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

FOURTH SECTION

DECISION

Application no. 16248/10
Tommi Tapani ANTTILA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 19 November 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović,
Robert Spano, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 22 March 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tommi Tapani Anttila, is a Finnish national, who was born in 1955 and lives in Kokemäki. He was represented before the Court by Mr Pekka Vainio, a lawyer practising in Turku.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

The circumstances of the case

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

4. The applicant has been the editor-in-chief of *Veropörssi* magazine since 1994. The magazine is published by a limited liability company

Satakunnan Markkinapörssi Oy in which the applicant is one of two shareholders and the chairman of the board. The magazine publishes yearly information about natural persons' taxable income and assets. This information is public according to Finnish law. Several other publications and media companies also publish such information.

5. In 2002 the magazine appeared 17 times and each issue concentrated on a certain geographical area of the country. Data on 1.2 million persons' taxable income and assets were published, which constituted at the time a third of all taxable persons in Finland. The magazine also published tax-related articles and announcements.

6. The limited liability company *Satakunnan Markkinapörssi Oy* had worked in cooperation with another limited liability company *Satamedia Oy* in which the applicant is also one of two shareholders and the chairman of the board. In 2003 these companies, together with a telephone operator, started an SMS-service. By sending a person's name to a service number, taxation information concerning that person could be obtained if that information was available in the database. The database was created using data already published in the magazine.

7. On an unspecified date the Data Protection Ombudsman (*tietosuojavaltuutettu, dataombudsmannen*) contacted the two limited liability companies and advised them to stop publishing the taxation data in the manner and to the extent that had been the case in 2002. The companies declined because they felt that this request violated their freedom of expression.

8. By letter dated 10 April 2003 the Data Protection Ombudsman requested the Data Protection Board (*tietosuojalautakunta, datasekretessnämnden*) to order that the two limited liability companies be forbidden to process taxation data in the manner and to the extent that had been the case in 2002 and to pass such data to an SMS-service. He claimed that, under the Personal Data Act, the companies had no right to establish such personal data registers and that the derogation provided by the Act concerning journalism did not apply to the present case. The collecting of taxation information and the passing of such information to third parties was not journalism but processing of personal data which the two limited liability companies had had no right to do.

9. On 7 January 2004 the Data Protection Board dismissed the request of the Data Protection Ombudsman. It found that the derogation provided by the Personal Data Act concerning journalism applied to the present case. As concerned the SMS-service, the data used by the service had already been published in *Veropörssi* magazine and the Act did not therefore apply to it.

10. By letter dated 12 February 2004 the Data Protection Ombudsman appealed to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), reiterating his request that the two limited liability companies be forbidden to process taxation information in the manner and

to the extent that had been the case in 2002 and to pass such data to the SMS-service.

11. On 29 September 2005 the Administrative Court rejected the appeal. It found that the derogation provided by the Personal Data Act concerning journalism, which had its origins in Directive 95/46/EC, should not be interpreted too strictly as it would then favour protection of privacy over freedom of expression. The court considered that *Veropörssi* magazine had a journalistic purpose and that it was also in the public interest to publish such data. The court emphasised, in particular, that the published data was public. The derogation provided by the Personal Data Act concerning journalism applied thus to the present case. As concerned the SMS-service, the court agreed with the Data Protection Board that, as the information had already been published in the magazine, the Act did not apply to it.

12. By letter dated 26 October 2005 the Data Protection Ombudsman appealed further to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstole*n), reiterating the grounds of appeal already presented before the Administrative Court.

13. On 8 February 2007 the Supreme Administrative Court decided to request a preliminary ruling from the European Court of Justice on the interpretation of Directive 95/46/EC.

14. On 16 December 2008 the European Court of Justice, sitting in a Grand Chamber composition, gave its judgment. It found first of all that the activities in question constituted "processing of personal data" to which the Directive applied. Moreover, activities involving the processing of personal data such as those relating to personal data files which contained solely, and in unaltered form, material that had already been published in the media, also fell within the scope of the Directive. In order to take account of the importance of the right to freedom of expression in every democratic society, it was necessary to interpret notions relating to that freedom, such as journalism, broadly. However, in order to achieve a balance between the two fundamental rights, the protection of the fundamental right to privacy required that the derogations and limitations in relation to the protection of data provided for in the Directive had to apply only in so far as was strictly necessary. In conclusion, activities such as those involved in the domestic proceedings, relating to data from documents which were in the public domain under national legislation, could be classified as "journalistic activities" if their object was to disclose to the public information, opinions or ideas, irrespective of the medium which was used to transmit them. They were not limited to media undertakings and could be undertaken for profit-making purposes.

15. On 23 September 2009 the Supreme Administrative Court quashed the previous decisions and requested the Data Protection Board to forbid the processing of taxation data in the manner and to the extent carried out in 2002. It noted first that the term "journalism" was not defined in Directive 95/46/EC but that, according to the European Court of Justice, it was to be

interpreted broadly and derogations were to be kept only to what was strictly necessary. When balancing the right to freedom of expression against the right to privacy, the European Court of Human Rights had found that the decisive factor was to assess whether a publication contributed to a public debate or was solely intended to satisfy the curiosity of readers. The court found that the publication of the whole database collected for journalistic purposes could not be regarded as journalistic activity. The public interest did not require the publication of personal data to the extent that had been seen in the present case, in particular as the derogation in the Personal Data Act was to be interpreted strictly. The same applied also to the SMS-service.

16. The SMS-service was shut down after the decision of the Supreme Administrative Court was served on the applicant. The magazine has continued to publish taxation data but its content is currently only one fifth of the previous content.

17. On 26 November 2009 the Data Protection Board forbade the two limited liability companies to process taxation data in the manner and to the extent that had been the case in 2002. The companies appealed against this decision.

18. On 28 October 2010 the Turku Administrative Court rejected the companies' appeal.

19. On 18 June 2012 the Supreme Administrative Court upheld the judgment of the Administrative Court.

COMPLAINT

20. The applicant complained under Article 10 of the Convention that his right to freedom of expression had been violated in a manner which was not "necessary in a democratic society". The collection of taxation information was not illegal as such and this information was public. The decision of the Supreme Administrative Court meant in fact that the applicant was put under prior censorship while other newspapers had been able to continue publishing such information.

THE LAW

21. The applicant complained that his right to freedom of expression had been violated under Article 10 of the Convention which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not

prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

22. The Government maintained that the applicant's application was incompatible *ratione personae* with the provisions of the Convention and should therefore be declared inadmissible. A person could not complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings. Disregarding a company's legal personality could only be justified in exceptional circumstances. The Government noted that the applicant had not been party to the domestic proceedings which concerned activities of limited liability companies. The applicant had admitted that he was not even the sole shareholder but one of the shareholders of *Satakunnan Markkinapörssi Oy*. The applicant had not explained what his role was in the limited liability companies *Satakunnan Markkinapörssi Oy* and *Satamedia Oy.*

23. The applicant admitted that he had not been a formal party *per se* in the domestic proceedings but that he nevertheless considered himself a victim of a violation of his freedom of expression. He had been chairman of the board of both publishing companies and owned half of the shares in each of them. His replacement as an editor-in-chief would not be possible without his consent. He had been practising his freedom of expression through the newspaper by writing all editorials and most of the articles and by deciding what was to be published. He had *in concreto* been directly banned from publishing the newspaper. Moreover, should he now continue publishing, he would most likely face criminal prosecution and in that context the "corporate veil" could also be lifted.

24. The Court reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004). As the Court explained in the case *Centro Europa 7 S.r.l. and Di Stefano v. Italy,* a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 93, ECHR 2012; see also *F. Santos, Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, ECHR 2000-X; and *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). Furthermore, while in certain circumstances the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention where the

impugned measures were taken in respect of his or her company (see, among other authorities, *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI; and *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, § 40, 11 October 2007), when that is not the case the disregarding of a company's legal personality can be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (see *Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 66, 17 June 2008; see also *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A; *CDI Holding Aktiengesellschaft and Others v. Slovakia* (dec.), no. 37398/97, 18 October 2001; and *Amat-G Ltd and Mebaghishvili v. Georgia*, no. 2507/03, § 33, ECHR 2005-VIII).

25. The Court observes at the outset that no such exceptional circumstances have been established in the instant case (see, by contrast, *G.J. v. Luxembourg*, no. 21156/93, § 24, 26 October 2000). It further notes that the applicant has not even claimed that he was the sole shareholder of the limited liability companies *Satakunnan Markkinapörssi Oy* and *Satamedia Oy*. All the material in the Court's possession indicates that it was these two companies alone, as legal entities, which were forbidden to process taxation data. Furthermore, all the decisions of the domestic courts during the domestic proceedings concerned these two limited liability companies alone (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], cited above, § 93; and *Meltex Ltd and Movsesyan*, cited above, § 67). The Court thus infers that the prohibition to process taxation data and the ensuing court proceedings affected only the interests of these two limited liability companies. Accordingly, it cannot regard the applicant as a "victim", within the meaning of Article 34 of the Convention, of the acts of which he complained.

26. Having regard to the foregoing, the Court concludes that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President