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. 62174/00
by Thommy FORSSTRÖM
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 14 September 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ,
Mr D. SPIELMANN, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 21 August 2000,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Thommy Forsström, is a Swedish national, who was born in 1944 and lives in Gävle. He is a lawyer.

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

At the beginning of 1990 the Tax Assessment Board (*taxeringsnämnden*) fixed the applicant's tax assessment for 1989 in accordance with the tax declaration that he had submitted.

However, during 1989, the Tax Authority (*skattemyndigheten*) of the County of Gävleborg had initiated a tax audit of the applicant's private law firm and of Utkiken AB, a private limited company owned by the applicant. On 14 June 1990 the tax audit was finalised and the results accounted for in a memorandum. The memorandum was communicated to the applicant.

On 28 June 1990 the Tax Authority lodged an appeal to the County Administrative Court (*länsrätten*) of the County of Gävleborg against the Tax Assessment Board's decision regarding the applicant's tax declaration for 1989. Invoking the memorandum, it claimed that, by signing a lease under which Utkiken AB leased the law firm during the year of 1988 paying the costs incurred by the firm but also receiving all proceeds of the firm, the applicant had evaded declaring his income from business according to his true earnings. The Tax Authority considered that the applicant had carried out shell company transactions. This was by transferring proceeds from legal work carried out before the lease with Utkiken AB had entered into force. Subsequently, once the proceeds had been transferred by June 1988, he had terminated the lease as of 1 October 1988. Moreover, it claimed that the applicant had not declared the real value of certain stocks which he had sold. Thus, the Tax Authority requested that the applicant's declared business income and capital be increased in accordance with the assessment it had made and that tax surcharges (*skattetillägg*) be imposed on him.

The applicant opposed any changes to his tax declaration.

On 13 December 1994 the court held an oral hearing. In a judgment of 29 December 1994, it found that the only purpose of the lease had been to transfer funds from the law firm to Utkiken AB in order to obtain tax benefits. The court decided that tax on withdrawals should be levied on the applicant in respect of the proceeds of work carried out before the lease entered into force between the parties. It also found that the value of the stocks which he had sold had been higher than he had declared. Consequently, it raised the applicant's income from business by SEK 3,350,000 and his capital by SEK 1,084,500. It further ordered the applicant to pay tax surcharges with an amount of 40 % of the tax of SEK 3,350,000, as it found that no extenuating circumstances for remission had been shown.

The applicant appealed against the judgment to the Administrative Court of Appeal (*kammarrätten*) of Sundsvall, demanding that he be taxed in accordance with his tax declaration. He stated that the lease had been a serious attempt to try to run his law firm in the form of a private limited company, as Utkiken AB was.

The Tax Authority also appealed against the County Administrative Court's judgment and requested that the applicant's income from business should be further increased.

On 19 January 1998, after having held an oral hearing, the Administrative Court of Appeal upheld the lower court's judgment in full. It noted, *inter alia*, that it was not the facts but the application of the relevant law that was in dispute.

In an appeal dated 3 March 1998, the applicant requested the Supreme Administrative Court (*Regeringsrätten*) to grant him leave to appeal on the merits. He claimed, *inter alia*, that the lower courts had interpreted the relevant tax legislation wrongly.

On 12 May 2000 the Supreme Administrative Court refused the request. On 16 July 2001, it refused a request by the applicant to re-open the case.

After the County Administrative Court's judgment, the applicant was granted time to pay the additional tax imposed on him. This time expired on 11 September 2000. During 2001 the applicant on four occasions applied for composition (*ackord*). The first three requests were rejected by the Tax Authority. However, the last such request was granted by the Enforcement Service (*kronofogdemyndigheten*) on 15 January 2002 on the condition that the composition amount, SEK 4,000,000, was paid no later than 31 January 2002. As the applicant did not pay, the decision was revoked.

Furthermore, on 5 July 2001 the Enforcement Service requested that the District Court (*tingsrätten*) of Gävle declare the applicant bankrupt as he was found to have insufficient assets to pay his tax debt to the State. At this time the debt amounted to SEK 9,374,475 of which SEK 3,677,162 represented additional taxes and the remainder (SEK 5,697,313) consisted of tax surcharges and interest.

On 4 February 2002 the District Court declared the applicant bankrupt after having held an oral hearing where neither the applicant nor his legal representative were present although they had been summoned.

The applicant appealed to the Court of Appeal (*hovrätten*) for Southern Norrland, claiming, *inter alia*, that a bankruptcy decision could not be based on his debt to the State as the tax proceedings had been in violation of Article 6 of the Convention and therefore should be considered void.

In a majority decision, announced on 24 April 2002, the Court of Appeal first noted that the tax proceedings had been finalised and that the judgment had gained legal force. It further observed that the applicant could have voiced his objection concerning Article 6 of the Convention during the tax proceedings. Thus, the court accepted the debt and proceeded to find that

the applicant lacked sufficient assets to repay it. Consequently, it upheld the lower court's decision to declare him bankrupt.

On 4 July 2002 the Supreme Court refused leave to appeal.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the length of the proceedings, which lasted almost 10 years, was excessive. In letters dated 28 January, 25 February and 25 April 2002 he added the following complaints to his application:

1. The excessive duration of the proceedings had also violated his rights under Article 1 of Protocol No. 1 to the Convention.

2. Although the imposition of tax surcharges, fees and interest on arrears of payment should be considered as criminal in nature, no attempt had been made to establish whether he had acted with criminal intent, in breach of the presumption of innocence under Article 6 § 2.

3. Due to the outcome of the tax proceedings, which caused him to be declared bankrupt, he was deprived of his right to exercise his profession as a lawyer, in violation of Article 6 of the Convention and Article 1 of Protocol No. 1.

THE LAW

1. The applicant first complains that the length of the national tax proceedings was excessive, in breach of Article 6 § 1 of the Convention, which in relevant parts reads:

> "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..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint 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 further complains that the prolonged duration of the tax proceedings violated Article 1 of Protocol No. 1 to the Convention. The provision reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court notes that the applicant introduced this complaint to the Court on 25 February 2002. It further observes that the final national decision in the tax proceedings was taken when the Supreme Administrative Court refused leave to appeal on 12 May 2000. Thus more than six months passed between the final decision and the introduction of this complaint to the Court.

It follows that this part of the application is inadmissible as having been lodged after the expiry of the six months' time-limit in Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

3. Next, the applicant complains that the presumption of innocence was violated during the tax proceedings since the imposition of tax surcharges and fees and interest on arrears must be regarded as penalties and the national courts did not consider whether he had criminal intent or not. He invokes Article 6 § 2 which reads as follows:

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

The Court observes that this complaint was introduced to the Court on 28 January 2002, thus, more than one year and eight months after the final national decision had been taken by the Supreme Administrative Court on 12 May 2000.

It follows that also this part of the application is inadmissible for failure to observe the six months' time-limit in Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

4. Finally, the applicant complains that he has been deprived of his right to exercise his profession because he was declared bankrupt following the tax proceedings, invoking Article 6 of the Convention as well as Article 1 of Protocol No. 1 to the Convention.

The Court notes that the applicant failed to raise this complaint, both in form and in substance, before the national courts. Thus, the applicant has not exhausted domestic remedies available to him.

This part of the application, therefore, is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the proceedings under Article 6 § 1 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President