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

SECOND SECTION

DECISION

Applications nos. 5854/18 and 5855/18
Mikko Juhani TULOKAS against Finland
and Erkki-Juhani Väinämö TAIPALE against Finland

The European Court of Human Rights (Second Section), sitting on 4 February 2025 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Péter Paczolay,
Gediminas Sagatys,
Stéphane Pisani*, judges*,
Tuomo Antila*, ad hoc judge*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above applications lodged on 25 January 2018,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the decision of the President of the Section to appoint Mr Tuomo Antila to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Mr J. Lavapuro, the judge elected in respect of Finland, having withdrawn from sitting in the case (Rule 28 § 3),

Having deliberated, decides as follows:

THE FACTS

1. The applicant in application no. 5854/18, Mr Mikko Juhani Tulokas (the first applicant), was a Finnish national, who was born in 1946 and lived in Helsinki. The applicant in application no. 5855/18, Mr Erkki-Juhani Väinämö Taipale (the second applicant), is a Finnish national, who was born in 1937 and lives in Helsinki. They were represented before the Court by Mr Markku Fredman, a lawyer practising in Helsinki.

2. The Finnish Government ("the Government") were represented by their Agent, Ms Krista Oinonen, from the Ministry for Foreign Affairs.

The circumstances of the case

3. The facts of the case may be summarised as follows.

4. On 1 July 2012, at the age of 66, the first applicant retired from public office and started receiving an old age pension.

5. The second applicant retired from public office at the end of 2004 when he was 67 years old and started receiving an old age pension. He continued to work in the private sector until his full retirement at the end of 2013.

6. In 2012, as a result of budgetary negotiations, the Income Tax Act (*tuloverolaki, inkomstskattelagen*) was amended and an additional tax of 6% was imposed on those pensioners whose annual pension exceeded 45,000 euros (EUR). This amendment entered into force on 1 January 2013 and applied for the first time to the tax year 2013. It was an amendment which was meant to be permanent. At the same time, an additional tax of 2% was imposed on those employed tax-payers whose annual income exceeded EUR 100,000. This amendment was of a temporary nature and only concerned the tax years 2013, 2014 and 2015. When enacting these amendments, no constitutional implications were examined, nor were the amendments submitted to the Parliamentary Constitutional Law Committee (*eduskunnan perustuslakivaliokunta, riksdagens grundlagsutskott*) for verification of their compatibility with the Finnish Constitution (*Suomen perustuslaki, Finlands grundlag*).

7. As the applicants' annual pension exceeded EUR 45,000, the first applicant was charged EUR 3,178.07 in additional taxes in respect of the tax year 2013 and EUR 3,258.81 in respect of the tax year 2014. The second applicant was charged EUR 1,907.04 in additional taxes in respect of the tax year 2013 and EUR 2,061.57 in respect of the tax year 2014.

8. By a letter dated 13 November 2014, the first applicant sought rectification of the taxation decision for the tax year 2013, claiming that the imposition of the tax had been unconstitutional and that he had been discriminated against without any justification.

9. By letters dated 12 November 2014 and 9 September 2015 respectively, the second applicant also sought rectification of his taxation decisions, claiming that the imposition of the tax had been unconstitutional and that he had been discriminated against without any justification.

10. On 11 August 2015 the local Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden*) dismissed the first applicant's request, noting that it had no competence to examine his complaint of unconstitutionality as it was not a court.

11. On 22 June 2015 and 30 March 2016 respectively, the local Tax Rectification Committee dismissed the second applicant's request without examining the merits of his complaint of unconstitutionality noting that it had no competence to do so as it was not a court.

12. By letters dated 15 December 2015, 23 September 2015 and 11 April 2016 respectively, the applicants appealed to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), reiterating the grounds of appeal already relied on before the Tax Rectification Committee and requesting, *inter alia*, that an oral hearing be held on the issue of unconstitutionality of the tax decisions concerning the tax years 2013 and 2014. They submitted that the additional tax on pension income was discriminatory and that the relevant provision should be left inapplicable by the court by virtue of Article 106 of the Constitution. They referred to a judgment of the Italian Constitutional Court which, in 2013, had declared unconstitutional and discriminatory similar tax laws on the basis of which a heavier tax burden was imposed on pensioners than employed tax-payers.

13. On 24 March 2017 the Administrative Court rejected the applicants' appeals in respect of the tax years 2013 and 2014. It found that the provisions on additional tax concerning pension income were not in apparent contradiction with the Constitution, nor were they incompatible with the Convention. The holding of an oral hearing in the matter was for that reason manifestly unnecessary.

14. By letters dated 24 May 2017, the applicants appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), reiterating the grounds of appeal already presented before the lower courts and requesting, *inter alia*, that an oral hearing be organised.

15. On 16 August 2017 the Supreme Administrative Court refused the applicants leave to appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Constitution

16. Article 6 of the Constitution (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) provides as follows:

> "Everyone is equal before the law.
>
> No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.
>
> Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.
>
> Equality of the sexes shall be promoted in society and working life, especially in the determination of pay and other terms of employment, as provided for in more detail by an [implementing] Act."

17. According to Article 15 of the Constitution, the property of everyone is protected. Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.

18. Article 22 of the Constitution provides that:

> "[t]he public authorities shall guarantee the observance of basic rights and liberties and human rights."

19. Article 106 of the Constitution, in so far as relevant, reads as follows:

> "[i]f, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution."

B. Income Tax Act

20. Section 61, subsection 2, of the Income Tax Act (*tuloverolaki, inkomstskattelagen*; Act no. 1535/1992) provides that taxable earned income includes, *inter alia*, wages received from employment contracts and any income comparable to them, pensions as well as benefits or compensation received instead of such income.

21. According to section 124, subsections 1 and 4, of the Act (as amended by Act no. 785/2012),

> "[a] natural person or a death estate shall pay to the State income tax on taxable earned income in accordance with the progressive income tax scale and on taxable unearned income in accordance with the income tax percentage. In addition, a natural person shall pay to the State an additional tax on pension income in such a manner as provided in subsection 4. Other tax-payers shall pay income tax on taxable income in accordance with the income tax percentage (14.12.2012/785).
>
> ...
>
> A natural person shall pay an additional tax of 6% on pension income to the extent that the pension income, minus deduction on pension income, exceeds 45,000 euros. The additional tax on pension income is applied in the same manner as the income tax on earned income paid to the State is applied in this Act or in other acts (14.12.2012/785)."

22. The *travaux préparatoires* concerning section 124 of the Act (see HE 87/2012 vp) indicate that the aim of the amendment was to collect taxes from those whose ability to pay taxes was the highest; to diminish the tax treatment gap between pensions and income received from employment; and to give an incentive for older people to work for longer.

23. In 2016 section 124, subsection 4, of the Act was reduced in such a manner that the additional tax of 6% imposed on pensioners was lowered to 5.85% and the annual pension threshold of EUR 45,000 was increased to EUR 47,000. This amendment entered into force on 1 January 2017 and applied for the first time to the tax year 2017 (see Act no. 1535/1992, as amended by Act no. 1510/2016).

24. During the legislative procedure, the amendment of 2016 was brought to the Parliamentary Constitutional Committee, which heard experts in the matter. The opinions of the experts were divided: half of them considered the amendment unconstitutional while the other half did not. The Committee subsequently found that the amendment was compatible with the Constitution and that it did not place pensioners in a clearly unfavourable position vis-à-vis employed tax-payers (see the statement PeVL 53/2016 vp).

C. The Supreme Administrative Court's case-law

25. In a decision rendered in another case (KHO:2016:180), the Supreme Administrative Court examined the relationship of the additional tax on pension income to the equality principle. The case concerned an applicant whose pension income for the tax year 2013 was about EUR 460,000. During the proceedings, the court requested the Court of Justice of the European Union to issue a preliminary ruling on the applicability of the Union's norms on age discrimination to the case. The Court of Justice held in its ruling of 2 June 2016 in case C-122/15, C (ECLI:EU:C:2016:391) that national legislation relating to a supplementary tax on pension income did not fall within the substantive scope of Directive 2000/78/EC nor, therefore, was it covered by Article 21(1) of the Charter of Fundamental Rights of the European Union.

26. On 15 November 2016 the Supreme Administrative Court rejected the appeal and upheld the decision of the Administrative Court. After assessing the matter from the standpoint of the objectives of regulating the additional tax on pension income, the court held that it had to be considered that the legislator, in order to achieve tax policy objectives, had primarily directed the tax burden at high-income pensioners on the basis of their capacity to pay taxes. The primary purpose of the additional tax, that is, the justification related to the capacity to pay taxes, complied with the objectives commonly attributed to the Finnish income tax system and fell, as such, within the legislator's socio-political discretion.

27. The Supreme Administrative Court further held that, considering also the requirements of the Constitution of Finland, the encouragement for ageing persons to continue to work could be regarded as an acceptable general justification for the regulation of the additional tax on pension income by the Income Tax Act, although in all individual cases there was no longer a presumption that a pensioner would continue to work, for instance if he or she had reached retirement age. The court held that the application of the provisions on the additional tax in section 124, subsections 1 and 4, of the Income Tax Act was not in evident conflict with the Constitution within the meaning of its Article 106 from the perspective of the regulation of equality in Article 6 or otherwise, when the tax-payer's capacity to pay taxes and the

objectives related to it, acceptable from the standpoint of the regulation, were taken into account.

28. The Supreme Administrative Court also assessed the matter from the perspective of the Convention since the provisions of the Constitution on fundamental rights and liberties had to be interpreted in its light. The court held that, taking into account, *inter alia*, the case-law of the Court, the Convention could not be considered to impose any further requirements in the matter.

COMPLAINTS

29. The applicants complained under Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention that the Income Tax Act discriminated against retired tax-payers without any justification on the ground of age. As pensioners, they had to pay an additional tax of 6% for their annual pension exceeding EUR 45,000 while employed tax-payers only paid 2% for annual income exceeding EUR 100,000. They thus paid more tax for the same income than employed tax-payers. Moreover, the additional tax for retired tax-payers was permanent, while the one for employed tax-payers was only temporary.

30. The applicants further complained under Article 13 of the Convention that the existing domestic remedies had proved to be inefficient in the present cases. The matter had not been examined by the Parliamentary Constitutional Law Committee, nor had the administrative courts found the legislation unconstitutional. There was thus no effective remedy.

THE LAW

A. Preliminary issues

31. The first applicant died on 24 July 2021. On 13 September 2021 his wife and daughter expressed their wish to continue the application on his behalf. For their part, the Government invited the Court to strike the application out of its list of cases.

32. According to its well-established case-law on the matter (see *Mile Novaković v. Croatia*, no. 73544/14, §§ 33-34, 17 December 2020, with further references), the Court considers that the first applicant's wife and daughter have standing to continue the proceedings in the first applicant's stead as his heirs and rejects the Government's objection in this respect.

33. Moreover, having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Alleged violation of Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention

34. The applicants complained that the Income Tax Act discriminated against retired tax-payers compared to employed tax-payers on the ground of age without any justification, contrary to Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, which read as follows:

Article 14 (prohibition of discrimination)

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 (General prohibition of discrimination)

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

1. Submissions by the parties

(a) The Government

35. The Government submitted that, as the applicants had not relied on any substantive Articles of the Convention in conjunction with Article 14 of the Convention, their complaint under that provision should be declared incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4 of the Convention. Alternatively, it should be declared inadmissible for being manifestly ill-founded as it was clearly of a fourth instance nature. In any event, the applicants had not suffered any significant financial disadvantage and their complaint should be declared inadmissible pursuant to Article 35 §§ 3 (b) and 4 of the Convention.

36. As to the merits, the Government noted that in 2013 a total of 42,117 persons and in 2014 a total of 46,645 persons had been subject to the same additional tax as the applicants. The applicants had not been treated any differently from these persons, who were in a similar situation.

37. In the Government's view, employment income, pensions and benefits differed essentially from each other and were not to be compared the way the applicants had suggested, while earned income of the same kind needed to be taxed in the same manner. Employment income was related to a person's earlier work performance, whereas pension income, especially if received from employment pension, was connected with the person's retirement age and the pension contributions paid from employment income.

The different nature of the different types of income was clearly visible in the fact that wage income, based on work performance, might be subject to deductions for costs incurred in acquiring the income which differed from the deductions from pensions, the basis for determination of which had essentially already been earned or which was based on a certain age. The tax ratios for wage income and for an equal amount of pension income had diverged since the mid-1990s when tax relief had mainly been directed at the taxation of work in order to boost employment.

38. As the Government explained, Finland had a 'mixed' system for the financing of pensions, in which part of the pension contributions was collected into funds for the payment of future pensions, and part was used for financing the pensions that were already being paid. Thus, the pension contributions collected from wage earners were not saved for the payment of their own future pensions but were mainly used for financing the pensions to be paid each year. Persons receiving different types of income could thus not be considered to be in a similar position in the sense that they could not be treated differently in taxation.

39. Even assuming that the above-mentioned groups of tax-payers were in a similar situation, the Government stressed that acceptable grounds existed to treat them differently. The primary objective of the additional tax had been to collect tax revenue from tax-payers with a high capacity to pay taxes. Another objective had been to narrow the difference between tax ratios for pension income and wage income, and to improve the incentives for ageing people to work longer. The Parliamentary Constitutional Law Committee and the Supreme Administrative Court had considered these objectives as acceptable grounds for different treatment which did not place pensioners in a considerably weaker position than other tax-payers. Moreover, the provisions on additional tax had no direct connection with the tax-payer's age.

(b) The applicants

40. The applicants maintained that as pensioners, they had to pay an additional tax of 6% on their annual pension exceeding EUR 45,000 while employed tax-payers only paid 2% for annual income exceeding EUR 100,000. They thus paid more tax for the same income than employed tax-payers. Moreover, the additional tax for retired tax-payers was permanent, while the one for employed tax-payers was only temporary.

41. The applicants pointed out that, at the legislative stage of the tax bill, no authorities had shown any concern for the protection of fundamental rights. Also, the retrospective safeguards had turned out to be ineffective due to the fact that no thorough investigation was allowed in the matter. The financial disadvantage the applicants had suffered was annually over EUR 3,000 and EUR 2,000 respectively. Although the applicants admitted

that the additional tax had not shaken their financial situation, this was a matter of principle.

42. As to the merits, the applicants argued that traditionally pensions in Finland were taxed as earnings income on the same scale as labour earnings. The objective of the new tax had been to achieve a similar level of taxation for labour and pension income and therefore the new tax had been directed at workers and pensioners with a strong assumption that they would be treated equally. In reality, the main burden had been imposed on pensioners. Workers and pensioners thus belonged to the same group of people whose income was taxed as earned income on the same scale. Workers and pensioners with a high income were thus in the same situation.

43. The applicants observed that the main objective of the Government bill had been to collect tax revenue from tax-payers with a high capacity to pay taxes. Yet tax-payers with the same high income had been treated differently. The second objective had been to improve incentives for ageing people to work longer. For the applicants and other retired tax-payers such an incentive was of no relevance since they were already retired. Moreover, essential amendments to the pension system should have been implemented by using transitional periods since retroactive deterioration of earned pensions ran contrary to the rule of law. The third objective had been to narrow the gap between the taxation ratios for pension income and wage income but no proof of the existence of such a gap was ever presented.

2. The Court's assessment

44. The Court first notes that the Government raised several objections as to the admissibility of this complaint. The Court, however, considers that it need not resolve these issues as this complaint is, in any event, inadmissible for the below reasons.

(a) General principles

45. In order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see, amongst many authorities, *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, ECHR 2017; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012 (extracts). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical. The elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject-matter and purpose of the measure which makes the distinction in question (see *Fábián v. Hungary* [GC], no. 78117/13, § 121, 5 September 2017). An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation

to others treated differently (see *Clift v. the United Kingdom*, no. 7205/07, § 66, 13 July 2010).

46. However, not every difference in treatment will amount to a violation of Article 14. Firstly, the Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010; and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 86, ECHR 2013 (extracts)). Secondly, a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts); *Topčić-Rosenberg v. Croatia*, no. 19391/11, § 36, 14 November 2013; and *Weller v. Hungary*, no. 44399/05, § 27, 31 March 2009).

47. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin will vary according to the circumstances, the subject-matter and the background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011; and *Fábián*, cited above, § 114).

48. A wide margin is usually allowed to the State under the Convention when it comes, for example, to general measures of economic or social strategy (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 109, ECHR 2014; and *Fábián*, cited above, § 115). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Carson and Others*, cited above, § 61). Any measures taken on such grounds, including the reduction of the amount of pension normally payable to the qualifying population, must nevertheless be implemented in a non-discriminatory manner and comply with the requirements of proportionality (see *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 59, 13 December 2011; and *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2006-VI). In any case, irrespective of the scope of the State's margin of appreciation, the final decision as to the observance of the Convention's requirements rests with the Court (see, *inter alia*, *Konstantin Markin*, cited above, § 126).

49. As regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference

in treatment, it is for the Government to show that it was justified (see *Milivojević v. Serbia* (dec.), no. 11944/16, § 30, 5 July 2022).

50. The Court reiterates that whereas Article 14 of the Convention prohibits discrimination in the enjoyment of "the rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 extends the scope of protection to "any right set forth by law". It thus introduces a general prohibition on discrimination (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 53, ECHR 2009). The term "discrimination" used in Article 14 is also used in Article 1 of Protocol No. 12. The Court reiterates that notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see paragraph 18 of the Explanatory Report to Protocol No. 12). The Court sees no reason to depart from the settled interpretation of "discrimination", as developed in the jurisprudence concerning Article 14 in applying the same term under Article 1 of Protocol No. 12 (see *Sejdić and Finci*, cited above, § 55; *Zornić v. Bosnia and Herzegovina*, no. 3681/06, § 27, 15 July 2014; and *Baralija v. Bosnia and Herzegovina*, no. 30100/18, §§ 45-46, 29 October 2019).

(b) Application to the present cases

(i) Applicability of Article 14 and Article 1 of Protocol No. 12

51. The Court notes that, according to the established case-law of the Court, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of them (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I; *Zarb Adami v. Malta*, no. 17209/02, § 42, ECHR 2006-VIII; *Konstantin Markin,* cited above, § 124; and *Bradshaw and Others v. Malta*, no. 37121/15, § 68, 23 October 2018). The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, *Savickis and Others v. Latvia* [GC], no. 49270/11, § 120, 9 June 2022). The Court considers that the facts at issue fall within the ambit of Article 1 of Protocol No. 1 even though this provision has not been explicitly relied upon by the applicants. Article 14 is therefore applicable to the present case (see, *Guberina v. Croatia*, no. 23682/13, § 75, 22 March 2016).

52. As to Protocol No. 12 to the Convention, it has been ratified by the Finnish State and entered into force in respect of Finland on 1 April 2005. Article 1 of Protocol No. 12 is thus also applicable to the present cases.

(ii) Existence of an analogous or relevantly similar situation

53. The first issue to be examined is whether the applicants, as retired tax-payers receiving a pension, were in an analogous or relevantly similar situation compared with tax-payers who were still working, for the purposes of paying additional income tax. Whereas the applicants claimed that they were indeed in a relevantly similar situation to working tax-payers, the Government disputed that claim, arguing that employment income and pensions differed essentially from each other and were not to be compared in the way the applicants had suggested.

54. As a general starting-point, the Court recalls that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation and the Court has consistently held that it will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see *M.A. and 34 Others v. Finland* (dec.), no. 27793/95, 10 June 2003; *Imbert de Trémiolles v. France* (dec.), nos. 25834/05 and 27815/05 (joined), 4 January 2008; *"Bulves" AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009, with further references; *Arnaud and Others v. France*, nos. 36918/11 and 5 others, § 25, 15 January 2015; and *Cacciato v. Italy* (dec.), no. 60633/16, § 24, 12 October 2016, with further references). It is, indeed, primarily for national authorities to decide the type of tax or contributions they wish to levy, since decisions in this area will commonly involve the appreciation of political, economic and social questions which the Convention leaves within the competence of the States parties, the domestic authorities being better placed than the Court in this connection (see *N.K.M. v. Hungary*, no. 66529/11, § 57, 14 May 2013).

55. Turning to the present cases, the Court observes that, in the Finnish taxation system, all earned income is taxed in accordance with the same progressive (see paragraphs 20-21 above). However, this is not in itself sufficient to establish that the situation of tax-payers in receipt of pensions and that of tax-payers who are still working are relevantly similar for the purposes of the assessment of the present cases. The Court has held that, when assessing the comparability of situations, it is appropriate to consider them as a whole and to avoid singling out marginal aspects, which would lead to an artificial analysis (see *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French Conseil d'État, § 69, 13 July 2022).

56. The Court notes in this connection that, under Finnish law, taxable earned income from employment and pensions are treated as distinct

categories (see paragraphs 20-21 above) and there are a number of differences between the two categories. First of all, employment income is related to a tax-payer's work performance while pension income is connected with a taxpayer's retirement age and the pension contributions paid from earlier employment income. Wages and pensions also differ in other respects: wage income can be subject to deductions for costs incurred in acquiring that income and those deductions are of a different type to the deductions made from pension income.

57. In previous cases concerning similar issues, the Court has already held that an employed pensioner was not in a situation analogous to that of retired pensioners within the meaning of Article 14 of the Convention as regards the contributions to be paid to the pension fund, since the applicant himself was still in employment (see *Hampek v. Slovakia* (dec.), no. 67171/01, 9 January 2007). Moreover, the Court has held, in the context of a pension cap examined under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, that it was not for an international court to decide whether the authorities of a Contracting State had made a valid distinction between the character of the two groups. Decisions involving such distinctions were policy judgments which were in principle reserved to the national authorities, which had direct democratic legitimacy and were better placed than an international court to assess local needs and conditions (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 117, 25 October 2011).

58. Considering all aspects of the present cases, the Court concludes that the applicants have not demonstrated that, as liable to pay tax on pensions, they were in a sufficiently comparable situation to taxpayers who are liable to pay tax on employment income. Accordingly, the Court finds no evidence of discrimination.

59. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 13 of the Convention

60. The applicants complained under Article 13 of the Convention that the existing domestic remedies had proved to be inefficient in the present case. The matter had not been examined by the Parliamentary Constitutional Law Committee, nor had the administrative courts found the legislation unconstitutional. There had thus been no effective remedy.

61. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. Submissions by the parties

(a) The Government

62. The Government argued that since the applicants could not be considered victims of a violation of Article 14 of the Convention and/or Article 1 of Protocol No. 12 to the Convention, they did not have an arguable claim under Article 13 of the Convention and that this complaint should be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

63. As to the merits, the Government noted that in Finland taxation was subject to a comprehensive appeal system and that the applicants had used this system and had appealed their cases until the end. Had the domestic courts found the legislation to be in evident conflict with the Convention, the applicants' taxation decisions would have been amended. There was no appearance that the remedy was not effective. It had become an established practice that the provisions of fundamental rights and liberties in the Constitution were interpreted in the light of the requirements of the Convention, thus taking the requirements of the Convention into account efficiently.

64. The Government observed that in the constitutional system of Finland, the application of Article 106 of the Constitution only constituted a secondary manner of eliminating tension between the Constitution and an ordinary Act of Parliament. Primarily, of all optional interpretations, a court had to choose the one that was best in harmony with the Constitution. Only if it were not possible to eliminate the evident conflict by way of interpretation, Article 106 of the Constitution made it possible to disregard a provision of an ordinary Act in the interests of ensuring an individual's legal protection. This conflict had to be manifest and indisputable. There was thus no violation of Article 13 of the Convention.

(b) The applicants

65. The applicants accepted that the effectiveness of remedies did not mean that the outcome of the case should be positive for them. Nevertheless, they had the right to expect their cases to be properly examined. The examination of the taxation bill's compatibility with the Constitution and fundamental rights had been completely neglected. The *ex post* control was the duty of the Administrative Court. The applicants' explicit request for organisation of an oral hearing had been rejected. The procedure in the Administrative Court had remained superficial and the Supreme Administrative Court had refused the applicants leave to appeal. Even if the applicants had had access to a court, there were no effective remedies available.

2. The Court's assessment

66. The Court notes that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131; and *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX).

67. In view of its conclusion that the applicants' complaint under Article 14 of the Convention and Article 1 of Protocol No. 12 is manifestly ill-founded (see paragraph 60 above), the Court finds that the applicants did not have an "arguable claim". Accordingly, Article 13 is not applicable to the present cases.

68. It follows that this complaint is also manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Holds that the first applicant's heirs have standing to pursue the application in his stead and *dismisses* the Government's objection in that respect;

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 6 March 2025.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President