



### About this application form

This form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the "Notes for filling in the application form". Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) requires that a concise statement of facts, complaints and information about compliance with the admissibility criteria MUST be on the relevant parts of the application form itself. The completed form should enable the Court to determine the nature and scope of the application without recourse to any other submissions.

#### Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

#### Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

### A. The applicant

#### A.1. Individual

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to section A.2.

1. Surname

2. First name(s)

3. Date of birth

 e.g. 31/12/1960  
D D M M Y Y Y Y

4. Place of birth

5. Nationality

6. Address

7. Telephone (including international dialling code)

8. Email (if any)

9. Sex

male

female

#### A.2. Organisation

This section should only be filled in where the applicant is a company, NGO, association or other legal entity. In this case, please also fill in section D.1.

10. Name

11. Identification number (if any)

12. Date of registration or incorporation (if any)

 e.g. 27/09/2012  
D D M M Y Y Y Y

13. Activity

14. Registered address

15. Telephone (including international dialling code)

16. Email

**B. State(s) against which the application is directed**

17. Tick the name(s) of the State(s) against which the application is directed.

- |   |  |
|---|--|
| <input type="checkbox"/> ALB - Albania                | <input type="checkbox"/> ITA - Italy               |
| <input type="checkbox"/> AND - Andorra                | <input type="checkbox"/> LIE - Liechtenstein       |
| <input type="checkbox"/> ARM - Armenia                | <input type="checkbox"/> LTU - Lithuania           |
| <input type="checkbox"/> AUT - Austria                | <input type="checkbox"/> LUX - Luxembourg          |
| <input type="checkbox"/> AZE - Azerbaijan             | <input type="checkbox"/> LVA - Latvia              |
| <input type="checkbox"/> BEL - Belgium                | <input type="checkbox"/> MCO - Monaco              |
| <input type="checkbox"/> BGR - Bulgaria               | <input type="checkbox"/> MDA - Republic of Moldova |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - North Macedonia     |
| <input type="checkbox"/> CHE - Switzerland            | <input type="checkbox"/> MLT - Malta               |
| <input type="checkbox"/> CYP - Cyprus                 | <input type="checkbox"/> MNE - Montenegro          |
| <input type="checkbox"/> CZE - Czech Republic         | <input type="checkbox"/> NLD - Netherlands         |
| <input type="checkbox"/> DEU - Germany                | <input type="checkbox"/> NOR - Norway              |
| <input type="checkbox"/> DNK - Denmark                | <input type="checkbox"/> POL - Poland              |
| <input type="checkbox"/> ESP - Spain                  | <input type="checkbox"/> PRT - Portugal            |
| <input type="checkbox"/> EST - Estonia                | <input type="checkbox"/> ROU - Romania             |
| <input type="checkbox"/> FIN - Finland                | <input type="checkbox"/> RUS - Russian Federation  |
| <input type="checkbox"/> FRA - France                 | <input type="checkbox"/> SMR - San Marino          |
| <input type="checkbox"/> GBR - United Kingdom         | <input type="checkbox"/> SRB - Serbia              |
| <input type="checkbox"/> GEO - Georgia                | <input type="checkbox"/> SVK - Slovak Republic     |
| <input type="checkbox"/> GRC - Greece                 | <input type="checkbox"/> SVN - Slovenia            |
| <input type="checkbox"/> HRV - Croatia                | <input checked="" type="checkbox"/> SWE - Sweden   |
| <input type="checkbox"/> HUN - Hungary                | <input type="checkbox"/> TUR - Turkey              |
| <input type="checkbox"/> IRL - Ireland                | <input type="checkbox"/> UKR - Ukraine             |
| <input type="checkbox"/> ISL - Iceland                |  |

**C. Representative(s) of the individual applicant**

An individual applicant does not have to be represented by a lawyer at this stage. If the applicant is not represented please go to section E.

Where the application is lodged on behalf of an individual applicant by a non-lawyer (e.g. a relative, friend or guardian), the non-lawyer must fill in section C.1; if it is lodged by a lawyer, the lawyer must fill in section C.2. In both situations section C.3 must be completed.

**C.1. Non-lawyer**

18. Capacity/relationship/function

19. Surname

20. First name(s)

21. Nationality

22. Address

23. Telephone (including international dialling code)

24. Fax

25. Email

**C.2. Lawyer**

26. Surname

27. First name(s)

28. Nationality

29. Address

30. Telephone (including international dialling code)

31. Fax

32. Email

**C.3. Authority**

The applicant must authorise any representative to act on his or her behalf by signing the first box below; the designated representative must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated above to represent me in the proceedings before the European Court of Human Rights concerning my application lodged under Article 34 of the Convention.

33. Signature of applicant

34. Date

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2015

I hereby agree to represent the applicant in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

35. Signature of representative

36. Date

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2015

**Electronic communication between the representative and the Court**

37. Email address for eComms account (if the representative already uses eComms, please provide the existing eComms account email address)

By completing this field you agree to using the eComms system.

**D. Representative(s) of the applicant organisation**

Where the applicant is an organisation, it must be represented before the Court by a person entitled to act on its behalf and in its name (e.g. a duly authorised director or official). The details of the representative must be set out in section D.1.

If the representative instructs a lawyer to plead on behalf of the organisation, both D.2 and D.3 must also be completed.

**D.1. Organisation official**

38. Capacity/relationship/function (please provide proof)

39. Surname

40. First name(s)

41. Nationality

42. Address

43. Telephone (including international dialling code)

44. Fax

45. Email

**D.2. Lawyer**

46. Surname

47. First name(s)

48. Nationality

49. Address

50. Telephone (including international dialling code)

51. Fax

52. Email

**D.3. Authority**

The representative of the applicant organisation must authorise any lawyer to act on its behalf by signing the first box below; the lawyer must indicate his or her acceptance by signing the second box below.

I hereby authorise the person indicated in section D.2 above to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

53. Signature of organisation official

54. Date

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2015

I hereby agree to represent the organisation in the proceedings before the European Court of Human Rights concerning the application lodged under Article 34 of the Convention.

55. Signature of lawyer

56. Date

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2015

**Electronic communication between the representative and the Court**

57. Email address for eComms account (if the representative already uses eComms, please provide the existing eComms account email address)

By completing this field you agree to using the eComms system.

**Subject matter of the application**

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the four-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

**E. Statement of the facts**

58.

**INTRODUCTION**

1. Mr Henrik Gustavsson (the "Applicant") is a Swedish citizen. He was born in 1981 and lives in Linköping, Sweden. Today, he is a manager at one of the largest construction companies in the Nordics, a construction industry consultant, and chair of a higher vocational education programme in construction management.

2. The Applicant's company, HGS i Linköping AB (the "Company") was blockaded by the Swedish Building Worker's Trade Union (sv. Svenska Byggnadsarbetareförbundet) (the "Trade Union") after the Company refused to sign a collective agreement – an agreement, it should be noted, that the Court has since ruled incompatible with the Convention. 16 years and nine Swedish court rulings later, the Applicant, now taking on the Company's claim, remains empty-handed. Even though the Swedish courts have held that the Trade Union violated the Company's Convention rights, the Applicant has not received damages and has even been ordered to pay the Trade Union's legal costs of SEK 2,716,200 (approximately EUR 300,000). The Applicant now turns to the Court and asks it to find that Sweden has violated his rights under Article 11 and Article 1 of Protocol No. 1 by failing to provide an adequate remedy, whereby he could vindicate his rights against the Trade Union. The Applicant also seeks just satisfaction for the amount of the Trade Union's legal costs.

**THE APPLICANT'S BUSINESS BECOMES SUBJECT TO A TRADE UNION BLOCKADE**

3. In 2006, the Applicant founded the Company in Linköping, which he solely owned and managed until the Company went bankrupt in 2007.

4. In the Spring of 2006, the Trade Union contacted the Applicant and demanded that the Company either: (i) become bound by its collective agreement (the "Construction Agreement") by becoming a member of the employer representative organisation, the Swedish Construction Federation (sv. Sveriges Byggindustrier); or (ii) conclude a substitute agreement with the Trade Union (the "Substitute Agreement").

5. The Applicant and the Company's employees had serious reservations about either option. They did not want to contribute, financially or otherwise, to the political agenda of the Trade Union or the Swedish Construction Federation. Once bound by either the Construction Agreement or the Substitute Agreement, the Trade Union would have the right to monitor the wages of the Company's employees, for which it would charge a "monitoring fee" equivalent to 1.5% of the employees' total wages. Under the Construction Agreement, the Company would be required to deduct this directly from its employees' wages. The Company would also have to become a member of the Swedish Construction Federation and pay a membership fee – thereby contributing to the organisation's political agenda. Under the Substitute Agreement, the Company would instead pay this amount in addition to its employees' wages.

6. The Applicant and the Company's employees were not alone in their concerns. In 2001, five employees of another Swedish construction firm had brought a case before the European Court of Human Rights (the "Court"). They argued that the Trade Union's collection of monitoring fees via employee wage deductions constituted a covert imposition of trade union membership fees. The Court found a violation due to the lack of transparency regarding how the funds were used, which made it uncertain whether the funds were used exclusively to cover the cost of monitoring activities or also to fund the Trade Union's political activities (see *Evaldsson and Others v. Sweden*, no. 75252/01, 13 February 2007).

7. On 31 March 2006, with reference to the then ongoing *Evaldsson* case, the Applicant notified the Trade Union that the Company was only willing to conclude a Substitute Agreement if the monitoring fee provisions was removed.

8. The Trade Union refused. On 22 June 2006, it initiated a blockade against the Company. The blockade resulted in the Trade Union using its position and contacts to deter the Company's suppliers and partners from doing business with the Company. The Trade Union also put up a sign at the Company's construction sites, informing the public that the Company was subject to a blockade. The blockade caused the Company to lose all of its employees and its most important business partner. It also made it difficult for the Company to obtain new construction contracts, to restock supplies in a timely manner, and to hire subcontractors and new employees.

**Statement of the facts (continued)**

59.

**THE COMPANY BRINGS LEGAL PROCEEDINGS AGAINST THE TRADE UNION BEFORE THE SWEDISH LABOUR COURT**

9. On 3 July 2006, the Company brought legal proceedings against the Trade Union before the Swedish Labour Court (sv. Arbetsdomstolen), to petition for the blockade to be lifted. It also applied for an interim order to the same effect. The Company stated that the blockade was unlawful as it was aimed at forcing the conclusion of a collective agreement that violated the Company's rights under Article 11 and Article 1 of Protocol No. 1 of the Convention. On 30 August 2006, the Swedish Labour Court rejected the Company's request for an interim order and remained seized of the matter (see AD 2006 no. 94, bundle pp. 39–44).

**THE TRADE UNION ENDS ITS BLOCKADE**

10. Meanwhile, on 13 February 2007, the Court delivered its judgment in Ewaldsson, holding that the Trade Union's monitoring fee arrangements violated Article 1 of Protocol No. 1 to the Convention (see Ewaldsson and Others v. Sweden, no. 75252/01, § 64, 13 February 2007).

11. Nevertheless, the Trade Union continued its blockade for an additional four months. In June 2007, it eventually offered the Company the possibility to sign the Substitute Agreement without monitoring fees. On 14 June 2007, the Company and the Trade Union concluded the Substitute Agreement with the monitoring fees provisions removed. The Trade Union then terminated its blockade, and the Company withdrew its case before the Swedish Labour Court.

12. The effects of the blockade, however, were too much for the Applicant's business to withstand. The Company was declared bankrupt on 19 June 2007. According to the bankruptcy administrator, "the blockade appeared [...] to be the main cause for insolvency" (in-office translation, see bundle p. 49).

**THE APPLICANT BRINGS ACTION AGAINST THE TRADE UNION BEFORE THE GENERAL COURTS**

13. After the Company went into bankruptcy, the bankruptcy administrator considered taking legal action against the Trade Union for violating the Company's rights. After consulting the relevant regulatory body for bankruptcies (sv. Tillsynsmyndigheten i konkurser), the administrator concluded that the Bankruptcy Act precluded him from bringing such proceedings against the Trade Union (see bundle pp. 58–59).

14. The Applicant, therefore, sought to acquire the claims against the Trade Union from the bankruptcy estate to vindicate his rights and the rights of the Company. The Applicant had been profoundly affected by the unlawful blockade against his business. As the sole owner of the Company, he had a direct interest in the Company's business and had no competing interests with it. On 10 March 2009, the bankruptcy administrator assigned the Company's claim, for both economic and non pecuniary damages, against the Trade Union to the Applicant (see bundle p. 51).

15. On 9 July 2009, the Applicant commenced legal proceedings against the Trade Union before the Stockholm District Court (sv. Stockholms tingsrätt), for economic and non pecuniary damages, on the grounds that the Trade Union's blockade had breached the Company's negative freedom of association and the right to protection of property under Article 11 and Article 1 of Protocol No. 1 of the Convention respectively. The Trade Union requested that the case be dismissed for lack of jurisdiction. It argued that the matter constituted a labour dispute and should, therefore, have been brought before the Labour Court and not the general courts. On 3 June 2010, the Stockholm District Court rejected the Trade Union's jurisdictional objections and held that the general courts were competent to hear the case (see bundle pp. 64–67). On appeal, the Court of Appeal (sv. Svea hovrätt) upheld this ruling (see bundle pp. 68–70). The Trade Union was denied leave to appeal to the Supreme Court on 1 June 2011 (sv. Högsta domstolen) (see bundle pp. 71–73).

16. The case was then remitted back to the Stockholm District Court, where the Trade Union argued that there was no legal basis for the court to order the Trade Union to pay damages for alleged breaches of the Convention. The Stockholm District Court decided that the issue of liability should be tried as a preliminary issue in accordance with Chapter 17, Section 5 of the Swedish Code of Judicial Procedure (sv. Rättegångsbalken, 1942:740). On 10 July 2012, the Stockholm District Court delivered a separate judgment on the preliminary issue finding that the Trade Union could not be held liable for violating the Convention (see bundle pp. 74–84). On 28 May 2013, the Court of Appeal agreed with the Stockholm District Court that, given the Trade Union was a private legal entity, it could not be held liable for violating the Convention (see bundle pp. 85–102).

**Statement of the facts (continued)**

60.

17. The Applicant appealed to the Supreme Court. On 17 December 2015, the Supreme Court found that the Trade Union could be held liable for damages for violating rights under the Convention, but that liability should be limited in two ways: (i) that the Trade Union could only be held liable for economic damages, and not for non-pecuniary damages; and (ii) that the Trade Union could only be held liable for damages if the industrial action taken could be considered to constitute a "manifestly unjustified action" (sv. kvalificerat otillbörligt handlande) (see NJA 2015 p. 899, bundle pp. 103–120).

18. The "manifestly unjustified" standard had only been applied by the Swedish courts on a single previous occasion, in a civil claim similar to a case on tortious interference (see NJA 2005 p. 608, bundle pp. 31–38). In the Applicant's case, the Supreme Court held that an industrial action that constitutes a violation of the Convention could constitute a manifestly unjustified action where warranted by the nature and severity of the Convention violation and the values behind the right to take industrial action under the Swedish Constitution; where there is an element of intent on the part of the violating party; and depending on whether it was possible to regulate the claim elsewhere, such as through labour law.

19. Following the Supreme Court's separate judgment on the preliminary issue, the case was remitted back to the Stockholm District Court. On 8 December 2017, the Stockholm District Court found that the Trade Union's industrial action had violated the Company's right to negative freedom of association and its right to protection of property under Article 11 and Article 1 of Protocol No. 1 of the Convention respectively; that the Trade Union had exercised its blockade powers in a manner that was manifestly unjustified; and that this had caused the Company economic loss of approximately SEK 140,000 and ultimately had led to the Company's insolvency. Therefore, it awarded the Applicant damages (see bundle pp. 121–155).

20. Both the Applicant and the Trade Union appealed the judgment to the Court of Appeal. On 13 March 2019, the Court of Appeal upheld the Stockholm District Court's determination that the Trade Union's blockade constituted a violation of Article 11 and Article 1 of Protocol No. 1 to the Convention. However, it held that the Trade Union's action was not "manifestly unjustified", and therefore the Applicant was not entitled to damages. The Court of Appeal provided two key reasons for its decision. First, it questioned whether the Trade Union had violated the Company's rights intentionally. Secondly, it considered that it was a relevant factor that the Trade Union could have possibly been held responsible for its actions in a labour dispute before the Labour Court. Whether the Applicant could in fact have brought such a claim against the Trade Union was, however, not considered by the Court of Appeal (see bundle pp. 156–169).

21. Crucially, despite the fact that the Court of Appeal held that the Company's rights under the Convention had been breached, the Court of Appeal nevertheless treated the Applicant as having lost the case entirely and ordered him to pay the Trade Union's legal costs totalling SEK 2,716,200 (see bundle pp. 167–168). The Applicant paid the Trade Union on 28 March 2019.

22. The Applicant subsequently appealed the judgment to the Supreme Court, but was denied leave to appeal on 24 September 2019 (see bundle pp. 170–172).

**THE APPLICANT'S COMPLAINT TO THE CHANCELLOR OF JUSTICE**

23. On 16 June 2021, the Applicant submitted a claim for damages to the Chancellor of Justice (sv. Justitiekanslern) with a view to exhausting domestic remedies (see bundle pp. 173–204). He claimed that the state had violated the Convention by failing to provide an adequate and effective remedy whereby he could vindicate his rights against the Trade Union.

24. The Chancellor dismissed the claim on 2 June 2022 (see bundle pp. 205–212). The Chancellor found the remedies available to the Applicant to be adequate, and that the State had not breached its obligations under the Convention. Notwithstanding that the Applicant had not been awarded any compensation, the Chancellor stated that the Applicant had failed to show that the available remedies were incapable of preventing trade unions from abusing of their power or of providing compensation for any such abuse.

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

| 61. Article invoked                        | Explanation  |
|--|--|
| Article 11 and Article 1 of Protocol No. 1 | <p>25. The Trade Union's unlawful actions drove the Applicant's company into bankruptcy. The only practicable way to defend his Convention rights was to acquire the right to litigate the case from the estate, which had the legal effect of precluding him from the jurisdiction of the Labour Court. When he turned to the general courts instead, they imposed an unusually high threshold for damages, which he could not meet. The Applicant was then ordered to pay the Trade Union's legal costs, notwithstanding the courts' findings that the Trade Union had violated his Convention rights. Sweden has thus allowed a system whereby trade unions can abuse their power without consequence and victims walk away empty-handed and out-of-pocket. Sweden has done nothing to execute the Evaldsson judgment, which requires that trade unions can be held liable for its actions. And Sweden has failed in its positive obligations to provide an adequate remedy under Article 11 and Article 1 of Protocol No. 1 to the Convention.</p> |
|  | <p>APPLICABLE LEGAL TEST</p>   |
|  | <p>26. Sweden violated the Convention if: (A) the Trade Union's blockade constituted an interference with the Applicant's rights; (B) Sweden did not provide an adequate remedy whereby the Applicant could seek to vindicate his rights against the Trade Union; and (C) based on an overall assessment, Sweden, did not strike a fair balance between the competing interests of the Applicant and of the community as a whole.</p>  |
|  | <p>27. On part (B) of the test, the Court has held that an adequate remedy should allow "the aggrieved party to assert its rights effectively" (Kotov v. Russia [GC], no. 54522/00, § 114, 3 April 2012). In order to ensure a consistent and harmonious interpretation of the Convention, the Applicant, therefore, submits that the Court's case-law on effective remedies under Article 13 is also relevant for present purposes. For a remedy to be effective under Article 13, the remedy must not place an excessive burden of cost on a claimant whose action is justified (see inter alia Burdov v. Russia, no. 2, no. 33509/04, § 99, ECHR 2009). Therefore, in assessing whether Sweden failed to provide the Applicant with an adequate remedy, the Court must determine whether the Applicant's claims against the Trade Union were justified, and whether the costs order imposed an excessive burden of cost on the Applicant.</p>   |
|  | <p>(A) THE TRADE UNION INTERFERED WITH THE APPLICANT'S RIGHTS</p>  |
|  | <p>28. As affirmed by the domestic courts, the Trade Union's blockade constituted an interference with Article 11 and Article 1 of Protocol No. 1. Even though the blockade was directed towards the Company, the Applicant acquired the right to continue to pursue claims against the Trade Union (sv. fodran) following the Company's bankruptcy. In any event, the Applicant himself was materially affected by the unlawful blockade. As the sole owner of the Company, he had a direct interest in the Company's business and had no competing interests with it. Consequently, the blockade constituted an interference with both the Company's and the Applicant's rights (see inter alia Ankarcrona v. Sweden, dec., no. 35178/97, ECHR 2000-VI, where the Court, on similar facts, made a finding to that effect).</p>   |
|  | <p>(B)(i) THE GENERAL COURTS WERE NOT AN ADEQUATE REMEDY</p>   |
|  | <p>29. The adverse costs order placed an excessive burden on the Applicant as he was made to pay for the entire litigation, even though his claims against the Trade Union were justified and the domestic courts found that his Convention rights were violated.</p>  |
|  | <p>30. The Applicant's claims were clearly justified: The Applicant's arguments succeeded in virtually all of the key issues of the case. It was well established when the Applicant brought proceedings that the Convention could be applicable between parties on the labour market under Swedish law (see inter alia AD 1998 no. 17 and AD 2001 no. 20, bundle pp. 1-30). It was clear from the judgment in Evaldsson that the state had an obligation to ensure that labour organisations, such as the Trade Union, could be held</p>  |



| <b>Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)</b> |  |
|--|--|
| 62. Article invoked<br>Article 11 and Article 1 of Protocol No. 1  | <p>Explanation responsible for their actions (see <i>Evaldsson and Others v. Sweden</i>, no. 75252/01, § 63, 13 February 2007). The courts also agreed the Trade Union had violated the Convention.</p> <p>31. Given that the Applicant's claims against the Trade Union were justified, he had the right to an effective remedy. But the remedy offered through the general courts was thwarted by the adverse costs order, which constituted an excessive burden on him. It should be noted that the burden of costs can be considered excessive even if the litigant is only obliged to pay a small amount. In <i>Barbotin v. France</i> (no. 25338/16, §§ 58–59, 19 November 2020), the Court found that it was an excessive burden for the applicant to pay EUR 270 to get recognised that his rights had been violated. In the present case, the Applicant was ordered to pay 1000 times more than the applicant in <i>Barbotin</i>.</p> <p><b>(B)(ii) THE LABOUR COURT WAS NOT AN ADEQUATE REMEDY</b></p> <p>32. Contrary to the finding of the Chancellor of Justice, the Labour Court was not an alternative to proceedings before the general courts. The Trade Union's actions drove the Company into bankruptcy. The administrator was then precluded from bringing a claim given his confined mandate. Under the Swedish Bankruptcy Act (1987:672), the administrator must secure the collective interests of creditors and speedily wind up the estate. The administrator consulted the regulatory body for bankruptcies and concluded that he was prevented from bringing a case due to the potential risks and costs involved. The Applicant's only meaningful option to seek redress, therefore, was to acquire the Company's claim for damages from the estate and litigate the case himself.</p> <p>33. This meant, however, that the Labour Court lacked jurisdiction. The Labour Court only has jurisdiction to handle disputes concerning the relationship between employers and employees (with some rare statutory exceptions). As the general courts later found, the case did not constitute a labour dispute after the Applicant had acquired the claims against the Trade Union from the bankruptcy estate.</p> <p><b>(C) THE STATE FAILED TO STRIKE A FAIR BALANCE</b></p> <p>34. On an overall assessment, the state overstepped its margin and failed to strike a fair balance between the competing interests at stake by failing to provide an adequate remedy. The Applicant's interest of legal certainty and being able to vindicate his rights was obliterated by the outcome of the proceedings. After he brought the case before the general courts, the Applicant found himself in an opaque procedural maze for over a decade (see facts section for full procedural history). In the end, the Applicant was then not only subject to an unusually high threshold for obtaining damages, but was also made to bear the Trade Union's legal costs when that threshold was not met – notwithstanding the courts' findings that the union had violated the Convention.</p> <p>35. The opposing general interest, moreover, do not outweigh the Applicant's interests. The lack of adequate remedies cannot be justified by an attempt to uphold the division between the Labour Court and the general courts. To be sure, the state could have chosen to institute a remedy before the Labour Court instead of the general courts. But it may not do so at the end of a case that has been ongoing for over a decade in which the Applicant has already been granted a remedy by the Supreme Court. When the state provides a remedy, as Sweden has done here, that remedy must be adequate and effective. Neither can the lack of adequate remedies be justified with respect to the Trade Union's right to take industrial action. That right is protected both under the Convention and under the Swedish Constitution. But it does not allow trade unions to take industrial action unchecked and in breach of the rights of others. Nor can the lack of adequate remedies be justified on any other ground.</p> <p>36. The Applicant thus submits that the state has failed to strike a fair balance and invites the Court to find that the state has violated his rights under the Convention.</p> |

**G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention**

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the four-month time-limit.

| 63. Complaint                                     | Information about remedies used and the date of the final decision   |
|---|--|
| <p>Article 11 and Article 1 of Protocol No. 1</p> | <p>37. The Applicant has complied with the admissibility criteria under Article 35 § 1. The Applicant has filed the application within four months from the decision by the Chancellor of Justice on 2 June 2022 (see bundle pp. 205–212).</p> <p>38. The Court has, in several cases, concluded that domestic remedies of general applicability in Sweden, namely the Chancellor of Justice and the Swedish general courts, are accessible and effective for the purposes of the exhaustion requirement (see inter alia Karin Andersson and Others v. Sweden, no. 29878/09, §§ 61–63, 25 September 2014). Applicants in Sweden are generally obliged to have lodged a complaint for damages with the Chancellor of Justice or to have sued the Government for damages before the general courts. This is also reflected in the Court's Application Notes for Sweden, which state that "[i]n many cases it is required that you have lodged a claim for damages with the Chancellor of Justice or the domestic courts" (in-house translation, see Application Notes SWE – 2022/01, p. 1).</p> <p>39. In accordance with the above, the Applicant lodged a complaint for damages with the Chancellor of Justice on 16 June 2021. The complaint was dismissed on 2 June 2022. The Applicant has, therefore, by initiating proceedings before the Chancellor of Justice, provided a competent authority in the Swedish legal system with the opportunity to consider and remedy the complaint against the adverse costs order decided by the Court of Appeal. The Chancellor of Justice and the general courts have, on several occasions, awarded damages for violations of the Convention, even when they arise from judicial acts. The Applicant reasonably and rightly believed, therefore, that the proceedings before the Chancellor of Justice were a necessary and appropriate action to take in order to exhaust domestic remedies before bringing his complaint before the Court (compare inter alia D.H. and Others v. the Czech Republic [GC], no. 57325/00, § 116, ECHR 2007-IV).</p> <p>40. In sum, the Applicant exhausted domestic remedies on 2 June 2022 when the Chancellor of Justice delivered its decision to reject the Applicant's complaint. The Applicant's application to the Court, therefore, is hereby lodged before the expiration of the four-month time-limit on 2 October 2022.</p> |

- Please ensure that the information you include here does not exceed the space provided -

64. Is or was there an appeal or remedy available to you which you have not used?  Yes  
 No

65. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

**THE APPLICANT WAS NOT REQUIRED TO BRING AN ACTION FOR DAMAGES BEFORE THE GENERAL COURTS**

41. The Applicant has not brought an action for damages against the state before the general courts. That is an alternative remedy to lodging a complaint for damages with the Chancellor of Justice, which has essentially the same objective: to obtain compensation for breaches of the Convention. As the Court held in *Jasinskis v. Latvia*: “[...] when a remedy has been pursued, use of another remedy which has essentially the same objective is not required” (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010).

42. In the Swedish context, applicants may choose either to lodge a complaint for damages with the Chancellor of Justice or to sue the Government for damages before the general courts (see *Ruminski v. Sweden*, dec., no. 10404/10, § 38, 21 May 2013). The Applicant chose to lodge a complaint with the Chancellor of Justice because the associated proceedings are speedy, uncomplicated and do not entail any legal fees or other costs. By contrast, tort proceedings before the general courts are considerably more complex and time-consuming, require the case to be tried at several levels of appeal, and would, due to the loser-pays rule, have involved the risk of the Applicant having to pay litigation costs incurred by the Government.

**H. Information concerning other international proceedings (if any)**

66. Have you raised any of these complaints in another procedure of international investigation or settlement?  Yes  
 No

67. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given)

[Empty text box for providing a concise summary of international proceedings]

68. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?  Yes  
 No

69. If you answered Yes above, please write the relevant application number(s) in the box below

[Empty text box for writing application number(s)]

**I. List of accompanying documents**

You should enclose full and legible *copies* of all documents. No documents will be returned to you. It is thus in your interests to submit copies, not originals. You **MUST**:

- arrange the documents in order by date and by set of proceedings;
- number the pages consecutively; and
- **NOT** staple, bind or tape the documents.

70. In the box below, please list the documents in chronological order with a concise description. Indicate the page number at which each document may be found

|     |  |    |     |
|-----|--|----|-----|
| 1.  | Judgment of the Labour Court in case AD 1998 no. 17, 11.02.98  | p. | 1   |
| 2.  | Judgment of the Labour Court in case AD 2001 no. 20, 07.03.2001  | p. | 11  |
| 3.  | Judgment of the Supreme Court in case NJA 2005 p. 608, 12.09.2005  | p. | 31  |
| 4.  | Interim decision of the Labour Court*, case AD 2006 no. 94, 30.08.2006   | p. | 39  |
| 5.  | Administrator's report, 30.01.2008   | p. | 45  |
| 6.  | Agreement between the estate and the Applicant re the assignment of the Company's claims against the Trade Union, 10.03.2009 | p. | 51  |
| 7.  | Administrator's work description, 27.01.2010   | p. | 52  |
| 8.  | Decision of the Stockholm District Court re jurisdiction*, 03.02.2010  | p. | 64  |
| 9.  | Decision of the Court of Appeal re jurisdiction*, 06.12.2010   | p. | 68  |
| 10. | Decision of the Supreme Court to refuse leave to appeal re jurisdiction*, 01.06.2011   | p. | 71  |
| 11. | Separate judgment of the Stockholm District Court*, 10.07.2012   | p. | 74  |
| 12. | Separate judgment of the Court of Appeal*, 28.05.2013  | p. | 85  |
| 13. | Separate judgment of the Supreme Court (NJA 2015 p. 899)*, 17.12.2015  | p. | 103 |
| 14. | Judgment of the Stockholm District Court on the merits*, 08.12.2017  | p. | 121 |
| 15. | Judgment of the Court of Appeal on the merits*, 13.03.2019   | p. | 156 |
| 16. | Decision of the Supreme Court to refuse leave to appeal*, 24.09.2019   | p. | 170 |
| 17. | Applicant's claim for damages to the Chancellor of Justice, 16.06.2021   | p. | 173 |
| 18. | Decision of the Chancellor of Justice*, case no. 2021.4046, 02.06.2022   | p. | 205 |
| 19. |  | p. |     |
| 20. | *These judgments and decisions pertain to the proceedings in the Applicant's case  | p. |     |
| 21. |  | p. |     |
| 22. |  | p. |     |
| 23. |  | p. |     |
| 24. |  | p. |     |
| 25. |  | p. |     |

**Any other comments**

Do you have any other comments about your application?

71. Comments

The Applicant intends to claim compensation for pecuniary damages amounting to SEK 2,716,200 under Article 41 of the Convention. The claim corresponds to the legal costs that the Applicant was ordered to pay the Trade Union, and was also the amount that the Applicant claimed in damages from the Chancellor of Justice. He also claims compensation for costs and expenses. The Applicant will submit itemised particulars of his claims and supporting documents for them under Rule 60 of the Rules of Court after the Court had communicated the Case with the Government.

**Declaration and signature**

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

72. Date

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
| 2 | 9 | 0 | 9 | 2 | 0 | 2 | 2 |
| D | D | M | M | Y | Y | Y | Y |

e.g. 27/09/2015

The applicant(s) or the applicant’s representative(s) must sign in the box below.

73. Signature(s)     Applicant(s)     Representative(s)    - tick as appropriate

**Confirmation of correspondent**

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond. Where the applicant is represented, the Court will correspond only with the representative (lawyer or non-lawyer).

74. Name and address of     Applicant     Representative    - tick as appropriate

Mr Fredrik Bergman  
 Centrum för rättvisa  
 Box 2215  
 SE-103 15 Stockholm  
 Sweden

**The completed application form should be signed and sent by post to:**

The Registrar  
 European Court of Human Rights  
 Council of Europe  
 67075 STRASBOURG CEDEX  
 FRANCE

