CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 61557/00
by ANDRIA OY and Kari KARANKO
against Finland

The European Court of Human Rights (Fourth Section), sitting on 27 April 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 10 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicants are a Finnish limited responsibility company Andria Oy (hereafter "the applicant company"), represented by Mr Kari Karanko, a Finnish national, who was born in 1958 and lives in Velkua, and Mr Karanko, the sole member of the applicant company's board of directors, personally (herafter "the applicant").

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The first set of taxation proceedings

The Regional Tax Office of Lounais-Suomi (*verovirasto, skatteverk*) conducted a tax inspection on the applicant company, which produced and sold clothes as well as selling and renting mobile homes. The Regional Tax Office found in its inspection report dated 12 November 1997, *inter alia*, that vouchers were missing from two of the company's shops which made it impossible to ascertain the company's exact turnover. It was also found that the applicant had made transfers of company funds to and from his own bank account and that some of the mobile home rental turnover was not accounted for.

On 18 December 1997 the Regional Tax Office assessed the applicant company's value-added tax (VAT) liability incurred from the sale of clothes from April 1995 to March 1996 and the company's turnover and VAT tax liability incurred from the mobile home rental turnover from October 1993 to December 1996. It levied additional taxes on the applicant company. In eight separate decisions dated the same day the Regional Tax Office also levied tax surcharges (*veronkorotus, skatteförhöjning*) on the applicant company amounting to 50% of the increased tax liability as regards the selling of clothes and mobile home rental and selling, and to 10-48% as regards other business activities. The total amount of taxes imposed on the applicant company seems to have been approximately 425,341 Finnish marks (FIM), corresponding to 71,537 euros (EUR). According to the applicant the tax surcharges amounted to EUR 11,981.

The applicant company appealed to the County Administrative Court of Uusimaa (*lääninoikeus, länsrätten*) requesting the quashing of the taxation decisions and an oral hearing. It also complained that it had not been given adequate time to submit its observations on the tax inspection to the Regional Tax Office. The County Administrative Court dismissed all of the applicant company's claims on 16 February 1999. It based the refusal to arrange an oral hearing on section 38, paragraph 1 of the Act on Judicial Procedure in Administrative Matters (*hallintolainkäyttölaki,*

förvaltningsprocesslagen) and held that an oral hearing was unnecessary as it would not have adduced any relevant arguments or evidence regarding the reliability of the accounting or the alleged seasonal changes in the turnover of mobile house rental. It accepted the tax assessments and tax surcharges levied on the applicant company and maintained that the applicant company had had the chance to submit its observations regarding the tax inspections. It further accepted the amounts of tax surcharges as it held that the applicant company's tax declarations were deliberately misleading.

The applicant company sought leave to appeal to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) requesting the quashing of the County Administrative Court's decision or secondarily a retrial in the County Administrative Court with an oral hearing. On 12 January 2000 the Supreme Administrative Court refused the applicant company leave to appeal.

The applicant was convicted on 22 May 2000 by the District Court of Turunseutu (*käräjäoikeus, tingsrätten*) of, *inter alia*, tax fraud and sentenced to 10 months' imprisonment. The conviction was based on the same facts as described in the tax inspection report mentioned above. The Court of Appeal of Turku (*hovioikeus, hovrätten*) upheld the judgment on 29 June 2001, however reducing the sentence to six months' suspended imprisonment. On 14 February 2002 the Supreme Court refused the applicant leave to appeal.

2. The second set of taxation proceedings

On 10 May 1999 the Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden*) of Lounais-Suomi reassessed the applicant's taxation for the fiscal year 1993 and levied tax surcharges of FIM 1,500 (EUR 252) with interest based on constructive dividends (*peitelty osinko, förtäckt dividend*) as the applicant had received benefits from the applicant company without declaring them as his salary.

On 10 May 1999 the Tax Rectification Committee reassessed the applicant's taxation for the fiscal year 1994. It found that the applicant had received constructive dividends worth FIM 172,085 and levied tax surcharges of FIM 17,200 (EUR 2,893) with interest.

On 10 May 1999 the the Tax Rectification Committee reassessed the applicant's taxation for the fiscal year of 1995. It found, *inter alia*, that the applicant had received constructive dividends worth FIM 372,675 and levied tax surcharges of FIM 55,900 (EUR 9,401) with interest.

The applicant appealed to the County Administrative Court of Turku and Pori, which later became the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) of Turku requesting, *inter alia*, the quashing of the said three tax decisions and an oral hearing, relying on Article 6 § 1 of the Convention. On 28 September 2001 the Administrative Court dismissed the

bulk of the applicant's appeal without holding an oral hearing. It however reduced the applicant's tax liability and tax surcharges for the fiscal years 1993-1995 by approximately 30 per cent. The Supreme Administrative Court refused the applicant leave to appeal on 31 December 2001.

On 10 December 1998 the Tax Rectification Committee of Lounais-Suomi reassessed the applicant's taxation for the fiscal year of 1996 based on constructive dividends (worth FIM 79,112, EUR 13,305) as he had received undeclared benefits from the applicant company. The applicant appealed to the County Administrative Court of Turku and Pori, which later became the Administrative Court of Turku requesting, *inter alia*, the quashing of the said tax decision and on oral hearing. On 28 September 2000 the Administrative Court dismissed most of the applicant's appeal without holding an oral hearing. It however reduced his tax liability for the fiscal year of 1996 by approximately 30 per cent. The applicant sought leave to appeal to the Supreme Administrative Court. The Supreme Administrative Court refused him leave to appeal on 31 December 2001.

On 11 December 1998 the Tax Rectification Committee upheld a previous decision of the Local Tax Office to reassess the applicant company's taxation for the fiscal year 1996. Its income was confirmed to have been FIM 370,000 (EUR 62,230) and it was levied, *inter alia*, a tax surcharge of FIM 71,000 (EUR 11,941). The applicant company appealed to the County Administrative Court of Turku and Pori (which became the Administrative Court of Turku) requesting, *inter alia*, the quashing of the said tax decision and on oral hearing. The Administrative Court dismissed the bulk of the applicant company's appeal without holding an oral hearing. It however, *inter alia*, reduced the tax surcharge for the fiscal year of 1996 to FIM 30,000 (EUR 5,045). The Supreme Administrative Court refused it leave to appeal on 31 December 2001.

On 10 December 1998 the Local Tax Office reassessed the applicant company's taxation for the fiscal year of 1997. It confirmed the applicant company's income to be higher than reported and imposed a tax surcharge of FIM 25,000 (EUR 4,204) on it. The Tax Rectification Committee upheld the decision on 10 December 1998. The applicant company appealed to the Administrative Court requesting, *inter alia*, the quashing of the said tax decision and on oral hearing. On 28 September 2000 the Administrative Court dismissed the applicant company's appeal in large part without holding an oral hearing. It however, *inter alia*, reduced the tax surcharge for the fiscal year of 1997 to FIM 15,000 (EUR 2,523). The Supreme Administrative Court refused the applicant company leave to appeal on 31 December 2001.

3. The civil proceedings

The applicant company demanded payment for an order of children's clothing made by Mr S, who claimed to have cancelled the order in due time. The case was lodged in the District Court of Vantaa (*käräjäoikeus, tingsrätten*) on 26 July 1994. The District Court heard one witness and examined seven items of written evidence. On 6 September 1999 the District Court rejected all of the applicant company's claims and ordered it, together with the applicant who represented the company, to pay the defendant's legal expenses. The applicant company appealed to the Court of Appeal (*hovioikeus, hovrätten*), which upheld the District Court's judgment on 27 December 2000 without holding an oral hearing. The applicant company sought leave to appeal to the Supreme Court (*korkein oikeus, högsta domstolen*) requesting, *inter alia*, an oral hearing. It also claimed that a District Court judge was biased as he had allegedly close relations with the defendant. The applicant company also complained about the length of the proceedings. The Supreme Court refused the applicant company leave to appeal on 10 October 2001.

B. Relevant domestic law

1. Tax legislation

The Act on Value-added Tax (*arvonlisäverolaki, mervärdesskattelag*; 1501/1993) provides as relevant:

Section 177, paragraph 1 provides that if a person liable to tax has neglected to pay tax, or has manifestly paid too little tax and has neglected, despite requests, to provide the information required for the imposition of tax, the Regional Tax Office (*verovirasto, skatteverk*) shall assess the unpaid tax due.

Section 179 provides that a tax reassessment (*jälkiverotus, efterbeskattning*) may be carried out after a certain time period. In such reassessment the taxpayer shall be liable to pay the tax which is unpaid, or which has been refunded in an excessive amount, because he neglected to submit a declaration or because he submitted a deficient, misleading or incorrect declaration, other information or document.

Section 182, subsection 2 provides, *inter alia*, that if the neglect, the submission of an incorrect return, information or other document occurred for the purposes of committing tax fraud, the tax shall be increased by not less than 50 per cent and by not more than three times its amount.

Section 183, subsection 2 provides that if tax due for a taxation period is not paid within due time, an additional tax (*veronlisäys, skattetillägg*) shall be imposed in respect of the unpaid tax.

2. Oral hearing

Section 38, paragraph 1 of the Act on Judicial Procedure in Administrative Matters (*hallintolainkäyttölaki, förvaltningsprocesslagen*; 586/1996) provides that an administrative court shall conduct an oral hearing if a private party so requests. The same applies to the Supreme Administrative Court where it is considering an appeal against the decision of an administrative authority. The oral hearing requested by a party need not be conducted if the claim is dismissed without considering its merits or is immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason (433/1999).

COMPLAINTS

1. The applicant company complains under Article 6 § 1 of the Convention about the lack of an oral hearing in the first set of taxation proceedings and that the County Administrative Court of Uusimaa did not invite its opinion regarding some documents referred to in the court's decision.

2. The applicant complains that he was convicted of, *inter alia*, tax fraud and sentenced to 10 months' imprisonment, without invoking any Convention Articles.

3. The applicant company complains that the tax authorities did not enable it to comment on some written documents during the tax inspection, as well as about other alleged errors by the tax authorities in the first set of taxation proceeding.

4. The applicants complain under Articles 6 and 13 of the Convention about the lack of an oral hearing before the Administrative Court of Helsinki and Supreme Administrative Court in the second set of taxation proceedings.

5. The applicants complain under Articles 6, 13 and 17 of the Convention and Article 1 of Protocol No. 1 to the Convention (a) about the length of the civil proceedings and (b) about the decision to oblige the applicant company as well as the applicant personally to reimburse the defendant's legal expenses, about a ruling that a third party was incompetent to act as a plaintiff in the matter and about the alleged bias of the District Court judge.

THE LAW

1. The applicant company complains under Article 6 § 1 of the Convention about the lack of an oral hearing in the County Administrative Court of Uusimaa and the Supreme Administrative Court in the first set of taxation proceedings. Further, it complains that the County Administrative Court of Uusimaa failed to communicate to it some documents referred to in the court's decision. Article 6 § 1 of the Convention reads 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 an independent and impartial tribunal established by law..."

As regards the complaint about non-communication of some documents by the County Administrative Court of Uusimaa the Court notes that this complaint is unsubstantiated and therefore rejects it as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of the remaining complaints about a lack of oral hearing and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant complains about his conviction for, *inter alia*, tax fraud and his sentence of 10 months' imprisonment. The Court has examined this complaint under Article 4 of Protocol No. 7 to the Convention, the relevant parts of which read as follows:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

The Court observes that the applicant was convicted in separate criminal proceedings for, *inter alia*, tax fraud based on the same facts which led to the present tax surcharge in the first set of taxation proceedings. The Court has previously rejected the applicant's complaints raised under Articles 6 and 7 regarding these criminal proceedings as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention (application no. 30734/02, (dec.) 2 September 2003). The examination of the case-file indicates that the applicant failed to raise any complaint under Article 4 of Protocol No. 7 to the Convention before the domestic authorities. He has not, therefore, exhausted domestic remedies as required by Article 35 § 1 of the Convention and this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

3. Insofar as complaint is made that the tax authorities did not enable the applicant company to comment on some documents during the tax inspection as well as other alleged errors by the tax authorities, the Court reiterates its previous case-law in which it has been 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, as the most recent authority, the *Ferrazzini v. Italy,* no. 44759/98, § 29, ECHR 2002-VIII). The facts of the present case do not give reason to review that conclusion. The Court accordingly rejects this part of the application as incompatible *ratione materiae* to the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicants complain under Articles 6 (see above) and 13 of the Convention about the lack of an oral hearing in the County Administrative Court of Turku and Pori/the Administrative Court of Turku and the Supreme Administrative Court in proceedings concerning, *inter alia*, tax surcharges in the second set of taxation proceedings. 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."

As regards the applicant's taxation in the fiscal year of 1996 the Court notes that no tax surcharges were imposed on him that year. No issues within the scope of Article 6 § 1 arise insofar as he complains of the tax assessment itself (see *Ferrazzini v. Italy* [GC], cited above, § 29) and this part of the application must be regarded as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 § 3 and 4 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of the remaining complaints about the lack of oral hearings and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

5. Finally, the applicants make various complaints under Articles 6 (see above), 13 (see above) and 17 (prohibition of abuse of rights) of the Convention and under Article 1 of Protocol No. 1 to the Convention (protection of property).

(a) Insofar as the applicant company complains that the length of civil proceedings exceeded a reasonable time, the Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaint (which falls to be examined under Article 6 of the Convention) and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of

Court, to give notice of this part of the application to the respondent Government.

(b) Insofar as complaint is made about the decision to oblige the applicants to reimburse legal expenses, about the ruling concerning the status of the third party to the proceedings and about the alleged bias of the District Court judge, the Court notes that these complaints are vague and unsubstantiated. Even assuming exhaustion of domestic remedies in respect of the decision about the legal expenses and the complaint about the bias, the Court notes that the examination of the case-file does not indicate any appearance of a violation of the Convention. Further, the applicants have not shown in what way they could claim to be a victim of any breach of their rights regarding their complaint about the ruling of the status of a party to the proceedings pursuant to Article 34 of the Convention. Consequently, the Court rejects these complaints as manifestly ill-founded as a whole pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning the lack of an oral hearing in the two sets of taxation proceedings and the length of the civil proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President