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. 57795/00
by Matti PURSIHEIMO
against Finland

The European Court of Human Rights (Fourth Section), sitting on 25 November 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr O'BOYLE, *Section Registrar*,

Having regard to the above application introduced on 7 March 2000,

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, Matti Pursiheimo, is a Finnish national, who was born in 1946 and lives in Rauma. He is represented before the Court by Mr Pekka Lankinen, a lawyer in Tampere. The respondent Government are represented by their Agent, Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

Commented [Note1]: To be checked.

A. The circumstances of the case

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

In December 1997 as well as in January and June 1998 the applicant was apprehended by the police in his home after having disturbed his wife and grown-up daughter in a drunken state. On 4 September 1998 the Rauma police authority revoked his licences to keep nine rifles and four pistols and seized them. The decision was based on section 67, subsection 2 (4), of the 1998 Firearms Act (*ampuma-aselaki, skjutvapenlag* 1/1998) which had entered into force on 1 March 1998. On the strength of this provision a licence may be withdrawn due to the holder's state of health or dangerous lifestyle or behaviour such that it endangers the safety of himself and others and renders him unsuitable to possess guns, ammunition or related parts. The reason indicated in the decision was, *in extenso*, "the applicant's repeated, disturbing behaviour while drunk".

The applicant appealed, requesting an oral hearing of himself as well as his wife and daughter so as to prove that there was no causal link between his being drunk and the purported risk that he might use the firearms while under the influence of alcohol. His heavy alcohol consumption had been due largely to conflicts between himself and his daughter, who had moved away from home after the incidents leading to his apprehension. He had never assaulted her or anyone else and had never touched the firearms while drunk. The firearms had furthermore been locked. He further denied abusing alcohol continuously such that his behaviour met the condition in the Firearms Act for withdrawing his licences. That law required, in addition, that his behaviour was so problematic as to engender a risk that he might use his firearms for other than permissible purposes. The police authority's position that he was an alcohol abuser had not been backed up by any medical evidence. The revocation and seizure order had come as a surprise as he had not been warned that this might be the consequence of the behaviour which had led to his apprehension for drunkenness. Some of the firearms had been inherited by the applicant and had been in the family for three generations.

In its decision of 23 March 1999 the County Administrative Court (*lääninoikeus, länsrätten*) of Turku and Pori refused the request for an oral

hearing, considering that the applicant "had accepted the basis" for the revocation and seizure order, i.e. that he had behaved in a disturbing manner while drunk. Even though it had been contended that he had never been violent, in the circumstances at hand and given "the other information emanating from the documents", it was manifestly unnecessary to hold a hearing, whether for the purpose of examining whether the legal conditions for the order had been met or for any other reason.

The court went on to uphold the revocation and seizure order, noting that it had been based on the applicant's "repeated, disturbing behaviour while drunk". The court recognised that no attempt had been made to establish whether he had acted violently but noted that the order had been based not on his violence but on his alcohol abuse which in itself could be considered a lifestyle endangering the safety of others and thus warranting a withdrawal of his licences.

In its decision of 31 December 1999 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), by three votes to two, dismissed the applicant's complaint about the lack of an oral hearing before the County Administrative Court. It also refused his request for an oral hearing before the Supreme Administrative Court. The highest court, like the lower court, noted that the applicant had accepted the basis of the decision made by the police, namely his alcohol problem and disturbing behaviour, adding that he had been apprehended in his home in December 1997 as well as in January and in June 1998. In view of this and "other information emanating from the documents" a hearing was unnecessary.

The Supreme Administrative Court also upheld the revocation and seizure order, essentially relying on the lower court's reasons. The justices in the minority would have remitted the case for an oral hearing before the lower court. They considered that the evidence which the applicant had wished to present as to the effect of his use of alcohol on his suitability to possess guns concerned a fact of relevance to the assessment of whether the legal conditions for the revocation of his licences were met. Considering also the importance of the licences for him, it was not "manifestly unnecessary" to hold an oral hearing.

B. Relevant domestic law

Under section 67, subsection 2 of the Firearms Act a licence for the acquisition or possession of a firearm, firearm component, cartridges and specially dangerous projectiles may be revoked if, *inter alia,* the licence holder is to be deemed unsuitable to acquire or possess such objects, given that due to his state of health or his way of life or his behaviour he is endangering his own safety or that of others.

According to the Government Bill (no. 183/1997) for the enactment of the Firearms Act, a licence could for example be revoked for reasons

relating to the licence-holder's health, way of life or behaviour. Before a licence can be revoked for reasons relating to the licence-holder's way of life or behaviour, this way of life or behaviour should endanger the licence-holder's own safety or that of others. Continued abuse of intoxicants – alcohol or drugs – may be considered such a way of life endangering safety as gives reason to revoke the licence. Thus, the danger caused thereby would not necessarily have to be related to firearms but even violent, dangerous or threatening behaviour without use of guns could constitute a ground for revoking the licence. However, in cases where the licence-holder's way of life was considered problematic to the extent that there was a risk of misuse of guns, it would always be necessary to revoke the licence.

The revocation should nonetheless take account of all particular circumstances, the decisive matter being to what extent the act or conduct in question impacts on the license holder's suitability to handle firearms.

In its decision no. 1998:16 the Supreme Administrative Court found that a case concerning the revocation of a licence to possess firearms involved no right or obligation within the meaning of section 16, subsection 1 (969/1995) of the Constitution (*perustuslaki, grundlagen*) or Article 6 § 1 of the Convention. The case concerned a prohibition to appeal against a decision under section 1 of the former Act on Firearms and Ammunition (33/1933) and sections 24 and 19 of the Decree on Firearms and Ammunition. Under those provisions, the police had the right to revoke a licence to possess firearms if it was found necessary. The Supreme Administrative Court voted on the case (5-3). According to the dissenting members of the Court, the revocation of a firearms licence involved the determination of a "right" or "obligation" within the meaning of section 16, subsection 1, of the Constitution.

Under section 38 of the Act on Administrative Court Procedure (*hallintolainkäyttölaki, förvaltningsprocesslag* 586/1996), in its then form, the applicant was in principle entitled to a hearing once he had requested one, but this request could be refused if a hearing would have been manifestly unnecessary in light of the subject-matter or for any other reason.

Under the Firearms Act the applicant was entitled to designate or accept someone else as the owner of his firearms provided that person had been granted the requisite licence to that end. There is no indication that the applicant availed himself of this right within the prescribed three months (possibly extended to six) or whether the firearms were sold at a public auction the yield of which was to be passed onto the applicant following a deduction of administrative costs. Any firearms that could not be sold were automatically transferred into State ownership without any compensation (sections 99-100).

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that he was denied an oral hearing before the administrative courts. A hearing would have enabled him to adduce oral testimony by his wife and daughter showing that the legal conditions for withdrawing his firearms licences and seizing his rifles and pistols had not been met: the behaviour which he had displayed prior to being apprehended had not been tantamount to "continuous alcohol abuse", nor to any other behaviour described in section 67 of the Act or the relevant Government Bill. By admitting to having disturbed his family while being drunk he had not accepted that his behaviour had been of such endangering nature as to fall within the scope of section 67. The proposed testimony would have shown that there had never been any risk that he would use his firearms while drunk. Two of the five justices on the Supreme Administrative Court considered that the proposed testimony related to the question of whether the legal conditions under section 67 had been met. The dispute was also of considerable importance to the applicant, as some of the firearms had been inherited.

THE LAW

The applicant has complained that he was denied an oral hearing before the administrative courts. He alleges a violation of Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... public hearing ... by an independent and impartial tribunal established by law. ..."

To the Government, Article 6 § 1 appears applicable, given that the criteria set out in the Firearms Act impose certain limits on the authorities' discretion and the revocation of a firearms licence entails an obligation to give up the firearms in question.

At any rate the Government consider the application manifestly ill-founded. The obligation under Article 6 § 1 to hold a public hearing is not an absolute one and exceptional circumstances justified dispensing with a hearing in the applicant's case.

The Government point out that the refusal of an oral hearing was based on the fact that the applicant's alcohol problem and his disturbing behaviour when drunk were found to constitute an adequate ground for the revocation of his licences. In the view of the County Administrative Court and the majority of the members of the Supreme Administrative Court the facts in respect of which he wished to present evidence would not have been relevant. Moreover, he was able to submit written observations to the

County Administrative Court and the Supreme Administrative Court after the relevant authorities had given their statements in response to his appeals. It therefore appears that in the circumstances of the case an oral hearing could have provided no information of relevance to the determination of his case.

The applicant maintains that he should have been entitled to an oral hearing. He was never arrested for having used, or having threatened to use, his firearms under the influence of alcohol. The police simply spotted the firearms on entering his home. The Supreme Administrative Court's decision no. 1998:16 did not concern the question of an oral hearing and is not relevant to the present case. Had he been able to present oral argument and hear witnesses, as expressly requested, the applicant would have been able to adduce information of relevance to the determination of the case.

The Court finds that Article 6 § 1 is not applicable under its criminal head, given that the original applicant was not charged with a criminal offence in the proceedings in question. As to the civil head of that Article, the Court notes that the proceedings did not only concern the question whether there were grounds for revoking his firearms licences, since an immediate consequence of the domestic authorities' affirmative finding in this respect was that his firearms were seized. The proceedings thus arguably affected a "civil right" recognised under domestic law.

The applicability of Article 6 § 1 under its civil head also requires the existence of "a genuine and serious dispute" over the right in question. Furthermore, while the dispute may relate not only to the existence of a right but also to its scope and to the manner of its exercise, the outcome of the proceedings must be "directly decisive" for the right at stake (*Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1160, § 38).

The Court notes that while the firearms were seized as a result of the licences being revoked, the State did not immediately obtain ownership thereof. While the applicant has argued that some of the firearms were valuable inherited objects, the Court finds no indication that he availed himself of the possibility of having the ownership of the firearms transferred to someone else (for example, a relative) who could have applied for licences to that end. Nor does the Court find any indication that the applicant availed himself of the right to have the firearms sold at a public auction whose net yield would have been his to keep.

For the purposes of the present case the Court will nevertheless assume that the outcome of the proceedings for the revocation of the applicant's licences and the seizure of his firearms was directly decisive for the future ownership of those firearms or for any yield from their sale at an auction and *a fortiori* for the applicant's civil right, thereby rendering Article 6 § 1 applicable.

The Court reiterates however that the obligation under this Article to hold a public hearing is not an absolute one. A hearing may not be necessary due to the exceptional circumstances of the case, for example when it raises no questions of fact or law which cannot be adequately resolved on the basis of the case-file and the parties' written observations (*Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002; *Pitkänen v. Sweden* (dec.), no. 52793/99, 26 August 2003).

The purpose of the applicant's requests for an oral hearing was to adduce oral testimony by his wife and grown-up daughter – as well as to enable himself to make observations to the court – on the question whether his behaviour when under the influence of alcohol rendered him unsuitable to possess firearms. However, the domestic courts found that undisputed facts, i.e. the applicant's alcohol problem and his disturbing behaviour which had led to his being apprehended in his home on three occasions, constituted sufficient reasons for revoking his licences under the Firearms Act. The domestic courts furthermore found that the facts in respect of which the applicant wished to present evidence would not have been relevant to the outcome of his appeal. The Court finds no reason to differ.

Having regard to the foregoing, the Court finds that there were circumstances which justified dispensing with an oral hearing.

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

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President