CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52559/99
by DANDERYDS KOMMUN
against Sweden

The European Court of Human Rights (First Section), sitting on 7 June 2001 as a Chamber composed of

Mrs W. THOMASSEN, *President*,
Mrs E. PALM,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced on 17 August 1999 and registered on 10 November 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant is the Swedish municipality of Danderyd. It is represented before the Court by Mr A. Widman, a lawyer practising in Malmö.

A. The circumstances of the case

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

On three occasions – 10 January 1996, 10 January 1997 and 19 January 1999 – the Tax Authority (*skattemyndigheten*) of Stockholm decided that the amounts of municipal tax that the applicant normally was entitled to should be reduced in accordance with the applicable legislation on equalisation subsidies and fees.

The applicant appealed against each of the three decisions to the Government which rejected the appeals on 29 February 1996, 20 March 1997 and 29 April 1999, respectively.

Further appeals were made to the courts against the Government's two earlier decisions. By decisions of 22 August 1997 and 28 December 1998, respectively, the District Court (*tingsrätten*) of Stockholm and the Svea Court of Appeal (*Svea hovrätt*) dismissed the appeals as they found themselves incompetent to deal with the matter. On 22 February 1999 the Supreme Court refused leave to appeal.

B. Relevant domestic law

Domestic provisions of relevance to the present case are found in the Act on General Governmental Subsidies to Municipalities and County Councils (*Lagen om generellt statsbidrag till kommuner och landsting*, 1995:1514), the Act on Equalisation Subsidies to Municipalities and County Councils (*Lagen om utjämningsbidrag till kommuner och landsting*, 1995:1515) and the Act on Equalisation Fees for Municipalities and County Councils (*Lagen om utjämningsavgift för kommuner och landsting*, 1995:1516).

According to these laws municipalities can either get a subsidy or be obliged to pay a fee depending on their costs for different public services, e.g. child care, geriatric care, education and road maintenance. Those municipalities whose tax income is lower than their above-mentioned costs are entitled to a subsidy, whereas those whose tax income is higher than their costs have to pay a fee. The subsidies and fees are fixed by the local tax authority. Its decision may be appealed against to the Government.

COMPLAINTS

The applicant complains that Article 1 of Protocol No. 1 to the Convention has been violated as the above-mentioned legislation is not compatible with the autonomy granted to municipalities under the Swedish Constitution (*Regeringformen*). The enforcement of these provisions was therefore not in accordance with law.

Furthermore, the applicant complains that it could not have this issue examined by a court in accordance with Article 6 of the Convention.

THE LAW

The applicant complains that its rights under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention have been violated.

The Court considers that it should first examine whether, under Article 34 of the Convention, the applicant has *locus standi* to introduce an application. According to Article 34, the Court may receive applications from "any person, non-governmental organisation or group of individuals". The question therefore arises whether the applicant can be deemed to be a non-governmental organisation or a group of individuals within the meaning of that provision.

The applicant notes that previous Convention case-law has emphasised the fact that municipalities perform official duties on behalf of the State, assigned to them by the Constitution and other legislation. However, a Swedish municipality is an independent legal person, acting in its own capacity, which cannot be considered to be exercising its competence on behalf of the Government. Furthermore, in this case the municipalities act with the governmental authorities as their only counterpart. The municipality should therefore be entitled to make an application under Article 34 of the Convention.

The Court notes that the jurisprudence of the Court and the former Commission has already dealt with the question whether a municipality can be considered to be a non-governmental organisation or a group of individuals within the meaning of Article 34 (formerly Article 25) of the Convention (see, e.g., 16 Austrian Communes and some of their councillors v. Austria, application nos. 5765/77 et al., Commission decision of 31 May 1974, Collection 46, p. 118; Commune Rothenthurm v. Switzerland, no. 13252/87, Commission decision of 14 December 1988, Decisions and Reports (DR) 59, p. 251; The Province of Bari, Sorrentino and Messeni Nemagna v. Italy, (dec.), no. 41877/98, 22.3.2001 ; *The Municipal Section of Antilly v. France* (dec.), no. 45129/98, ECHR 1999-

VIII and *Ayuntamiento de Mula v. Spain* (dec.), no. 55346/00, to be published in ECHR 2001).

According to this jurisprudence it is not only the central organs of the State that are clearly governmental organisation, as opposed to non-governmental organisations, but also decentralised authorities that exercise public functions, notwithstanding the extent of their autonomy *vis-à-vis* the central organs. This is the case even if the municipality is claiming that in this particular situation it is acting as a private organ.

Moreover, to consider a Swedish municipality a non-governmental organisation is clearly contradicted by the fact that its acts can engage the responsibility of the Swedish State under the Convention. From the Court's perspective the hierarchy between different organs of the State is thus not relevant while examining an application before it. Furthermore, a conflict between a central State organ and a municipality is rather a conflict of jurisdiction which is not for the Court to solve.

Neither can a municipality be considered to be a group of individuals. Such an interpretation would not be compatible with the distinction made between groups of individuals on the one hand and non-governmental organisations on the other.

Turning to the present case, the Court finds that the applicant is clearly a public organ exercising public functions. It must therefore be considered to be a governmental organisation.

It follows that the application is incompatible with the provisions of the Convention within the meaning of Article 35 § 3. The Court must therefore reject the application as being inadmissible *ratione personae.*

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Wilhelmina THOMASSEN
President