



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

THIRD SECTION

CASE OF THE ESTATE OF NITSCHKE v. SWEDEN

(Application no. 6301/05)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

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 the Estate of Nitschke v. Sweden,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 6 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 6301/05) 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 the estate of a Swedish national, Mr Alfred Nitschke, (“the applicant”), on 16 February 2005.

2. The applicant was represented by Mr J. Thörnhammar, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Mr C. H. Ehrenkrona, of the Ministry for Foreign Affairs.

3. On 6 June 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings, the lack of reasoning in the Administrative Court of Appeal's judgment and the failure of the appellate courts to remit the tax surcharges after Mr Nitschke's death to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The application is brought by the estate of a Swedish national, Mr Alfred Nitschke, who was born in 1940 and died on 13 January 2003.

5. From 1988 until its bankruptcy in 1997, Mr Nitschke owned 49 % of the company *Restaurang Takåsen AB* (hereinafter referred to as “the company”). He was a member of the board of directors and authorised to sign for the company as well as being responsible for the daily functioning of the company. The other shares (51%) were owned by *Stockholms företagskrogar AB*.

6. On 3 November 1994 the Tax Authority (*skattemyndigheten*) of the County of Stockholm sent an audit report (*granskningspromemoria*) to Mr Nitschke, informing him that, following a tax audit of the company, it was considering altering the tax returns for the tax assessment years 1993 and 1994 for the company, as well as for Mr Nitschke, and imposing tax surcharges on them. On the basis of information from the audit, the Tax Authority concluded that Mr Nitschke had to be considered the executive of the company, due to his influence therein, and that his taxable income for both years should be increased because he had omitted to inform the Tax Authority about certain income from the company in the form of salary payments and benefits involving free lunches and the free use of a company car. Moreover, the Tax Authority had found that Mr Nitschke had let the company pay for a boat mooring at a marina, as well as for a computer and stereo which he had bought for private use and kept in his home.

7. Mr Nitschke replied to the Tax Authority, disputing its findings and demanding that he be taxed in accordance with his tax returns and that the tax surcharges be remitted. He stated that he was not the executive of the company, as he was a minority owner, but that it was the executive of *Stockholms företagskrogar AB* who controlled the company and that the book-keeping was carried out by that company's accountant. He further claimed that he had never eaten lunch at the restaurant since he was too busy serving lunches to the guests. Moreover, he only used the company car for carrying out work-related matters as he owned a car for private use. The mooring had been rented for the company to cater for islands in the archipelago, and he underlined that he did not own a boat himself. Also, as the company did not have proper office space, he kept the computer and stereo in a room of his house which he only used as an office. The stereo was used in the restaurant and when the company organised parties, and the computer was used to produce lunch menus, price lists, etc.

8. On 8 December 1994 the Tax Authority upheld its findings in the audit report for the tax assessment year 1993. It increased Mr Nitschke's income assessment to 240,363 Swedish kronor (SEK) and imposed tax surcharges amounting to 40 % of the tax liability on that sum (SEK 34,735, approximately EUR 3,800). Further, on 23 December 1994, it increased Mr Nitschke's income assessment for the tax year 1994 to SEK 70,260 and imposed tax surcharges on him amounting to SEK 12,992 (approximately EUR 1,400), again on the basis of the findings in the audit report.

9. On 20 February 1995 Mr Nitschke requested the Tax Authority to reassess its decision as he maintained that his tax returns were correct and that he should be taxed in accordance with them. He further developed his reasons for disputing the Tax Authority's findings on each of the points where his income had been altered.

10. On 21 April 1997 the Tax Authority maintained its decision concerning the tax year 1994 but lowered Mr Nitschke's income assessment by SEK 10,500 for the tax year 1993, as it had been confirmed that Mr Nitschke did not own a boat and that the mooring had been rented for company purposes. As a consequence, the tax surcharges were lowered to SEK 32,698.

11. On 9 May 1997 the company was declared bankrupt.

12. On 26 June 1997 Mr Nitschke appealed against the decisions and requested a stay of payment for the additional taxes for both tax years. This request was rejected on 18 August 1997 by the Tax Authority, and Mr Nitschke immediately appealed against it to the County Administrative Court (*länsrätten*) of the County of Stockholm. However, the court rejected the appeal on 23 October 1997, as it found that the prerequisites for granting a stay of payment were not fulfilled. Apparently, Mr Nitschke did not appeal against this judgment and, in the beginning of 1998, he paid the taxes and the tax surcharges to avoid seizure by the Enforcement Office (*kronofogdemyndigheten*).

13. In the meantime, the Tax Authority invited Mr Nitschke to an information meeting with the responsible officials, which took place on 24 October 1997. Mr Nitschke was given the opportunity to ask questions about the audit report and to discuss the changes to his tax returns.

14. On 5 March 1998 the Tax Authority made the obligatory re-assessment of its decisions of 21 April 1997 but decided not to change them. Following this, it forwarded the appeals to the County Administrative Court.

15. In August 1998 Mr Nitschke submitted a very detailed account (79 pages) of the company, its structure, business areas, its plans for the future, etc., which could be of relevance for the case, and to clarify his views on the contentious issues. He still maintained that he should be taxed in accordance with his tax returns and that the tax surcharges should be remitted, if on no other grounds, then at least because the proceedings before the Tax Authority had been of excessive length, which had caused the interest on the added taxes to increase his debt to the Swedish State.

16. In its reply, the Tax Authority, on 5 February 1999, maintained its stance, except as concerned the lunch benefits, which it agreed to remove for both tax assessment years. As a consequence, it also agreed that the tax surcharges should be lowered, but it objected to them being remitted completely as it did not consider that the proceedings had been

unreasonably long or that there were any other reasons on which to remit them.

17. In April 1999 the applicant submitted his comments on the Tax Authority's submission and requested an extension to supplement his claims. The County Administrative Court granted an extension of the time-limit until 4 May 1999. This date was subsequently prolonged upon request by the applicant until 24 August 1999. However, no supplementary pleadings were received by the court.

18. On 9 February 2000 the County Administrative Court granted the appeal in so far as it related to the lunch benefits and the tax surcharges based on these costs, but rejected the remainder of the appeal. In its judgment, it examined, one by one, each point raised by Mr Nitschke, stating the grounds for its conclusions. As concerned the remaining part of the tax surcharges, the court found that no reasons for remission had been shown.

19. In April 2000 Mr Nitschke appealed against the judgment to the Administrative Court of Appeal (*kammarrätten*) in Stockholm and stated that he would submit supplementary information. However, no further material was received by the court, despite reminders. Thus, in September 2000, it formally ordered Mr Nitschke to submit all further material which he wanted to invoke before the court, within three weeks from the date on which he received the order. Apparently, Mr Nitschke asked for further extensions of the time-limit but did not submit any more material. Therefore, in September 2002, the court renewed its order and warned Mr Nitschke that the case could be decided even if he did not submit any material within the three weeks time-limit. Due to illness, Mr Nitschke hired a lawyer to represent him, who asked for a respite of four weeks to submit the supplementary information and material.

20. On 13 January 2003 Mr Nitschke died. However, his estate, through the same representative, pursued his appeal concerning both tax assessment years and requested another extension of the time-limit to supplement its claims. The Administrative Court of Appeal granted an extension until 23 May 2003 and informed the applicant's representative that no more extensions would be granted.

21. On 30 September 2003, without having received any submissions from the applicant, the Administrative Court of Appeal upheld the lower court's judgment in full without giving any reasoning of its own. The court simply stated that:

“What has emerged in the case does not lead the Administrative Court of Appeal to make an evaluation other than that made by the County Administrative Court.”

22. On 9 December 2003 the applicant appealed to the Supreme Administrative Court (*Regeringsrätten*) and at the same time asked for extra time to supplement its appeal, which was granted and subsequently

prolonged twice. On 1 July 2004 the applicant submitted its supplementary pleadings, invoking Article 6 of the Convention. It claimed that the proceedings had been of excessive length and that the accumulated respite interest should therefore be remitted. Moreover, it alleged that the proceedings had been flawed in several ways, *inter alia*, by ignoring the evidence and by the Administrative Court of Appeal's failure to give any reasons for its judgment. Moreover, as Mr Nitschke had died before the appellate court's judgment, the tax surcharges should have been remitted in accordance with the Taxation Act, as they were a penalty falling within the criminal sphere.

23. On 17 August 2004 the Supreme Administrative Court refused leave to appeal.

II. RELEVANT DOMESTIC LAW

24. The rules governing the administration of justice before the administrative courts are laid down in the 1971 Administrative Court Procedure Act (*förvaltningsprocesslagen*, hereinafter "the 1971 Act").

25. According to section 30 of the 1971 Act, the determination of a case by a court shall be based on that contained in the documents and what has otherwise been established in the case. The decision of the court shall state the reasons that determined the outcome.

26. Moreover, the 1971 Act does not contain any particular provisions stipulating how rapidly cases must be examined and determined by the administrative courts. However, it is in the nature of things that the courts shall conclude the examination of a case and issue a decision or a judgment as soon as this can be done, having regard, *inter alia*, to the character of the case.

27. At the time relevant for the present case, the 1953 Tax Collection Act (*uppbördslagen*, hereinafter "the 1953 Act"), section 102, stipulated that a request for reconsideration or an appeal against a decision concerning taxes and tax surcharges had no suspensive effect on the taxpayer's obligation to pay the amounts in question. However, the Tax Authority could grant a stay of execution in respect of the taxes and tax surcharges provided that certain conditions were met (section 49). Its decision in this respect could be appealed against to the administrative courts.

28. If a stay of execution was not granted, the taxes and tax surcharges should be paid immediately or they could be enforced by the Enforcement Agency. However, this also meant that if a tax decision was quashed or amended to the taxpayer's advantage by a court judgment after the relevant amounts had been paid, the amount overpaid was refunded with interest (Chapter 18, section 2, and Chapter 19, sections 1 and 12, of the Tax Payment Act, *skattebetalningslagen*). In addition, a taxpayer could claim compensation from the Chancellor of Justice or bring an action for damages

against the State for the financial loss caused by enforcement measures taken, on the ground that the authorities or courts had acted wrongfully or negligently (Chapter 3, section 2, of the Tort Liability Act, *skadeståndslagen*).

29. According to Chapter 5, section 12, of the 1990 Taxation Act (*taxeringslagen*), no tax surcharges could be imposed if, at that time, the taxpayer had deceased. This was confirmed by a judgment from the Supreme Administrative Court (*Regeringsrättens Årsbok 2003 not 13*). In this case, the County Administrative Court had granted the tax payer's appeal and remitted the tax surcharges imposed by the Tax Authority. The Tax Authority had appealed against the judgment to the Administrative Court of Appeal which overturned the lower court's judgment and upheld the Tax Authority's original decision, including imposing tax surcharges anew. However, during the proceedings before the appellate court, the taxpayer had died. Thus, the taxpayer's estate, and the National Tax Board (*Riksskatteverket*), appealed to the Supreme Administrative Court and requested that the tax surcharges be repealed as they could not be imposed on a deceased person. On 7 February 2003, the Supreme Administrative Court granted the appeal, noting that since the tax payer had died before the Administrative Court of Appeal's judgment, there had been no legal basis on which to impose the tax surcharges.

30. Under Swedish law, the estate of a deceased person is a separate legal person responsible for settling all matters relating to the deceased person, including his/her debts and liabilities (see, *inter alia*, the Inheritance Code [*Ärvdabalken*] and Chapter 12, section 9, and Chapter 22, section 1 (b) 3 of the Tax Payment Act).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

31. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings had been incompatible with the “reasonable time” requirement and that the proceedings had not been fair as the Administrative Court of Appeal had failed to give reasons for its judgment. Article 6 § 1 of the Convention provides, in relevant parts, as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...”

32. The applicant further complained that the appellate courts had violated Article 6 § 2 of the Convention when they did not remit the tax surcharges after Mr Nitschke's death but transferred them to the estate, having regard to the fact that tax surcharges are to be considered a penalty within the criminal sphere. Article 6 § 2 of the Convention reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

33. The Government denied that there had been a violation of the applicant's rights in respect of its complaints concerning the fairness of the proceedings and the presumption of innocence. With regard to the complaint relating to the length of the proceedings, they left it to the Court to decide whether it revealed a violation.

II. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

34. Together with their observations of 12 January 2007, the Government also submitted a unilateral declaration to the Court in which they stated that, in their observations, they had acknowledged that the proceedings before the national authorities and courts had lasted in total nearly ten years and had left it to the Court's discretion to decide whether there had been a breach of the Convention in this respect. They further undertook to pay the applicant, *ex gratia*, SEK 150,000 (approximately EUR 16,200) in order to resolve the case. On the basis of this unilateral declaration the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 § 1 (c) of the Convention.

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

36. The Court observes that the parties were unable to agree on the terms of a friendly settlement of the case. However, as it has stated in earlier cases (see in particular *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 74, ECHR 2003, and *Venera-Nord-Vest Borta A.G. v. Moldova*, no. 31535/03, § 28, 13 February 2007), a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declaration and the parties' observations submitted outside the framework of friendly-settlement negotiations, and will

disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement.

37. Moreover, whilst under certain circumstances an application may indeed be struck out of the Court's list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued, this procedure is not, as such, intended to circumvent the applicant's opposition to a friendly settlement (see *Tahsin Acar*, cited above, § 76, and *Venera-Nord-Vest Borta A.G.* cited above, § 29).

38. The Court considers that relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue. Moreover, it may be of relevance whether, in their unilateral declaration, the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant. This list is not exhaustive and, depending on the particular circumstances of each case, it is conceivable that further considerations may come into play (see *Tahsin Acar*, cited above, §§ 76-77).

39. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court notes in the first place that the Government, in its unilateral declaration, has referred to only one of the applicant's three complaints which were communicated to them, namely that relating to the length of the domestic proceedings. Moreover, even in respect of this one complaint, the Government have neither admitted that there has been a violation of the Convention nor regretted the inconvenience caused to the applicant by the duration of the proceedings. Instead, the Government have simply referred to their observations where they have left it for the Court to decide. Furthermore, although the Court considers that the sum offered by the Government to the applicant is very reasonable, it observes that it is proposed to be paid *ex gratia*.

Having regard to what have been stated above and the facts of the present case, the Court finds that the unilateral declaration does not offer satisfactory redress to the applicant and that, consequently, the Government have failed to submit a statement offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI and *Van*

Houten v. the Netherlands (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

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

III. ADMISSIBILITY OF THE COMPLAINTS

A. The fairness of the proceedings

40. The applicant complained under Article 6 § 1 of the Convention that the domestic proceedings had not been fair as the Court of Appeal had failed to give reasons for its judgment. In its view, the court should have been obliged to state clearly the grounds for its judgment in order to enable the applicant to make an appeal with material content to the Supreme Administrative Court.

41. The Government argued that this complaint was manifestly ill-founded as the Administrative Court of Appeal had expressly stated that it upheld the County Administrative Court's judgment in full, and had appended the lower court's judgment to its own. The Government stressed that this technique of drafting and presenting the judgment was in accordance with Swedish legislation and legal tradition. Moreover, the County Administrative Court's judgment had been well-reasoned and detailed and Mr Nitschke had not added any new legal grounds or submitted supplementary information in his appeal to the Administrative Court of Appeal. Thus, no need arose for the appellate court to add anything to the lower court's reasoning.

42. The Court reiterates that, according to its established case-law reflecting the need for the effective administration of justice, courts and tribunals should adequately state the reasons on which they base their decisions. The extent to which this obligation applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. However, it cannot be understood as requiring a detailed answer to every argument. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons of the lower court (see the *García Ruiz v. Spain* judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 26; *Helle v. Finland*, judgment of 19 December 1997, *Reports* 1997-VIII, §§ 59-60).

43. In the present case, the Court observes that the County Administrative Court gave detailed reasons for its judgment, leaving no doubt as to how it had reached its conclusions on each of the points raised by Mr Nitschke. Furthermore, both parties had been given the opportunity to comment on each other's submissions and had also done so while, at the

same time, developing their arguments before the court. Thus, the Court finds that the proceedings before the County Administrative Court were fair and that the applicant could appeal in an effective way against its judgment to the Administrative Court of Appeal.

44. Concerning the proceedings before the Administrative Court of Appeal, the Court notes that the appellate court allowed Mr Nitschke several extensions of time-limits in order to be able to supplement his appeal and, after he had hired a lawyer to represent him, the representative was granted further respite to complete the appeal and submit information. Despite these extensions, including two warnings from the court that the case could be decided even if he did not submit any material within the new time-limits, no submissions were sent to the Administrative Court of Appeal.

45. The Court wishes to emphasise that the function of a reasoned judgment is to afford the parties the possibility of an effective appeal and to show to the parties that they have been heard (see, *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003). By confirming the County Administrative Court's judgment and appending it to its own, the Administrative Court of Appeal demonstrated to the parties that it agreed with the lower court's reasoning in full (see paragraph 21 above). Moreover, despite repeated requests by the appellate court, Mr Nitschke, and later the applicant, did not file any submissions to substantiate their appeal for which reason the Administrative Court of Appeal was not called upon to examine any arguments not already considered by the lower court. Consequently, the Court finds that the appellate court's judgment was sufficiently clear and did not hinder the applicant's effective appeal to the Supreme Administrative Court.

46. Thus, the Court considers that the proceedings at issue were fair for the purposes of Article 6 § 1 of the Convention and it follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. The presumption of innocence

47. The applicant further complained that the appellate courts violated Article 6 § 2 of the Convention when they did not remit the tax surcharges after Mr Nitschke's death but transferred them to his estate. In its view, the inheritance of the guilt of the dead was not compatible with the presumption of innocence and the standards of criminal justice.

48. The Government argued that the complaint was manifestly ill-founded. They submitted that since, under Swedish law, an estate after a deceased person is a separate legal person, debts cannot be transferred to the heirs after the death of a debtor. Instead, the balance of the estate consists of the assets reduced by the debts that the deceased had at the time of death and, if the balance is positive, the assets which remain are divided between

the heirs. Moreover, the Government observed that the notions of innocence or guilt were of no relevance to the imposition, or enforcement, of tax surcharges since they were determined on objective grounds without any regard being had to criminal intent of the person. It was for the Tax Authority to show before the courts that there were grounds for imposing the surcharges. In this respect, they noted that the matter had been tried on the merits by the County Administrative Court which had upheld the Tax Authority's decision while Mr Nitschke was still alive and the Government emphasised that, if any of the domestic courts had decided to remit the tax surcharges, then they would have been repaid, with interest, to the applicant. For these reasons, they claimed that this complaint was manifestly ill-founded.

49. The Court reiterates that it has found in several judgments concerning Sweden that the imposition of tax surcharges involves the determination of a "criminal charge" within the meaning of Article 6 of the Convention, although they cannot be said to belong to criminal law under the Swedish legal system (see, in particular, *Janosevic v. Sweden*, no. 34619/97, §§ 64-71, ECHR 2002-VII, and *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, §§ 75-82, 23 July 2002). It follows that Article 6 is applicable under its criminal head and the question arises whether Article 6 § 2 was complied with.

50. The Court first observes that the imposition by the Tax Authority of the tax surcharges was determined upon appeal by the County Administrative Court after Mr Nitschke had had the opportunity to submit his observations on the matter. The court examined all the evidence before it, including the grounds for remission of the tax surcharges, but found that no such grounds were applicable and that the Tax Authority had been justified to impose them. Thus, the Court considers that Mr Nitschke's right to be presumed innocent was respected as the imposition of the tax surcharges were subjected to judicial review, and upheld, while Mr Nitschke was still alive.

51. It remains to be determined whether the appellate courts' decision not to remit the tax surcharges following Mr Nitschke's death violated the applicant's (i.e. the estate's) rights under Article 6 § 2.

52. The Court reiterates that it is a fundamental rule of criminal law that criminal liability does not survive the person who committed the criminal act. Therefore, imposing criminal sanctions on the living in respect of acts apparently committed by a deceased person, calls for careful scrutiny by the Court (see, *A.P., M.P. and T.P. v. Switzerland*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, §§ 46 and 48, and *E.L., R.L. and J.O.-L. v. Switzerland*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, §§ 51 and 53).

53. In the Court's opinion, there are some fundamental differences between the above-cited Swiss cases and the present case. To begin with,

according to Swiss law, the deceased's assets and liabilities fall directly to the heirs whereas, under Swedish law, the estate of a deceased person is a separate legal person responsible for settling the deceased's financial, and other, matters. Hence, the heirs have no personal responsibility for the deceased's debts or other liabilities (unless in some very particular circumstances which were not present in the instant case).

54. Moreover, in the two Swiss cases proceedings had been brought against the applicants and fines imposed on them personally, after the death of their father, for tax evasion allegedly committed by him. In contrast, Mr Nitschke was never accused of having committed a crime, such as tax evasion, but the tax surcharges were imposed on him on objective grounds and after it had been established that no reasons for remission existed. Furthermore, neither Mr Nitschke's heirs nor his estate were ever held personally liable for the tax surcharges since they had already been imposed on Mr Nitschke while he was alive and paid by him. The Court finds it to be of relevance to observe that, according to Swedish law, tax surcharges cannot be imposed on a deceased person or his/her estate (see paragraph 29 above). However, the estate after Mr Nitschke had the right, and indeed used it, to pursue the tax proceedings before the appellate courts to try to have the County Administrative Court's judgment overturned and the additional taxes and tax surcharges repaid.

55. In these circumstances, and in particular as the Court has found that the presumption of innocence was respected in relation to Mr Nitschke and that neither his estate nor his heirs have in any way been held personally liable for the tax surcharges, the Court considers that the presumption of innocence in Article 6 § 2 of the Convention has been complied with.

56. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

C. The length of the proceedings

57. Lastly, the applicant claimed that the length of the domestic proceedings had been excessive as they had lasted almost ten years.

58. The Government left it to the Court to decide whether the proceedings had been concluded within a reasonable time.

59. The period to be taken into consideration began on 3 November 1994 and ended on 17 August 2004. It thus lasted nine years and nine months for four levels of jurisdiction.

60. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

IV. MERITS

61. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

62. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

63. The Government claimed that the national proceedings had been of some complexity as they had concerned the assessment of the turnover of Mr Nitschke's business activities. They further observed that Mr Nitschke and the applicant had been responsible for certain delays before the national courts as they had repeatedly requested extension of time-limits to supplement their submissions. In this respect, the Government alleged that Mr Nitschke and the applicant had been responsible for a delay amounting to approximately ten months before the County Administrative Court and seven months before the Supreme Administrative Court. As concerned the proceedings before the Administrative Court of Appeal, the Government stressed that Mr Nitschke and the applicant, although having requested and been granted several extensions of time-limits, never actually supplemented their appeal to that court.

64. The applicant maintained its stance and emphasised that despite Mr Nitschke's requests for respite, which had been due to his illness, the total length of the proceedings had been completely unacceptable.

65. The Court accepts that the present case concerned matters of some complexity and that Mr Nitschke and the applicant were responsible for some of the delays before the administrative courts when requesting several extensions of time-limits. However, the Court does not find that Mr Nitschke's and the applicant's conduct alone contributed to the prolonged length of the proceedings. On the contrary, the Court is of the opinion that there were periods of inactivity, in particular before the Tax Authority and the Administrative Court of Appeal, which were at least in part attributable to these instances and that their handling of the case did not promote its timely completion.

66. Thus, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage in relation to the length of the proceedings. Moreover, it requested that the Government be ordered to repay the tax surcharges, in total SEK 47,727 (approximately EUR 5,200), with interest from 13 January 2003, the day that Mr Nitschke died.

69. The Government considered that, if the Court found a violation in respect of the length of the proceedings, the compensation for non-pecuniary damage should not exceed EUR 10,000. They contested that the tax surcharges should be repaid.

70. The Court finds no causal link between the violation found and the applicant's request to have the tax surcharges repaid; it therefore rejects this request. However, it considers that the applicant must have sustained some non-pecuniary damage because of the excessive length of the national proceedings but takes into account that Mr Nitschke and the applicant were responsible for part of the delays before the national authorities and courts. Thus, ruling on an equitable basis, it awards the applicant EUR 3,000 under that head.

B. Costs and expenses

71. The applicant also claimed SEK 50,000 (approximately EUR 5,450) for the costs and expenses incurred before the domestic courts and SEK 125,000 (approximately EUR 13,600), including VAT, for those incurred before the Court.

72. The Government contested the claim in so far as it concerned the domestic proceedings but was prepared to accept a total amount of approximately SEK 50,000 as compensation for lawyer's fees before the Court.

73. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, the above criteria and the fact that the Court has found a violation of only one out of the applicant's original five complaints lodged

before it, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 4,000 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings (Article 6 § 1 of the Convention) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Swedish kronor at the rate applicable at the date of the settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President