SNS, its subsidiary company, that there had been special reasons to search for material at the applicant law firm as two of Draupner's representatives, Mr Jurik and Mr Möller, had offices there and that the risk of corruption of material was acute in view of the fact that, during the ongoing enforcement, it had become apparent to persons involved which transactions and connected documents were to be examined. Draupner requested that the decision be quashed, referring, *inter alia*, to attorney-client privilege pertaining to its representatives. By a judgment of 26 March 2008 the interim decision was confirmed by the court, which found that the seizure of the documents at issue had been justified. The court further considered that there was a substantial risk that the documents would be withheld, corrupted or destroyed if they were returned.

19. Draupner and Mr Jurik appealed to the Administrative Court of Appeal. On 22 August 2008 the court struck out Draupner's appeal and dismissed that of Mr Jurik. As in the similar case concerning SNS (see paragraph 16 above), the court took into account that the coercive measures had already been enforced and considered therefore that Draupner did not have a justified interest in having them examined by a second judicial instance. In regard to Mr Jurik, it was noted that he had not been a party to the case at the lower court.

20. On 28 January 2009 the Supreme Administrative Court refused Draupner leave to appeal.

G. Appeals against the decision to audit Draupner

21. Draupner also appealed against the Tax Agency's decision of 14 March 2008 to conduct an audit. On 18 June 2008 the Tax Agency dismissed the appeal because, in accordance with Chapter 6, section 2 of the Tax Assessment Act (*Taxeringslagen*; 1990:324), no appeal lay against such a decision. This determination was upheld by the County Administrative Court on 11 July 2008.

22. On 19 September 2008 the Administrative Court of Appeal quashed the Tax Agency's decision to dismiss the appeal and the County Administrative Court's judgment and referred the case back to the County Administrative Court. The appellate court found that the Tax Agency had lacked a legal basis for its decision; instead of dismissing Draupner's appeal, it should have submitted it to the County Administrative Court for determination.

23. After a new examination of the case, the County Administrative Court dismissed the appeal in a decision of 3 October 2008, finding that no appeal lay against a decision to conduct a tax audit and that the European Convention was not applicable to such a decision. In addition, it noted that, while the audit decision itself did not involve any harm to Draupner, possible detriment caused by the audit procedure could be removed or mitigated through a request for the exemption of documents from the audit. Such a request was at the time already under examination by the court (see paragraphs 35-43 below).

24. On 15 January 2009 the Administrative Court of Appeal rejected Draupner's further appeal, agreeing with the lower court's assessment.

H. The applicant's request for exemption of documents

25. By a letter dated 14 March 2008, the day of the search of the flat and the law office, and received by the County Administrative Court on 17 March 2008, the applicant requested that those parts of the material seized and copied at the flat that could concern the law firm be exempted from the audit. It mentioned, in particular, the external hard disk drive and the USB memory stick. Noting that both SNS and Draupner were clients of the law firm, the applicant argued that the material it sought to have exempted was protected by attorney-client privilege.

26. By a decision of 26 March 2008 the County Administrative Court dismissed the request, finding that the applicant lacked legal standing in the matter. It noted that the material had been seized from Draupner and was therefore not under the applicant's right of disposition.

27. The applicant appealed to the Administrative Court of Appeal, demanding that all seized and copied material except for the files with accounting material be exempted. It also requested that an oral hearing be held on the question of its legal standing in the matter. Mr Jurik joined the applicant's appeal.

28. On 18 April 2008 the Administrative Court of Appeal refused the request for an oral hearing, finding it unnecessary.

29. By a judgment of 22 August 2008 the Administrative Court of Appeal rejected the applicant's appeal and agreed with the lower court that the applicant did not have legal standing concerning the requested exemption of documents, as the coercive measures had not been directed against the law firm. Mr Jurik's appeal was dismissed, as he had not been a party to the case at the lower court.

30. The applicant made a further appeal, stating, among other things, that the Tax Agency's original interim decision of 14 March 2008 concerning Draupner and the County Administrative Court's judgment of 26 March 2008 confirming that decision had been directed against the law firm because they allowed a search in the firm's offices. Moreover, the coercive measures employed had led to the seizure of material which allegedly belonged to the applicant and could contain information covered by attorney-client privilege. In the latter respect, the applicant claimed that the external hard disk drive and the USB memory stick had been used by its associate lawyer Mr Jurik in his work for the firm.

31. On 28 January 2009 the Supreme Administrative Court refused the applicant leave to appeal.

I. Proceedings concerning disqualification of judge

32. In the decision of the Administrative Court of Appeal of 18 April 2008 not to hold an oral hearing (see paragraph 28 above) three judges participated, one of whom was a co-opted member (*adjungerad ledamot*). She was also a civil servant at the Tax Agency, albeit formally on leave of absence while temporarily serving with the court. The Tax Agency being the opposing party, the applicant challenged her impartiality and called for her disqualification from the case.

33. On 14 May 2008 the Administrative Court of Appeal, sitting in a different formation, rejected the objection, noting that the co-opted member was on leave from her post at the Tax Agency.

34. By a judgment of 5 March 2009 the Supreme Administrative Court, which had regard to Strasbourg case-law, rejected the applicant's appeal, declaring that the objection had not been justified. It considered that the issue of objective impartiality had to be examined in light of the individual character of the case at hand. In this respect, it noted that the co-opted member's tasks at the Tax Agency had concerned activities of a different

type than those relevant in the case and had been performed in a different part of the country. Furthermore, she was only one of three judges participating in the decision in question, which had concerned a request for an oral hearing. She had not participated in the judgment on the merits of the case.

J. Draupner's requests for exemption of documents

35. Draupner, represented by Mr Lindstrand, requested that all material seized or copied during the audit be exempted, in particular because it contained information protected by attorney-client privilege pertaining to the applicant law firm and its clients.

36. On 16 October 2008 the County Administrative Court rejected the request. It stated that Draupner was the subject of a tax audit and that all electronic or paper documents linked to the company's business found on its premises should be considered as belonging to it and being eligible for examination in the audit. The court noted that the company register listed Mr Jurik as a board member and signatory of Draupner. Furthermore, the available evidence in the case showed that he was the representative of the company and that the flat where the search and seizure had taken place constituted the company's business premises. As the documents at issue had been found at that flat, they should be considered to belong to Draupner, concern its business and, as a rule, be included in the audit. While the coercive measures used could not therefore be considered to have contravened the Coercive Measures Act or the Convention, the question remained whether there were reasons to exempt some or all of the material. Noting that the burden of proof rested with the audited party, the court considered that the company had not demonstrated that the documents were covered by any of the exemptions under the Act.

37. Upon Draupner's appeal, the Administrative Court of Appeal, on 5 March 2009, decided to quash the County Administrative Court's judgment and refer the case back to that court. The appellate court found that the lower court had not examined the contents of all the documents, which was a requirement for the assessment of the question of exemption.

38. The County Administrative Court then directed Draupner to specify its request in greater detail, which the company did. By a judgment of 14 September 2009 the court rejected the company's requests for an oral hearing and an inspection of the flat but granted that a few seized documents be exempted from examination by the Tax Agency, as they were considered to be Mr Jurik's private documents. It further considered that deleted files, which were readable only after reconstruction, could not be the object of a seizure under the Coercive Measures Act and could therefore neither be exempted nor used by the Tax Agency.

39. Draupner and the Tax Agency appealed. Draupner agreed that 17 of the 19 files seized on 14 March 2008 could be handed over to the Tax Agency for examination, following which the request for exemption concerned the remaining material seized and copied on that day. The Tax Agency requested that it be allowed to examine deleted and reconstructed data files.

40. On 14 September 2010 the Administrative Court of Appeal rejected Draupner's appeal, but granted that of the Tax Agency. Draupner's procedural requests for an oral hearing and an inspection were rejected, but the court held a preparatory meeting with the parties to determine the continued proceedings in the case, notably the method for examining the disputed material. The court found that, due to the extremely extensive data material – more than 300,000 files and entries –, it was impossible to examine each and every data file, and the Tax Agency was therefore instructed to list the documents and files it considered as part of its examination after which Draupner would have an opportunity to lodge a new request for exemption. The appellate court agreed with the County Administrative Court's assessments that the material, including the hard disk drive and the USB memory stick, had been seized on Draupner's business premises, that there was, accordingly, a presumption that it was included in the audit and eligible for the Tax Agency's examination and that the burden of proof for exemptions rested with the company, even though a modest level of evidence was sufficient. With regard to Draupner's assertion that certain documents came under attorney-client privilege, the court noted that the Tax Agency had not ordered a law firm to provide information in the case and that the documents had not been seized at a law firm. It also considered that the particular circumstances of the case did not show that certain documents were protected by such privilege.

41. On 15 November 2010 the Supreme Administrative Court refused Draupner leave to appeal.

42. After the Tax Agency had listed the documents and files it wished to examine, Draupner made a new application for exemption of documents which was partially approved by the County Administrative Court on 24 November 2011 in regard to some documents which were considered to be of a private nature. However, none of the documents for which exemption had been requested were found to have such content that attorney-client privilege applied.

43. On 21 February 2012 the Administrative Court of Appeal upheld the lower court's judgment. On 8 May 2012 the Supreme Administrative Court (now *Högsta förvaltningsdomstolen*) refused Draupner leave to appeal.

K. Other events

44. The applicant and Mr Jurik made a complaint to the Parliamentary Ombudsman (*Justitieombudsmannen*) against the handling of the case by the Tax Agency, the County Administrative Court and the Administrative Court of Appeal and assessments made by these instances. On 11 December 2008 the Ombudsman found no reason to take action.

45. The applicant also petitioned for a re-opening of the Supreme Administrative Court's decision of 28 January 2009 not to grant leave to appeal in the case concerning the applicant's request for exemption of documents. This petition was rejected by the Supreme Administrative Court on 20 September 2010.

46. The audits concerning SNS and Draupner were eventually discontinued and no taxation decisions were taken on the basis of the audits. All documents were returned to Draupner. Like SNS, Draupner has since been liquidated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Coercive measures in tax procedures

47. At the relevant time, the Coercive Measures Act regulated tax audits and other control procedures relating to taxes and other fees levied pursuant to, *inter alia*, the Tax Assessment Act. Measures that could be ordered under the Act included audits on the party's business premises, searches for and seizure of documents as well as the sealing of premises, storage areas or other spaces (section 2). Documents that could be searched and seized included those that could only be read with the aid of a technical device (section 3). Coercive measures could only be ordered if the grounds therefor were of such importance that they outweighed the intrusion or other detriment it entailed for the individual (section 4).

48. Audits on business premises could be undertaken even if the audited party had not agreed to it or had failed to co-operate in the audit or if there was a substantial risk that the party would withhold, corrupt or destroy documents or other material relevant to the audit. In the latter case, the audit could be carried out without the audited party having been notified (section 5). Documents and other material covered by the audit could be searched for and seized during such an audit (section 6). Also when an audit was not conducted on the audited party's business premises, search and seizure could be made on the premises if an order to release a document covered by the audit had not been followed or there was a substantial risk of its withholding, corruption or destruction. Under those conditions, the measure could be undertaken without prior notification to the audited party (section 7). Documents covered by the audit could, under the conditions

stipulated in section 7, be searched for and seized also on premises, in storage areas or in other places that were not part of the audited party's business premises provided that there was a particular reason to assume that the documents could be found there (section 8).

49. Decisions on coercive measures were taken by a county administrative court, except for decisions under section 6 which fell under the authority of the audit manager (section 14). However, if there was a substantial risk that documents and other material of significance to the audit be withheld, corrupted or destroyed before the court could take a decision, the audit manager could take decisions to use also the other coercive measures mentioned above, provided that they concerned only business premises. Such a decision by the audit manager had to be submitted immediately for review to the court, which was required to determine without delay whether the manager's decision should stand. If the decision was revoked, the court should decide that seized documents be returned and other information gathered be destroyed (section 15).

50. Exemptions from coercive measures could be granted at the request of the individual for documents that contained information covered by rules of professional secrecy. Section 16 of the Coercive Measures Act provided:

> "At the request of the individual, measures under this Act do not comprise
>
> 1. a document which may not be seized according to Chapter 27, section 2 of the Code of Judicial Procedure [*Rättegångsbalken*],
>
> 2. another document to which a significant protection interest is attached, if the contents of the document, due to particular circumstances, should not come to another person's knowledge.
>
> A document referred to in the first paragraph at 2 may be excluded only if the protection interest of the document is greater than its importance for the control procedure."

At the material time, Chapter 27, section 2 of the Code of Judicial Procedure stipulated:

> "If it can be assumed that a document contains information that an official or other person may not disclose under testimony under Chapter 36, Section 5, the document may not be seized from the possession of that person or the person who is owed the duty of confidentiality. ..."

In so far as relevant, subsections 2 and 3 of Chapter 36, Section 5 of the Code provided as follows:

> "Advocates ... and their counsel may testify concerning matters entrusted to, or found out by, them in their professional capacity only if this is authorised by law or is consented to by the person for whose benefit the duty of secrecy applies. ...
>
> Attorneys, legal representatives or defence counsel may be heard as a witness concerning matters entrusted to them in the performance of their assignment only if the party gives consent."

In the case NJA 1990 p. 537 the Supreme Court examined whether there was a legal basis for the seizure on the premises of a law firm of certain documents concerning a company, of which the owner of the law firm was a board member. Since the case concerned suspected tax offences, it did not involve measures under the Coercive Measures Act but rather the application of the protection of professional secrecy under Chapter 27, section 2 of the Code of Judicial Procedure. The Supreme Court stated that, if a lawyer claimed that there were impediments to seizing documents, a modest level of evidence should be considered sufficient in order to avoid undermining legal professional privilege too much. In the case at hand, the court found that it could be assumed that all the documents in question contained information that had been confided to the lawyer in his professional capacity or that he had learned of in that capacity. Consequently, as the documents were protected under Chapter 27, section 2, their seizure lacked a legal basis.

51. If a request for exemption of a document was made, the document should, if the audit manager considered that it needed to be audited, immediately be sealed and presented to the administrative court, which had to decide on the issue of exemption without delay. In regard to recordings which could only be read, listened to or otherwise understood through the use of technical means, the court decided in what form or in what way they were to be presented in the case. If the individual considered that a document was not covered by the audit, the issue of exemption was dealt with by the court in a corresponding manner (section 17). The court could also order that the use of technical devices and search criteria be limited so that a recording exempted from examination did not become accessible to the tax authority (section 18).

52. Decisions on coercive measures were immediately enforceable and were carried out by the Enforcement Authority at the request of the audit manager (section 21). Unless otherwise prescribed in the decision, the person on whom the decision was to be enforced and any other person affected by it should be notified of the decision and given the opportunity to be present themselves or through an authorised representative and to summon a legal counsel before the decision was enforced. If a person to be notified could not be reached, the decision could be enforced only if there were exceptional reasons. Moreover, enforcement could not be initiated before those who had a right to be present had had reasonable time to appear. If an audit manager, during an audit, had decided to search for and seize certain documents (see section 6, mentioned at paragraph 48 above), the person concerned was to be notified immediately after the measure had been enforced (section 22).

53. Coercive measures were to be enforced in such a way as to cause the least possible inconvenience to those affected (section 23). If a document was seized, binders, folders or other storage materials in which the

document was stored could also be taken. Technical devices could be seized only in exceptional circumstances. If computerised records were seized, copies should, where possible, be left with the owner (section 24). Documents and other items that had been seized had to be returned as soon as they were no longer needed (section 26). A record of the enforcement should be issued, containing details of when and where the decision on coercive measures was enforced, who was present and anything else of significance that arose during the enforcement. If documents or anything else had been seized, the record also had to include a list of these items. The record was to be submitted to the person on whom the coercive measure had been enforced and any other person affected by the measure (section 27).

B. Right to appeal to the administrative courts

54. The right to appeal against a decision by a public authority is regulated in section 22 of the Public Administration Act (*Förvaltningslagen*, 1986:223):

> "A decision may be appealed against by the person concerned by it, if it goes against him and an appeal lie against the decision."

55. With respect to further appeals, section 33 of the Administrative Court Procedure Act (*Förvaltningsprocesslagen*, 1971:291) stipulates, in so far as relevant, the following:

> "A decision by a county administrative court is appealed against to an administrative court of appeal. A decision by an administrative court of appeal is appealed against to the Supreme Administrative Court.
>
> The decision may be appealed against by the person concerned by it, if it goes against him or her.
>
> ..."

C. Co-opted members of court and disqualification of judges

56. In the Swedish court system, not only permanent judges, but also 'non-permanent judges', such as co-opted members, adjudicate cases. Under section 44(1) of the Administrative Courts of Appeal Instructions Ordinance (*Förordning med kammarrättsinstruktion*; 1996:380), these courts may appoint as a co-opted member (1) a person who is or has been a permanent judge, or who is or has been a chief judge or a judge appointed by the government for a fixed term, (2) a person who has been employed as a reporting clerk at an administrative court of appeal or a court of appeal and who has subsequently served at least one year as an assistant judge at an administrative court or a district court, or as a judge or a chief judge, (3) a prosecutor, (4) a legally trained professor or associate professor of a legal discipline or other legally trained person with many years' experience in a

branch of law of relevance to the administrative court of appeal, (5) a member of the Swedish Bar Association, or (6) a person who has previously been a co-opted member. A co-opted member is appointed by the Administrative Court of Appeal for a particular case or for a fixed term, and in principle carries out the same duties as a permanent judge.

57. In regard to the disqualification of judges, section 41 of the Administrative Court Procedure Act refers to Chapter 4, section 13 of the Code of Judicial Procedure. The latter provision reads as follows:

> "A judge shall be disqualified from hearing a case:
>
> 1. if he is a party to or otherwise has an interest in the case or can expect particular advantage or injury from its outcome;
>
> 2. if he and one of the parties are, or have been, married or are related by blood or marriage in direct line of ancestry or descent, or are siblings, or are so related by marriage that one of them is, or has been, married to a sibling of the other, or if he is similarly related to one of the parties;
>
> 3. if he is related, as specified in point 2, to anyone who has an interest in the case or can expect particular advantage or injury from its outcome;
>
> 4. if he or anyone closely related to him, as specified in point 2, is a guardian, custodian or administrator or otherwise serves as legal representative of a party, or is a member of the board of a corporation, association or similar society, foundation or similar institution which is a party, or, when a municipality or similar community is a party, if he is a member of a committee or board in charge of the administration of the matter at issue in the case;
>
> 5. if he or anyone closely related to him, as specified in point 2, is related in the way stated in point 4 to anyone who has an interest in the case or can expect particular advantage or injury from its outcome;
>
> 6. if he is the adversary of a party, though not if the party has initiated litigation against him in order to disqualify him;
>
> 7. if he, as a judge or officer in another court, has rendered a decision concerning the matter at issue, or if he, for an authority other than a court or as an arbitrator, has dealt with the matter;
>
> 8. if he, prior to a main hearing in a criminal case, has determined the issue of whether the defendant has committed the act;
>
> 9. if he has served in the case as an attorney for, or counselled, one of the parties, or has been a witness or an expert therein; or
>
> 10. if there is some other special circumstance that is likely to undermine confidence in his impartiality in the case."

This provision applies to all judges, including co-opted members of a court.

D. Compensation for violations of the Convention

1. Case-law developments

58. In a judgment of 9 June 2005 (NJA 2005 p. 462) the Supreme Court dealt with a claim for damages brought by an individual against the Swedish State, *inter alia*, on the basis of an alleged violation of Article 6 of the Convention. The case concerned the excessive length of criminal proceedings and 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, in particular the case of *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI), the Supreme Court concluded that the plaintiff was entitled to compensation under Swedish law for both pecuniary and non-pecuniary damage. With respect to the level of compensation for non-pecuniary damage, the Supreme Court took note of the criteria established in the Court's case-law stating that the Court's practice constituted a natural point of departure in this regard.

59. In subsequent judgments and decisions the Supreme Court examined claims for damages in respect of various specific matters where violations of Articles 2, 5 and 8 of the Convention were alleged and where compensation could not be awarded directly under the Tort Liability Act (*Skadeståndslagen*, 1972:207) or special legislation. These determinations extended the scope of application of compensation awards based on the Convention and the Court's case-law (see NJA 2007 p. 295, NJA 2007 p. 584 and NJA 2007 p. 891).

60. In a judgment of 3 December 2009 (NJA 2009 N 70), the Supreme Court confirmed its previous case-law in a case concerning claims for damages against the Swedish State on account of excessive length of tax proceedings. The court affirmed that it was now a general principle of law that, to the extent that Sweden had a duty to provide redress to victims of Convention violations through a right to compensation for damages, and that this duty could not be fulfilled even by interpreting national tort law in accordance with the Convention, compensation for damages could be ordered without direct support in law.

61. In line with this last judgment, the Supreme Court has continued to deal with cases involving various Articles of the Convention and its Protocols (see, for example, NJA 2010 p. 363, NJA 2012 p. 211, NJA 2012 p. 1038 and NJA 2013 p. 813, dealing with Article 6 § 1 alone or taken together with Article 13; NJA 2013 p. 502 and NJA 2013 p. 746, concerning Article 4 of Protocol No. 7 alone and in combination with Article 13; and NJA 2013 p. 1055, relating to Article 6 § 2 and Article 8).

2. Other developments

62. Since the autumn of 2007, following the Supreme Court's case-law developments (as set out above), the Office of the Chancellor of Justice (*Justitiekanslern*) has dealt with a large number of requests from individuals for compensation on the basis of violations of the Convention. In 2011, the Office estimated that it had dealt with roughly 1000 cases over the previous three years. During this time the Chancellor of Justice had also represented the Swedish State in a number of cases before the civil courts concerning alleged violations of the Convention. A majority of the cases that the Office had dealt with had concerned non-pecuniary damages for excessive length of proceedings under Article 6 § 1 of the Convention. Since November 2009, it had received more than 400 such complaints, and in more than half of them the Chancellor had found a violation and granted compensation. Furthermore, the Chancellor had dealt with a substantial number of cases (around 160) concerning the registration of individuals in the Security Police register. These cases had concerned one or more of Articles 8, 10, 11 and 13 of the Convention. Since 2011 there have been many other compensation cases determined by the Chancellor of Justice relating to alleged violations of Articles 3, 5, 6, 7, 8, 9, 13 and 14 of the Convention as well as Article 1 of Protocol No. 1, among others.

THE LAW

I. PRELIMINARY OBJECTION

A. The parties' submissions

63. The Government contended that the applicant had failed to exhaust domestic remedies available to them since it had not turned to the domestic courts or the Chancellor of Justice to claim compensation on the basis of the alleged violations of the Convention. With reference to the Court's recent case-law, in particular *Eskilsson v. Sweden* ((dec.), no. 14628/08, 24 January 2012) and *Eriksson v. Sweden* (no. 60437/08, 12 April 2012), the Government argued that Swedish law provided a remedy in the form of compensation for both pecuniary and non-pecuniary damage in respect of any breach of the Convention and that this remedy had been available to the applicant for the purpose of Article 35 § 1 of the Convention at the time when the application was lodged with the Court or, in any event, that it had since become available to it. In the Government's view, there were no circumstances that exempted the applicant from the obligation to use this remedy. They also noted that, since the limitation period of such a claim

was ten years from the point in time when the damage occurred, the remedy was still open to the applicant.

64. The applicant disagreed with the Government. It asserted that the compensation remedy in question was not accessible and effective due to its limited scope and field of application. In any event, it had not been obliged to pursue this remedy since an applicant was only required to exhaust one potentially effective remedy, which the applicant had done by making full use of the remedies provided by Swedish administrative law before the administrative courts. In this connection, the applicant also mentioned that it had made a complaint to the Parliamentary Ombudsman and petitioned the Supreme Administrative Court for a re-opening of the case concerning its request for exemption of documents.

B. The Court's assessment

65. The purpose of the requirement under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Thus, the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-70, 25 March 2014).

66. However, the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, among many other authorities, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII, and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

67. In several recent judgments and decisions, the Court has considered that there exists an effective remedy in Sweden that is capable of affording redress in respect of alleged violations of the Convention. Reference has

been made to the case-law established by the Supreme Court and the Chancellor of Justice in recent years and their continued development of precedents in this domain. In particular, the Supreme Court judgment of 3 December 2009 (see paragraph 60 above) affirmed that it is a general principle of law that compensation for Convention violations can be ordered without direct support in Swedish law, to the extent that Sweden has a duty to provide redress to victims of Convention violations through a right to compensation for damages. This judgment shifted the Supreme Court's case-law from establishing precedent in specific matters to introducing a general principle for the domestic courts and the Chancellor of Justice to follow in cases relating to all claims for compensation for alleged violations of the Convention. Consequently, the Court has found that potential applicants may, as a general rule, be expected to lodge a domestic claim for compensation for alleged breaches of the Convention before applying to the Court (see *Eriksson*, cited above, §§ 50-52; *Ruminski* (dec.), no. 10404/10, §§ 37 and 39, 21 May 2013; and *Marinkovic* (dec.), no. 43570/10, §§ 39 and 41, 10 December 2013).

68. Having said that, 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. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see for example, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Henriksson v. Sweden* (dec.), no. 7396/10, § 44, 21 October 2014).

69. The present application, with claims of violations of Articles 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1, was introduced on 3 April 2009. At that time, the Supreme Court and the Chancellor of Justice had already examined requests for compensation based on alleged breaches of the Articles mentioned, but, rather than establishing a general principle, their judgments and decisions had concerned specific matters which did not, in substance, resemble the issues arising in the present application. It cannot be said, therefore, that there was a domestic compensation remedy available to the applicant at the time when the application was lodged with the Court. Furthermore, the Court does not find any particular circumstances in this case to justify a departure from the general principle on the relevant date for the assessment of the exhaustion requirement.

70. Consequently, the Court finds that, in the instant case, it could not be required of the applicant to pursue the remedy invoked by the Government. The Government's objection as to the exhaustion of domestic remedies must therefore be dismissed.

71. The Court further notes that the complaints under Article 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. Accordingly, with the

exception of the complaint under Article 6 of the Convention (see paragraph 113 below), the application is declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

72. The applicant complained that the Tax Agency, through the decisions and judgments on coercive measures, had been given access to search its premises, thereby infringing its rights under Article 8 of the Convention. This provision reads as follows:

> "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. The parties' submissions

1. The applicant

73. The applicant pointed out that, according to the Court's case-law, a search of a law firm's premises constituted an interference with "private life" and "correspondence" and – potentially – "home" under Article 8. Also, documents and information entrusted to a law firm by its clients were protected under Article 8 as part of attorney-client privilege.

74. The applicant questioned whether a search and seizure at a law firm's offices was at all allowed under Swedish law, in particular the Code of Judicial Procedure. In any event, the relationship between the Coercive Measures Act and the applicable laws and regulations regarding the protection of information subject to client confidentiality was allegedly unclear, resulting in the law failing to meet the requirements of foreseeability and compatibility with the rule of law. Even if there was a domestic legal basis for the search of the applicant's office, the applicable legislation had not been precise enough.

75. The applicant further claimed that it was the owner of the USB memory stick and the external hard disk drive seized at the flat and that this data media had been used by Mr Jurik, the applicant's associate, while performing work for the applicant from his home and at a distance. In this connection, the applicant argued that the flat in question had not been the business premises of Draupner but the private dwelling of Mr Jurik. The courts had based their conclusion that the data media belonged to Draupner on a presumption and, although Draupner had presented arguments provided by the applicant to the effect that the media belonged to the applicant and contained privileged information, the applicant itself had not been able to

argue its ownership of the media as it had been denied legal standing in the matter. Moreover, while the information on the media was covered by secrecy in the taxation proceedings, professional secrecy should apply also in relation to the Tax Agency and the courts. The principle of attorney-client privilege had thus been infringed upon.

76. Even if the Court's case-law did not completely exclude the search of a lawyer's office, the applicant was of the opinion that due caution had not been exercised in the instant case. Allegedly, the conditions of the Coercive Measures Act had not been met, as illustrated by the fact that the Tax Agency's audits had not led to any remarks or levying of additional taxes. Thus, there could not have been any "reasonable suspicions" but only misconceived speculations on the part of the Agency. There had not been any safeguards in place to protect the applicant, or its clients, against abuse and the enforcement measures could rather be described as a "fishing expedition". The applicant also claimed that its professional reputation had been harmed. It argued that the case had attracted publicity and that this publicity had been one of the considerations which had led the law firm to change its name in 2009. Stating that it provided qualified services to, among others, other law firms and legal practitioners, the applicant emphasised the importance of retaining a good reputation among its peers.

77. In conclusion, the applicant asserted that both the search of its offices and the seizure of data media allegedly belonging to it had been disproportionate in relation to the legitimate aims pursued.

2. The respondent Government

78. The Government acknowledged that there had been an interference with the applicant's rights under Article 8 as concerned the search of its offices. They disputed, however, that there had been such an interference in relation to the seizure of the USB memory stick and the external hard disk drive since the domestic courts had reasonably considered that those items belonged to Draupner and not the applicant, in accordance with the presumption that any documents found on the premises linked to a business should be presumed to belong to that business. Nor had the search of the flat interfered with the applicant's rights as it did not belong to the applicant but had been the business premises of Draupner, as concluded by the courts in several decisions. With respect to the search of the applicant's offices, the Government further asserted that it had been in accordance with the law and necessary in a democratic society and that, thus, it had not involved a violation of Article 8.

79. As regards the search's compliance with the law, the Government contended that the Coercive Measures Act, on which the search was based, contained very detailed provisions on the conditions under which coercive measures were allowed as well as other protective provisions, including requirements of proportionality. Furthermore, the measure at issue had been

preceded by thorough considerations, was well reasoned and documented and had been extensively reviewed by the domestic courts. Consequently, the Government argued that the relevant legislation was compatible with the rule of law, that it was accessible to the applicant and that it had foreseeable consequences. Also, the search had pursued legitimate aims, namely the economic well-being of the country and the prevention of crime.

80. As to the necessity of the coercive measures used, the Government submitted that the instruments given to the Tax Agency by law, including the Coercive Measures Act, were essential in enabling it to investigate whether information supplied in tax returns was correct. In certain situations, it was necessary for the Agency to gain forced access to documents when the person or company being audited could not be expected to cooperate. The audit in which the coercive measures had been used had concerned Draupner and the target of the search had thus not been the applicant. Nevertheless, the domestic law and practice applied had allegedly afforded the applicant adequate and effective safeguards against abuse and arbitrariness. For instance, the Tax Agency's decision to use the measures under the Coercive Measures Act was narrow and targeted only material belonging to Draupner. It was described in detail in the Agency's submissions to the County Administrative Court and was based on reasonable suspicions. Furthermore, a representative of the applicant and other persons were present. In addition, Swedish law provided for the possibility of exemption of documents from a tax audit, and this issue had been examined numerous times by the courts at the request of Draupner, the audited company. According to the information available to the Government, the seized material had been outside the Tax Agency's control and kept by the courts throughout the exemption proceedings, which had lasted from the enforcement of the coercive measures, in March 2008, until 2012.

81. The Government further pointed out that Mr Jurik, the representative of the audited company, Draupner, was also an associate of the applicant. In their view, if a person is running a company and at the same time works as an associate of a law firm, it must be acceptable in certain situations that the person's place of work is searched in connection with an audit of the person's company.

82. Finally, in regard to the applicant's claim that its professional reputation had been impaired by the search of its offices, the Government submitted that no material had been seized there. Therefore, any publicity regarding the events could not have affected the applicant's reputation in such a way that Article 8 came into play.

B. The Court's assessment

1. Whether there was an interference

83. The search of a lawyer's office may be regarded as an interference with "private life", "home" and "correspondence" under Article 8 § 1. As regards the notion of "home", it covers not only a private individual's home; the word "*domicile*" in the French version of Article 8 has a broader connotation than the word "home" and may extend, for example, to a professional person's office. Consequently, "home" is to be construed as including also the registered office of a company run by a private individual, as well as a legal person's registered office, branches and other business premises (see, for instance, *Niemietz v. Germany*, 16 December 1992, §§ 29-32, Series A no. 251-B, and *Sallinen and Others v. Finland*, no. 50882/99, § 70, 27 September 2005, with further references).

84. It is not in dispute between the parties that the search of the offices of the applicant law firm constituted an interference with its rights under Article 8. The Court, considering that it is of no consequence to the question of interference that the coercive measures were not directed against the applicant as such, finds that the search interfered with the applicant's right to respect for its "home". Furthermore, while no material was seized at the law firm, those conducting the search in the offices of Mr Jurik and Mr Möller examined the contents of cupboards, shelves, computers and a safe and must inevitably have come across documents that could properly be regarded as the applicant's "correspondence" (cf. *Niemietz v. Germany*, cited above, § 32). The search thus interfered with the applicant's rights under Article 8 also on that count.

85. The parties disagree, however, on the question whether the seizure and copying, respectively, of the external hard disk drive and the USB memory stick constituted an interference with the applicant's rights under Article 8. In this respect, the Court notes that the data media was not seized on the premises of the applicant law firm, but at the flat belonging to Draupner. The domestic courts – notably by judgments of the County Administrative Court and the Administrative Court of Appeal of 16 October 2008 and 14 September 2010, respectively – concluded that the flat served as the business premises of Draupner. Having regard to the principle of subsidiarity – that the domestic courts are better placed to examine and interpret facts – the Court can see no reason to deviate from the findings of on this point. The courts went on to state that, as the company was the subject of a tax audit, any material linked to its business and found on its premises should be considered as belonging to it and as eligible for examination. The Court considers that this was a justifiable presumption, which was further supported by the fact that Mr Jurik, who used the flat also as a *pied-à-terre*, was the manager of the company. The applicant has stated that it was unable to argue its ownership of the media as it was denied legal

standing in the matter. Nevertheless, as was acknowledged by the applicant, in the proceedings concerning Draupner's requests for exemption of documents, the ownership arguments were in fact put to the domestic courts, presented by Draupner's representative Mr Lindstrand, a lawyer of the applicant law firm. In this connection, it should be noted that the courts also examined whether any documents or other material was covered by attorney-client privilege. There is, in the Court's view, nothing to indicate that the domestic courts failed to take into account the claims and arguments presented or that their conclusions were arbitrary or otherwise unreasonable.

86. In conclusion, the Court finds that the search of the offices of the applicant law firm interfered with its right to respect for its home and correspondence under Article 8, but that the search and seizures occurring at the flat belonging to Draupner did not constitute an interference with the applicant's rights under that provision.

2. Whether the interference was justified

87. The Court must therefore determine whether this interference satisfied the requirements of the second paragraph of Article 8, in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve the aim or aims in question.

(a) In accordance with the law

88. The Court has established that a measure must have some basis in domestic law, with the term "law" being understood in its "substantive" sense, not its "formal" one. In a sphere covered by statutory law, the "law" is the enactment in force as the competent courts have interpreted it (see *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III). The Court has also held that the domestic law must be compatible with the rule of law and accessible to the person concerned and that the person affected must be able to foresee the consequences of the domestic law for him or her (see *Kennedy v. the United Kingdom* (no. 26839/05, § 151, 18 May 2010). Given that search and seizure represent a serious interference with rights protected under Article 8, they must be based on a law that is particularly precise (see *Sallinen and Others v. Finland*, cited above, § 90).

89. The Court reiterates that the search of the offices of Mr Jurik and Mr Möller at the applicant law firm was made pursuant to the County Administrative Court's judgment of 10 March 2008 (concerning SNS) and the interim decision of 14 March 2008 by the Tax Agency's audit manager (concerning Draupner). The measure in question had a basis in the Coercive Measures Act, notably sections 7 and 8 and – as far as the interim decision was concerned – section 15. The authority of the audit manager under section 15 was limited to business premises, but not only to the business

premises of the audited party. An interim decision could be taken to search business premises other than the audited party's if there was a particular reason to assume that documents of significance to the audit could be found there and if there was a substantial risk that these documents would otherwise be withheld, corrupted or destroyed. The Court considers that the provisions establishing the circumstances under which a decision on search and seizure could be taken were sufficiently clear and detailed.

90. The Coercive Measures Act did not exclude law offices from searches of the present kind. It did, however, contain provisions on exemption of documents, notably section 16, which referred to the rules of the Code of Judicial Procedure on information covered by professional secrecy, including attorney-client privilege. The protection of attorney-client privilege concerned everything entrusted to or found out by a lawyer in his or her professional capacity. Thus, the safeguard was comprehensive and worded in unequivocal terms (cf. the differently worded provisions examined in *Sallinen and Others v. Finland*, cited above, §§ 83-93, which were not considered to meet these requirements). Thus, in all its parts, the applicable law was accessible to the applicant, which was able to foresee its consequences.

91. Moreover, the Court considers that the decision to search the applicant's offices was thoroughly reasoned and the enforcement proceedings were properly documented. In this context and in the following assessment, the Court is of the view that, having regard to the link between the companies SNS and Draupner and the closeness in time in the initial proceedings, the County Administrative Court's judgment and the interim decision of the Tax Agency's audit manager must be read in conjunction with the Agency's application to the County Administrative Court of 4 March 2008.

92. In conclusion, the Court finds that the measure at issue satisfied the criteria to be considered as having been "in accordance with the law".

(b) Legitimate aim

93. Noting that the search of the applicant's offices was undertaken in the context of a tax audit of several companies, the Court considers that it served a legitimate aim, namely the economic well-being of the country.

(c) Necessary in a democratic society

94. It remains for the Court to determine whether the measure at issue was "necessary in a democratic society", in other words, whether the relationship between the aim sought to be achieved and the means employed can be considered proportionate.

95. In comparable cases that have dealt with search warrants in criminal proceedings, the Court has examined whether domestic law and practice afforded adequate and effective safeguards against any abuse and

arbitrariness. Elements taken into consideration are, in particular, whether the search was based on a warrant issued by a judge and based on reasonable suspicion; whether the scope of the warrant was reasonably limited; and – where the search of a lawyer's office was concerned – whether the search was carried out in the presence of an independent observer in order to ensure that materials subject to professional secrecy were not removed (see *Robathin v. Austria*, no. 30457/06, § 44, 3 July 2012, with further references). In this context, it should be noted that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 of the Convention (*Niemitz v. Germany*, cited above, § 37, and *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 38, 22 May 2008).

96. In the present case, the Court notes that the Tax Agency's application to the County Administrative Court was quite detailed, stating that it had proved impossible to determine the ownership and declared business costs of a number of named, interrelated companies through communication with the persons involved in those companies and that it was therefore necessary to gain access to documents that could shed light on these issues. The application mentioned the known connections of Mr Jurik to the various companies, including the involvement in the three Swedish companies subjected to the original audit and his management of the parent company Draupner, and mentioned why, in the Agency's view, there was a need to search the two premises specified. The connection between SNS and Draupner was mentioned already at this early stage of the proceedings. In these circumstances, the Court finds that the judge examining the application had ample information to satisfy himself that there were reasonable grounds to conduct the search and that material of significance might be found at the applicant law firm. Neither the fact that nothing was found and seized at the law firm nor the fact that the tax audits of SNS and Draupner led to no levying of additional taxes can be taken as proof that, as has been asserted by the applicant, the Tax Agency had no "reasonable suspicion"; rather, the reasonableness of the suspicion must be assessed in the light of the information available at the time of the court's judgment approving the search.

97. While the granting of the Agency's application was obtained in an *ex parte* procedure, the Court considers that there may be good reason not to give forewarning of a proposed search; the scrutiny of the judge of the original application in the present case still provided an important safeguard against abuse (cf. *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII). In the circumstances of the case, the interim decision taken by the audit manager under section 15 of the Coercive Measures Act to effectively extend the search to cover also Draupner should, in the Court's view, be seen as a continuation of the original judgment issued by

the County Administrative Court and was, moreover, immediately referred to the court for confirmation. Furthermore, given that the decision was taken during the actual enforcement, at a time when it had become apparent to persons involved what transactions and documents were to be examined, the interim and immediate nature of the decision must be considered to have been justified.

98. It should further be noted that the proceedings at the applicant law firm was carried out in the presence of a legal representative appointed by the applicant, who monitored the searches conducted in the offices of Mr Jurik and Mr Möller and was able to object to the seizure of any material deemed to be subject to professional secrecy. While nothing was seized at the law firm, the representative did request that the external hard disk drive and the USB memory stick, appropriated at the flat belonging to Draupner, be exempted from the audit on that ground.

99. Moreover, although the Court has concluded above (paragraphs 85-86) that the search and seizure at the flat as such did not interfere with the applicant's rights under Article 8, it acknowledges that the data media mentioned could have contained information coming under attorney-client privilege pertaining to the applicant and its clients. However, this issue has been extensively examined in the domestic proceedings concerning exemption of documents, in which a lawyer of the applicant law firm specified the documents for which exemption was requested and put forward arguments to that end. While some documents were exempted because they were considered to be of a private nature, none of the material seized or copied by the Tax Agency was found to contain information subject to professional secrecy. It should be mentioned that, apparently, the challenged material was kept by the courts throughout the exemption proceedings and was thus during that time not available for examination by the Tax Agency.

100. Finally, the Court cannot find that the search at issue generally was conducted in an excessive manner or otherwise inflicted unnecessary harm on the applicant. In support of its claim that the search had damaged its reputation and led to its changing names, the applicant has submitted copies of a few news items posted on two Swedish legal research websites. These articles, which summarily describe the facts and outcomes of some of the domestic judgments and decisions in the case, do not show that the reputation of the law firm was damaged to any noteworthy degree.

101. Having regard to the above, the Court concludes that the search of the applicant's offices was not disproportionate to the legitimate aims pursued. The interference can accordingly be regarded as having been "necessary in a democratic society".

102. It follows that there has been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

103. The applicant claimed that the seizure of the USB memory stick and the external hard disk drive at issue in the case had violated its right to property under Article 1 of Protocol No. 1. Also the applicant's professional reputation, to be considered property, had been adversely affected by the decision to search its premises. Article 1 of Protocol No. 1 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. The parties' submissions

1. The applicant

104. The applicant asserted that the domestic courts had failed to recognise that the data media in question belonged to it as they had not considered that the media had been seized at a private dwelling rather than business premises. Furthermore, it had been denied legal standing to argue this point. The applicant also claimed that its professional reputation had been harmed by the publicity caused by the search of its offices and that this had been one of the considerations which had led the law firm to change its name in 2009.

2. The respondent Government

105. The Government disagreed with the applicant's ownership contention, arguing that the domestic courts had considered the data media to belong to Draupner and not the applicant. In regard to the applicant's professional reputation, the Government disputed that the change of name of the law firm had been necessary due to the coercive measures taken or the limited publicity this might have entailed. In this respect, they pointed out that no material had been seized on the applicant's premises and that no taxation decisions involving the applicant or any of its clients had been taken as a result of the coercive measures.

B. The Court's assessment

106. Having already taken into consideration, in the context of Article 8 of the Convention, the applicant's claims that the domestic courts had failed

to recognise its ownership of the data media in question and that its professional reputation had been harmed due to the coercive measures employed, the Court finds that no separate issue arises under Article 1 of Protocol No. 1.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

107. The applicant complained that it had been denied *locus standi* in two sets of proceedings, regarding the coercive measures as such (allowing the Tax Agency to search its premises) and the subsequent request for exemption of documents. It further asserted that the latter proceedings had failed to meet the requirements of independence and impartiality, since a civil servant of the Tax Agency had been permitted to sit as judge in the Administrative Court of Appeal. It relied on Article 6 § 1 of the Convention which provides the following:

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

A. The parties' submissions

1. The applicant

108. The applicant asserted that the matters raised came within the ambit of Article 6 § 1, as their complaints did not concern a tax dispute but related to its property and premises and the principle of attorney-client privilege.

2. The respondent Government

109. Referring to the Court's case-law concerning tax disputes, the Government left it to the Court to determine whether Article 6 § 1 under its civil head was applicable to the proceedings concerning coercive measures and exemption of documents.

B. The Court's assessment

110. Noting that the various decisions and judgments in the domestic proceedings at issue were taken in the context of tax audits carried out by the Tax Agency with a view to determine the liability to tax of several companies, the Court reiterates that it has consistently held that, generally, tax disputes fall outside the scope of "civil rights and obligations" under Article 6 of the Convention, despite the pecuniary effects which they necessarily produce for the taxpayer (see, among other authorities, *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII).

111. In several judgments concerning Sweden, Article 6 has been deemed applicable to tax disputes in which tax surcharges have been imposed because that imposition involved a determination of a "criminal charge" within the meaning of Article 6 (see, for instance, *Janosevic v. Sweden*, no. 34619/97, §§ 64-71, ECHR 2002-VII, and *Carlberg v. Sweden*, no. 9631/04, § 41, 27 January 2009). In the present case, however, the Tax Agency's application of 4 March 2008 did not mention an intention of imposing tax surcharges, and the tax audits did not, in fact, lead to any taxation decisions being taken.

112. Notwithstanding the use of coercive measures in the present case, the Court cannot find therefore that there was a determination of a "criminal charge". Nor does it find that the proceedings at issue contained any element which would give reason to deviate from the above conclusion that a tax dispute fall outside the scope of "civil rights and obligations".

113. Accordingly, Article 6 § 1 of the Convention does not apply in the present case. The present complaint must therefore be declared inadmissible.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

114. The applicant complained also under Article 13 of the Convention about the fact that it had been denied *locus standi* in the proceedings concerning the authorisation to search its premises and the request for exemption of documents. Article 13 reads as follows:

> "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. The parties' submissions

1. The applicant

115. The applicant submitted that it had not had an effective remedy to present arguments in the two proceedings at issue. It argued that the premises of a law firm must be protected from intrusions from the State in order for the principle of attorney-client privilege to retain any practical meaning. The use of coercive measures against a law firm should therefore be prohibited unless the firm itself was on reasonable and tangible grounds suspected of criminal activities, which was not the case in the present context. The principle of attorney-client privilege was also at stake in the proceedings concerning exemption of documents, as the data media seized and copied by the Tax Agency allegedly contained information which had been entrusted to the applicant in its capacity of a law firm in the course of

its legal practice. Moreover, the applicant insisted that it was the owner of the data media, an assertion it had not been able to argue as a party before the courts.

2. The respondent Government

116. The Government asserted that the applicant did not have an arguable claim of a violation of its rights under Article 8 and that Article 13 was therefore inapplicable to both aspects of the present complaint. In any event, they argued that the applicant had in fact had an effective remedy regarding the search of its offices, as it could have appealed against the County Administrative Court's judgment of 26 March 2008 affirming the Tax Agency's interim decision of 14 March 2008. While the determination upon appeal would have occurred after the search, certain cases and circumstances called for expediency and immediate enforcement in order for the purpose of a search to be fulfilled. The possibility of a court examination after the enforcement provided, in the Government's view, sufficient procedural safeguards. If a search was found to have lacked a legal basis, the individual could be awarded damages in court proceedings. In regard to the issue of exemption of documents, the Government further pointed out that Draupner, the object of the seizure, had had a remedy to request exemption and had in fact used it.

B. The Court's assessment

117. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they are secured in the domestic legal order. The effect of this Article is thus to require a remedy in domestic law in respect of grievances which can be regarded as "arguable" in terms of the Convention, allowing the competent national authority both to deal with an "arguable complaint" and to grant appropriate relief. The scope of the obligations under Article 13 varies depending on the nature of the applicant's complaint, and the State is afforded some discretion as to the manner in which it conforms to its obligations under this provision. However, the domestic remedy must be "effective" in practice as well as in law (see, for instance, *Keegan v. the United Kingdom*, no. 28867/03, § 40, ECHR 2006-X, and *De Souza Ribeiro v. France* [GC], no. 22689/07, § 78, ECHR 2012).

118. The Court has concluded above (see paragraphs 101-102) that, while there has been an interference with the applicant's rights under Article 8, there has been no violation of that provision because the interference can be regarded as having been "necessary in a democratic society". Nevertheless, having regard, in particular, to the significant interference represented by the Tax Agency's forced access to and search of the offices

of the applicant law firm and the potential encroachment such an action may entail on professional secrecy, the Court considers that the applicant had an "arguable complaint" under Article 8 of the Convention and that, consequently, it was entitled to an effective remedy within the meaning of Article 13.

119. The applicant has complained about its lack of legal standing, and thus access to an effective remedy, in two sets of proceedings: first, those in which the Tax Agency was authorised to search the law firm's offices and, second, those in which the requests for exemption of documents were determined.

120. In regard to the latter proceedings, it should first be reiterated that the data media for which exemption was sought had not been seized on the premises of the applicant law firm and did not, according to the domestic courts, belong to it. The Court has therefore concluded that the seizure did not interfere with the applicant's rights under Article 8 (see paragraphs 85-86 above). Nevertheless, the Court has also considered that there was a possibility that the data media contained information for which attorney-client privilege applied (paragraph 99).

121. It is true that, through the County Administrative Court's decision of 26 March 2008, upheld on appeal, the applicant was denied legal standing to request exemption of documents. However, Draupner's subsequent exemption request was examined on the merits by the courts. While the data media in question was found to contain no privileged information, the courts conducted extensive and thorough examinations before reaching that conclusion. More importantly, Draupner was represented in the exemption proceedings by Mr Lindstrand, a lawyer of the applicant law firm, who presented arguments relating to the alleged attorney-client privilege pertaining to the information contained on the data media, and the courts had regard to those submissions. Thus, whereas the applicant was not formally a party to the proceedings relating to Draupner, the substance of its claims was examined in those proceedings and it was able to present all its arguments on the issue. In these circumstances, the applicant must be considered to have had an effective remedy in regard to the question of exemption of documents.

122. Turning to the earlier proceedings in which the Tax Agency was given permission to search the offices of the applicant law firm, the Court notes that there were two determinations of this issue. First, the County Administrative Court, by a judgment of 10 March 2008, granted the Tax Agency's application in relation to SNS. The applicant, who had not been a party to the proceedings before that court, appealed to the Administrative Court of Appeal but was denied legal standing as the appellate court found that the applicant was not sufficiently affected by the appealed judgment to give it a right to appeal (see paragraph 16 above). Second, the Tax Agency, on 14 March 2008, took an interim decision to use coercive measures in

regard to Draupner which, after referral, was confirmed by the County Administrative Court on 26 March 2008. The applicant did not appeal against the latter judgment.

123. The applicant's submissions in the case have concentrated on the Tax Agency's interim decision and the subsequent proceedings. The Government have contended, in this connection, that the applicant had an effective remedy, arguing that that it could have appealed against the County Administrative Court's judgment of 26 March 2008. The Court disagrees with the Government's contention. As has been concluded above (see paragraph 97), the Tax Agency's interim decision must be seen as a continuation of the original judgment of the County Administrative Court of 10 March 2008, which allowed the applicant's offices to be searched and led to the enforcement during which the interim decision extended the scope of that search. The applicant did appeal against the original judgment, but the appeal was dismissed because the applicant was not considered to be sufficiently affected. Against this background, an appeal by the applicant against the County Administrative Court's judgment of 26 March 2008, concerning an issue identical in substance to that examined in the original judgment, would obviously have been to no avail.

124. The Court reiterates that, while the coercive measures employed in the case were not directed against the applicant law firm, the search in question was carried out on its premises where contents of cupboards, shelves, computers and a safe were examined. In the Court's view, the search therefore clearly affected the applicant, which had a justified interest in obtaining a review of whether the search complied with its rights under the Convention, in particular Article 8. Due to the special nature of a search of the present kind, notably the importance of not giving forewarning to persons concerned by the measure, a review that takes place after the enforcement may still be considered effective (see *Iliya Stefanov v. Bulgaria*, cited above, § 59). In the present case, however, the applicant was denied legal standing and thus did not have access to any remedy for the examination of its objections to the search. In these circumstances, the applicant did not have an "effective remedy before a national authority".

125. It follows that there has been a violation of Article 13 of the Convention in conjunction with Article 8.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant did not submit a claim for pecuniary or non-pecuniary damage. Accordingly, the Court considers that there is no call to award it any sum on that account.

B. Costs and expenses

128. The applicant claimed 100,000 Swedish kronor (approximately 10,600 euros (EUR)) for the costs and expenses incurred before the domestic courts and the Court.

129. The Government submitted that they had no objection to the amount claimed if the Court were to find a violation of the Convention and the costs and expenses were considered to have been actually and necessarily incurred in order to avoid, or obtain redress for, the violation found.

130. 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 documents in its possession and the above criteria, as well as the fact that no violation has been found in regard to the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 and that the complaint under Article 6 of the Convention has been declared inadmissible, the Court considers it reasonable to award the sum of EUR 5,000 covering costs and expenses under all heads.

C. Default interest

131. 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. *Declares* the complaints concerning Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with 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, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(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 English, and notified in writing on 20 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President