CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62174/00
by Thommy FORSSTRÖM
against Sweden

The European Court of Human Rights (Second Section), sitting on 19 May 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy 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 regard to the formal declarations accepting a friendly settlement of the case.

Having regard to the partial decision of 14 September 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Thommy Forsström, is a Swedish national who was born in 1944 and lives in Stockholm. He is a lawyer. The respondent Government were represented by their Agent, Ms I. Kalmerborn of the Ministry for Foreign Affairs.

The facts of the case, as submitted by the parties, 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 with the Gävleborg County Administrative Court (*länsrätten*) against the Tax Assessment Board's decision regarding the applicant's tax declaration for 1989. Invoking the memorandum, it 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. It claimed that the applicant had evaded declaring his income from business according to his true earnings, that he had carried out shell company transactions and that he had not declared the real value of certain stocks which he had sold.

The applicant opposed any changes to his tax declaration.

On 13 December 1994 the County Administrative Court held an oral hearing and, in a judgment of 29 December 1994, it raised the applicant's income from business by SEK 3,350,000 and his capital by SEK 1,084,500. It further ordered him to pay tax surcharges in the amount of 40 % of the tax of SEK 3,350,000, as it found that no extenuating circumstances for remission had been shown.

Both the applicant and the Tax Authority appealed against the judgment to the Administrative Court of Appeal (*kammarrätten*) of Sundsvall.

On 19 January 1998, after an oral hearing, the Administrative Court of Appeal upheld the lower court's judgment in full.

On 12 May 2000 the Supreme Administrative Court (*Regeringsrätten*) refused the applicant leave to appeal and, 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. 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. By then the debt amounted to SEK 9,374,475[1], 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.

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[1] Around 1,018,965 euros (EUR)

The applicant appealed to the Court of Appeal (*hovrätten*) for Southern Norrland which, on 24 April 2002, upheld the lower court's decision.

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

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that the length of the tax proceedings was excessive.

THE LAW

On 11 February 2005 the Court received the following declaration from the Swedish Government, signed by the Agent of the Government on 14 January 2005 and by the applicant on 18 January 2005.

> "On 21 August 2000, Mr Tommy Forsström ("the applicant") lodged application no. 62174/00 against Sweden with the European Court of Human Rights ("the Court"). On 14 September 2004, the Court decided to adjourn the examination of the applicant's complaint under Article 6 of the Convention concerning the length of tax proceedings and declare the remainder of the application inadmissible.
>
> The Swedish Government ("the Government") and the applicant have now reached the following friendly settlement on the basis of respect for human rights, as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in order to terminate the proceedings before the Court.
>
> a) The Government will pay, *ex gratia*, the sum of SEK 75,000 (seventy-five thousand)[1] to the applicant. Execution of payment will take place when the Government has received the Court's decision striking the case out of its list of cases.
>
> b) The applicant declares that he has no further claims on the Swedish State based on the fact of the above application.
>
> This settlement is dependent upon the formal approval of the Government at a Cabinet meeting."

The settlement was approved by the Swedish Government on 3 February 2005.

The Court takes note of the friendly settlement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued

[1] Around 8,152 EUR

examination of the application (Article 37 § 1 *in fine* of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President