CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42230/98
by Daniel OLSSON
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 8 April 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 13 February 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

The applicant, Daniel Olsson, is a Swedish national, who was born in 1971 and lives in Orsa. The respondent Government were represented by Ms I. Kalmerborn, Ministry for Foreign Affairs.

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

In its tax return for value-added tax for the period January – June 1993, Dondolare AB, a limited liability company owned by the applicant, claimed a right to deduct value-added tax (VAT) in the amount of 599,125 Swedish kronor (SEK) which had allegedly been paid in connection with the purchase of certain computer software rights.

By a decision of 30 May 1994 the Tax Authority (*skattemyndigheten*) of the County of Kronoberg refused the deduction, considering that it was based on a fictitious transaction. The Authority also ordered the company to pay a tax surcharge (*skattetillägg*) amounting to 20% of the increased tax liability, claiming that the company had submitted incorrect information in its tax return. On the basis of this decision the Authority, on 3 January 1995, reported the applicant to the police authorities in Växjö on suspicion that he had committed a tax crime (hereinafter referred to as "case A").

As a consequence of the report, a preliminary investigation was opened on 10 January 1995. The applicant was questioned on 19 January 1995. The Växjö police authorities completed its investigation on 2 February 1995 and the applicant received, on that date, a copy of the file.

Another preliminary investigation, initiated in 1994 and involving, *inter alia*, the applicant, was being conducted by the special department for economic crimes of the Public Prosecutor's Office (*åklagarmyndigheten*) in Malmö (hereinafter referred to as "case B"). As the two investigations were considered to have much in common, they were joined and, as from 23 February 1995, directed by the prosecutor in Malmö.

In the tax proceedings, the applicant's company appealed against the imposition of a tax surcharge. By a judgment of 28 February 1995 the County Administrative Court (*länsrätten*) of the County of Kronoberg found that, although there were circumstances in the case which justified the calling into question of the right to the claimed VAT deduction, there was not sufficient evidence to show that the transaction in question had been fictitious or that the information submitted in the tax return in this respect had been incorrect in any other sense. The court noted that the mere rejection, under taxation law, of the arguments made in support of a claim for deduction of tax could not in itself lead to the conclusion that incorrect information had been submitted. Consequently, the court quashed the Tax Authority's decision in so far as it concerned the imposition of a tax surcharge. The Authority did not appeal against the judgment.

The applicant alleges that, following the County Administrative Court's judgment, he and his legal counsel requested both the Tax Authority and the Public Prosecutor's Office in Malmö to observe it and to take action accordingly.

During the criminal investigations it emerged that, in case A, the applicant, as representative of Dondolare AB, had bought computer software and certain related sales rights from Media Mic Software AB, a company which had previously been owned by the applicant's brother, M.O., and in which the brother was considered to have a continuing deciding influence. The latter company had, in its turn, bought the software from another company owned by M.O, Bo Michael Trade AB. Moreover, Dondolare AB's purchase had been financed by M.O.

In case B, M.O. had financed the purchase by an Indonesian company of certain licensing rights to computer software from a Swedish company, Svenska Dataintressenter AB. That company had, in its turn, bought the rights from another Swedish company, PE & BE Reklam AB, of which, *inter alia*, the applicant was a representative. The latter company had claimed to have purchased the rights from a Polish company which later turned out to be non-existent. A third Swedish company, Svenska Dataintressenter i Malmö AB, thus having a similar name as the one that had bought the licensing rights from PE & BE Reklam AB, had claimed in its tax return for the period January – June 1993 a deduction for VAT paid on the basis of that sales agreement, although it had not been a partner to the agreement and therefore not entitled to claim the deduction. It was suspected that the transactions in case B had been initiated by M.O. and that he had had a deciding influence over the various Swedish companies. Moreover, the computer software to which the licensing rights applied had been of insignificant value, according to an expert opinion, and it was suspected that the transactions had been carried out in order to fraudulently obtain VAT refunds. The applicant, M.O. and a third person were suspected of tax crimes in relation to the VAT claim in case B.

The Public Prosecutor's Office concluded that the persons involved, the mode of action and the relevant time-periods were essentially the same in cases A and B and considered that the possibilities of indicting both the applicant and M.O. were good. It was further considered that, in regard to both cases and thus in regard also to the suspicions against the applicant, it was necessary to hear M.O., who was living in Jakarta, Indonesia.

In the beginning of the investigation into case B, M.O. had expressed his readiness to be interviewed by the Swedish police. M.O. having later changed his mind, the prosecutor had, via the Swedish Ministry for Foreign Affairs and the Swedish Embassy in Jakarta, in June 1994 requested legal assistance from the Indonesian authorities in obtaining information from a bank concerning certain documents submitted by M.O which were suspected to be forgeries. No information was forthcoming from the

Indonesian police authorities in charge of the matter and further contacts via diplomatic channels were therefore taken in November 1994 and in February and March 1995. By a decision of the public prosecutor of 13 September 1995 M.O. was ordered to be detained on remand in his absence and a Swedish warrant for his arrest was issued. In early 1996 and in June the same year the public prosecutor again contacted the Ministry for Foreign Affairs in relation to the mentioned request for legal assistance. At the time of the latter contact, the District Court had upheld the decision on detention on remand and, as a consequence, an international warrant for M.O.'s arrest was issued. The prosecutor also asked the Ministry for Foreign Affairs to examine the possibilities of having M.O. extradited from Indonesia. The efforts to get legal assistance from the Indonesian authorities continued. In January 1997 there was a further contact between the prosecutor and the Ministry for Foreign Affairs concerning both the request for legal assistance and the extradition issue. At about this time, a Swedish liaison officer temporarily staying in Indonesia and an employee of the Swedish Embassy had paid a visit to some high-ranking Indonesian police officers and had raised the problem of receiving legal assistance from Indonesia. The outcome of this meeting was considered positive and it was hoped that the requested information would arrive within a month or two. Apparently, however, this did not happen. On 9 June 1997 the Swedish Embassy reported that the local police authorities were waiting for permission from the Indonesian Ministry of Finance to put questions to the Indonesian bank. The next day, it submitted information from Interpol in Jakarta, according to which M.O. had moved and his new address was unknown. In addition to the above-mentioned measures, the Swedish police was continuously searching for M.O., having received indications on several occasions that he would come to Sweden.

On 19 June 1997 the Public Prosecutor's Office decided to terminate the criminal proceedings in cases A and B on the ground that it could not be proved that a crime had been committed. The applicant was informed thereof on 4 September 1997.

On 30 January 1998 the Parliamentary Ombudsman (*Justitieombuds-mannen*), examining a complaint made by the applicant, concluded that there was nothing calling for further action and therefore decided not to make any inquiries in the matter.

On 22 December 1999 the Chancellor of Justice (*Justitiekanslern*), in reply to a request for damages made by the applicant, decided that there was no reason to assume that a crime had been committed by any public official and the applicant was therefore not entitled to damages. His request was consequently rejected.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention, that the criminal charge against him in relation to the claim for VAT deductions by his company Dondolare AB (case A) had not been determined within a reasonable time. In particular he maintained that the period between 28 February 1995 and 4 September 1997 had been unreasonable.

2. The applicant also complained that the length of these proceedings implied that he had not been presumed innocent, contrary to Article 6 § 2 of the Convention.

THE LAW

1. The applicant complained that the criminal charge against him had not been determined within a reasonable time. He relied on Article 6 § 1 of the Convention, the relevant parts of which provide the following:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time..."

The respondent Government submitted that the complaint was manifestly ill-founded. They contended that, although the judgment of the County Administrative Court had been a factor to take into consideration, the public prosecutor had not been bound by it when considering whether to indict the applicant, especially since the court had not been in possession of all the material available to the prosecutor. In the latter regard, the Government maintained that case A, which was at issue in the present case, had been closely linked to case B. In both cases, suspicions of serious tax crimes had been directed towards the applicant. The mode of action had been very similar and the VAT deductions had been claimed for identical periods. Moreover, in both cases it had been suspected that the business transactions had had no basis in reality but that they had been made up solely in order to fraudulently obtain VAT refunds from the State. The applicant's brother, M.O., had been involved in both matters and, in the public prosecutor's view, it had been necessary to hear him in regard to both cases, although he had not been formally suspected of any crime in case A.

The Government maintained that the preliminary investigation had concerned complicated matters, involving a number of persons, companies and business transactions. In this regard, they pointed out that two companies had been foreign and that M.O. had been living in a country with which Sweden had no agreement on legal assistance.

Noting that the applicant had not been responsible for any delay in the proceedings, the Government further submitted that there did not seem to have been any long periods of inactivity for which the Swedish authorities

should be blamed. In the latter respect, they claimed that great efforts had been made from 1994 to June 1997 to obtain information from Indonesia and to find M.O. and question him. It having been of importance for the public prosecutor to have access to M.O. in order to assess whether there were reasons to prosecute the applicant, it was only after considerable unsuccessful efforts had been made to find M.O. that the prosecutor had decided not to pursue the criminal investigation.

In conclusion, the Government submitted that the duration of the proceedings in the present case had not gone beyond what could be considered reasonable in the particular circumstances of the case.

The applicant maintained his complaint and submitted that, by the County Administrative Court's judgment concerning the tax surcharge, the question of the applicant's criminal liability must be considered to have been determined. The preliminary investigation against him should therefore have been discontinued immediately after this judgment had gained legal force.

The applicant also asserted that the conduct of his brother, M.O., had been of no relevance to his case and his rights. There had been no legal links between the suspected crimes in cases A and B. The only, illusory, link had been the fact that two of the suspects happened to be brothers. Furthermore, the fact that the public prosecutor could only conclude the preliminary investigations by getting access to M.O. showed that the suspicions and the evidence against the applicant had been so weak that it would not have been possible to prove that any crime had been committed by him.

Alleging that no action relevant to case A had been taken after 28 February 1995, the applicant submitted that the Government had not presented any justification for the fact that, for two and a half years, he had remained suspect of a serious tax crime without there having been good reason for that suspicion.

The Court considers firstly that the period to be taken into consideration – an issue which does not seem to be in dispute between the parties – began on 19 January 1995, when the applicant was questioned by the police about the suspected tax crime in case A and was thus substantially affected by the proceedings, and ended on 4 September 1997, when the Public Prosecutor's Office informed him of the decision not to bring criminal charges against him. The proceedings thus lasted approximately two years and seven and a half months.

The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the relevant authorities (see, among other authorities, *Włoch v. Poland*, no. 27785/95, ECHR 2000-XI, p. 37, § 146).

Having regard to the above criteria, the Court first notes that the public prosecutor, in examining the criminal suspicions against the applicant, was not bound by the County Administrative Court's finding that there was not sufficient evidence to impose a tax surcharge upon his company. While it is not for the Court to say whether it would have been more expedient to join or sever cases A and B (see *Gelli v. Italy*, no. 37752/97, § 43, 19 October 1999, unreported), it accepts that there were sufficient links between the cases for the public prosecutor to consider that the investigation in case A should continue and that the two cases should be handled together. Furthermore, in view of those links, the Court cannot agree with the applicant's contention that no action relevant to case A was taken during the period at issue. It remains, however, to be examined whether this period was "reasonable" in the circumstances of the case.

The Court considers that the subject-matter of case A was of a rather complex nature. The business transactions at issue involved several companies and persons. The similar transactions in case B involved an even greater number of companies and persons, some of which were foreign. Moreover, the joint investigation was made more complicated by the fact that M.O., whom it was considered necessary to hear in regard to case A, was living in Indonesia and refused to be heard by the Swedish police.

On the other hand, the Court cannot find anything to suggest that the applicant was responsible for prolonging the proceedings.

As to the conduct of the authorities, the Court notes that the criminal investigation was delayed due to the unsuccessful attempts to have access to M.O. and certain information from an Indonesian bank. While it was for the public prosecutor to determine the importance of this evidence, the Court observes that continued efforts were made during the period in question in order to obtain it. The prosecutor had repeated contacts with the Swedish Ministry for Foreign Affairs which, in turn, used various diplomatic channels. In particular, it appears that the Swedish Embassy in Jakarta was seized with this issue throughout the relevant period. Thus, although there were shorter periods without contact between the prosecutor and the Ministry for Foreign Affairs, there do not seem to have been any periods where no action at all was taken in the criminal investigation.

It appears that, except for the attempts to find and question M.O. and to obtain information from the Indonesian bank, no major investigative measures were taken during the period at issue. It could thus be questioned whether it was reasonable to continue those attempts until June 1997. In this connection, the Court takes note of the public prosecutor's conclusion that M.O.'s testimony was vital for both case A and case B and acknowledges the difficulties and delays that may occur in obtaining evidence from abroad. The Court further notes that the applicant was not detained during the period in question or subjected to any other restrictions on account of the criminal investigation. Making an overall assessment of the

circumstances of the case, the Court therefore finds that the length of the proceedings did not go beyond what could be considered "reasonable" within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant also complained that the length of the criminal proceedings implied that he had not been presumed innocent, contrary to Article 6 § 2 of the Convention. That provision reads as follows:

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

The Court, considering that the duration of criminal investigations cannot by itself lead to the conclusion that the suspect was not presumed innocent, finds that there is nothing in the present case to indicate that the requirement of Article 6 § 2 of the Convention was not respected.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President