September 2018
This Factsheet does not bind the Court and is not exhaustive

Taxation and the European Convention on Human Rights

A number of applicants rely on the **European Convention on Human Rights** to challenge the rules and procedures of the Contracting States in tax matters, and the methods used by tax-authority officials. These applications are based on Article 1 (protection of property) of Protocol No. 1 to the Convention, which recognises that a State is entitled "to enforce such laws as it deems necessary … to secure the payment of taxes or other contributions", and Article 6 (right to a fair trial) of the Convention. Other Convention provisions have also been relied on, however.

Protection of property (Article 1 of Protocol No. 1 to the Convention)

Sporrong and Lönnroth v. Sweden

23 September 1982

These two applications related to the effects on the applicants, in their capacity as property owners, of long-term expropriation permits, accompanied by prohibitions on construction, affecting their properties. It amounted, in their view, to an unlawful infringement of their right to the peaceful enjoyment of their possessions. They also submitted that their complaints concerning the expropriation permits affecting their properties had not been heard by the Swedish courts.

The European Court of Human Rights held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, finding that the applicants bore an individual and excessive burden which could have been rendered legitimate only if they had had the possibility of seeking a reduction of the time-limits or of claiming compensation. It also held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the applicants' case could not be heard by a tribunal competent to determine all the aspects of the matter.

In its judgment on *just satisfaction* of 18 December 1984, the Court further decided that Sweden was to pay, for damage, 800,000 Swedish crowns to the first and 200,000 crowns to the second applicant.

Hentrich v. France

22 September 1994

In May 1979 the applicant and her husband bought 6,766 square metres of non-building land. The sale was concluded on the condition precedent that the SAFER (Regional Development and Rural Settlement Corporation) did not exercise its right of pre-emption over the property within two months. The main tax office registered the sale on payment of duties and the sale took effect when the SAFER failed to exercise its right of pre-emption within the statutory time. In February 1980 the applicants were notified by a bailiff of the decision to pre-empt. The applicant claimed that the exercise of the right of pre-emption had been an unjustified interference with her right of property. She also complained that the Revenue and the courts had not given her a fair hearing.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. Having regard to all the facts of the case, it considered that, as a selected victim of the exercise of the right of pre-emption, the applicant had borne an individual and excessive burden which could have been rendered legitimate only if she had had the possibility – which was refused her – of effectively challenging the measure taken against her; the fair balance which should be struck between the protection of the right of property and the requirements of the general interest had therefore been upset. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that, in the present case, the proceedings on the merits had not afforded the applicant a reasonable opportunity to present her case under conditions that did not place her at a substantial disadvantage vis-à-vis her opponent. It also found a **violation of Article 6 § 1** on account of the length of the proceedings.
In its judgment on *just satisfaction* of 3 July 1995, the Court further decided that France was to pay the applicant 800,000 French francs in respect of pecuniary damage.

Gasus Dosier- und Fördertechnik GmbH v. the Netherlands

23 February 1995

In June 1980 the applicant company sold a concrete-mixer and ancillary equipment to a Dutch company, subject to the condition that they remained its property until the full price had been paid. One month later the Tax Bailiff seized all the movable assets on the Dutch company's premises for forced sale in pursuance of three writs of execution issued by the Collector of Direct Taxes. The applicant company complained about the seizure of the concrete mixer by the tax authorities and its subsequent sale with their complicity.
The Court held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1**, finding that the requirement of proportionality between the means employed and the aim pursued had been satisfied. It considered in particular that the interference complained of in this case was in fact the result of the tax authorities' exercise of their powers under the 1845 Tax Collection Act (*Invorderingswet*). It also noted that the present case concerned the right of States to enact such laws as they deem necessary for the purpose of securing the payment of taxes and recalled that, in this matter, the legislature must be allowed a wide margin of appreciation, especially with regard to the question whether – and if so, to what extent – the tax authorities should be put in a better position to enforce tax debts than ordinary creditors are in to enforce commercial debts. The Court will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation.

National and Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom

23 October 1997

This case concerned legal claims to restitution of monies paid under invalidated tax provisions extinguished under the effects of retrospective legislation (section 53 of Finance Act 1991 and section 64 of Finance (No. 2) Act 1992). The applicant building societies[1] alleged in particular a violation of the right to property.
The Court held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1**. Having regard to the wide margin of appreciation which a Contracting State enjoys in framing and adopting policies in the tax sector, it found that, in the circumstances, the retrospective measures adopted by Parliament, even if they had the effect of stifling the applicant's legal claims, did not upset the balance between their rights to restitution and the public interest in securing the payment of taxes. The Court further held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the applicants could not in the circumstances justifiably complain that they had been denied the right of access to a court for a judicial

[1]. Building societies operate under the status of mutual societies under English law as opposed to the status enjoyed by companies under company law. A building society's members are made up of its investors who deposit savings with it and receive a rate of interest or a dividend in return, and its borrowers who are charged interest on their loans. By and large, loans are taken out by borrowers to buy private residential property.

determination of their rights. It also held that there had been **no violation of Article 1 of Protocol No. 1 taken in conjunction with Article 14** (prohibition of discrimination) of the Convention and **no violation of Article 6 § 1 in conjunction with Article 14**.

S.A. Dangeville v. France

16 April 2002

The applicant company, a firm of insurance brokers whose commercial transactions were subject to value added tax (VAT), paid 292,816 French francs in VAT on its operations in 1978. The provisions of the Sixth Council Directive of the European Communities, which should have been applied from 1 January 1978, exempted from VAT "insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents". However, France was granted an extension of time for implementing that directive. The applicant company sought reimbursement of the amount of VAT it had paid or, failing that, the amount attributable to the period from 1 January 1978 to the date the directive entered into force. The *Conseil d'État* dismissed its application. The applicant also lodged an application with the tax authorities requesting them to review their position. Those proceedings were dismissed by the *Conseil d'État*, which held that the application for a tax refund had already been the subject of a final judicial decision. However, ruling that same day on an appeal by another company, whose commercial activity and claims were identical to those of the applicant, the *Conseil d'État*, in a decision that represented a departure from its previous case-law, accepted that there was an obligation on the State to reimburse the sums that had been unduly paid. The applicant alleged in particular a violation of the right to property, as it considered that it had been definitively deprived of money owed to it by the State by the decisions of the *Conseil d'État* dismissing its claims.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It noted in particular that on both its applications the applicant company was a creditor of the State on account of the VAT wrongly paid for the period 1 January to 30 June 1978 and that in any event it had at least a legitimate expectation of being able to obtain a refund. The Court found that the interference with the applicant's possessions did not satisfy the requirements of the general interest and that the interference with the applicant's enjoyment of its property was disproportionate because its inability to enforce its debt against the State and the lack of domestic proceedings providing a sufficient remedy to protect its right to respect for enjoyment of its possessions upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

Just satisfaction: The Court decided that France was to pay the applicant company 21,734.49 euros in respect of pecuniary damage.

See also: ***Aon Conseil and Courtage S.A. and Christian de Clarens S.A. v. France***, judgment of 25 January 2007.

Buffalo Srl in liquidation v. Italy

3 July 2003

The applicant, a limited liability company, had ceased trading in 1994 and was recorded in the companies register as being in voluntary liquidation. Between 1985 and 1992 it had paid sums on account of corporation tax in excess of the amounts it owed the State. It had consequently been entitled to tax rebates which the tax authorities started to repay in 1997. During that period the applicant was forced to seek financing from banks and private individuals. It thereby incurred costs and had to pay interest at a higher rate than was paid by the State on the tax rebates. The applicant alleged that the tax authority's delays in paying the rebates had infringed its right to the peaceful enjoyment of its possessions.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It found that the delays in paying the tax rebates had created a state of

uncertainty for the applicant company for more than what might be regarded as a reasonable period, without its being able to remedy the position. That interference with the applicant's possessions had been disproportionate, as the financial impact of the delays, coupled with the lack of any effective remedy to expedite matters and the uncertainty regarding when the rebates would be paid, had upset the fair balance that had to be maintained between the demands of the general interest of the community and the requirements of the protection of the right to the peaceful enjoyment of possessions.
In its judgment on *just satisfaction* of 22 July 2004, the Court further decided that Italy was to pay the applicant 75,000 euros in respect of damage.

Eko-Elda AVEE v. Greece

9 March 2006
In June 1988 the applicant, a limited company specialising in petroleum products, asked the Inland Revenue Service to repay 123,387,306 drachmas (approximately 362,105 euros) wrongly paid in income tax. When the tax authorities refused, the applicant brought proceedings in Athens Administrative Court to obtain that sum plus interest. In November 1993, while the proceedings were pending, the State paid the applicant the equivalent of 362,105 euros. In its observations to the Administrative Court the applicant limited its claim to the statutory interest for being kept out of its money. The Administrative Court dismissed that claim as inadmissible and the Court of Appeal ruled that a subsequent appeal by the company was ill-founded because at the material time the Tax Code made no provision for the payment of interest by the State in such a situation. In November 2000 the Supreme Administrative Court dismissed an appeal on points of law. The applicant complained of the tax authorities' refusal to pay it interest to compensate it for the delay in payment of a tax credit to which it was entitled.
The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It noted in particular that the tax wrongly paid had been reimbursed approximately five years and five months after the date on which the applicant company had requested its repayment. The Court considered that the authorities' refusal to pay default interest for such a long period had upset the fair balance to be maintained between the general interest and individual interests.
Just satisfaction: The Court decided that Greece was to pay the applicant company 120,000 euros in respect of pecuniary damage.

Intersplav v. Ukraine

9 January 2007
Since 1998, the applicant, a Ukrainian-Spanish Joint Venture, had been complaining without success to the Lugansk Regional Tax Administration and the State Tax Administration about the failure of the Sverdlovsk Town Tax Administration to issue certificates for the VAT refunds on time. However, while recognising the existence of the State's debts to the applicant, the authorities found no fault with the Tax Administration. The applicant maintained that, as of 18 June 2004, the amount of the State debt to the company confirmed by court decisions was 26,363,200 hrivnas (around 4,119,250 euros). It complained, in particular, that the State's practice of groundlessly refusing to confirm the applicant's entitlement to VAT refunds constituted an interference with the peaceful enjoyment of its property, and caused significant losses to its business.
The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**, finding that the interference with the applicant's possession had been disproportionate. The Court considered in particular that the constant delays with VAT refund and compensation in conjunction with the lack of effective remedies to prevent or terminate such an administrative practice, as well as the state of uncertainty as to the time of return of its funds, had upset the "fair balance" between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions. In the Court's view, the applicant had borne and continued to bear an individual and excessive burden.

Just satisfaction: The Court decided that Ukraine was to pay the applicant 25,000 euros in respect of pecuniary damage.

Imbert de Trémiolles v. France

4 January 2008 (decision on the admissibility)

In 1997 and 2002 the applicants' assets were subject to the wealth tax provided for in the General Tax Code. They unsuccessfully challenged the lawfulness of the methods that made them subject to the wealth tax.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the wealth tax, which had been introduced by a Finance Act, was payable by individuals whose net taxable assets exceeded a certain value, and had been introduced as a solidarity tax, to serve the public interest by financing part of the minimum welfare benefit. In view of the margin of appreciation which the States were afforded in this sphere, the Court found that the payment of the tax in question had not affected the applicants' financial situation seriously enough for the measure to be considered disproportionate or an abuse of a State's right, acknowledged in Article 1 (protection of property) of Protocol No. 1, to secure the payment of taxes and other contributions.

Bulves AD v. Bulgaria

22 January 2009

The applicant, a joint-stock company, complained in particular that the Bulgarian authorities had deprived it of the right to deduct the input VAT it had paid to its supplier, who had been late in complying with its own VAT reporting obligations.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. Taking into account the timely and full discharge by the applicant company of its VAT reporting obligations, its inability to secure compliance by its supplier with its VAT reporting obligations and the fact that there had been no fraud in relation to the VAT system of which the applicant company had knowledge or the means to obtain such knowledge, the Court found in particular that the applicant should not have been required to bear the full consequences of its supplier's failure to discharge its VAT reporting obligations in timely fashion, and considered that that had amounted to an excessive individual burden on the applicant company.

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant company and that Bulgaria was to pay the applicant 1,953 euros for pecuniary damage.

Faccio v. Italy

31 March 2009 (decision on the admissibility)

See below, under "Freedom to receive information".

Di Belmonte v. Italy

16 March 2010

The applicant died in June 2004 and his cousin has continued the proceedings before the Court. The municipality of Ispica (Ragusa, Italy), which had expropriated land belonging to the applicant with a view to using it for the construction of low-rent housing, was ordered to pay him compensation. The applicant complained about a decision of the domestic authorities to apply tax legislation retroactively with the result that 20% tax was deducted at source from the compensation he received.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It firstly reiterated that States had a wide discretion in determining the types of taxes or contributions to be levied. They alone were competent to assess the political, economic and social issues to be taken into account in this regard. The 1991 tax law to which the present case related fell within the State's margin of appreciation in such matters. The Court further noted that the 1991 law had come into force between the final assessment of the compensation payable to the applicant for the expropriation of his land and the payment of the sums due. It observed, however, that the possibility

of retrospective application of the law would not in itself have raised an issue under the Convention, since Article 1 of Protocol No. 1 did not prohibit as such the retrospective application of a law on taxation. The question arising was whether, in the circumstances of the case, the application of the 1991 law had imposed an excessive burden on the applicant. In that connection, the Court noted that the law had come into force more than seven months after the final assessment, by the Catania Court of Appeal, of the amount of compensation for the expropriation. Accordingly, the delay by the authorities in executing that judgment had had a decisive impact on the application of the new tax system, since the compensation awarded to the applicant would not have been subject to the tax provided for by the new tax legislation if the judgment had been executed properly and punctually.
Just satisfaction: The Court awarded the applicant's heir 1,100,000 euros for the pecuniary damage sustained (reimbursement of the sum deducted in tax, adjustment of that amount to offset the effects of inflation, and interest) and 3,000 euros in respect of non-pecuniary damage.

OAO Neftyanaya Kompaniya YUKOS v. Russia

20 September 2011
This case concerned the tax and enforcement proceedings brought against the applicant oil company – one of Russia's largest and most successful businesses, which was fully state-owned until 1995-1996, when it was privatised – which led to its liquidation. The applicant company complained in particular of irregularities in the proceedings concerning its tax liability for the 2000 tax year and about the unlawfulness and lack of proportionality of the 2000-2003 tax assessments and their subsequent enforcement. It maintained that the enforcement of its tax liability had been deliberately orchestrated to prevent it from repaying its debts; in particular, the seizure of its assets pending litigation had prevented it from repaying the debt. It also complained about: the 7% enforcement fee; the short time-limit for voluntary compliance with the 2000-2003 tax assessments; and, the forced sale of OAO Yuganskneftegaz. The applicant further argued that the courts' interpretation of the relevant laws had been selective and unique, since many other Russian companies had also used domestic tax havens. It submitted that the authorities had tolerated and even endorsed the "tax optimisation" techniques it had used. It further argued that the legislative framework had allowed it to use such techniques.
The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** regarding the imposition and calculation of the penalties concerning the 2000-2001 tax assessments for two reasons, the retroactive change in the rules on the applicable statutory time-limit and the consequent doubling of the penalties due for the 2001 tax year. However, observing that the rest of the 2000-2003 tax assessments were lawful, pursued a legitimate aim (securing the payment of taxes) and were a proportionate measure, it found **no violation of Article 1 of Protocol No. 1** regarding the rest of the 2000-2003 tax assessments. As regards enforcement proceedings, given the pace of the enforcement proceedings, the obligation to pay the full enforcement fee and the authorities' failure to take proper account of the consequences of their actions, the Court found that the Russian authorities had failed to strike a fair balance between the legitimate aims sought and the measures employed, in **violation of Article 1 of Protocol No. 1**. In this case the Court also found **violations of Article 6 §§ 1 and 3 (b)** (right to a fair trial) of the Convention in respect of the 2000 tax-assessment proceedings on the grounds that the applicant had not had sufficient time to study the case file at first instance (four days for at least 43,000 pages) or to make submissions and, more generally, to prepare the appeal hearings. It further held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** as, in view of the considerable complexity of the tax arrangements it had put in place, the applicant was not in a relevantly similar position to any other company. Lastly, the Court found that there had been **no violation of Article 18** (limitation on use of restrictions on rights) of the

Convention **in conjunction with Article 1 of Protocol No. 1**, as the applicant had failed to substantiate its claims that the authorities' aim had not been to take legitimate action to counter tax evasion, but to destroy it and take control of its assets.
In its judgment on *just satisfaction* of 31 July 2014, the Court further decided: that Russia was to pay the shareholders of the applicant company as they had stood at the time of the company's liquidation and, if applicable, their legal successors and heirs 1,866,104,634 euros in respect of pecuniary damage, and that Russia had to produce, in co-operation with the Council of Europe's Committee of Ministers, a comprehensive plan for distribution of the award of just satisfaction; that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

N.K.M. v. Hungary (no. 66529/11)

14 May 2013
The applicant, a civil servant, complained in particular that the imposition of a 98 per cent tax on part of her severance pay under a legislation entered into force ten weeks before her dismissal had amounted to an unjustified deprivation of property.
The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. Despite the wide discretion that the authorities enjoyed in matters of taxation, the Court found that the means employed had been disproportionate to the legitimate aim pursued of protecting the public purse against excessive severance payments. Nor had the applicant been provided with a transitional period in which to adjust to the new severance scheme. Moreover, in depriving her of an acquired right which served the special social interest of reintegrating the labour market, the Hungarian authorities had exposed the applicant to an excessive individual burden.

Cacciato v. Italy and Guiso and Consiglio v. Italy

16 January 2018 (decisions on the admissibility)
The applications complained about the expropriation of land by municipal authorities and in particular the tax of 20% that they had to pay on the compensation they received. They argued in particular that it meant that they had received less than the market value of the land.
The Court declared the applicants' complaints about the tax **inadmissible** as being manifestly ill-founded. It found in particular that the tax had not upset the balance that had to be maintained between the applicants' rights and the public interest in collecting taxes, particularly given the room for manoeuvre ("margin of appreciation") which countries had in fiscal policy. The tax, including the rate and the means of enforcement, had been well within the area of the Italian legislature's discretionary judgment. A level of 20% was also not prohibitive. Furthermore, the tax had not led to the compensation awards being effectively nullified or to undue financial hardship for the applicants.

Right to a fair trial (Article 6 of the Convention)

Bendenoun v. France

24 February 1994
In 1973 the applicant, a dealer in coins, formed a public limited company under French law for the purpose of dealing in old coins, *objets d'art* and precious stones. He owned the greater part of its capital and acted as its chairman and managing director. As a result of his activities, three sets of proceedings – customs, tax and criminal proceedings – were brought against him, and they progressed more or less in parallel. The applicant complained in particular that he had not had a fair trial in the administrative courts in respect of the tax surcharges that had been imposed on him. While the Revenue had carefully chosen, unilaterally, the incriminating documents and produced them to the administrative courts, he himself had not had access to the whole of the file compiled by the customs, which included not only the reports but also the information on which they were based.

The Court considered that **Article 6 § 1** (right to a fair trial) of the Convention **was applicable** in the present case. In the first place, the offences with which the applicant was charged came under Article 1729 § 1 of the General Tax Code. That provision covered all citizens in their capacity as taxpayers, and not a given group with a particular status. It laid down certain requirements, to which it attached penalties in the event of non-compliance. Secondly, the tax surcharges were intended not as pecuniary compensation for damage but essentially as a punishment to deter reoffending. Thirdly, they were imposed under a general rule, whose purpose was both deterrent and punitive. Lastly, in the instant case the surcharges were very substantial, amounting to 422,534 French francs in respect of the applicant personally and 570,398 francs in respect of his company; and if he failed to pay, he was liable to be committed to prison by the criminal courts. Having weighed the various aspects of the case, the Court noted the predominance of those which had a criminal connotation. None of them was decisive on its own, but taken together and cumulatively they made the charge in issue a criminal one within the meaning of Article 6 § 1.
In this case, it did not appear from the information available to the Court that the failure to produce documents infringed the rights of the defence or the principle of equality of arms. The Court therefore held that there had been **no violation of Article 6 § 1** of the Convention

A.P., M.P. and T.P. v. Switzerland (application no. 19958/92)

29 August 1997

The applicants were the widow and sons of the sole shareholder of a construction company who died in 1984. They were his only heirs. The period within which they could have renounced the inheritance expired in May 1984. It subsequently turned out that the deceased had evaded paying certain taxes and the tax authorities initiated proceedings against the applicants. In 1990 the Direct Federal Tax Department ordered them to pay the deceased's unpaid taxes and also fined them. The applicants alleged in particular that, irrespective of any personal guilt, they had been convicted of an offence allegedly committed by someone else.
The Court held that there had been a **violation of Article 6 § 2** (right to a fair trial – presumption of innocence) of the Convention. It observed that no issue could be, nor had been, taken with the recovery from the applicants of unpaid taxes. Indeed, the Court found it normal that tax debts, like other debts incurred by the deceased, should be paid out of the estate. Imposing criminal sanctions on the living in respect of acts apparently committed by a deceased person was, however, a different matter. In the present case, whether or not the deceased was actually guilty, the applicants had been subjected to a penal sanction for tax evasion allegedly committed by him. It is, however, a fundamental rule of criminal law that criminal liability does not survive the person who has committed the criminal act and this was in fact recognised by the general criminal law of Switzerland. In the Court's opinion, such a rule was also required by the presumption of innocence enshrined in Article 6 § 2 of the Convention. Inheritance of the guilt of the dead is not compatible with the standards of criminal justice in a society governed by the rule of law.

J.J. v. the Netherlands (no. 21351/93)

27 March 1998

In December 1989 the applicant, a freelance tax consultant, received an assessment for supplementary income tax and notification of a fiscal penalty raising the amount due by 100% to a total of 38,656 Dutch guilders. He appealed to the Tax Chamber of the Court of Appeal. The latter declared the appeal inadmissible on the ground that the court registration fee had not been paid. The applicant unsuccessfully appealed on points of law to the Supreme Court. He complained that he had been a victim of a violation of the right to a fair trial in that he had not been able to respond to the advisory opinion submitted to the Supreme Court by the Advocate-General.
The Court found that the outcome of the proceedings before the Supreme Court determined a criminal charge against the applicant. Regard being had to what was at

stake for the applicant in the proceedings and to the nature of the advisory opinion of the Advocate-General, the fact that it had been impossible for the applicant to reply to it before the Supreme Court took its decision had infringed his right to adversarial proceedings, which right meant in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision. The Court therefore held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention.

J.B. v. Switzerland (no. 31827/96)

3 May 2001

The applicant, who had had tax evasion proceedings instituted against him, was requested, on various occasions, to submit all the documents concerning the companies in which he had invested money. He failed to do so on each occasion and was fined four times. He alleged that the criminal proceedings against him had been unfair and contrary to the right to a fair trial in that he had been obliged to submit documents which could have incriminated him.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention. It noted in particular that the right to remain silent and the right not to incriminate oneself were international standards at the heart of the notion of a fair procedure under Article 6 § 1. In the present case, it appeared that the authorities had attempted to compel the applicant to submit documents which would have provided information as to his income in view of the assessment of his taxes. The applicant could not exclude that any additional income which transpired from these documents from untaxed sources could have constituted the offence of tax evasion.

Ferrazzini v. Italy

12 July 2001 (Grand Chamber)

The company of which the applicant was the representative applied to the tax authorities for a reduction in the applicable rate of certain taxes for which it was liable. The tax authorities served supplementary tax assessments on the company. The applicant complained of the length of the subsequent tax proceedings.

In this case it was incumbent on the Court to review whether, in the light of changed attitudes in society as to the legal protection that fell to be accorded to individuals in their relations with the State, the scope of Article 6 § 1 (right to a fair trial) of the Convention should not be extended to cover disputes between citizens and public authorities as to the lawfulness under domestic law of the tax authorities' decisions. In this respect, the Court noted that relations between the individual and the State had clearly developed in many spheres during the fifty years which had elapsed since the Convention was adopted, with State regulation increasingly intervening in private-law relations. In the tax field, developments which might have occurred in democratic societies did not, however, affect the fundamental nature of the obligation on individuals or companies to pay tax. In comparison with the position when the Convention was adopted, those developments had not entailed a further intervention by the State into the "civil" sphere of the individual's life. The Court therefore considered that tax matters still formed part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the tax authority remaining predominant. Accordingly, it found that tax disputes fell outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produced for the taxpayer, and held that **Article 6 § 1 did not apply** in the instant case.

Jussila v. Finland

23 November 2006 (Grand Chamber)

A tax office imposed tax surcharges on the applicant amounting to 10% of his re-assessed tax liability. The surcharges totalled 1,836 Finnish Marks (about EUR 300) at the time and were based on the fact that his VAT declarations in 1994-1995 had been incomplete. He appealed to the firs-instance administrative court, requesting an oral

hearing where a tax inspector and an expert could be heard as witnesses. The administrative court invited the two to submit written observations and eventually found an oral hearing manifestly unnecessary because both parties had submitted all the necessary information in writing. The applicant was denied leave to appeal. Before the Court, he alleged that he had not received a fair hearing in the proceedings in which a tax surcharge was imposed as there had been no oral hearing.
The Court found that, although the tax surcharges in the case were part of the fiscal regime, they had been imposed by a rule whose purpose was deterrent and punitive. The offence was therefore criminal, within the meaning of Article 6 (right to a fair trial) of the Convention and the Court held that Article 6 was applicable in the applicant's case. Noting, however, that the applicant had been given ample opportunity to put forward his case in writing and to comment on the submissions of the tax authority, the Court found that the requirements of fairness had been complied with and did not, in the particular circumstances of the case, necessitate an oral hearing. It therefore held that there had been **no violation of Article 6 § 1** of the Convention in the applicant's case.

OAO Neftyanaya Kompaniya YUKOS v. Russia

20 September 2011
See above, under "Protection of property".

Segame S.A. v. France

7 June 2012
This case concerned a public limited company managing an art gallery which was subjected to a revised tax assessment concerning, among other things, additional taxes on the proceeds from the sale of precious metals, jewels, *objets d'art*, collectors' items and antiques (tax on works of art). The applicant complained before the Court about the fine imposed. It considered in particular that the relevant provision of the General Tax Code did not confer full jurisdiction on the tax court, enabling the latter to vary the fine in proportion to the seriousness of the accusations made against a taxpayer.
The Court noted that the applicant company had been able to put forward before the administrative courts all the factual and legal arguments it considered valid in support of its claim. In particular, it had raised the alleged inconsistency of the tax with Community law and had discussed, in detail, the base used in calculating the tax assessment, which, moreover, the administrative court of appeal had reduced. Having regard to the fact that the fine was set as a percentage of the unpaid tax, the particular nature of tax disputes and the rate of the fine, the Court concluded that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention.

Janosevic v. Sweden and Västberga Taxi Aktiebolag and Vulic v. Sweden

23 July 2002
The applicant in the first case owned a taxi company. The applicants in the second case were a taxi company and its former director. As part of a large-scale investigation of taxicab operators in 1994 and 1995, the tax authority carried out audits of the two taxi companies. Concluding that their tax returns were incorrect, the tax authority checked their accounts and adjusted their taxes upwards. As the applicants had supplied false information, they were ordered to pay surcharges: the applicant in the first case to the tune of 160,000 Swedish kroner, and the first applicant in the second case 35,000 kroner. As a result of the tax imposed on the latter, its former director's tax returns were also verified and he was ordered to pay a total of almost 58,000 kroner additional tax. The applicants all claimed that it had been contrary to the right to a fair trial to enforce the decision of the tax authorities before a final court judgment had established their liabilities. They also complained that the tax proceedings had not been concluded within a reasonable time and that they had been deprived of their right to be presumed innocent until proved guilty according to law.
The Court found that the general character of the legal provisions on tax surcharges and the purpose of the penalties, which were both deterrent and punitive, showed that, for the purposes of Article 6 (right to a fair trial) of the Convention, the applicants were

charged with a criminal offence. The criminal character of the offence was further evidenced by the severity of the potential and actual penalty. In both cases, the Court held that there had been a **violation of Article 6 § 1** of the Convention concerning the applicants' right of access to court. Noting in the first case that enforcement measures had been taken against the applicant and a stay of execution had been refused, the Court concluded that the tax authority's decisions concerning taxes and tax surcharges had had serious implications for the applicant and entailed consequences which were liable to become more serious as the proceedings progressed and would be difficult to estimate and redress should he succeed in his attempts at having the decisions overturned. It was therefore indispensable if he were to have effective access to the courts that the procedures he had set in motion were conducted promptly. The Court considered that, in taking almost three years to decide the applicant's requests for reconsideration of the assessments, the tax authority had failed to act with the urgency required by the circumstances of the case and thereby unduly delayed a court determination of the main issues concerning the imposition of additional taxes and tax surcharges. In the second case, the Court considered that the tax authority and the County Administrative Court had failed to act with the urgency required by the circumstances of the cases and thereby unduly delayed court determinations of the main issues concerning the imposition of additional taxes and tax surcharges. Regarding the first applicant, even if a court determination were to be provided in the future, the overall delay in obtaining such a determination meant that the access to the courts thereby acquired could not be considered effective. In both cases the Court also held that there had been a **violation of Article 6 § 1** because of the length of the proceedings. Lastly, the Court held in both cases that there had been **no violation of Article 6 § 2** (right to a fair trial – presumption of innocence) of the Convention.

Melo Tadeu v. Portugal

23 October 2014

This case concerned a tax enforcement procedure initiated against the applicant to collect a tax debt owed by a company of which she was regarded as *de facto* manager, the procedure having continued in spite of her acquittal in criminal proceedings for tax fraud and having resulted in the attachment of a shareholding interest that she held in another company. The applicant complained that she had been treated, in a tax enforcement procedure, as guilty of an offence for which she had been acquitted. She further alleged that the attachment of her interest in the other company constituted an unjustified interference with her right to the peaceful enjoyment of her possessions.

The Court held that there had been a **violation of Article 6 § 2** (right to a fair trial – presumption of innocence) of the Convention, finding that the tax authorities and the administrative courts hearing the case had disregarded the applicant's acquittal in criminal proceedings, thus casting doubt on the well-foundedness of her acquittal in a manner that was incompatible with her right to be presumed innocent. The Court also held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**, finding that, by refusing to release from attachment the applicant's interest in another company, in spite of her acquittal in criminal proceedings, the Portuguese authorities had failed to strike a fair balance between the protection of the applicant's right to the enjoyment of her possessions and the requirements of the general interest.

Chap Ltd v. Armenia

2 May 2017

This case concerned tax evasion proceedings brought against a regional television broadcasting company. The company notably alleged that they had not been able to examine witnesses whose evidence had been used against it in the proceedings. The witnesses were the head of the National Television and Radio Commission and a number of businessmen.

The Court held that there had been a **violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d)** (right to a fair trial and right to obtain attendance and examination of witnesses) of the Convention, finding that the restriction on the applicant

company's right to examine these witnesses had been unreasonable. In particular, the courts had refused to grant the applicant company's request to summon these witnesses, finding their evidence irrelevant, despite the fact that the very same evidence had been considered decisive for imposing tax surcharges and fines on the applicant company in the proceedings against it.

Gohe v. France and three other applications

3 July 2018 (decision on the admissibility)

See below, under "Right to respect for private and family life, home and correspondence".

No punishment without law (article 7 of the Convention)

Société Oxygène Plus v. France

17 May 2016 (decision on the admissibility)

The applicant, a company carrying on the activity of property dealer, benefited from favourable tax treatment in relation to the ordinary stamp duty for property conveyancing (*droits d'enregistrement*). In 2002 the tax authority observed that the applicant company had not satisfied one of the statutory conditions for that regime and considered that the anomalies were serious enough to warrant the forfeiture of the favourable treatment. Consequently, the applicant company was required to pay 213,915 euros, corresponding to the tax ordinarily levied on property transactions, including 43,353 euros in default interest. The applicant company challenged that reassessment. During the proceedings a new law replaced the measure of forfeiture of the favourable tax treatment by a system of tax penalties. Subsequently, even the obligation to keep a register was abolished. The applicant company thus found it justified to rely on the principle of the application of the more lenient criminal law.

The applicant declared the application **inadmissible**, finding that the withdrawal of the preferential treatment did not, in the present case, constitute a penalty within the meaning of Article 7 (no punishment without law) of the Convention. Concerning in particular the nature of the offence, the Court noted that the relevant provision of the General Tax Code provided for the possibility of derogation from the ordinary law and exemption from the tax ordinarily levied on property purchases, subject to compliance with certain formalities. It thus appeared logical that a property dealer claiming preferential treatment but failing to satisfy the conditions, which constituted a decisive factor for granting the tax regime, should have that treatment withdrawn, resulting in the application of the ordinary law and therefore in the payment of taxes which it would normally have had to pay. It could therefore not be said that the forfeiture of the preferential treatment was based on a rule whose aim was both preventive and punitive. Furthermore, it was true that the applicant company had been ordered to pay significant amounts. However, they consisted merely of a tax reassessment together with default interest. No penalties had been imposed on the applicant company, whose good faith was not disputed by the tax authority.

Right to respect for private and family life, home and correspondence (Article 8 of the Convention)

Keslassy v. France

8 January 2002 (decision on the admissibility)

This case concerned the search of residential premises during an investigation into an alleged tax fraud by companies. The applicant, who held a controlling interest in various companies whose premises had been searched under a judicial warrant, complained about the circumstances in which these searches, and in particular his home, had been ordered.

The Cour declared the application **inadmissible** as being manifestly ill-founded. Having regard to the strict rules of domestic law governing searches and to the fact that those had been complied with during the searches, it found that the interference with the applicant's right to respect for his private life and his home had been proportionate to the legitimate aims pursued, namely the protection of the economic well-being of the country and the prevention of crime, and therefore necessary in a democratic society, within the meaning of Article 8 (right to respect for private life and the home) of the Convention.

André and Other v. France

24 July 2008

The applicants were a lawyer and a law firm. The case concerned a search of their offices in June 2001 by tax inspectors with a view to the discovery of evidence against a client company of the applicants' practice which was suspected of tax evasion. The search was conducted in the presence of the first applicant, the chairman of the Marseilles Bar Association and a senior police officer, and 66 documents were seized. The applicants complained that the search and the seizures had been unlawful, and lodged an appeal on points of law, which was dismissed by the Court of Cassation. The applicants alleged in particular an infringement of their defence rights and a breach of professional confidentiality.

In this case the Court recalled that it was essential for searches at a lawyer's office to be attended by special safeguards. It was also vital to provide a strict regulatory framework for such measures. The Court noted that in the applicant's case the search had been attended by a special safeguard since the chairman of the Marseilles Bar Association had been present. On the other hand, apart from the fact that the judge who had authorised the search was not present, the presence of the chairman of the bar and his protests were not adequate to prevent the effective disclosure of all the documents at the practice or their seizure. In addition, the tax inspectors and the senior police officer had been given extensive powers by virtue of the broad terms of the search warrant. Lastly, the Court noted that in the context of a tax inspection into the affairs of the applicants' client company the tax inspectorate had targeted the applicants for the sole reason that it was finding it difficult to carry out the necessary checks and to find documents capable of confirming the suspicion that the company was guilty of tax evasion, although at no time had the applicants been accused or suspected of committing an offence or participating in a fraud committed by their client. Accordingly, considering that the search and seizures had been disproportionate to the aim pursued, the Court held that there had been a **violation of Article 8** (right to respect for home) of the Convention. It also found a **violation of Article 6 § 1** (right of access to a court) of the Convention on account of the lack of effective judicial review.

Faccio v. Italy

31 March 2009 (decision on the admissibility)

See below, under "Freedom to receive information".

Bernh Larsen Holding AS and Others v. Norway

14 March 2013

This case concerned the complaint by three Norwegian companies about a decision of the tax authorities ordering tax auditors to be provided with a copy of all data on a computer server used jointly by the three companies. The applicants maintained that this decision had breached their rights to respect for home and correspondence, alleging in particular that the measure had been taken in an arbitrary manner.

The Court held that there had been **no violation of Article 8** (right to respect for home and correspondence) of the Convention, finding that, despite the lack of a requirement for prior judicial authorisation, effective and adequate safeguards against abuse had been in place and a fair balance had been struck between the applicant companies' right to respect for home and correspondence and their interest in protecting the privacy of persons working for them on the one hand, and the public interest in ensuring efficient

inspection for tax assessment purposes on the other. In the present case, the Court agreed with the Norwegian courts' argument that, for efficiency reasons, tax authorities' possibilities to act should not be limited by the fact that a tax payer was using a "mixed archive", even if that archive contained data belonging to other tax payers.

G.S.B. v. Switzerland (no. 28601/11)

22 December 2015

This case concerned the transmission to the US tax authorities of the applicant's bank account details in connection with an administrative cooperation agreement between Switzerland and the United States of America. In 2008 the US tax authorities had discovered that the bank UBS SA had allowed US taxpayers to conceal their assets and income from them and had advised customers who had not declared their accounts to those authorities. Following an agreement which, in its consolidated form with a protocol, was entitled "Convention 10", the Swiss federal tax authority had ordered UBS to transmit the applicant's file in the context of that authority's cooperation with the US Internal Revenue Service. The applicant complained that the disclosure of his bank details had amounted to a violation of his right to respect for his private life. He also considered himself a victim of discrimination as an UBS customer with US taxpayer status, as compared with the customers of other banks who had not, at the relevant time, been covered by administrative cooperation in tax matters

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It accepted in particular that Switzerland had had a major interest in acceding to the US request for administrative cooperation in order to enable the US authorities to identify any assets which might have been concealed in Switzerland. At the procedural level, the Court further noted that the applicant had had access to several effective and genuine procedural safeguards in order to contest the transmission of his bank details and to secure protection against arbitrary implementation of agreements concluded between Switzerland and the US. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8**, finding that the applicant had not suffered discriminatory treatment.

K.S. and M.S. v. Germany (no. 33696/11)

6 October 2016

This case concerned a search of a couple's home because they were suspected of tax evasion. The proceedings against them had been triggered when information about their assets held in a Liechtenstein bank had been illegally copied by an employee of the bank and sold to the German secret services. The applicants notably complained that their home had been searched on the basis of a warrant issued on the strength of evidence which had been obtained in breach of domestic and international law.

The Court held that there had been **no violation of Article 8** (right to respect for the home) of the Convention. It found in particular that the search had been carried out in accordance with the law. It further noted the settled case-law of the German Federal Constitutional Court according to which there was no absolute rule that evidence which had been acquired in violation of procedural rules could not be used in criminal proceedings. That meant that the couple had been able to foresee – if necessary with the aid of legal advice – that the domestic authorities would consider basing the search warrant on the Liechtenstein data despite the fact that that information might have been acquired in breach of the law. Furthermore, the Court found that the search had been proportionate: firstly, because German legislation and jurisprudence in the sphere of searches provided adequate and effective safeguards against abuse in general and had done so in the circumstances of this particular case; secondly, because tax evasion constituted a serious offence; thirdly, because nothing indicated that the German authorities had deliberately and systematically breached domestic and international law in order to obtain information for the prosecution of tax crimes; fourthly, because the warrant had been explicit and detailed as concerned both the offence being investigated as well as the items sought as evidence; and, lastly, because the couple had not alleged

any repercussions on their personal reputation as a consequence of the search of their home.

Gohe v. France and three other applications

3 July 2018 (decision on the admissibility)

This case concerned house searches and subsequent seizures, carried out at the homes of third parties, on the basis of which the applicants underwent separate tax inspections which led in some cases to tax assessment proceedings and in one case to a conviction for tax fraud. The applicants complained in particular of the dismissal of their submissions at all stages of the proceedings and their inability to challenge the lawfulness of the house searches and seizures carried out.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It observed, in particular, that where no search or seizure operations had been carried out at an applicant's own home or premises, he or she could not claim to be the victim of a breach of the right to respect for private life or the home. The Court also found that the domestic proceedings as a whole had been fair. The applicants had been represented by lawyers throughout the proceedings and had thus had an opportunity to challenge the lawfulness of the proceedings and put forward their defence arguments. The domestic courts had also expressly examined the issue of compliance with the adversarial principle and had ruled out any violation.

Brazzi v. Italy

27 September 2018[2]

This case concerned a search carried out by the Italian tax authorities in a house that the applicant had owned in Italy since 2009 and where his wife and children lived during the school year. The applicant complained in particular of a breach of his right to respect for his home.

The Court held that there had been a **violation of Article 8** (right to respect for the home) of the Convention. It found in particular that the interference with the applicant's right to respect for his home had not been in accordance with the law, within the meaning of Article 8 § 2 of the Convention, because he had not had the benefit of the effective oversight required by the rule of law in a democratic society. No judge had examined the lawfulness or necessity of the warrant for the search of his home, neither before nor after the search. Italian law did not therefore provide sufficient upstream or downstream safeguards against risks of abuse of power or arbitrariness.

Freedom of religion (Article 9 of the Convention)

Spampinato v. Italy

29 March 2007 (decision on the admissibility)

See below, under "Prohibition of discrimination".

Association Les Témoins de Jéhovah v. France

30 June 2011

In a 1995 parliamentary report on "Sects in France", the Jehovah's Witnesses were classified as a sect. The applicant association alleged that a number of steps had been taken to marginalise it in the light of the report. In particular, it received a supplementary tax demand for tens of millions of euros relating to donations from its adherents. Although such donations are not subject to tax in the case of liturgical associations, the authorities ruled that the applicant association did not belong to that category. The applicant submitted that the tax proceedings against it had infringed its freedom of religion.

The Court recalled that it had already held in several cases that Article 9 (freedom of thought, conscience and religion) of the Convention protected the free exercise of the

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Jehovah's Witnesses' right to freedom of religion. In the present case, it noted that the supplementary tax assessment in question had concerned the entirety of the manual gifts received by the applicant, although they represented the main source of its funding. Its operating resources having thus been cut, it had no longer been able to guarantee to its followers the free exercise of their religion in practical terms. There had therefore been interference in the applicant association's right to freedom of religion. For such interference to be acceptable from the perspective of Article 9, it had above all to be prescribed by law, and the law in question had to be formulated with sufficient clarity to be foreseeable. In this case, the law under which the gifts to the applicant association were automatically taxed was Article 757 of the General Tax Code, under which manual gifts "disclosed" to the tax authorities were subject to gift tax. The Court, however, identified two reasons why that Article and its application to the case of the applicant had not been sufficiently foreseeable: firstly, the disputed Article gave no details about the targeted "donee" and, as a result, it was impossible to know whether it was applicable to legal entities and thus to the applicant association; secondly, with regard to the concept of the "disclosure" of gifts within the meaning of Article 757, the Court noted that the present case was the first in which it had been argued that submission of the required accounting records in the context of a tax audit was the equivalent of "disclosure". Since the Court was not convinced that the applicant had been able reasonably to foresee the consequence which the receipt of donations and the submission of its accounts to the tax authorities might entail, it concluded that the interference had not been prescribed by law and that there had been a **violation of Article 9** of the Convention.
In its judgment on *just satisfaction* of 5 July 2012, the Court further decided that France was to pay the applicant 4,590,295 euros in respect of pecuniary damage, corresponding to the amount unduly paid by the association, and dismissed the applicant's claim for non-pecuniary damage. In addition, noting that the tax measure, including penalties and interest for late payment, was still in force, the Court considered, under **Article 46** (binding force and execution of judgments) of the Convention, that a decision to discontinue recovery of those sums would be an appropriate form of reparation which would put an end to the violation found. However, subject to monitoring by the Council of Europe's Committee of Ministers, France remained free to choose other means to discharge its legal obligation under Article 46.

See also: ***Association Cultuelle Du Temple Pyramide v. France***, ***Association Des Chevaliers Du Lotus D'Or v. France*** and ***Église Évangélique Missionnaire et Salaûn v. France***, judgments of 31 January 2013.

Klein and Others v. Germany

6 April 2017

Under German law, some churches and religious societies are entitled to levy a church tax and/or fee on their members. The five applicants complained that, when such taxes or fees were calculated and levied on the basis of the joint income of both the applicant and their spouse, it violated their right to freedom of religion. In particular, they complained variously of being obliged to pay for their spouse's special church fee when they themselves were not a member of the church; of requiring the financial assistance of their spouse to pay their own special church fee, making them dependant on their spouse for their freedom of religion; or of being obliged to pay an unfairly high church tax, as it had been calculated taking their spouse's income into account.
The Court found that most of the **complaints under Article 9** (freedom of religion) of the Convention were **inadmissible**. In particular, this was because in these cases the taxes/fees had been levied not by the State, but by the applicants' churches – which the applicants were free to leave under German law. As such, in most of the cases the levying and calculation of the taxes/fees had been an autonomous church activity, which could not be attributed to the German State. However, in one case the State had been involved in levying a special church fee on an applicant who was not a member of the relevant church. This was because the fee which had been levied on the applicant's wife

had been subtracted directly from the applicant's tax reimbursement claim by way of an off-set – therefore subjecting the applicant to his wife's financial obligations towards her church. However, this off-set had arisen because the couple themselves had chosen to file a joint tax assessment, and it appeared that the applicant could have cancelled it by lodging a settlement notice. In these circumstances, the off-set had been a proportionate way for the State to try to rationalise the couple's tax liabilities, which had involved **no violation** of the Convention.

Freedom of expression (article 10 of the Convention)

Freedom to impart information

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland

27 June 2017 (Grand Chamber)

After two companies had published the personal tax information of 1.2 million people, the domestic authorities ruled that such wholesale publication of personal data had been unlawful under data protection laws, and barred such mass publications in future. The companies complained that the ban had violated their right to freedom of expression.

The Grand Chamber held, by fifteen votes to two, that there had been **no violation of Article 10** (freedom of expression) of the Convention. It noted in particular that the ban had interfered with the companies' freedom of expression. However, it had not violated Article 10 because it had been in accordance with the law, it had pursued the legitimate aim of protecting individuals' privacy, and it had struck a fair balance between the right to privacy and the right to freedom of expression. In particular, the Grand Chamber agreed with the conclusion of the domestic courts, that the mass collection and wholesale dissemination of taxation data had not contributed to a debate of public interest, and had not been for a solely journalistic purpose.

Freedom to receive information

Faccio v. Italy

31 March 2009 (decision on the admissibility)

In December 1999 the applicant applied to the subscriptions office of a public-service broadcasting channel for the cancellation of his subscription to the public television service. In August 2003 the tax police affixed seals to his television set, wrapping it in a nylon bag to prevent it being used. The applicant complained of a violation of his right to receive information, of his right to respect for his property, and of his right to respect for his private and family life. He alleged among other things that the act of making his television set unusable had been a disproportionate measure as it also prevented him from watching private channels.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted that it was not disputed that the affixing of seals to the applicant's television set amounted to an interference in his right to receive information and his right to respect for property and his private life. However, this measure, provided for by law, pursued a legitimate aim, namely that of dissuading individuals from failing to pay a tax or dissuading them from cancelling the subscription to the public television service. The Court, like the Italian Government, considered that the proportionality of the measure was to be analysed in the light of the fiscal nature of the broadcasting licence. The licence fee was a tax intended for funding the public broadcasting service. In the Court's opinion, and as was clear from the wording of the relevant legislation, the mere fact of possessing a television set entailed an obligation to pay the tax in question, independently of the applicant's wish to watch the programmes broadcast by the public channels. Indeed, by converse implication, even accepting that a system which made it

possible to watch only private channels without paying the licence fee was technically possible, this would be tantamount to stripping the tax of its very essence, namely a contribution to a community service rather than the price paid by an individual in exchange for reception of a given channel. In this context, it was to be noted that taxation matters still belonged to the "hard core" of prerogatives of the State authorities, and that the public nature of the relationship between the tax-payer and the community remained predominant. In the light of these considerations, and of the reasonable amount of the tax in question (107.50 euros for 2009), the Court found that affixing of seals to the applicant's television set was a measure that was proportionate to the objective pursued by the State.

Prohibition of discrimination (Article 14 of the Convention)

Spampinato v. Italy

29 March 2007 (decision on the admissibility)

The applicant worked as a trainee lawyer. On his income-tax return he opted to allocate eight thousandths of the tax to the State[3]. Before the Court, he complained in particular that he had been obliged to manifest his religious beliefs when completing his income tax return. He further alleged that he had been liable for a tax that did not satisfy a general interest, as only certain specific recipients could benefit from the relevant amounts.

The Court declared the application **inadmissible** as being manifestly ill-founded. It firstly observed that it was unable to share the applicant's view that the choice for the allocation of a portion of his income tax necessarily obliged him to indicate a religious affiliation. Under the relevant law, taxpayers were entitled not to make any choice as to the allocation of the eight thousandths of their income tax. Accordingly, the provision in question did not entail an obligation to manifest one's religious beliefs in a manner that may be regarded as contrary to Articles 9 (freedom of religion) and 14 (prohibition of discrimination) of the Convention on which the applicant relied. The Court further noted that the tax legislation complained of did not provide for a tax to be added to the ordinary income tax but only for a specific allocation of a percentage of the total amount of income tax levied. In any event, that legislation fell within the State's margin of appreciation and could not as such be regarded as arbitrary. The legislation in question could therefore not be said to have imposed an excessive burden on the applicant such as to upset the "fair balance" that had to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

Burden v. the United Kingdom

29 April 2008 (Grand Chamber)

The applicants were elderly, unmarried sisters who had lived together all their lives, for the last 30 years in a house they owned jointly built on land inherited from their parents. Each had made a will leaving all her estate to the other sister. They complained that, when one of them dies, the survivor would face a heavy inheritance tax bill, unlike the survivor of a marriage or a civil partnership[4].

---

3. The relevant legislation provides that this proportion must be allocated to the State, to the Catholic church, or to one of the institutions representing the other five religions which had agreed to receive that contribution. Taxpayers are required to indicate their choice when they fill in their tax return. If no option is indicated, the corresponding sum is paid to the State, the Catholic church and the institutions representing the other five religions, in proportion to the choices made by all taxpayers. The portion of that income tax received by the State is earmarked for activities with a social purpose. However, the total amount of this portion is reduced every year by EUR 80,000,000 – a sum which the State is allowed to use freely according to its needs.

4. Under the 1984 Inheritance Tax Act, inheritance tax was charged at 40% on the value of a person's property. That rate applied to any amount in excess of 285,000 pounds sterling (GBP) (420,844 euros) for transfers during the tax year 2006-2007 and GBP 300,000 (442,994 euros) for 2007-2008. Property passing from the deceased to his or her spouse or "civil partner" (a category introduced under the 2004 Civil

The Court found that the applicants, as co-habiting sisters, could not be compared for the purposes of Article 14 (prohibition of discrimination) of the Convention to a married or Civil Partnership Act couple and therefore held that there had been **no violation of Article 14 taken in conjunction with Article 1** (protection of property) **of Protocol No.1**. It noted in particular that the absence of such a legally-binding agreement between the applicants rendered their relationship of co-habitation, despite its long duration, fundamentally different to that of a married or civil partnership couple. This view was unaffected by the fact that the 47 Council of Europe member States had adopted a variety of different rules of succession as between survivors of a marriage, civil partnership and those in a close family relationship and had similarly adopted different policies as regards the grant of inheritance-tax exemptions to the various categories of survivor; States, in principle, remaining free to devise different rules in the field of taxation policy.

Glor v. Switzerland

30 April 2009

The applicant, who suffered from diabetes and was declared unfit for military service by a military doctor, was nevertheless required to pay a tax for not doing his military service. He considered this as discrimination and argued that he was quite willing to do military service but was prevented from doing it, yet nevertheless obliged to pay a tax by the competent authorities, who considered his disability a minor one. The applicant alleged that the disability threshold (40% physical or mental disability) used as the criterion for exemption from the impugned tax had no legal basis.

The Court considered that there was a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment. It held that in the present case there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention, finding that the Swiss authorities had not struck a fair balance between the protection of the interests of the community and respect for the applicant's rights and freedoms. In the light of the aim and effects of the impugned tax, the objective justification for the distinction made by the domestic authorities, particularly between persons who were unfit for service and not liable to the tax in question and persons who were unfit for service but nonetheless obliged to pay it, did not seem reasonable in relation to the principles which prevailed in democratic societies.

The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom

4 March 2014

This case concerned the complaint of the applicant – a religious organisation, registered as a private unlimited company in the UK, part of the worldwide Mormon Church – of being denied an exemption from local property taxes. In 2001 the church applied to have its temple in Preston, Lancashire, removed from a list of premises liable to pay business tax, on the grounds that it was a "place of public religious worship" which was entitled to exemption from that tax. While a first-instance court decision granted the church's claim, that decision was overturned in 2005. In a final decision of July 2008, the House of Lords dismissed the church's appeal, holding in particular that the temple was not to be qualified as a "place of public religious worship", since access to the temple was restricted to a select group of the most devout followers holding a special authorisation.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 9** (freedom of thought, conscience and religion) of the Convention, finding that, in so far as any difference of treatment between religious groups in comparable situations could be said to have been established, it had a reasonable and objective justification. The Court noted in particular that the policy of using rates exemptions to promote the public benefit in enjoying

Partnership Act for same-sex couples, which does not cover family members living together) was exempt from charge.

access to religious services and buildings could be characterised as one of general social strategy, in respect of which the State authorities had a wide margin of discretion. Furthermore, the consequences of refusing the exemption had not been disproportionate in the present case: all the applicant's places of worship that were open to the public, such as its chapels and stake centres, had the benefit of the full exemption; the temple itself, which was not open to the public, did not attract the full exemption, but did benefit from an 80% reduction in rates in view of its use for charitable purposes; the legislation prompting the contested measure did not go to the legitimacy of Mormon beliefs, but was instead neutral, being the same for all religious groups as regards the manifestation of religious beliefs in private and producing exactly the same negative consequences for the officially established Christian Church in England (the Church of England) as far as private chapels were concerned; lastly, the remaining liability to rates was relatively low in monetary terms.

Freedom of movement (Article 2 of Protocol No. 4)

Riener v. Bulgaria

23 May 2006

At the relevant time the applicant held both Austrian and Bulgarian nationality. She had business interests in Bulgaria and spent most of her time there. She amassed tax debts to a considerable amount. This remained unpaid. In March 1995, at the request of the tax authorities, the passport authority imposed a travel ban under the Law on Passports for Travelling Abroad. One month later, the applicant's Austrian passport was seized at the border when she tried to cross into Greece, and a travel ban was imposed on her under the Law on the Sojourn of Aliens. The travel ban was lifted in August 2004, after the applicant's tax debts had been extinguished through lapse of time. The applicant complained, in particular, about the ban preventing her from leaving Bulgaria.

The Court held that there had been a **violation of Article 2** (freedom of movement) **of Protocol No. 4** to the Convention, finding that the relevant law had not provided sufficient procedural safeguards against arbitrariness. The Court noted in particular that the public interest in recovering unpaid tax of an amount such as in the present case could warrant appropriate limitations on the applicant's rights. States have a certain margin of appreciation to frame and organise their fiscal policies and make arrangements to ensure that taxes are paid. However, it follows from the principle of proportionality that a restriction on the right to leave one's country on grounds of unpaid debt can only be justified as long as it serves its aim – recovering the debt. That means that such a restriction cannot amount to a *de facto* punishment for inability to pay. In addition, the authorities are not entitled to maintain over lengthy periods restrictions on the individual's freedom of movement without periodic reassessment of their justification in the light of factors such as whether or not the fiscal authorities had made reasonable efforts to collect the debt through other means and the likelihood that the debtor's leaving the country might undermine the chances to collect the money. In the applicant's case, however, the Court observed that the authorities had failed to give due consideration to the principle of proportionality in their decisions and that the travel ban imposed on her was of an automatic nature and of indeterminate duration. It also noted a lack of clarity in the law and practice with regard to some of the issues. It further noted that the impugned measure was maintained over a lengthy period and was disproportionate to the aim it pursued, i.e. to recover the tax debt. In this case the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention **and Article 2** (freedom of movement) **of Protocol No. 4** in respect of the travel ban against the applicant.

Right not to be tried or punished twice (Article 4 of Protocol No. 7)

Ruotsalainen v. Finland

16 June 2009

The applicant was running his van on fuel that was more leniently taxed than the diesel oil he should have been using, without paying the extra tax. He was fined the equivalent of about 120 euros for petty tax fraud, through a summary penal order. In subsequent administrative proceedings he was ordered to pay about 15,000 euros, corresponding to the difference between the tax he actually paid and the tax he should have paid, multiplied by three because he had failed to inform the competent authorities. He appealed against that decision, but to no avail. The applicant complained that he had been punished twice for the same motor vehicle fuel tax offence.

The Court held that had been a **violation of Article 4** (right not to be tried or punished twice) **of Protocol No. 7** to the Convention. It firstly noted that both sanctions imposed on the applicant had been criminal in nature: the first set of proceedings having been criminal according to the Finnish legal classification; and, the subsequent set of proceedings, although classified as part of the fiscal regime and therefore administrative, could not just be considered compensatory given that the difference in tax charge had been trebled as a means to punish and deter re-offending, which were characteristic features of a criminal penalty. Furthermore, the facts behind both sets of proceedings against the applicant had essentially been the same: they both concerned the use of more leniently taxed fuel than diesel oil. The only difference had been the notion of intent in the first set of proceedings. In sum, the second sanction had arisen from the same facts as the former and there had therefore been a duplication of proceedings. Nor did the second set of proceedings contain any exceptions, such as new evidence or facts or a fundamental defect in the previous proceedings which could affect the outcome of the case, as envisaged by the second paragraph of Article 4 of Protocol No. 7.

Shibendra Dev v. Sweden

21 October 2014 (decision on the admissibility)

The applicant in the instant case was ordered to pay tax surcharges before being convicted of, *inter alia*, a tax offence. He lodged an application with the European Court complaining of a violation of Article 4 (right not to be tried or punished twice) of Protocol No. 7 to the Convention on 21 January 2010. The question arose whether he was required first to exhaust the domestic remedies that had become available as a result of a decision by the Swedish Supreme Court of June 2013[5].

The Court declared the application **inadmissible** for failure to exhaust domestic remedies. In view of the new legal position following the Supreme Court's decision of 11 June 2013, if found that there was now an accessible and effective remedy in Sweden that was capable of affording redress in respect of alleged violations of Article 4 of Protocol No. 7 and which applied retroactively. Thus, to the extent that a case involved tax surcharges and tax offences based on the same information supplied in a tax return and had been tried or adjudicated in the second set of proceedings on or after 10 February 2009, a potential applicant could be expected to take domestic action to secure a re-opening of the proceedings, a quashing or reduction of sanctions or an award of compensation for alleged damage.

[5]. In this plenary decision of 11 June 2013 the Swedish Supreme Court, departing from its previous case-law, held that there was sufficient support to conclude that the Swedish system that enabled persons guilty of tax offences to be both prosecuted and subjected to tax surcharges was incompatible with Article 4 of Protocol No. 7 to the Convention. In a series of further decisions, both it and the Supreme Administrative Court ruled that persons convicted or on whom surcharges were imposed in a manner incompatible with Article 4 of Protocol No. 7 could, in certain situations, have their cases re-opened. This applied with retrospective effect from 10 February 2009, the date of the European Court's Grand Chamber judgment in the case of *Sergey Zolotukhin v. Russia*.

See also: ***Henriksson v. Sweden*** and ***Åberg v. Sweden***, decisions of 21 October 2014.

Lucky Dev v. Sweden

27 November 2014

In June 2004 the Swedish tax authorities instituted proceedings against the applicant in respect of her income tax and VAT returns for 2002 and ordered her to pay additional tax and surcharges. The applicant challenged that order in the courts. She was also prosecuted for bookkeeping and tax offences arising out of the same set of tax returns. Although she was convicted of the bookkeeping offence, she was acquitted of the tax offence. The tax proceedings continued for a further nine and a half months after the date her acquittal became final. The applicant complained that as a result of being prosecuted and ordered to pay tax surcharges in respect of the same events, she had been tried and punished twice for the same offence.

Concerning the question of admissibility of the application, as the criminal proceedings against the applicant had been concluded on 8 January 2009, that is before 10 February 2009, the Court concluded that she had not failed to exhaust the domestic remedies available to her (see, *a contrario*, the *Shibendra Dev v. Sweden* decision summarised above). As to the merits of the case, the Court held that there had been **a violation of Article 4** (right not to be tried or punished twice) **of Protocol no. 7**, finding that the applicant had been tried again for a tax offence for which she had already been finally acquitted as the tax proceedings against her had not been terminated and the tax surcharges not quashed, even when criminal proceedings against her for a related tax offence had become final.

A. and B. v. Norway (nos. 24130/11 and 29758/11)

15 November 2016 (Grand Chamber)

This case concerned two taxpayers who submitted that they had been prosecuted and punished twice – in administrative and criminal proceedings – for the same offence. The applicants alleged more particularly that they had been interviewed by the public prosecutor as persons charged and had then been indicted, had had tax penalties imposed on them by the tax authorities, which they had paid, and had thereafter been convicted and sentenced in criminal proceedings.

The Grand Chamber held that there had been **no violation of Article 4** (right not to be tried or punished twice) **of Protocol No. 7**. It first noted that it had no cause to cast doubt on the reasons why the Norwegian legislature had opted to regulate the socially harmful conduct of non-payment of taxes by means of an integrated dual (administrative/criminal) process. Nor did it call into question the reasons why the Norwegian authorities had chosen to deal separately with the more serious and socially reprehensible aspect of fraud in the context of criminal proceedings rather than an ordinary administrative procedure. The Court then found that the conduct of dual proceedings, with the possibility of a combination of different penalties, had been foreseeable for the applicants, who must have known from the outset that criminal prosecution as well as the imposition of tax penalties was possible, or even likely, on the facts of their cases. The Grand Chamber also observed that the administrative and criminal proceedings had been conducted in parallel and were interconnected. The facts established in one of the sets of proceedings had been relied on in the other set and, as regards the proportionality of the overall punishment, the sentence imposed in the criminal trial had taken account of the tax penalty. The Grand Chamber was therefore satisfied that, while different penalties had been imposed by two different authorities in the context of different procedures, there had nevertheless been a sufficiently close connection between them, both in substance and in time, for them to be regarded as forming part of an overall scheme of sanctions under Norwegian law.

Johannesson and Others v. Iceland

18 May 2017

The applicants, two individuals and one company, complained that they had been tried twice for the same conduct of failing to make accurate declarations for tax assessments: first through the imposition of tax surcharges, and second through a subsequent criminal trial and conviction for aggravated tax offences.

The Court held that had been a **violation of Article 4** (right not to be tried or punished twice) **of Protocol No. 7** in respect of the two individual applicants, finding that they had been tried and punished twice for the same conduct. In particular, this was because the two sets of proceedings had both been "criminal" in nature; they had been based on substantially the same facts; and they had not been sufficiently interlinked for it to be considered that the authorities had avoided a duplication of proceedings. Though Article 4 of Protocol No.7 does not exclude the carrying out of parallel administrative and criminal proceedings in relation to the same offending conduct, the two sets of proceedings must have a sufficiently close connection in substance and in time to avoid duplication. The Court held that there had not been a sufficiently close connection between the sets of proceedings in this case. As further regards the applicant company's complaint, the Court declared it **inadmissible**, because the company had failed to show that it wished to continue its application before the Court.

Media Contact:
Tel: +33 (0)3 90 21 42 08