INTERNATIONAL

Taxation and the European Convention on Human Rights

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I. INTRODUCTION

The purpose of this article is to introduce and discuss the jurisprudence of the European Commission of Human Rights ("ECnHR") and the European Court of Human Rights ("ECtHR") on taxation matters.[1]

The timing seemed to be appropriate for an article on this subject for two reasons. First, there is a particular interest in the European Convention on Human Rights[2] ("the Convention") in the United Kingdom at present. On 2 October 2000 the Human Rights Act 1998 ("HRA 1998") will enter fully into force. That Act incorporates part of the Convention into UK domestic law.[3] Issues relating to the Convention are, for the first time, likely to arise regularly in tax cases before UK courts and tribunals.[4] Second, the availability of an electronic database of judgments, decisions and opinions[5] of the ECnHR and ECtHR – the "HUDOC" database[6] – has made it possible to identify a significant number of cases dealing with taxation matters. It has been possible to identify over 240 cases relating to taxation matters in which decisions were given between May 1959 and April 2000. These cases are analysed in II. to IX. These decisions form the case database for this article.

Appended to this article are tables summarizing the case database. Table 1 lists all of the cases in the database in order of application number.[7] Table 2 sub-divides the database into separate sub-tables listing those cases in which specific articles of the Convention or protocols[8] have been considered.[9] Table 3 lists the cases in which Article 6 (*right to a fair trial*) was considered, sub-divided

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1. There is only a relatively limited literature in English on the European Convention on Human Rights and Taxation. This includes the following:
Peter van den Broek, "Taxation and the European Convention on Human Rights", 25 *European Taxation* 12 (1985), at 344-348.
Peter van den Broek, "Taxation and the European Convention on Human Rights – the Dutch Supreme Court Gives its View", 26 *European Taxation* 4 (1986), at 107-112.
International Fiscal Association; *Taxation and Human Rights* (Proceedings of a seminar held in Brussels), Congress Seminar Series Vol. 12 (Deventer: Kluwer, 1988).
Stefan Frommel, "The European Court of Human Rights and the Right of the Accused to Remain Silent: Can it be Invoked by Taxpayers?", [1994] *B.T.R.*, at 598-634 and an earlier version of that article in 1993/11 *Intertax*, at 520-549.
Marc Dassesse, "Human Rights, European Law and Tax Law: The Implications of the Judgments of the Court of Human Rights in *re Funke* and of the European Court of Justice in *re Corbiau*", 1994/3 *EC Tax Review*, at 86-90.
Fiona Ferguson, "A Day Out in Strasbourg", (1995) *The Tax Journal*, at 12-13.
Delphine de Drouâs and Isabelle Sienko, "The Increasing Importance of the European Convention on Human Rights in the Tax Area" (1996) 25 *Intertax*, at 332.
John Tiley, "Human Rights and Taxpayers", [1998] *C.L.J.*, at 269-273.
Nigel Popplewell, "It's going to be a lot of fun", *Taxation Practitioner*, September 1998, at 17 et seq.
Jonathan Peacock and Francis Fitzpatrick; Chapter on Tax Law in Christopher Baker (ed.), *Human Rights Act 1998*: *A Practitioner's Guide* (London: Sweet & Maxwell, 1998), at 399-425.
There is also an interesting discussion of one aspect of human rights and taxation in Gerard Meussen (ed.), *The Principle of Equality in European Taxation* (Deventer: Kluwer, 1999).
To these one might add the following articles in French:
Guy Gest, "La Convention et l'action des autorités fiscales" (1991) 14 *Droit et pratique du commerce international*, at 546-562.
Jean-Pierre Le Gall and Laurence Gérard, "Les Recours des Contribuables sur le Fondement de la Convention Européene de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales", *Droit Fiscal* 1994 No. 21-22, at 878-885.
Victor Haïm, "Le Contribuable Peut-il Prétendre à un Procès Équitable devant le Juge Administratif?", *Revue de Droit Fiscal* 1999, No. 25, at 862-866.
2. To give the Convention its full title: "Convention for the Protection of Human Rights and Fundamental Freedoms", signed at Rome on 4 November 1950 (ETS No. 5). The Convention was executed in English and French, both texts being equally authentic: see the final wording of the Convention. The Convention was prepared by the Council of Europe of which there are currently 41 member states.
3. The United Kingdom was the first state to ratify the Convention, on 8 March 1951. However, at that time the Convention was not incorporated into domestic law. Under the "dualist" doctrine followed by the United Kingdom, international treaties require incorporation into domestic law to create rights justiciable before the domestic courts. The operation of the HRA 1998 is not discussed further in this article.
4. Convention points have occasionally arisen in VAT and duties cases in recent years.
5. Formally, the ECtHR issues judgments, decisions, declarations and advisory opinions and the ECnHR issues opinions and decisions. In this article all of these will be referred to simply as decisions given in cases.
6. This is accessible through the ECtHR web site, the address of which is www.echr.coe.int.
7. This number is given to a case when the complaint is registered is Strasbourg.
8. There are presently 11 protocols to the Convention which have been opened for signature. Details of the Convention, the protocols, signatures, ratifications and accessions are available on the Council of Europe's web site.
9. Table 2(1) contains the cases which have considered Article 1 of the First Protocol (*protection of property*) ("1/1" in the form of abbreviation used in this article and in the tables).
Table 2(2) contains the cases which have considered Article 6 of the Convention (*right to a fair trial*).
Table 2(3) contains the cases which have considered Article 14 (*prohibition of discrimination*).
Table 2(4) contains the cases which have considered Article 8 (*right to respect for private and family life*).
Table 2(5) contains the cases which have considered Article 9 (*freedom of thought, conscience and religion*).
Table 2(6) contains the cases which have considered other articles of the Convention and protocols.

into four sub-categories.[10] Table 4 contains a list of "essential reading": these are the cases which anyone interested in the topic (but disinclined to read over 240 decisions) should consider essential reading.

The author would like to make the point here that no claim is made that the database is in any way comprehensive. The way in which the database was assembled is explained in II. The author would be immensely grateful to any gentle readers who can send him further information about: tax-related cases that are not included in the database, cases for which the author did not have a reported decision, or cases in which the author did not have details of the final outcome.[11]

The case database is analysed in general terms in II. of this article. The articles of the Convention and protocols which are of more relevance to taxation are then analysed in III., IV. and V. These parts cover Article 1 of the First Protocol ("Article 1/1" in the abbreviation generally used in this article and the tables) (*protection of property*), Article 6 (*right to a fair trial*) and Article 14 (*prohibition of discrimination*). VI., VII. and VIII. then analyse the articles which are of less relevance to taxation: Article 8 (*right to respect for private and family life*), Article 9 (*freedom of thought, conscience and religion*) and various miscellaneous articles. Finally, IX. considers a small number of special topics arising from the database.

Summary

Article 1/1 protects the enjoyment of property. All taxation is a prima facie interference with the right to enjoy property, but the second paragraph of Article 1/1 provides a specific exception for taxation. As an exception to a fundamental right, taxation is subject to supervision by the Strasbourg organs[12] to ensure: that taxation is imposed according to law, that taxation measures pursue a legitimate purpose, and that the means employed are not disproportionate to the ends involved. States enjoy a wide margin of appreciation in taxation matters. Article 1/1 has been successfully[13] raised in only two cases in the database, both involving measures for the enforcement of a tax liability.

Article 6 provides a basket of guarantees associated with the fair trial of civil and criminal cases. There is an established jurisprudence of the Strasbourg organs that ordinary tax proceedings do not fall within Article 6 since they involve public law issues. There are exceptions, however, where proceedings can properly be characterized as involving the determination of "civil rights and obligations" or of "any criminal charge". A substantial number of cases in the database have been held to fall within these exceptions, especially where the dispute involved liability to substantial, tax-geared penalties.

Where Article 6 applies, there are various guarantees for the determination of the dispute. These include the right to a determination within a reasonable time: the largest number of tax cases under the Convention have been successful on this point. In criminal cases – including those involving substantial fiscal penalties – additional guarantees apply.

Article 14 prohibits discrimination in the enjoyment of the rights protected by the Convention. In a taxation context this article is most frequently raised in conjunction with Article 1/1. It has been successfully raised primarily in connection with substantive tax rules which apply on a discriminatory basis between men and women.

Article 8 (*right to respect for private and family life*) may be applicable both to substantive tax rules and to procedural matters. Most cases have raised Article 8 in connection with information-seeking activities of revenue authorities. Taxpayers have been successful where the powers are broad and are not accompanied by adequate judicial safeguards.

So far as Article 9 (*freedom of thought, conscience and religion*) and other miscellaneous articles are concerned, complaints under these articles have almost invariably failed. It is interesting to see, however, what arguments have been mounted which have not appealed to the Strasbourg organs.

II. THE CASE DATABASE: GENERAL DISCUSSION

The database consists of just over 240 decisions of the ECnHR and the ECtHR on matters relating to taxation. This part discusses a number of general points concerning the database.

A word of explanation may be helpful with respect to the ECnHR in particular. Under the procedures originally established by the Convention and which operated before the 11th Protocol took effect on 1 November 1998, the Strasbourg supervisory organs included both the ECnHR and the ECtHR.[14] Petitions to the Strasbourg organs were initially made to the ECnHR which considered both admissibility and, if found admissible, the merits of the complaint. If the ECnHR found the petition admissible and adopted a report on the complaint, the case might be referred to the ECtHR by the ECnHR or by one of the countries concerned.[15]

10. The relevance of these four sub-categories will become clearer in IV.
Table 3(1) contains all those cases in which it was held that Article 6 did not apply to ordinary tax proceedings.
Table 3(2) contains those cases where the issue was whether the length of civil or criminal proceedings was unreasonable.
Table 3(3) contains those cases where the issue was whether the proceedings involved the determination of "civil rights and obligations".
Table 3(4) contains those cases where the issue was whether the imposition of a fiscal penalty involved the determination of a "criminal charge".

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12. The seat of the ECnHR and ECtHR is in Strasbourg, hence references to the Strasbourg organs.

13. The meaning of "success" in this context is discussed in II.

14. The supervisory bodies also include the Committee of Ministers. For purposes of simplifying matters, however, the role of the Committee is not discussed further here.

15. For a discussion of the procedures of the ECnHR and ECtHR before the 11th Protocol came into force, see P. van Dijk and G. van Hoof, *Theory and Practice of the European Convention on Human Rights* (Deventer: Kluwer, 2nd edition, 1990), at 61-190. For a discussion of the procedures after the introduction of the 11th Protocol, see the 3rd edition (Deventer: Kluwer, 1998), at 97-191.

The 11th Protocol has replaced the previous ECnHR and ECtHR by a full-time ECtHR. Petitions are now considered by the ECtHR with respect to admissibility and merits. The ECnHR continued to function with respect to pending cases until 31 October 1999, and ceased to function after that date.[16]

Prior to the entry into force of the 11th Protocol, the right of individual petition (that is, the right of a person to bring a complaint before the Strasbourg organs) only applied to states that had expressly recognized that right.[17] Under the 11th Protocol, the right of individual petition is recognized for all states parties to the Convention.

Since most of the cases in the database relate to petitions lodged before 1 November 1998, the vast majority of cases were considered first by the ECnHR and only a small number of those cases referred on to the ECtHR. A small number of recent cases went directly to the ECtHR under the new procedure. In the tables, a case which was considered by the ECtHR is indicated by the application number in bold type. For applications to which the new procedures apply, the ECtHR considers both admissibility and, if the complaint is found admissible, the merits.

The case database has been assembled in a number of ways. First, cases concerning taxation matters which are printed in the published collections of reports[18] were identified; any further cases cited in the reported cases were then followed up. Second, decisions referred to in any articles written about the Convention and taxation matters were followed up. Finally, and most significant, a search was made of the electronic, HUDOC database for cases relating to taxation matters.[19]

In the final analysis, there is an element of subjective choice in the cases included in the database. The author would be delighted to hear of any other cases which should be included.

The database contains a small number of cases – 15 in total – where it has not been possible to obtain a report of the case.[20] Because a report of the case has not been obtained, it is not possible to say for certain what the outcome was, though it seems likely that in all of these cases the ECnHR held the application to be inadmissible.

In a sense a database of cases on taxation matters is rather artificial. It is artificial to single out cases on one area of law from cases arising from other matters and which may raise similar issues. Cases on taxation may illustrate general points of relevance to other areas of practice, while cases arising from non-tax matters may establish principles of relevance to taxation. There are few issues under the Convention which are unique to taxation.

Even with this point in mind, however, it is thought that there is some value in looking at the jurisprudence of the Strasbourg organs in taxation matters as a sub-set of the entire jurisprudence of these organs.

It is important to stress that no claim is made that the database is a comprehensive collection of all of the decisions of the ECnHR and ECtHR in taxation matters. There are likely to be very large gaps, particularly with respect to decisions of the ECnHR for the earlier years since only a small number are included in the electronic database. In an ideal world, the author would have travelled to Strasbourg and consulted the records of the ECnHR and ECtHR insofar as they are accessible. Hopefully, however, while not being comprehensive, the database is at least an interesting selection of a significant number of the decisions relating to taxation matters. Hopefully, the database contains all of the most significant decisions of the ECnHR and ECtHR for the period under review.

The database only contains decisions of the Strasbourg organs. Decisions of national courts – particularly in those states where the Convention has been incorporated into domestic law – would provide another major source of jurisprudence on the interpretation and application of the Convention to taxation matters. The author is in the process (together with a number of other European colleagues) of attempting to identify the more significant decisions of the national courts. At the time of writing, however, only a small number of these national decisions are available.[21] Hopefully, a later version of this article may appear which will include significant decisions of the national courts.

The database also contains only cases on the European Convention on Human Rights. There also exists a jurisprudence of the relevant treaty bodies and national courts on the International Covenant on Civil and Political Rights (the "ICCPR") and, possibly, other human rights instru-

16. The transitional provisions are discussed in Clements, Mole & Simmons, *European Human Rights: Taking a Case Under the Convention* (London: Sweet & Maxwell, 2nd ed., 1999), at 72-74.

17. Article 25 of the Convention (prior to the amendments made by the 11th Protocol).

18. Decisions of the ECnHR and the ECtHR have been published in a variety of sources. One of the most accessible is the *European Human Rights Reports* (hereinafter: *EHRR*) published by Sweet & Maxwell. The Council of Europe also produces an official series of reports of judgments of the ECtHR. Before 1996 these were published as Series A and Series B. From 1996 they are simply published as the *Reports of Judgments and Decisions* under the particular year. Decisions of the ECnHR are available in various sources. Between 1974 and 1995 some were published in the official series of *Decisions and Reports* (hereinafter: *DR*); a small number are published in the EHRR, sometimes in the Commission Decisions (hereinafter: *EHRR CD*) part of the Reports. For early years some of the decisions are found in the *Collection of Decisions* or in the *Yearbook of the European Convention on Human Rights*. A *Digest of Strasbourg Case Law* was also published in 1982 with supplements. In this article only the application number is given for a case in the database; the reports of the case can then be found from Table 1. In Table 1 the details of a case are given. The first name of the applicant is given in most cases to assist any tax advisers (or others) who are looking for a given name for a child and need inspiration.

19. In the HUDOC database, a search was made in both English and French language texts by searching for the words "tax", "taxe", and "impôt". This search produced, of course, a large number of cases where one of these words was used but which had very little to do with taxation (for example, a large number of cases involved a claim for costs which included a claim for lawyers' fees plus value added tax). A manual search was therefore made through the results to identify those cases which were actually concerned with taxation matters. The search also disclosed a number of criminal cases involving tax fraud but which turned purely on general issues relating to criminal procedure and not on matters of particular relevance to taxation; these cases were excluded from the database (an exception was made where the reasonableness of the length of criminal tax proceedings was in issue since this may be relevant to cases involving fiscal penalties).

20. These cases have been identified from various sources, chiefly from references in articles or from the *Digest of Strasbourg Case Law*.

21. A few of the French decisions are referred to below in V. dealing with Article 6. Nearly all of the relevant French decisions are cited in Le Gall and Gérard, "Les Recours des Contribuables sur le Fondement de la Convention Européenne de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales", 1994, *Droit Fiscal*, No. 21-22, at 878–885.

ments, in cases relating to taxation.[22] Again, in an ideal world these would have been identified and included in a broader article on taxation and human rights. Hopefully, a later version will include this material.

Since the database is not comprehensive, any conclusions which might be drawn from the generality of the database must be treated with a high degree of caution. This is particularly true of any conclusions with respect to the success rate of applicants in taxation matters. The database is unlikely to include a large number of earlier decisions of the ECnHR where the applicant was unsuccessful on admissibility, and this is likely to distort the overall results.

With that caveat in mind, and looking at the existing database, the applicant might be regarded as successful in 56 of the 243 cases; that is, just under 25% of all cases. Cases where the applicant may be regarded as successful are indicated in the tables by the text in the "outcome" column printed in bold type.

The concept of "success" needs some explanation. The final outcome of a case is not always available: it may be that the case was found to be admissible, but there is no record of the determination on the merits, or (for more recent cases) the final outcome may not yet be known. For this reason, "success" is determined if the applicant had been successful at the stage of the last reported decision in that case contained in the database.

In only 16 of the "successful" cases is it known that just satisfaction[23] was ordered. In a further eight cases the complaint was held to be admissible and a friendly settlement was agreed. In 23 cases the ECnHR or the ECtHR found a breach of the Convention, but it is not known what remedy was awarded. Finally, in nine cases the complaint was found to be admissible but it is not known whether a breach of the Convention was found. It is possible that, in this last group of nine cases, no breach of the Convention was or will ultimately be found. The number of successful cases may, therefore, fall.

Taking, for the moment, the figure of 56 successful cases in a database of 243, and bearing in mind the limits of the database, this figure is nevertheless quite surprising. One might have anticipated that the applicant would have been successful in a far lower percentage of cases. In all matters the applicant would have had to exhaust domestic remedies: in most countries the Convention issue would also have been raised before the domestic courts. One might have expected, therefore, that the applicant would be successful before the Strasbourg organs in far less than one quarter of the total cases.

The point should be made, however, that the figure for successful cases is somewhat skewed by two quite sizeable groups of cases. In 47 cases the applicant succeeded in an argument based upon Article 6; 28 of those were cases where the determination of the applicant's civil rights and obligations or a criminal charge did not take place within a reasonable period of time. Secondly, in five cases on substantially similar facts the Strasbourg organs found against the United Kingdom in connection with the Community Charge.

The discussion below indicates how successful applicants were at raising arguments on each article.

III. ARTICLE 1 OF THE 1ST PROTOCOL (*PROTECTION OF PROPERTY*) ("ARTICLE 1/1")

Pride of place in discussion of the jurisprudence is given to Article 1/1, not because it has been raised in the largest number of cases (that honour belongs to Article 6) but because it is the only article which makes express reference to taxation.[24] Article 1/1 provides as follows:

> Article 1: *protection of property*
>
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.[25]

All taxation is a prima facie interference with the right of enjoyment of possessions; put simply, if there were no tax, one would have more possessions to enjoy. However, the

22. The author is aware of eleven decisions of the Human Rights Committee under the ICCPR on taxation matters. These are:
Communication No. 129/1982: *IM v. Norway* 06/04/83, in Seventh Annual Report of the Human Rights Committee to the General Assembly, Annex XXVII.
Communication No. 446/1991: *JP v. Canada* 07/11/91 (referred to in 568/1993).
Communication No. 450/1991: *IP v. Finland* 26/07/93, CCPR/C/48/D/450/1991.
Communication No. 483/1991: *JvK and CMGvK-S v. the Netherlands* 23/07/92 (referred to in 568/1993).
Communication No. 501/1992: *JHW v. the Netherlands* 16/07/93, CCPR/C/48/D/501/1992.
Communication No. 568/1993: *KV and CV v. Germany* 25/04/94, CCPR/C/50/D/568/1993.
Communication No. 651/1995: *Snijders, Willemen and Van der Wouw v. the Netherlands* 27/07/98, CCPR/C/63/D/651/1995.
Communication No. 658/1995: *van Oord v. the Netherlands* 14/08/97, CCPR/C/60/D/658/1995.
Communication No. 674/1995: *Kaaber v. Iceland* 03/12/96, CCPR/C/58/D/674/1995.
Communication No. 714/1996: *Gerritsen v. the Netherlands* 04/05/99, CCPR/C/65/D/714/1996.
Communication No. 742/1997: *Byrne and Lazarescu v. Canada* 30/04/99, CCPR/C/65/D/742/1997.
Some domestic cases on the ICCPR are referred to in Meussen, *supra* note 1. A decision of the Human Rights Committee in *Broeks v. Netherlands* (No. 172/1984: 09/04/87 in Eleventh Annual Report of the Human Rights Committee to the General Assembly, Annex X.B) is also referred to in that work at 130, though that case actually concerns entitlement to social security payments.

23. This is the Convention equivalent of damages for breach.

24. This part discusses only Article 1/1 as a stand-alone article. Cases where Article 1/1 was combined with Article 14 are considered in V.

25. The French text of this article is as follows:
Toute personne physique et morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.
Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt general ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes.

draughtsmen of Article 1/1 did not intend to deprive states of their taxing powers. The second paragraph preserves an exception for taxation.

As an exception to a fundamental right, however, all taxation must satisfy the principles underlying the Convention: it must be imposed according to law, it must serve a valid purpose in the public or general interest, and the provisions adopted must be a reasonable and proportionate means to achieve that end.[26]

Article 1/1 has been considered in 65 cases in the database.[27] Warning has been given above about the dangers of drawing conclusions from the generality of the database. Nevertheless, it is worth making the point that the applicant was successful under Article 1/1 in only two cases out of the 65.[28]

Article 1/1 was considered in a number of the very earliest cases concerning taxation. The earliest decision in the database[29] involved a complaint against a 100% levy on the gain made on the revaluation of a mortgage. The Commission concluded that the measure fell within the terms of the second paragraph of Article 1/1 and held the complaint inadmissible.

In an application lodged before this (but determined afterwards)[30] a complaint was made against a 15% capital tax in Iceland. The ECnHR rejected the application on the somewhat surprising grounds that an examination of the preparatory work for the Protocol indicated that the contracting states did not intend to extend the principles in Article 1/1 to the taking of property from a state's own nationals. This view has been abandoned in later years.

The role of honour of taxes which have been subject to consideration in connection with Article 1/1 reads something like the John Cleese cheese-shop sketch:[31] Icelandic capital tax,[32] Austrian church tax,[33] Swedish profit-sharing tax,[34] the Swedish windfall tax on insurance companies,[35] Austrian Disabled Persons Equalization Tax,[36] Finnish street tax,[37] Finnish pharmacy duty,[38] a German local entertainment tax on gaming machines,[39] and Viennese auction tax.[40] It is worth repeating the point that in none of these cases was the applicant successful in challenging the tax itself or the aspect of the tax of which complaint was made.

A. The general approach to Article 1/1

Perhaps the best way to explain the approach of the Strasbourg organs to Article 1/1 and taxation matters is to consider a small number of quotations from the decisions of these organs.

One of the clearest statements of principle is found in an ECnHR decision, *Travers v. Italy*.[41] That case concerned an Italian rule requiring the withholding of tax from payments to independent consultants; this rule generally led to overpayments of tax but with repayments delayed for up to five years.[42] The ECnHR held that the Italian rule was a reasonable and proportionate measure, and that 9% interest compensated for the delay in repayment. The comments on Article 1/1 merit quotation in full:

> The Commission recalls the principle that taxation is an interference with the rights guaranteed in Article 1 paragraph 1 of Protocol No. 1, but that this interference is justified under the second paragraph of that Article which provides expressly for an exception in respect of taxes or other contributions (see No. 11089/84, decision 11.11.86, DR 49 page 181).
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> The Commission observes, however, that despite this, an issue of this nature does not escape the Commission's power of review, since the Convention organs must ensure that Article 1 of Protocol No.1 has been correctly applied.
>
> The Commission recalls that 'the second paragraph of Article 1 of Protocol No.1 has to be construed in the light of the general principle set out in the first sentence of that Article'. It follows that the interference in question should strike a 'fair balance' between 'the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights ... the concern to achieve this balance is reflected in the structure of Article 1 as a whole', and hence also in the second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aims sought to be realised [references omitted]. Consequently, 'the financial liability arising out of the raising of tax or contributions may adversely affect the guarantee secured under this provision if it places an excessive burden on the person or the entity concerned or fundamentally interferes with his or its financial position' (see No.13013/87, decision 14.12.88, DR 58 pages 163, 186).
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> The Commission further recalls that it is in the first instance for the national authorities to decide on the type of tax or contributions they wish to levy. Decisions in this area normally involve, in addition, an assessment of political, economic and social problems which the Convention leaves to the competence of the member States, for the domestic authorities are clearly better placed than the Commission to assess such problems (see No.11089/84, aforementioned decision, page 202). The member States therefore have a wide margin of appreciation in this area.

At approximately the same time as the ECnHR adopted this decision, the ECtHR expressed the principles contained in Article 1/1 in the case of *Gasus Dosier-und*

26. On Article 1/1 generally, see Lester and Pannick, *Human Rights Law and Practice* (London: Butterworths, 1999), at 247–253 and Keir Starmer, *European Human Rights Law* (London: Legal Action Group, 1999), at 635–642.
27. See Table 2(1).
28. *Hentrich v. France* (Application No. 13616/88) and *Lemoine v. France* (Application No. 26242/95).
29. *X v. Germany* (Application No. 551/59).
30. *Gundmundsson v. Iceland* (Application No. 511/59).
31. "Some Norwegian Jarlsberger tax, perchance?"
32. *Gundmundsson v. Iceland* (Application No. 511/59).
33. *E and GR v. Austria* (Application No. 9781/82).
34. *Svenska Managementgruppen AV v. Sweden* (Application No. 11036/84) and *Company S and T v. Sweden* (Application No. 11189/84).
35. *Wasa Liv v. Sweden* (Application No. 13013/87).
36. *HK KG v. Austria* (Application No. 14623/89).
37. *Försti v. Finland* (Application No. 22588/93).
38. *Kaira v. Finland* (Application No. 17109/95).
39. *Wolfhard Koop-Automaten, Goldene 7 GmbH & Co. KG v. Germany* (Application No. 38070/97).
40. *Musa v. Austria* (Application No. 40477/98).
41. Application No. 15117/89.
42. The issue of the long periods of delay before the repayment of tax was also considered in *Ferretti v. Italy* (Application No. 25083/94) where it was held that delays of approximately ten years in repayment of tax, and repayment with only simple interest, could nevertheless be justified. The interest provided adequate compensation.

Fördertechnik GmbH v. the Netherlands[43] in a slightly more concise way. That case concerned measures taken for the enforcement of a tax liability: in that case, the seizure of assets in the possession of a Netherlands company, but which had been sold to the Netherlands company by the German applicant with reservation of title. Holding against the applicant, the ECtHR expressed the principles as follows:

> 55. As the Court has often held, Article 1 guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or rather contributions or penalties.
>
> However, the three rules are not 'distinct' in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.
>
> 60. ... the present case concerns the right of States to enact such laws as they deem necessary for the purpose of 'securing the payment of taxes'. ...
>
> In passing such laws 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. ...
>
> 62. According to the Court's well-established case law, the second paragraph of Article 1 of Protocol No.1 must be construed in the light of the principle laid down in the Article's first sentence. Consequently, an interference must achieve a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued. [footnotes omitted]

The same basic points are reiterated in a number of other cases: that taxation is an interference with the right to enjoyment of possessions; that paragraph 2 of Article 1/1 expressly preserves the right to enforce tax laws; that this paragraph does not, however, take the imposition of tax outside of the supervision by the Strasbourg organs; that taxation may adversely affect the right to enjoyment of possessions if it places an excessive burden on the person or fundamentally interferes with his or its financial position; that it is for national authorities to decide on the form of taxes to be collected in the light of local political, economic and social conditions; and that states therefore enjoy a wide margin of appreciation in this area.

These principles are summarized in the decision of the ECnHR in *Kaira v. Finland*:[44]

> The Commission recalls that any legislation which introduces some sort of fiscal obligation will as such deprive those affected of a possession, namely the amount of money which must be paid. However, the second paragraph of Article 1 of the Protocol No.1 to the Convention expressly secures to the States Parties to the Convention the right to enforce such laws as they deem necessary to secure the payment of taxes or other contributions (see No.13013/87, Decision 14.12.88, DR 58, page 163). Accordingly, the Commission will first consider whether the interference with the applicant's right under Article 1 of Protocol No.1 is justified by the second paragraph of this provision ...
>
> ... the correct application of Article 1 of Protocol No.1 is subject to supervision by the Convention organs.
>
> Applying this supervision, the Commission finds that a financial liability arising out of the raising of taxes or contributions may adversely affect the guarantee secured under this provision if it places an excessive burden on the person or entity concerned or fundamentally interferes with his or its financial position. However, it is in the first place for the national authorities to decide what kind of taxes or contributions are to be collected. Furthermore, the decisions in this area will commonly involve the appreciation of political, economic and social questions which the Convention leaves within the competence of the Contracting States. The power of appreciation of the Contracting States is therefore a wide one (cf. No.11036/84, Decision 2.12.85, DR 45 page 211).

In a small number of cases the argument has been made that the particular tax imposed such an excessive burden as to be an interference with the right to enjoy one's possessions. In *Svenska Managementgruppen AB v. Sweden*[45] it was alleged that a Swedish profit-sharing tax amounted to expropriation. The ECnHR found, however, that the particular tax in issue did not affect the guarantee of ownership or interfere with the taxpayer's financial position to such an extent that it could be considered disproportionate or an abuse of the right of the state to levy taxes.

A similar issue arose in *Wasa Liv v. Sweden*[46] which involved a challenge to a windfall tax on Swedish insurance companies. The ECnHR set out more fully the grounds of supervision of the state's discretion with respect to taxation:[47]

> The applicants recognise, as is made clear by the second paragraph [of Article 1 of Protocol No.1] itself, that the margin of appreciation given to national authorities under Article 1 of Protocol No.1 in the field of economic and fiscal regulation, is necessarily a wide one. However, it is well-established in the Commission's case law that the powers of taxation are not immune from review under the Convention (cf., for example, No.8531/79, Decision 10.3.81, DR 23 page 203).
>
> It follows that although the Act involves the payment of a tax, this fact does not exclude the circumstances of the present case from the effective protection afforded by Article 1 of Protocol No.1 and the other relevant provisions of the Convention. The relevant principles are as follows:

43. Application No. 15375/89.
44. Application No. 27109/95.
45. Application No. 11036/84.
46. Application No. 13013/87.
47. 58 *DR* 163, at 177-178.

(i) Although the margin of appreciation available to the national legislature under Article 1 is a wide one, the measure imposed must have a legitimate aim, in the sense of not being "manifestly without reasonable foundation" (cf. for example, ECtHR *James and Others*, judgment of 21 February 1986, Series A, No.98).

(ii) Where the measure has a legitimate aim, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(iii) A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, and this balance will not be struck if the measure results in a person or a section of the public having an individual and excessive burden (cf. ECtHR, *Sporrong and Lönnroth* judgment of 23 September 1982, Series A, No.52). ...

Under the second sentence of the first paragraph of Article 1 of Protocol No. 1 a deprivation of possessions must not only be in the public interest, but must also be 'subject to the conditions provided for by law'.

Once again, the ECnHR dismissed the complaint as inadmissible.[48]

The last paragraph of this quotation mentions that, for a tax to be justified as an interference with the right to enjoyment of possessions, it must be "subject to the conditions provided for by law". This brings into play the principle of legal certainty which is inherent throughout the Convention.[49]

A challenge to the legality of a tax rule on grounds of insufficient publicity was made in *Špaček sro v. Czech Republic*.[50] In that case the applicant alleged that the tax legislation in question had not been adequately published since it was included only in a bulletin issued by the Ministry of Finance and not in the Official Gazette. The ECnHR declared the application admissible but concluded on the merits that there had been no violation of Article 1/1. The case was referred to the ECtHR which reached the same conclusion. The ECtHR emphasized that, as an interference with the right to the enjoyment of possessions, taxation must be in accordance with law:

53. Like the Commission, the Court considers that the main question in the present case is the publicity afforded to the principles governing the calculation of the income tax base upon which the amount of income tax payable was to be determined.

54. The Court considers that when speaking of 'law', Article 1 of Protocol No.1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case law. It implies qualitative requirements, notably those of accessibility and foreseeability [references omitted].

The ECtHR held that there had been no violation of Article 1/1 since the regulations in question were adequately accessible and foreseeable and, therefore, that the interference with the right to enjoyment of possessions had a sufficient legal basis in Czech law to comply with the requirements of the second paragraph of Article 1/1. The ECtHR added one rather intriguing comment (at paragraph 59 of the Decision):

In addition, taking into consideration that the applicant company as a legal entity, contrary to an individual taxpayer, could and should have consulted the competent specialists, the publication of the Regulations in the Financial Bulletin was sufficient.

This raises the point that greater publicity may be necessary with respect to tax rules applying to individual taxpayers as opposed to corporate entities.[51]

The remainder of this part turns from the general approach to Article 1/1 to a discussion of a number of specific issues which have been considered by the Convention organs.

B. Retrospective legislation

The Strasbourg organs have considered a number of challenges to retrospective tax legislation: on each occasion they have concluded that the legislation was compatible with the guarantees contained in Article 1/1. Perhaps coincidentally, three of the four cases involved the United Kingdom.

The first case, *ABCD v. United Kingdom*[52] concerned legislation contained in s.31 of the Finance Act 1978 which had retrospective effect to prevent tax avoidance by the use of losses. The ECnHR noted that the section was enacted to counteract a specific form of tax avoidance, that retrospective application was necessary if this form of avoidance was to be effectively prevented, and concluded that the retrospective legislation was not disproportionate in these circumstances.

The *Building Societies* case[53] concerned legislation which retrospectively validated certain regulations and which applied to building societies other than one society (which had brought proceedings against the Inland Revenue). The ECtHR concluded that the legislation did not upset the balance between the protection of the applicants' rights and the public interest in securing the payment of taxes.[54]

The case of *Voggenberger Transport GmbH v. Austria*[55] concerned the situation where a law was retrospectively clarified by an amendment so that it became clear that the applicant company did not enjoy an exemption from tax. The ECnHR concluded that the interference with the right to the enjoyment of possessions was lawful, served a legitimate aim (namely, the levying of taxes) and was proportionate in that there was a reasonable relationship between the means employed and the aim pursued (taking into account the wide margin of appreciation which states enjoy in this area).

48. On the issue of supervision by the Convention organs, see also *ABCD v. United Kingdom* (Application No. 8531/79) 23 *DR* 203, at 209.
49. See Lester and Pannick, *supra* note 26, at 252–253.
50. Application No. 26449/95.
51. The issue of whether "common law" fiscal offences were sufficiently clear and adequately defined was discussed in the case of *L-GR v. Sweden* (Application No. 27032/95).
52. Application No. 8531/79.
53. Application Nos. 21319/93, 21449/93 and 21675/93. On this case see John Tiley, "Human Rights and Taxpayers", [1998] *C.L.J.*, at 269–273.
54. See, in particular, 25 *EHRR* 127, at 107-173.
55. Application No. 21294/93.

The last of the cases in this area – *Nap Holdings UK Ltd v. United Kingdom*[56] – was essentially a complaint of the failure to apply amending legislation (s.115 of the Finance Act 1988) on a retrospective basis. The ECnHR held quite shortly that there was no violation of the applicant's rights under Article 1/1.

It is clear from these cases that there is no general principle in the Convention against retrospective application of tax legislation. However, such legislation – as an interference with the right to enjoyment of possessions – must be justified: it must serve a legitimate purpose and not be disproportionate. States enjoy a wide margin of appreciation in this sphere.

C. The non-retrospective invalidity of unconstitutional taxes

A similar issue – which the Strasbourg organs have had to consider on a number of occasions – arises where a provision of tax legislation has been held to be unconstitutional, but the decision that the legislation is invalid is applied only prospectively. The complaint of the taxpayer is that he has been taxed for an earlier period under legislation which has been found to be unconstitutional and invalid.

On each occasion where this issue has arisen the Strasbourg organs have found that the prospective invalidation of the legislation is not an infringement of Article 1/1.[57] The most recent of these cases concerned a decision of the Austrian Constitutional Court that a rule preventing the deduction of maintenance payments was unconstitutional. The ECnHR pointed to the principle of legal certainty; this principle may be applied where a constitutional court annuls legislation as unconstitutional. The annulled provision may continue to apply to the period prior to the annulment decision.[58]

D. Measures for the enforcement of taxation

The second paragraph of Article 1/1 refers to "such laws as it deems necessary ... to secure the payment of taxes or other contributions or penalties". It is now clear that this includes both laws which impose tax and also laws which provide for the enforcement of taxes.[59]

A number of cases have involved challenges to measures which provide for the enforcement of taxes. Only two of these challenges have been successful; in all other cases the Strasbourg organs have held the measures to be justified within the exception to Article 1/1.

In a relatively early case the ECnHR found that a mortgage on the taxpayer's property to secure payment of taxes fell within the second paragraph of Article 1/1.[60] In the subsequent case of *Lemoine v. France*,[61] however, the ECnHR held that the imposition of a charge on nine properties belonging to the taxpayers, and having a value in excess of FRF 1 million, in order to guarantee a payment of taxes slightly in excess of FRF 80,000 was a breach of Article 1/1. Unfortunately, the ECnHR report on the case is not published, but it appears that the reasons for the decision were the lack of proportionality between the aim to be achieved and the measure adopted and the lack of adequate judicial supervision over the power.[62]

The seizure of a person's total property in Denmark (where he had been charged with fiscal offences and had absconded) was not a violation of Article 1/1.[63] Similarly, a rule which prevented the applicants from taking their property with them when they left Sweden to live in the United States was held neither to be an infringement of Article 1/1 or of Article 2/4 (*freedom of movement* – this is discussed further below).[64]

Other measures for the enforcement of taxes which have been upheld include: the requirement of withholding tax on payments to independent consultants,[65] the seizure of property in a taxpayer's possession for non-payment of taxes,[66] the imposition of fines on a company whose managing director was liable for tax evasion,[67] the criminal bankruptcy of a taxpayer for defrauding the UK Customs & Excise,[68] the imposition of a fine for failure to register with the tax authorities,[69] and a provision of Greek law that a director is personally liable for all taxes due from his company.[70]

The second case in which a taxpayer was successful under Article 1/1 is *Hentrich v. France*.[71] This concerned the French revenue's former right to exercise an option of pre-emption over property if the sale price stipulated by the parties was regarded as too low. The ECtHR held that this was an interference with the right of enjoyment of possessions because the exercise of the right of pre-emption was discretionary and the procedural aspects of the right were not fair: the pre-emption operated arbitrarily and selec-

56. Application No. 27721/95.
57. See *X Co v. Austria* (Application No. 3500/68), *AP v. Austria* (Application No. 15464/88), *JR v. Germany* (Application No. 22651/93) (argued on the combined effect of Article 1/1 and 14) and *Mika v. Austria* (Application No. 26560/95) (argued on the same basis).
58. See 22 *EHRR CD* 208, at 211.
59. See, for example, the *Building Societies* case (Application No. 21319/93 and others) especially, see 25 *EHRR* 127, at 170, paragraph 79.
60. *X v. France* (Application No. 9889/82).
61. Application No. 26242/95.
62. The result is referred to in other documents. The matter was referred to the ECtHR by France, but outside of the three-month time limit – see the judgment of 1 April 1999.
63. *K v. Denmark* (Application No. 10378/83).
64. *S v. Sweden* (Application No. 10653/83).
65. *Travers v. Italy* (Application No. 15117/89).
66. *Gasus Dossier v. the Netherlands* (Application No. 15375/89).
67. *Schneider Austria GmbH v. Austria* (Application No. 21354/93).
68. *AG v. United Kingdom* (Application No. 24828/94).
69. *KG v. Bulgaria* (Application No. 28554/95). The taxpayer argued that he was unable to comply with the requirement to register since he was in hospital at the time that the registration should have been carried out: his case failed largely because he failed to register for four months after he came out of hospital. The case is interesting because there is also consideration of the question of the lawfulness of the charge. The ECnHR said the following:

> In accordance with the Convention organs' case law, such interference has to be lawful. The notion of lawfulness, as contained in other provisions of the Convention, requires that the impugned measure should have a basis in domestic law and that this basis should have sufficient precision, thus allowing to foresee, to a reasonable degree, the consequences of a given action. It is primarily for the national courts to interpret and apply domestic law. Problems as regards the lawfulness of a particular interference with property rights may arise, inter alia, when it is exercised in a discretionary manner and in the same time the procedure is not fair [references omitted].

70. *Klavdianos v. Greece* (Application No. 38841/97).
71. Application No. 13616/88.

tively and was scarcely foreseeable, and was not attended by basic procedural safeguards. The ECtHR considered that a pre-emption decision could not be legitimate in the absence of adversarial proceedings that complied with the principle of equality of arms and enabled argument to be presented on the issue of the under-estimation of the price.[72] The Court further considered that, as a victim of the exercise of the right of pre-emption, Mrs Hentrich "bore an individual and excessive burden" which could only be legitimate if she had the possibility of effectively challenging the measure taken against her. The ECtHR finally concluded that the fair balance between the protection of the right to enjoy one's possessions and the requirements of the general public interest had not been met.[73]

Hentrich and *Lemoine*[74] are the only two cases in the database where the applicant has been successful under Article 1/1. Both involve to an extent a broad discretionary power given to a revenue authority, with inadequate judicial supervision. In both cases it appears that this absence of supervision was a significant factor in the decision that the measure could not be justified as an interference with the freedom of enjoyment of possessions.

IV. ARTICLE 6 (*RIGHT TO A FAIR TRIAL*)

Article 6 was raised in the largest number of cases in the database: 160 cases (almost exactly two thirds of the total).[75] The applicant was successful under Article 6 in 47 of those cases (that is, approximately 30% of the cases in which the article was raised). This was so despite the fact that there is a constant jurisprudence of the ECnHR (and, to a lesser extent, the ECtHR) that Article 6 does not apply to ordinary tax proceedings.

This part is divided into two sections. The first section discusses the issue of applicability: whether and, if so, in what circumstances Article 6 applies to proceedings arising out of taxation matters. This section discusses the constant jurisprudence and its origins, and also the circumstances where a tax-related dispute can involve the determination of civil rights and obligations or of any criminal charge. The second section discusses the consequences for tax-related proceedings where Article 6 applies: it considers, in particular, the right to a determination within a reasonable period of time.

Article 6 – in its essentials – provides as follows:

> Article 6: *right to a fair trial*
>
> 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ....[76]

A. Applicability[77]

There is a constant jurisprudence of the ECnHR and, to a lesser extent, of the ECtHR to the effect that Article 6 has no application to ordinary tax proceedings. There are, however, exceptions where proceedings which arise out of taxation matters can be regarded as involving "the determination of ... civil rights and obligations" or of "any criminal charge". This section discusses the origins of the constant jurisprudence and the exceptions. It also raises the general issue whether Article 6 should apply to ordinary tax proceedings.

The conflict on the applicability of Article 6 is well illustrated by contrasting decisions of the highest courts in taxation matters in France. Appeals with respect to certain taxes in France lie ultimately to the *Cour de Cassation* (Supreme Civil Court); with respect to other taxes, appeals lie through the structure of administrative courts to the *Conseil d'Etat* (Supreme Administrative Court). In a decision of 14 June 1996 – the *Kloeckner* case – the Plenary Assembly of the *Cour de Cassation* held that Article 6 applied to tax appeals through the ordinary court structure.[78] In a series of decisions, of which the most recent is the *Guénoun* case of 26 November 1999, the *Conseil d'Etat* has held Article 6 inapplicable to tax appeals through the administrative court structure.[79] This continuing difference of opinion between the two highest courts in taxation matters in France well illustrates conflicting views over whether Article 6 is applicable to ordinary tax proceedings.

1. The origins of the jurisprudence

The earliest case in the database where the applicability of Article 6 to tax proceedings was in issue is *AX and BX v. Germany*.[80] The applicants complained that the Federal Constitutional Court did not grant them an oral hearing.

72. See 18 *EHRR* 440, at 469, paragraph 42.
73. Id., at 471, paragraph 49. Subsequently, the French revenue service never applied the right of pre-emption and it was repealed in 1996, see Meussen, *supra* note 1, at 88.
74. Application No. 26242/95, discussed above.
75. See Table 2(2).
76. Only the parts of Article 6 which may be relevant to this discussion are included here. The French text of these provisions is as follows:
    1. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle....
    2. Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.
    3. Tout accusé a droit notamment à
    [...]
        c. se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent;
77. On this see in general, Lester and Pannick, *supra* note 26, at 134-139.
78. *Cour de Cassation*, 14 June 1996, Req. No. 93-21, 710, *Droit Fiscal* 1996, No. 30, Comm. 986; *RJF* 8-9/96 No. 1118.
79. *Conseil d'Etat*, 9th and 8th subsections, 26 November 1999, Req. No. 184, 474, *Droit Fiscal*, 2000, No. 15, Comm. 298. On this see also: Victor Haïm, "Le Contribuable Peut-il Prétendre à un Procès Équitable Devant le Juge Administratif?", *Droit Fiscal*, 1999, No. 25, at 862-866.
80. Application No. 673/59, decision of 28 July 1961.

While holding that this would not in any event have constituted a violation of the Convention, the ECnHR also stated briefly:[81] "whereas this decision did not relate to 'the determination of civil rights and obligations' of or to 'any criminal charge' against the Applicants, within the meaning of Article 6 of the Convention...".

The second case in which this issue was raised left the matter unresolved: *X v. Germany.*[82] The applicant alleged various breaches of Article 6(1) in the hearing of his tax appeal. Professor J. – representing the applicant – cited an article by Echterhölter[83] but then contested Echterhölter's thesis that Article 6(1) applied only to criminal and civil actions.[84] The ECnHR held the case inadmissible as the applicant had failed to exhaust domestic remedies so that it was unnecessary to determine the applicability of Article 6.

The first case to state clearly that Article 6 did not apply to taxation matters as part of public law was the case of *X v. Belgium*.[85] The applicant alleged various breaches of Article 6 relating to the impartiality of the tribunal and various defects in the procedure. The ECnHR, in holding the application inadmissible, stated as follows:[86]

> That the rights and obligations on which the local tax tribunal had to rule arose, however, out of one of the areas of public law, tax law, and not from civil law;...
>
> That it follows that Article 6(1) of the Convention is not applicable to the case, even though the tax provision in question has lead to repercussions for the taxpayer's property rights [citing Application No. 945/60]. [unofficial translation]

This decision was followed in a fourth case where the application was lodged before, but the decision came after, *X v. Belgium*: *ABC and D v. the Netherlands.*[87] The ECnHR there stated:[88]

> whereas, in a previous case (Application No.2145/64 *X v. Belgium*, Collection of Decisions, Volume 18 page 1), the Commission has already found that Article 6(1) was not applicable to certain proceedings regarding taxation; whereas the Commission stated in this previous decision that these proceedings concerned a matter falling under public law and not under private law, although the fiscal measure complained of having had repercussions on the Applicant's property rights; ...

X v. Belgium and *ABC and D v. the Netherlands* were followed in a fifth case relating to proceedings before the Supreme Court for the determination of contributions to a social security scheme: see *X v. the Netherlands*.[89]

By 1973 and its decision in *X v. Belgium,*[90] the ECnHR was able to refer to its "*jurisprudence constante*" that Article 6 did not apply to tax matters:

> The Commission refers on this subject to its constant jurisprudence, according to which suits at law on tax matters arise out of one of the areas of public law, tax law, and, even though they have repercussions for the applicant's property rights, do not involve civil rights and obligations, within the meaning of Article 6(1) (citing *X v. Belgium*, Application No. 2145/641]. [unofficial translation]

In total, the database contains at least 34 decisions of the ECnHR all stating that Article 6 does not apply to ordinary tax proceedings.[91]

If one takes the most recent ECnHR pronouncement on this topic, *Kappa Kanzlei und Bürobetriebs GmbH v. Austria*,[92] the ECnHR expressed the point as follows:

> However, according to the Commission's case law Article 6(1) of the Convention does not apply to disputes concerning the assessment of taxes and of other contributions (Application No.8531/79, Decision 10.3.81, DR 23, page 203; Application No.9908/82, Decision 4.5.83, DR 32, page 266).

It is rather interesting that there are far fewer express statements of the ECtHR (as opposed to the ECnHR) to the effect that Article 6 is inapplicable to ordinary tax proceedings.[93] The point is implicit in the decisions of the ECtHR in *Bendenoun v. France*[94] and in *Schouten and Meldrum v. the Netherlands*,[95] if only because the Court in both these cases decided that Article 6 applied exceptionally to actions relating to fiscal penalties and the payment of social security contributions, respectively (both the cases are discussed further below). The only clear statement from the ECtHR that Article 6 does not apply to ordinary tax proceedings is in a relatively recent case, *Vidacar SA and Opergrup SL v. Spain*[96] where the Court said as follows:

> However, the Court recalls that according to the constant jurisprudence of the organs of the Convention, Article 6(1) is not applicable to suits at law that fall exclusively under public law and notably to tax proceedings as such, because these do not have the character of suits at law concerning

81. YB IV 286, at 294.
82. Application No. 945/60, decision of 10 March 1962.
83. In *Juristenzeitung*, 1956, at 145.
84. Colln. 8, 98, at 104.
85. Application No. 2145/64, decision of 1 October 1965.
86. Colln. 18, 1, at 17 – the case is only available in French. The French text reads:
> Que les droits et obligations sur lesquels [the local tax tribunal] avait à se prononcer ressortissaient, toutefois, à l'un des domaines du droit public, le droit fiscal, et non pas au droit privé; ...
> Qu'il s'ensuit que l'article 6(1) de la Convention ne s'appliquait pas en l'occurence, encore que la mesure fiscale incriminée ait entraîné des répercussions sur les droits patrimonaux d'un contribuable.
87. Application No. 1904/63 and others, decision of 23 May 1966.
88. YB IX 268, at 284.
89. Application No. 2248/64, decision of 6 February 1967. See YB X 170, at 176. This case must now be considered overruled by the decision in *Schouten and Meldrum v. the Netherlands* (Application No. 19005/91) discussed below.
90. Application No. 5421/72, decision of 5 February 1973. See Colln. 43, 94, at 98. The decision is available only in French. The French text reads:
> La Commission s'en réfère à ce sujet à sa jurisprudence constante, selon laquelle les contestations sur des questions fiscales ressortissent à l'un des domaines du droit public, le droit fiscal, et ne portent pas, quand bien même elles auraient des répercussions sur le patrimoine du requérant, sur des droits et obligations de caractère civil, au sens de l'article 6(1).
91. See Table 3(1).
92. Application No. 37416/97 and others.
93. Even though more tax cases under Article 6 have proceeded to the ECtHR than under any other article.
94. Application No. 12547/86.
95. Application No. 19005/91.
96. Application Nos. 41601/98 and 41775/98, Decision of 20 April 1999. Unfortunately, the decision is only available in French. The French text reads:
> Toutefois, la Cour rappelle que selon la jurisprudence constante des organes de la Convention, l'article 6(1) de la Convention n'est pas applicable aux contestations ressortissant exclusivement au domaine du droit public et notamment aux procédures fiscales en tant que telles, puisque celles-ci n'ont pas trait à des contestations sur des droits ou obligations de caractère civil.

> civil rights and obligations [citing Application Nos. 11189/84 and 20471/92]. [unofficial translation]

Before turning to look at the exceptions to the inapplicability of Article 6, a brief comment might be made about the *travaux préparatoires* to the Convention and what light, if any, they can throw upon the applicability of Article 6 to tax matters. In none of the cases in the database was an examination made of the *travaux préparatoires* to determine whether or not Article 6 should apply to taxation matters.

There seem to be two references in the *travaux préparatoires* which are somewhat contradictory on this point.

The original draft of the Convention referred to "civil rights and obligations". In the Preparatory Report by the Secretariat-General of the Council of Europe there is the following paragraph:[97]

> It should be pointed out that there was some discussion in Committee[98] about the term 'civil'. The 'common law' countries pointed out that 'civil rights and obligations', as recognised by the administrative authorities, were not protected by an administrative tribunal. In this respect, there was an important difference from the 'civil law' countries. Hence the words 'in a suit at law' ['contestation' in the French text] which would enable administrative proceedings to be excluded from the field of application of the Convention.

As a result of this comment, Alternative B of the draft Convention was amended to provide as follows:[99]

> In the determination of any criminal charge against him *or of his rights and obligations in a suit at law*, everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law and within a reasonable time... [emphasis added]

This statement and the amendment seem to imply that the Committee on Legal and Administrative Questions intended to exclude administrative law proceedings from the scope of Article 6.

The wording "in the determination of ... his rights and obligations in a suit at law ..." remained in the text of the draft Convention right up to the text prepared by the Consultative Assembly at the end of August 1950. At some point shortly before the text was finalized (on 4 November 1950), Article 6 was amended back to its present form which refers to "the determination of his civil rights and obligations" (though the French text still refers to "*contestations*").

Given the statement quoted above that a reference to "civil rights and obligations" raised the possibility for common law countries that administrative proceedings were not excluded, one might ask the question whether this amendment at the last minute to the Convention was intended to reverse the change that was made to the draft in August. This would include all matters which might be regarded as involving the determination of civil rights and obligations – including administrative proceedings – within the scope of Article 6. At best the *travaux préparatoires* seem to provide no clear indication that it was intended to exclude ordinary tax proceedings from the scope of Article 6.[100]

The general approach of the Strasbourg organs to the applicability of Article 6 has been to ask if there is a dispute – "*contestation*" in French; there is no precise English equivalent – and whether that dispute is determinative of a criminal charge or of civil rights and obligations. "Civil rights" derive from the field of private law and clearly include rights to property. However, as seen from the quotations above, the mere fact that a tax dispute may have consequences for the property of the taxpayer does not make the tax dispute an issue of private law.[101]

2. Exceptions to the applicability of Article 6: social security contributions

Before looking at disputes arising out of general taxation matters which have involved the determination of civil rights and obligations or of criminal charges, reference should be made to the decision of the ECtHR in *Schouten and Meldrum v. the Netherlands*.[102] The complaint in that case involved unreasonable delay in the determination of the applicants' liability to pay social security contributions. The case was decided against a background that the ECtHR had already concluded that Article 6 applied to proceedings to determine an entitlement to welfare benefits.[103] The ECtHR approached the issue by asking whether the liability to pay social security contributions had more features relating to private law than those relating to public law. It concluded that the private law features were of greater significance than those of public law and that, on balance, the dispute was to be regarded as involving "the determination of civil rights and obligations".[104] Having decided that Article 6 applied to the determination of liability to pay social security contributions, the ECtHR went on to hold that there had been a breach of that article.

3. Exceptions to the applicability of Article 6: civil cases[105]

Schouten and Meldrum v. the Netherlands is an example of a case where the issue involved the determination of civil rights and obligations. There are a small number of further cases where, though the dispute arose ultimately from taxation matters, the Strasbourg organs have decided that Article 6 applied since the case involved the determination of civil rights and obligations.

The first example of this in the database was the ECtHR decision in *Tre Traktörer AB v. Sweden*.[106] As a result of a tax investigation, the applicant company's licence to sell

97. See the Collected Edition of the *Travaux Préparatoires* (The Hague: Nijhoff, 1977), Vol. III, at 30.
98. This refers to the Committee on Legal and Administrative Questions.
99. Id., Vol. IV, at 60.
100. Unfortunately, the collected edition of the *travaux préparatoires* consists of seven volumes which are very poorly indexed. Not all documents are included in this collection. In an ideal world, a much fuller examination of the *travaux préparatoires* should be made to decide why the text of Article 6 was amended back to its present form and whether there was any intention of the draughtsmen not to exclude administrative law matters either in all countries or at least in common law countries.
101. On this see generally Lester and Pannick, *supra* note 26, at 134-138.
102. Application No. 19005/91.
103. See, particularly, *Feldbrugge v. the Netherlands*, (1986) 8 *EHRR* 425.
104. See 19 *EHRR* 432, at 458, paragraph 60.
105. See Table 3(3).
106. Application No. 10873/84.

alcohol was revoked. No appeal lay against that revocation of the licence. The ECtHR held that Article 6 applied since the dispute involved the determination of a civil right. The article had been breached since the applicant company had been denied recourse to a court.

A clear example of Article 6 applying to a dispute which arose out of a taxation matter is the case of *Editions Periscope v. France*.[107] In that case the applicant company was refused a tax concession; this refusal led ultimately to the company's insolvency. The company sued the French Government for compensation, the litigation taking approximately eight and a half years. The company complained of the unreasonable length of the proceedings. The ECtHR concluded that the proceedings concerned compensation for injury caused by the state:[108]

> 40. The Court notes that the subject matter of the applicant's action was 'pecuniary' in nature and that the action was founded on an alleged infringement of rights which were likewise pecuniary rights. The right in question was therefore a 'civil right', notwithstanding the origin of the dispute and the fact that the administrative courts had jurisdiction.

Actions to recover overpayments of tax have been treated as proceedings involving the determination of civil rights and obligations. In *DC v. Italy*[109] the taxpayer brought an action to recover tax credits to which he was entitled; the action took eight years and three months in respect of one claim and six years and two months in respect of another. The applicant complained of the unreasonable length of the proceedings. The ECnHR considered that the proceedings involved the determination of civil rights and obligations and fell within Article 6(1). It went on to conclude that there had been a breach of that article and awarded just satisfaction.

Similarly, in the *Building Societies* case[110] the ECtHR concluded that the actions for repayment of tax were restitutionary, that they were private law actions and were decisive of the determination of private law rights to quantifiable sums of money. Article 6(1) therefore applied, though the complaint was ultimately unsuccessful.[111]

There is an interesting contrast to these cases in *D'Andrei v. Italy*.[112] The applicant brought an action before the Tax Commission for repayment of tax on the grounds that, on one interpretation of the tax law, no tax was due. The proceedings took more than twelve years, and the applicant complained of the unreasonable length of the proceedings. The ECnHR found that the case was inadmissible as it turned on the determination of the tax base and the interpretation of tax legislation; the case was therefore within the established jurisprudence that Article 6 did not apply to ordinary tax proceedings.

In a sense, one can understand the logic of this decision: had the taxpayer disputed liability to pay the tax initially, then (according to the established jurisprudence) proceedings to recover the tax would not have come within Article 6. It would seem a little surprising if proceedings to recover the tax wrongly paid should be subject to Article 6. There is, however, a somewhat fine line between this case and, for example, the *Building Societies* case.

Various cases have accepted that actions to recover property seized by the revenue authorities are actions for the determination of civil rights and obligations. These include *K v. Sweden*[113] where the tax enforcement office had seized the applicant's goods and money for taxes unpaid by her ex-husband. The ECnHR concluded that the action was a civil claim for the return of goods. Similarly, in *S. v. Austria*[114] a bank brought an action for the return of jewellery deposited with the bank and seized by the revenue authorities for unpaid taxes which the depositor had failed to pay. The ECnHR concluded that the case did not concern the tax obligations of the applicant but rather the civil rights arising out of a pledge of assets. The ECnHR found, however, that there was no appearance of a breach of Article 6(1).

In the case of *Basic v. Austria*[115] the applicant was found in possession of a Rolex watch on which no customs duty had been paid. The watch was seized and three sets of proceedings followed: a criminal case against the person who had sold the watch for non-payment of duty, a criminal case against the applicant for receiving the property and an action for return of the watch. The applicant complained that these proceedings were not concluded within a reasonable period of time. The ECnHR held that Article 6 applied to all three proceedings since they involved either the determination of a criminal charge or of a civil right or obligation.

Aside from actions to recover goods already seized, this approach has also been extended to actions involving an order to seize goods for non-payment of taxes.

In *Klavedianos v. Greece*[116] the applicant was a director of a company which went bankrupt and was unable to pay its taxes. The applicant was personally liable and an order of the court was issued to seize his house for payment of the taxes. The applicant complained of the unreasonable length of the proceedings before the domestic courts. The parties did not dispute that the proceedings involved the determination of the applicant's civil rights and obligations.

Most recently, in *Filippello v. Italy*[117] the applicant brought proceedings to annul an assessment for taxes which he had already paid. He complained of the length of the proceedings, which took five years and four months. The ECnHR in a relatively short judgment concluded that the action involved the determination of civil rights and obligations and that there had been an unreasonable delay.

One can see in theory the dividing line between cases like this and ordinary tax proceedings for the determination of the amount of the tax liability. However, it seems extremely hard to justify in principle the inapplicability of

107. Application No. 11760/85.
108. 14 *EHRR* 597, at 613, paragraph 40.
109. Application No. 13120/87.
110. Application No. 21319/93 and others.
111. See 25 *EHRR* 127, at 176 to 177, paragraphs 97 to 98.
112. Application No. 30601/96.
113. Application No. 13800/88.
114. Application No. 18778/91.
115. Application No. 29880/96.
116. Application No. 38841/97.
117. Application No. 25564/94.

Article 6 to ordinary tax proceedings while an action to recover overpaid tax, to obtain the return of property seized by the revenue authorities or to annul a tax assessment might all be regarded as the determination of civil rights and obligations.

4. Exceptions to the applicability of Article 6: the determination of a criminal charge[118]

Article 6 is applicable to taxation proceedings if they involve the determination of a criminal charge. The leading decision of the ECtHR on this point is the case of *Bendenoun v. France*.[119] Following a customs' investigation, the applicant was subject to supplementary income tax assessments including penalties of approximately 50% of the tax outstanding. The applicant challenged these assessments through the French administrative courts. He complained of a breach of Article 6(1) in that the full customs' investigation file was not made available to him. The ECtHR considered the nature of the fiscal penalties and decided that the dispute over the penalties involved the determination of a criminal charge. Article 6 was therefore applicable, though the Court found that there was no actual breach of the article in that case.

Whether or not proceedings involve the determination of a criminal charge does not depend only upon whether the conduct in issue is regarded by the domestic law of the state concerned as falling within the scope of the criminal law. The term "criminal charge" has an autonomous, Convention meaning. The ECtHR has developed a series of tests for determining whether or not proceedings involve the determination of a criminal charge, sometimes referred to as the "Engel criteria".[120] These three criteria are:
(a) the classification of the proceedings in domestic law;
(b) the nature of the offence; and
(c) the severity of the penalty which may be imposed.

If the offence is regarded as falling within the scope of criminal law by the domestic law of the country concerned, then it will constitute a criminal charge for Convention purposes. If the domestic legal system does not regard it as criminal, it may nevertheless be regarded as a criminal charge for Convention purposes by looking at the nature of the offence – in particular, whether it is an offence applicable to the public in general and whether it involves, for example, dishonesty – or the severity of the punishment, or by looking at the nature of the offence and the severity of the punishment combined. Where the penalty involves imprisonment or the imposition of a fine with imprisonment in default of payment (as was the case in *Bendenoun*) that would generally indicate that the offence involved a criminal charge.[121]

Bendenoun was not the first case to consider whether the imposition of a fine as a fiscal penalty could involve the determination of a criminal charge. In *Max von Sydow v. Sweden*[122] the applicant was assessed to additional tax together with a 50% tax supplement. He complained of the absence of an oral hearing at his request. The ECnHR declared admissible the question of a violation of Article 6 without deciding the matter on the merits. A friendly settlement was subsequently reached. It was not necessary, therefore, for the ECnHR to determine finally whether or not the 50% penalty involved the determination of a criminal charge.

In at least five further cases in the database the ECnHR was able to reach a decision without having to come to a conclusion whether a fine as a fiscal penalty involved a criminal charge.[123] In all of these cases the ECnHR was able to decide that, even if the fine in question constituted a criminal charge, there would have been no breach of Article 6 in any event.

At roughly the same time that the ECnHR adopted its report in the case of *Bendenoun*, it also reached a decision in the case of *Perrin v. France*[124] that a dispute concerning, *inter alia*, tax-geared penalties of 30% or 50% involved the determination of a criminal charge. In reaching this decision, the ECnHR followed earlier decisions of the French *Conseil d'Etat* to the effect that such penalties involved the determination of criminal charges.

Subsequent to *Bendenoun* there have been a number of cases where the Strasbourg organs have accepted – increasingly without the issue being contested – that disputes which include the question of liability to pay substantial, tax-geared penalties involve the determination of criminal charges. Thus, for example, the two cases of *AP, MP and TP v. Switzerland*[125] and *EL, RL and JOL v. Switzerland*[126] both involved fines for tax evasion which could be as high as 400% of the tax evaded, though in both cases the fine was substantially mitigated (in the *EL etc*. case, for example, the fine eventually imposed was just over CHF 5,500). The ECtHR concluded that both cases concerned criminal charges. Both cases involved the heirs of a deceased person; the deceased had allegedly perpetrated the tax evasion. Since criminal liability is personal to an individual, the ECtHR found that there was a breach of Article 6 in imposing the liability on the heirs of the deceased.

In *JJ v. the Netherlands*[127] the applicant was assessed to additional tax plus a 100% fiscal penalty. The applicant failed to pay a court fee, as a result of which he was unable to appear before the court on appeal to contest the tax and the penalty. He complained of a breach of Article 6(1) in that he had been denied a court. The ECtHR accepted that the 100% penalty involved a criminal charge. Article 6 was therefore applicable and there was a violation of that

118. See Table 3(4).
119. Application No. 12547/86.
120. The leading case is *Engel v. Netherlands*, (1976) 1 *EHRR* 647. See also *Öztürk v. Germany*, (1984) 6 *EHRR* 409, and *Garryfallou AFBE v. Greece* (1997). On this see Lester and Pannick, *supra* note 26, at 138.
121. There is a very clear discussion of the application of the *Engel* criteria in a tax context in the recent case of *WS v. Poland* (Application No. 37607/97).
122. Application No. 11464/85.
123. See *U v. Netherlands* (Application No. 12130/86), which involved a 50% additional charge, *IJzergieterij- en Machinefabriek J. Zimmer en Zonen BV v. Netherlands* (Application No. 12347/86), which involved a 10% penalty, *H v. Sweden* (Application No. 12670/87), which involved a 40/50% penalty, *Källander v. Sweden* (Application No. 12693/87) and *McLoughlin v. Ireland* (Application No. 15967/90), which involved various fixed penalties for failure to submit tax returns.
124. Application No. 18656/91.
125. Application No. 19958/92.
126. Application No. 20919/92.
127. Application No. 21351/93.

article in denying the applicant access to a court both to challenge the tax assessment and the penalty.

In *HWK v. Switzerland*[128] the applicant was assessed to additional tax plus a 50% penalty. He complained of the lack of an independent tribunal. It was not contested that Article 6 applied since the penalty entailed a criminal charge; the ECnHR held, however, that there was no appearance of a breach of Article 6.

The case of *Lechaczinski v. France*[129] again involved French fiscal penalties of 30% or 50%. It appears that no one contested that Article 6 was applicable. The applicant complained of the duration of the proceedings (nine years and five months). The ECnHR found a breach of Article 6.[130]

Similarly, in *Kovexin SA v. France*[131] it was not argued that a 25% penalty was other than for a criminal charge.

It now seems clearly established, therefore, that a tax-geared penalty can entail a criminal charge, and that proceedings to determine the issue of liability to penalties of 25% or higher can be regarded as involving the determination of a criminal charge.

At the other end of the scale, the Strasbourg organs have determined that certain fiscal fines are not sufficiently severe, or do not relate to such conduct, that they can be regarded as involving a criminal charge. In *CB and AM v. Switzerland*[132] the only issue at stake was a CHF 100 administrative fine. The ECnHR decided that this did not involve a criminal charge.

Similarly, in *WS v. Poland*[133] the applicant was subject to a penalty for incorrect bookkeeping entries of PLN 300 (or thirty days imprisonment in default) and for incorrect calculation of VAT of PLN 100 (or ten days imprisonment in default). The ECtHR came to the conclusion that the penalties imposed were not sufficiently severe to be regarded as criminal. (Interestingly, the ECtHR focused on the financial amount and not on the possibility of imprisonment in default.)

Of particular relevance here is the Community Charge case of *Smith v. United Kingdom*[134] where the ECnHR had to decide whether the 10% surcharge for failure to pay Community Charge on time entailed a criminal charge. The ECnHR noted that the surcharge was imposed automatically where an application for a summary warrant was made. It was imposed because the liability to tax had not been paid when due, and was not imposed for anything equivalent to the concept of "wilful refusal or culpable neglect", or "displaying bad faith". In the particular case, the amount of the surcharge was small (just over GBP 7). The ECnHR concluded that the surcharge did not amount to a criminal charge. One might comment on the case that, had the surcharge clearly been imposed for wilful refusal or similar conduct, or had the surcharge amounted to a very substantial sum, the decision might have been different.

Finally in this context, in *Riener v. Bulgaria*[135] the ECnHR confirmed that interest on late payment of tax is not a penalty. The interest in that case was calculated on a daily basis from the time that the tax should have been paid, and was computed at the basic interest rate prevailing in the country plus a surcharge of 0.05%. The interest was due on all late payments to the state regardless of the reasons for failure to pay. It was not a fine under domestic law and its payment was enforceable only through civil action. The proceedings did not, therefore, involve the determination of a criminal charge.

It remains the case that, where no penalty is in issue, Article 6 is regarded as inapplicable. Two recent cases illustrate this. In *Fichter v. France*[136] the applicant was assessed to additional tax plus a 100% penalty. She appealed to the Administrative Court of Appeals which struck down the penalty but left the additional assessment standing. She then appealed on to the *Conseil d'Etat*. She subsequently complained of various breaches of Article 6. The ECnHR noted that, at the level of the *Conseil d'Etat*, no penalties were in issue. Article 6 did not, therefore, apply to the proceedings at that level.

Similarly, in *Société d'Edition des Artistes Peignant de la Bouche et du Pied v. France*[137] the applicant was subject to additional tax assessments plus interest but the administration expressly determined that no fines were applicable. The ECnHR confirmed that Article 6 did not apply as no penalties were at stake.

One point which has not perhaps been highlighted in the cases on fiscal penalties and criminal charges is the distinction between the proceedings to determine the tax liability and the proceedings to determine the penalty. In most of the cases the proceedings under examination involved both issues. Strictly speaking, the question of applicability of Article 6 turns on whether the proceedings can be regarded as involving the determination of a criminal charge. Where the tax liability and the penalties are contained in the same assessment, or the penalty is automatic, it would seem impossible – as a practical matter, if nothing else – to apply Article 6 to part only of the proceedings.

There has been an attempt in one case at least to separate the proceedings relating to the ordinary tax liability (to which, in accordance with the jurisprudence of the Strasbourg organs, Article 6 should not apply) from that part of the proceedings which related to penalties. In *Rouviere v. France*[138] the French Government argued that proceedings relating to the determination of the amount of a tax liability should be separated from the proceedings for imposition of a penalty: Article 6 applied only to the latter. The ECnHR did not find it necessary to determine this issue since the applicant had failed to exhaust domestic remedies.

In theory, one can see the distinction between, on the one hand, a single hearing where the taxpayer appeals against an assessment to additional tax plus penalties and, on the

128. Application No. 23399/94.
129. Application No. 29350/95.
130. At the time of writing, the final outcome has not yet been determined.
131. Application No. 32509/96.
132. Application No. 17443/90.
133. Application No. 37607/97.
134. Application No. 25373/94.
135. Application No. 28411/95.
136. Application No. 28990/95.
137. Application No. 29998/96.
138. Application No. 24472/94.

other hand, initial proceedings for the determination of the tax liability, followed by a separate assessment to penalties and subsequent proceedings to challenge those penalties. In theory, Article 6 applies to the entire proceedings in the first case, but only to the penalty proceedings in the second. That situation seems, however, inherently unattractive. Why should an applicant have, for example, the guarantee of a determination within a reasonable time for both his tax liability and the penalties in the first case, but only for the penalties in the latter case? Where substantial penalties are involved, it seems logical to say that Article 6 applies to the entire proceedings. This issue has not been conclusively resolved by the Strasbourg organs.

B. The consequences where Article 6 applies to proceedings relating to taxation matters[139]

The previous section has shown that Article 6 may apply to proceedings arising out of taxation matters if the proceedings involve the determination of civil rights and obligations or the determination of any criminal charge. The inclusion of substantial, tax-geared penalties within the scope of criminal charges means that many proceedings concerning additional tax liabilities will involve the determination of a criminal charge.

Where the proceedings involve the determination of civil rights and obligations, only Article 6(1) applies. Where, however a criminal charge is involved, the additional guarantees in Article 6(2) and (3) also apply. This section considers some of the consequences where Article 6 applies to proceedings relating to taxation matters.

1. Unreasonable length of proceedings

Perhaps one of the most important consequences is that, where Article 6 applies – whether to a civil matter or a criminal matter – the proceedings must be determined within a reasonable time. In a number of cases in the database the argument was raised that the proceedings were not determined within a reasonable time. Table 3(2) lists those cases where the length of proceedings was in issue. There are 43 cases in that sub-table: in 28 cases the Strasbourg organs held that the proceedings had not been determined within a reasonable time, in a further 11 they held that the length of the proceedings could be justified, in 3 there was no breach of Article 6 since the delay in the proceedings was taken into account in the imposition of the sentence, and a further case was struck out. Delay in the determination of proceedings is by far and away the ground upon which the largest number of applicants were successful in their complaints under the Convention with respect to taxation matters.

As one might expect, there is no fixed period of time beyond which proceedings are regarded as having suffered an unreasonable delay. Instead, the Strasbourg organs have emphasized that each case depends upon its circumstances and, in particular, on a review of three factors: the complexity of the case, the conduct of the applicant and the conduct of the authorities. In a number of cases the government concerned argued that the tax proceedings involved complex issues, but the Strasbourg organs disagreed.[140] In general, periods of unexplained inactivity on the part of the government are likely to establish unreasonable delay.

Table 3(2) gives an indication of the length of proceedings that were considered in the various cases. There is relatively little point in looking much further at these time periods since each case depends upon its particular circumstances. It is worth pointing out, however, that the shortest proceedings which were regarded as unreasonably long took four years and three months in *Schouten and Meldrum v. the Netherlands*[141] though this is perhaps exceptional. There are a number of cases where a duration slightly in excess of five years was regarded as a breach of Article 6(1).[142] One might hazard a tentative conclusion that there is a watershed around the five-year point: proceedings concluded within that five-year period are unlikely to constitute a breach; proceedings that take longer than five years need to be justified by the authorities.

At the other end of the scale, one might point to cases such as *Hozee v. the Netherlands*,[143] where proceedings which lasted eight and a half years and involved a 100% fiscal penalty were not unreasonable having regard to the complexity of the case, and *HH v. the Netherlands*[144] where nine and a half years was not unreasonable since the delays were not by and large due to the authorities.

For the purposes of Article 6, the length of the proceedings is computed from their start to their final determination when all appeal hearings have been concluded. In the case of a criminal charge, the proceedings commence when the applicant is "substantially affected" by the proceedings taken against him: this will generally be when the applicant is charged or interviewed with a view to a charge being brought against him.[145] In *Hozee*,[146] for example, the proceedings commenced when the applicant was interrogated by the Netherlands Fiscal Intelligence and Investigation Department (*Fiscale Inlichtingen- en Opsporingsdienst*) as a suspect. He was arrested on suspicion of fraud some eleven months later.

In civil cases, proceedings will generally commence when court proceedings are initiated, though they may be regarded as starting earlier if there is, for example, a preliminary requirement to exhaust an administrative remedy.[147]

Though proceedings may have been unduly lengthy, in a number of cases it was concluded that there was no violation of Article 6 where the delay in the proceedings was

139. On the rights guaranteed by Article 6 in general see Lester and Pannick, *supra* note 26, at 139-157.
140. See, for example, *Lechaczynski v. France* (Application No. 29350/95).
141. Application No. 19005/91.
142. See *Danielli v. Italy* (Application No. 20363/92) (five years, three months), and *PW v. Austria* (Application No. 22604/93) (four years, ten months), *Larsen v. Denmark* (Application No. 23871/94) (five years, five months), *Filippello v. Italy* (Application No. 25564/94) (five years, four months), *HL v. Finland* (Application No. 33600/96) (five years, ten months).
143. Application No. 21961/93.
144. Application No. 23229/94.
145. See, for example, *Eckle v. Germany*, (1982) 5 *EHRR* 1. On this see Lester and Pannick, *supra* note 26, paras. 4.6.14 and 4.6.47.
146. See above.
147. See Lester and Pannick, *supra* note 26, para. 4.6.47.

taken into account in mitigation of penalty.[148] There is unlikely, therefore, to be a violation of Article 6 where tax proceedings exceed, say, five years (the delay not being due to the complexity of the case or the conduct of the applicant) and any fines are reduced to take account of these delays.

2. The right to a court

One of the fundamental rights guaranteed by Article 6 is the right to a court for the determination of civil rights and obligations or a criminal charge. This right was at issue in the case of *JJ v. the Netherlands*[149] where the applicant was assessed to additional tax plus a 100% fiscal penalty but was unable to appear in court because of his failure to pay the court fee (the bank instructed to make the payment failed to do so within the time limit). The ECtHR concluded that Article 6 applied since the penalty involved the determination of a criminal charge, and that the applicant had been denied a court. The Government of the Netherlands subsequently changed the practice of its Supreme Court to avoid a recurrence.[150]

This raises important issues where Article 6 applies to tax proceedings but the taxpayer is, for example, required to pay the tax before he can appeal.[151] If the requirement of payment of the tax is absolute, and there is no possibility for the taxpayer to make representations that he should be excused payment of the tax before appealing, then it seems likely that a breach of Article 6 (always assuming it is applicable) would be found. If, on the other hand, there was a general rule that the taxpayer was required to pay the tax but the tribunal had a discretion to excuse payment, then it seems far less likely that a violation of Article 6 would be found (though this may depend on the particular circumstances, on the form of the proceedings before the tribunal to decide whether the taxpayer should be excused, and on the practice of the tribunal with regard to the exercise of this discretion).[152]

3. Independent and impartial tribunal

In a small number of tax cases the applicant has complained of a breach of his right to a determination by an independent and impartial tribunal. In none of the cases was the applicant successful.

In *S v. Austria*[153] the applicant bank challenged the seizure of jewellery which had been deposited with it. The decision to seize the jewellery was taken by the Salzburg Customs Office, and an initial appeal against that decision lay to the Regional Directorate of Finance. The applicant also brought a claim before the Austrian Constitutional Court which referred the matter to the Administrative Court. The ECnHR first held that Article 6 was applicable since the case involved the determination of civil rights and obligations. With respect to the applicant's complaint of the lack of an independent and impartial tribunal, the ECnHR noted that Article 6(1) does not require that the proceedings be conducted at each stage before tribunals meeting the requirements of independence and impartiality. Thus an administrative procedure might be followed by a review by an independent and impartial tribunal. The review by that tribunal must, however, cover questions of fact and of law, and the review tribunal must have full jurisdiction in order to provide the guarantees in Article 6(1). The Salzburg Customs Office and the Regional Directorate of Finance were not tribunals; the Constitutional Court did not review the facts; however, the Administrative Court was an independent and impartial tribunal which fulfilled the requirements of Article 6(1).

In the case of *HWK v. Switzerland*[154] the applicant was assessed by the Tax Office of the Canton of Zurich to additional taxes plus a 50% penalty for tax evasion. An appeal from this decision lay to the Appeals Commission for Federal Taxes. A further appeal lay to the Federal Court but the Federal Court decided that it was not free to examine the facts as established by the Appeals Commission. The applicant complained that the Appeals Commission was not independent since it was appointed by the Council of State of the Canton of Zurich, its members were appointed for only four years, and it was under the supervision of the Finance Directorate of the Canton of Zurich. The ECnHR noted that the manner of appointment of the members of the tribunal could not of itself call into question their independence, and that the four-year period of office was not so short as to raise an issue of independence. So far as supervision by the Finance Directorate was concerned, it was clear that the members of the Appeals Commission were not in any way subject to instructions by the Finance Directorate regarding their functions. The ECnHR therefore concluded that the Appeals Commission was an independent tribunal.[155]

4. Right to a public hearing

Article 6(1) – which applies to both civil and criminal cases – provides for a "public hearing". In *HB v. Switzerland*[156] the applicant was charged with tax evasion. He appealed to the Cantonal Tax Appeals Commission for the Canton of Obwalden. He was prevented from attending the hearing (though his lawyer was present); the hearing was not in public. Following a review by the Federal Court a further hearing was held by the Appeals Commission at which the applicant was present but again the hearing was

148. On this, see *ES v. Germany* (Application No. 9182/80) (12 years' proceedings taken into account in sentencing), *H v. Germany* (Application No. 10884/84) (eight years and four months' proceedings taken into account in reduction of sentence), and *LvL v. the Netherlands* (Application No. 20773/92) (five years' proceedings taken into account in sentencing).
149. Application No. 21351/93.
150. See the resolution of the Committee of Ministers, Resolution DH (99) 251 of 15 April 1999.
151. This issue was considered in the Hong Kong case of *Harvest Sheen Ltd v. Collector of Stamp Revenue*, (1997) 1 OFLR 669 under the Hong Kong Bill of Rights Ordinance. The discussion on this point in the case is *obiter*, however.
152. On the right to a court, see particularly Keir Starmer, *supra* note 26, at 354-367.
153. Application No. 18778/91.
154. Application No. 23399/94.
155. In the case of *HB v. Switzerland* (Application No. 28332/95) the taxpayer also argued that the Cantonal Tax Appeals Commission was not an independent and impartial tribunal since the proceedings before the Cantonal tribunal took place after proceedings involving federal tax. The Cantonal tribunal was not therefore in a position to reach a different conclusion from the federal proceedings and some of the judges who had sat in the federal tax proceedings also sat in the Cantonal proceedings. The ECnHR did not find it necessary to decide on the independence or impartiality of the Cantonal Tax Appeals Commission since the taxpayer had received a full hearing before the Administrative Court.
156. Application No. 17951/91.

not in public. The applicant complained of a breach of Article 6(1) on the grounds that the hearings had not been in public. The ECnHR noted that the applicant had at no time during the proceedings made any request for the hearings to be in public or complaint of the fact that they were not in public, and concluded that the applicant had waived his right to a public hearing. The ECnHR stated:

> 38. According to the Convention organs' case-law, the public character of the proceedings contemplated in Article 6(1) of the Convention protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the aim of Article 6(1) of the Convention, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society within the meaning of the Convention [references omitted].
>
> 39. Nevertheless, while the member States of the Council of Europe all recognise the principle of such publicity, there is some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the pronouncement of judgments.
>
> 40. Thus, according to the Convention organs' case-law, provided that a public hearing has been held in first instance, the absence of a hearing before a second or third instance may be justified by the special features of the case [references omitted].

One rather interesting issue is whether there is a correlative right to a hearing in private with anonymity maintained. May a taxpayer, for example, insist that a hearing of his tax appeal is held in private and that any report of the case does not identify him or his financial circumstances? Article 6(1), second sentence, deals with circumstances where the public may be excluded from all or part of the trial and includes as one of the grounds "where ... the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". If a taxpayer would be deterred from bringing an appeal by the possibility of public disclosure of his financial circumstances, then it seems clearly arguable that the interests of justice would be in favour of a restriction on the reporting of the name and financial details of the taxpayer. A taxpayer arguing in favour of a private hearing could also deploy the right to privacy in Article 8.

Though there is clearly a principle that open and visible justice is desirable, there are cogent arguments that in tax cases in particular – where the financial details of the taxpayer are almost invariably disclosed – there should be a right to request that the proceedings be in private, with anonymity preserved in any report of the proceedings. This anonymity should apply to any appeals in the proceedings.[157]

5. The right to silence[158]

Article 6 does not expressly contain a right to silence in criminal proceedings. However, the Strasbourg organs have concluded that a right to silence and a right not to incriminate oneself are generally recognized international standards which lie at the heart of the notion of a fair procedure guaranteed by Article 6.[159] Since proceedings arising out of taxation matters may involve the determination of a criminal charge, the right to silence may arise in connection with those proceedings. The right to silence has been raised in a few recent tax cases.

Perhaps the leading case on this point is that of *Funke v. France*.[160] French Customs officers searched the applicant's house and seized various documents. The Customs officers asked the applicant to provide them with copies of statements for his overseas bank accounts: when the applicant failed to provide these statements he was convicted and fined for failing to do so. He alleged breaches of Article 6 and Article 8. The ECnHR found no breach of Article 6 since the "special circumstances of Customs law" implied a duty to disclose information.[161] The ECtHR, however, reached a different conclusion as follows:[162]

> 44. The Court notes that the Customs secured Mr. Funke's conviction in order to obtain certain documents which they believed must exist, although they were not certain of the fact. Being unable or unwilling to procure them by some other means, they attempted to compel the applicant himself to provide the evidence of offences he had allegedly committed. The special features of Customs law cannot justify such an infringement of the right of anyone 'charged with a criminal offence,' within the autonomous meaning of this expression in Article 6, to remain silent and not to contribute to incriminating itself.
>
> There has accordingly been a breach of Article 6(1).

The right to silence was also raised in the case of *Abas v. the Netherlands*.[163] The applicant claimed that he had ceased residence in the Netherlands and that he was resident in Ireland: the Netherlands tax inspector wrote to the applicant seeking further information, and the applicant replied that he was resident in Ireland. The Netherlands tax authorities subsequently searched the applicant's family home and seized a number of documents from which it appeared that he was in fact still residing in the Netherlands. He was charged with fraud and tax evasion. His conviction was based in part on his answers to the letter from the tax inspector. The applicant complained that there was an infringement of Article 6 through the failure of the tax inspector to inform him that he could rely upon his right to silence and not reply to the letter.

The ECnHR effectively approached the case by asking whether or not the criminal proceedings had commenced at the time that the tax inspector wrote to the applicant. Only if the criminal proceedings had commenced did the guarantees contained in Article 6(1) apply. Criminal proceedings are regarded as commencing when a person is

157. In this respect the current position in the United Kingdom seems perverse since anonymity may be preserved at the level of Special Commissioners but is lost if the case proceeds on appeal.
158. On this see especially, S. Frommel, "The European Court of Human Rights and the Right of the Accused to Remain Silent: Can It Be Invoked by Taxpayers?", [1994] *B.T.R.*, at 598-634.
159. See *Saunders v. United Kingdom*, (1996) 23 *EHRR* 313.
160. Application No. 10828/84. The aspects of this and the two related decisions of *Crémieux* and *Miailhe* relevant to Article 8 are discussed in VII. Article 6 was only considered in the *Funke* decision.
161. See (1993) 16 *EHRR* 297, at 314, paragraphs 64 and 65.
162. Id., at 326, paragraph 44.
163. Application No. 27943/95.

substantially affected by those proceedings. The ECnHR noted that the manner in which Article 6 is to be applied during preliminary investigations depends upon the particular features of the proceedings involved. In this case, the letter from the tax inspector was sent as part of an investigation to record facts for fiscal purposes. The applicant's reply merely confirmed information already supplied voluntarily to the tax authorities. Looking at the circumstances as a whole, the ECnHR found that the applicant's position was not substantially affected at the time that the letter was sent to him. The ECnHR stated:

> The Commission further finds that a requirement that an investigation by a Tax Inspector under Article 47 of the General State Taxes Act should be subject to the guarantees of a judicial procedure as set forth in Article 6(1) of the Convention would in practice unduly hamper the effective functioning in the public interest of the activities of fiscal authorities [citations omitted]. The Commission is, therefore, of the opinion that the investigation by the Tax Inspector of the applicant's case was not such as to attract the application of Article 6 of the Convention and, consequently, that the applicant's obligation to answer the Tax Inspector's questions did not constitute an infringement of the right to silence and the right not to incriminate one.

The ECnHR went on to hold that the applicant's position for the purposes of Article 6 altered when his family home was searched. From that time onwards, his situation was substantially affected by the investigation and, therefore, the guarantees provided by Article 6(1) of the Convention applied. The ECnHR found, however, that the actions of the authorities subsequent to that date did not infringe Article 6.[164]

The right to silence raises potentially difficult issues for the administration of taxes. All tax administration requires the submission of a great deal of information by taxpayers. Where, however, a criminal charge is involved, the right to silence implicit in Article 6(1) may apply. In the light of the recent jurisprudence of the Strasbourg organs – subsequent, in particular, to *Bendenoun*[165] – to the effect that a substantial fiscal penalty may involve a criminal charge, many tax investigations give rise to the possibility of a "criminal charge" within the terms of the Convention.

Clearly, a taxpayer could not invoke the right to silence and simply refuse to submit his tax return on the grounds that, if any entry in the return proved to be inaccurate, he might be liable to a fiscal penalty. The Strasbourg organs have on several occasions noted that the administration of tax involves the disclosure of information by the taxpayer.[166] On the other hand, a point may come where it becomes clear that a criminal charge is contemplated and the right to silence is engaged. This is clearly so where it has become apparent that the authorities are contemplating a criminal prosecution under the provisions of the general criminal law and before the criminal courts. In principle, it must also be the case when it becomes clear that the revenue authorities may be seeking substantial fiscal penalties which would be regarded as involving a criminal charge for Convention purposes.

In *Abas* the ECnHR used as a dividing line the same point of time that is used to determine when criminal proceedings have commenced for the purpose of deciding whether those proceedings have been unreasonably delayed: that is, when the applicant is substantially affected by the investigation. On the basis of *Abas*, from the time that the applicant is substantially affected, the right to silence arises.

The point might be made, of course, that the fact that the applicant may exercise a right to silence does not prevent the revenue authorities from carrying out their investigations in other ways: by seeking information from third parties, for example. The decision of the ECtHR in *Funke* indicates, however, that the exercise of the right to silence also permits the applicant to refuse to supply documents to the revenue authorities once he has become substantially affected by proceedings for the determination of a criminal charge against him.

6. Legal aid[167]

One of the additional guarantees for persons charged with a criminal offence is the right "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require" (see Article 6(3)(c)). If proceedings arising out of taxation matters involve the determination of a criminal charge, then, in principle, legal aid should be available (subject, always, to the applicant showing that he has not sufficient means and that the interests of justice so require).

The absence of legal aid has been one of the grounds for finding a breach of Article 6 in a number of cases arising out of the Community Charge in the United Kingdom. In *Benham v. United Kingdom*,[168] the applicant was committed to prison for wilful non-payment of the Community Charge: legal aid was not provided. The ECtHR found a breach of Article 6(1) and 6(3)(c).[169]

It seems, however, that imprisonment need not always be in prospect for a right to legal aid to arise. Following the recent jurisprudence of the Strasbourg organs, a case which may lead to the imposition of a substantial tax-geared penalty will involve the determination of a criminal charge. In principle, legal aid should also be available in such a case.

7. The non-heritability of criminal charges

Reference has already been made to the cases of *AP, MP and TP v. Switzerland*[170] and *EL, RL and JOL v. Switzer-*

164. The right to silence was also raised recently in the case of *Passet v. France* (Application No. 38434/97) where the applicants failed to reply to requests for information; as a consequence, the assessments against them were confirmed with penalties. Unfortunately, the ECtHR held that it did not need to consider the issue of the right to silence since the applicants had failed to exhaust domestic remedies by raising the issue before the domestic courts.
165. See, *supra*, note 94.
166. See, in particular, the cases considered under Article 8.
167. On the issue of legal aid in civil cases, see Keir Starmer, *supra* note 26, at 365-367.
168. Application No. 19380/92.
169. A similar decision was reached in *Perks v. United Kingdom* (Application No. 25277/94), *SD v. United Kingdom* (Application No. 25286/84), *Poole v. United Kingdom* (Application No. 28190/95) and *Johnson v. United Kingdom* (Application No. 28455/95).
170. Application No. 19958/92.

land[171] both of which concerned fiscal penalties imposed on the heirs of a deceased (with a maximum of 400% of the tax evaded) for tax evasion committed by the deceased. In both cases the ECtHR decided that the fiscal penalty involved a criminal charge, and the principle that criminal liability was personal to an individual meant that the penalties could not be imposed on the heirs.

Both cases arose in Switzerland where the rule of universal succession applies (under which an heir effectively steps directly into the shoes of the deceased). In principle, however, there seems no reason why the result should be any different in a country where assets pass first to an executor, administrator or other personal representative before being passed to the heirs. The implication seems clear that fiscal penalties – to the extent that they constitute criminal charges – cannot survive the death of the particular taxpayer.[172] Whether this is a reasonable result is open to debate.

8. Tax proceedings as the determination of a criminal charge

Several of the issues that have just been considered have arisen because of the jurisprudence of the Strasbourg organs that a fiscal penalty may involve a criminal charge and, hence, the extended guarantees in Article 6 will apply. Issues such as the right to silence, the non-heritability of criminal liability and, to a certain extent, the issue of legal aid all create some difficulties in the tax context. These issues have primarily been faced by the Strasbourg organs and national courts since the decision of the ECtHR in *Bendenoun*[173] in 1994.

A small number of further issues have arisen in the context of tax proceedings as the determination of a criminal charge.

A few cases have raised the application of the presumption of innocence in Article 6(2) to tax matters, since the onus of proving facts often falls upon the taxpayer (who normally has access to the information). In none of these cases has the presumption of innocence been successfully raised by the applicant.[174]

Article 4 of the 7th Protocol ("Article 4/7") involves a right not to be tried or punished twice – the principle of double jeopardy.[175] In *Ponsetti and Chesnel v. France1*[176] the taxpayers failed to submit their income tax or VAT returns. As a consequence they were liable to payment of the tax plus penalties plus criminal prosecution for their deliberate omission to submit the returns. They complained of double jeopardy arguing that the fiscal penalties involved a criminal charge and, in addition, they were liable to criminal prosecution. The ECtHR found their applications inadmissible on the grounds that there was in fact no double jeopardy: the criminal offences contained an additional element (specifically, the deliberate omission to submit returns) which was not relevant to the establishment of the fiscal penalties. It is not particularly clear from the decision, however, that the ECtHR focused on the point that the fiscal penalties involved criminal charges (according to its own jurisprudence) and that two sets of criminal charges might be regarded as arising out of the same failure to submit returns.

While one can appreciate that a taxpayer who is prosecuted for an offence under the criminal law should nevertheless be liable to pay the tax (with interest for late payment), it is harder in principle to see why an individual should be liable both to prosecution for an offence under the criminal law and also for fiscal penalties.

Though it is not exactly a problem thrown up by the jurisprudence on fiscal penalties, one recent case has considered Article 6 where the penalties were assessed by the revenue authorities. In *Taddei v. France*[177] the applicant was subject to an additional tax assessment plus penalties of 40% for bad faith. The penalties were assessed by the revenue authorities and could be challenged before the administrative courts, though those courts had no power to modify the amount of the penalties. The ECnHR confirmed that the fiscal penalties entailed a criminal charge. There was no breach of the Convention merely because they were assessed by the administration, provided they could be subject to an appeal to an independent tribunal with full power to review both questions of fact and law. On the point that the French courts had no power to modify the amount of the penalties, the ECnHR noted that the French legislation provided for different levels of penalty for bad faith, on the one hand, and "fraudulent manoeuvres" on the other. The different levels of penalty reflected the seriousness of the conduct. The administrative courts had power to review whether, for example, bad faith had been established. In those circumstances there was no appearance of a violation of the Convention.

One might draw at least two conclusions from this case. First, there is no breach of the Convention if penalties are assessed initially by the revenue authorities provided that the penalties can be appealed to an independent tribunal with full powers to review both questions of fact and law. Second, where the penalty is fixed by law at a single level, and the tribunal has no power to moderate the penalty, that might constitute a breach: the position in France is somewhat unusual since the legislation itself provides for fixed penalties at two different levels to reflect the seriousness of the conduct.

In the conclusions/recommendations at the end of this article there is a short discussion of the question whether the guarantees applicable to criminal charges are appropriate to tax proceedings. It suffices to point out here that there are some very real difficulties in applying the criminal charge guarantees to taxation matters, most notably in areas such as the right to silence. On the one hand, one can quite easily see that substantial fines for fiscal offences may have as great an impact on an individual as a conviction for a criminal offence under the ordinary criminal law. On the other hand, there are aspects of tax administration – particularly the requirement for the taxpayer to supply

171. Application No. 20919/92.
172. On this, see Francis Fitzpatrick, "HRA 1998 – the essentials", *Trusts and Estates Tax Journal*, April 2000, at 10-12. Fitzpatrick concludes that s. 100A of the Taxes Management Act 1970 may be contrary to Article 6.
173. Id.
174. See, for example, *KS and KS AG v. Switzerland* (Application No. 19117/91).
175. This is discussed in slightly more detail in IX.
176. Application Nos. 36855/97 and 41731/98.
177. Application No. 36118/97.

information, or the possibility that tax avoidance/evasion may be discovered sometime after a taxpayer has died – which appear to make certain of the criminal charge guarantees inappropriate in fiscal proceedings.

At the same time, the constant jurisprudence that Article 6 does not apply to ordinary tax proceedings appears unattractive. Why, for example, should a taxpayer not have a right to have his appeal against liability to tax determined within a reasonable time by an independent and impartial tribunal?

V. ARTICLE 14 (*PROHIBITION OF DISCRIMINATION*)[178]

Article 14 provides as follows:

> Article 14: *prohibition of discrimination*
>
> The enjoyment of the rights and freedoms set forth in this 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.[179]

A. General discussion

Article 14[180] is a non-free-standing non-discrimination rule: that is, the article does not prohibit discrimination as such, but only discrimination in the enjoyment of the rights and freedoms contained in the Convention.[181] A complaint must, therefore, point to the right or freedom in respect of which discrimination is alleged. Article 14 alone cannot be the basis of a complaint where none of the other rights or freedoms contained in the Convention are engaged.[182]

Discrimination consists of the application of different treatment to persons who are in an objectively similar situation. Even then, the state may justify the difference in treatment if it pursues a legitimate aim and is not disproportionate.[183] In the sphere of taxation, states enjoy a wide margin of appreciation.

In the tax context, Article 14 is most often raised in conjunction with Article 1/1 on the basis that the right to enjoyment of possessions has been infringed by tax rules which operate in an unjustified and discriminatory way.[184] A small number of the cases in the database have sought to combine Article 14 with other of the rights or freedoms.

In 49 cases in the database complaints were made under Article 14. The applicant was successful under Article 14 in only six of those cases. Five of those six involved unjustified discrimination on grounds of sex, the remaining case involved unjustified discrimination on grounds of residence.

Article 14 was raised (unsuccessfully) in the earliest two cases in the database. In *Gundmundsson v. Iceland*[185] the applicant argued that the Icelandic capital tax discriminated between different types of entity. The ECnHR found, however, that there was no infringement of Article 1/1 and Article 14 could not stand on its own. Similarly, in *X v. Germany*[186] complaint was made of a 100% levy on mortgage gains. The ECnHR concluded that Article 1/1 was inapplicable and that Article 14 could not, therefore, stand alone.

There are a number of statements in the database on the general approach to the application of Article 14 in tax matters. An example may be taken from one of the most recent decisions in this area. In *Galeotti Ottieri della Ciaja v. Italy*[187] the applicants complained that the Italian inheritance tax fell disproportionately more heavily on larger estates rather than smaller ones. The ECtHR concluded that this was not discriminatory and that the tax rules were well within the state's margin of appreciation. The ECtHR said the following:

> The Court notes that Article 1 of Protocol No. 1, second paragraph, establishes that the duty to pay tax falls within its field of application. Accordingly, Article 14 is also applicable [quoting the case of *Darby v. Sweden*[188]].
>
> For the purposes of Article 14 a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is 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'. Moreover, in the field of taxation the Contracting States enjoy a wide margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment [references omitted]. In particular, it is not sufficient for the applicants to complain merely that they have been taxed more than others, but they must show that the tax in question operates to distinguish between similar taxpayers on discriminatory grounds [references omitted].

Not surprisingly, the Strasbourg organs have frequently confirmed that states enjoy a wide margin of appreciation in determining how they will subject different taxpayers to taxation.

178. See Table 2(3).
179. The French text of Article 14 is as follows:
> La jouissance des droits et libertés reconnus dans la présente Convention doit être assurée, sans distinction aucune, fondée notamment sur le sexe, la race, la couleur, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance ou toute autre situation.

180. For a general discussion of Article 14, see Lester and Pannick, *supra* note 26, at 225–232.
181. This is in contrast, for example, to Article 26 of the International Covenant on Civil and Political Rights, which contains a free-standing non-discrimination rule as follows:
> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

182. Though it is not necessary to show that the other article has actually been breached, merely that the rights in the article are protected in a discriminatory fashion – see the *Belgian Linguistic* case, (1967) 1 *EHRR* 241.
183. On discrimination in general see Keir Starmer, *supra* note 26, at 684-691.
184. See, in particular, *Darby v. Sweden* (Application No. 11581/85) discussed further below.
185. Application No. 511/59.
186. Application No. 551/59.
187. Application No. 46757/99.
188. Application No. 11581/85. *Darby* is often cited in tax cases involving Article 14 in conjunction with Article 1/1.

B. Cases where discrimination was not established

Before considering cases where the applicant was successful in an argument based upon Article 14, it may be interesting to consider a number of cases where no discrimination was found.

In *X v. Ireland*[189] the applicant had been adopted in England but his family then moved to Ireland. He was left a legacy under the will of his adoptive mother which was subject to legacy duty in Ireland. The rate of duty was 1% for legacies to any children of the deceased, but 10% for legacies to "strangers in blood". Only a person adopted in Ireland and under Irish law was treated as a child for this purpose. The applicant complained that he was required to bear the 10% legacy duty because he was adopted abroad and that this was discriminatory. The ECnHR rejected his complaint on the grounds that differences in conditions for adoption and in adoption procedures from one country to another meant that it was reasonable for Ireland to apply a different rate of tax to domestic adoptees; the rule was not, therefore, discriminatory.

In at least four cases in the database applicants complained (unsuccessfully) of differences in tax treatment between employed persons, self-employed persons and employers. In *X v. Austria*[190] the Viennese subway tax was imposed only on employers. The ECnHR held the complaint inadmissible on the grounds that employers were a distinct group who could be taxed under different rules. Similarly, in *X v. Austria*[191] the Austrian tax system allowed certain deductions only to employed persons and not to the self-employed. The ECnHR rejected the admissibility of the complaint on the grounds that the difference in treatment was justified. In *National Federation of the Self-Employed v. United Kingdom*[192] the Federation complained about National Insurance Contributions that self-employed persons received no benefits as a result of their contributions. The ECnHR held the complaint inadmissible on the grounds that the differences in treatment were justified. A subsequent case[193] complained about National Insurance Contributions on the grounds that self-employed persons could not deduct their contributions. The ECnHR held the application inadmissible on the grounds that a self-employed person was not in a comparable position with an employer.[194]

One can, with a certain amount of confidence, conclude that differences in tax rules between employers, employees and the self-employed are unlikely to be regarded as unjustified and discriminatory.

Taking a further example from a more recent case, in *Gianquitto v. Italy*[195] a retired member of the carabinieri complained that his invalidity pension was taxable whereas a war pension was not. The ECnHR concluded that it was within the state's margin of appreciation to determine that war pensions should be exempt from tax whilst this invalidity pension was taxable.

C. Cases where discrimination was established

Turning to the cases in which the applicant has been successful in a complaint under Article 14, five of these involved discrimination on grounds of sex: four involved discrimination against men, and one involved discrimination against women.

In *Schmidt v. Germany*[196] the applicant complained of having to pay fire service levy to the German *Land* of Baden-Württemberg. This levy was paid in lieu of service in the local fire brigade: only men were obliged to serve in the brigade, so only men might be required to pay the levy. The ECnHR and the ECtHR noted that the possibility of service in the fire brigade was now illusory. In practice, the law imposed a levy which was payable only by men: this discrimination could not be justified.

Under the former Netherlands rule, an unmarried and childless woman over 45 was not required to pay child benefit contributions, but a man in similar circumstances was required to pay. In *Van Raalte v. the Netherlands*[197] the ECtHR concluded that this involved unjustified discrimination against men.[198]

In two parallel cases – *Crossland v. United Kingdom*[199] and *Fielding v. United Kingdom*[200] – complaint was made that the widow's bereavement allowance was only given to a woman and not to a man whose deceased wife was the principal breadwinner. The ECnHR held both cases to be admissible and a friendly settlement was agreed.[201] The legislation[202] has been subsequently amended.

MacGregor v. United Kingdom[203] involved discrimination against women. An incapacitated spouse allowance was given only to a man with an incapacitated wife and not to a woman with an incapacitated husband. Again the ECnHR held the application admissible, a friendly settlement was agreed, and the legislation[204] has subsequently been amended.[205]

D. Taxation of husbands and wives

The discussion of discrimination on grounds of sex is, perhaps, an appropriate point to consider a small number of cases where a challenge has been brought to provisions of the tax system applicable to married couples on the grounds that they were taxed on a different basis from unmarried couples in similar circumstances. In addition to

189. Application No. 5913/72.
190. Application No. 6087/73.
191. Application No. 6163/73.
192. Application No. 7995/77.
193. Application No. 9793/82.
194. Similar issues were raised in the case of *Juby v. UK* (Application No. 11592/85), which was held inadmissible on the grounds that it was substantially the same as two earlier applications.
195. Application No. 26779/95.
196. Application No. 13580/88.
197. Application No. 20060/92.
198. The same issue was raised before the Human Rights Committee under the ICCPR: see *JHW v. the Netherlands*, Communication No. 501/1992: Netherlands 16/07/93, CCPR/C/48/D/501/1992.
199. Application No. 36120/97.
200. Application No. 36940/97.
201. At least in the *Crossland* case; the final outcome in *Fielding* is not yet known.
202. The legislation is in s. 262 of the Taxes Act 1988.
203. Application No. 30548/96.
204. In s. 259 of the Taxes Act 1988.
205. By s. 26 of the FA 1998.

Article 14 (taken in conjunction with Article 1/1), these cases have also sought to challenge the provisions of the tax legislation on other grounds including Article 8 (*right to respect for private and family life*) and Article 12 (*the right to marry*).

In *Hubaux v. Belgium*,[206] complaint was made of the Belgian tax system of aggregating the income of husbands and wives. The application was declared inadmissible on the grounds that married couples and co-habitees were not in a comparable position. There was also no appearance of an infringement of any of the other rights in the Convention.

Similarly, in *Lindsay v. United Kingdom*[207] complaint was made of the former UK tax system of aggregating certain of the income of husbands and wives. The ECnHR held that the provisions were well within the margin of appreciation enjoyed by a state in tax matters. Again, there was no infringement of any of the other rights.

In the more recent case of *Feteris-Gerards v. the Netherlands*[208] complaint was made of the Netherlands rule under which certain tax deductions were allocated to the spouse with the highest income (and, therefore, normally allocated to the husband). The ECnHR held that it was not discriminatory to have a rule which allocated the deductions to the spouse with the highest income.

All of these cases involved claims that the operation of the rules of the tax system resulted in a higher tax burden on a couple because they were married than if they were simply co-habiting. In principle, the same answer should apply where the rules of the tax system result in a higher tax burden falling upon an unmarried couple (in a settled and stable relationship) as compared with a married couple in identical circumstances. It may be, however, that a different result will ultimately be recognized in such a case. This may be an area where a dynamic approach to the interpretation of the Convention eventually recognizes that unmarried couples (both heterosexual and, perhaps, homosexual) who live in a stable and settled relationship should be accorded the same tax treatment as married couples. Put into more formal terms, the unmarried couple would have to show that they were in an objectively identical position to an equivalent married couple: in those circumstances, the state concerned would have to justify the difference in tax treatment as pursuing a legitimate aim and as proportionate.

E. Discrimination on grounds of residence

Leaving aside discrimination on grounds of sex, the only other case that has been successful under Article 14 in a tax context was the well-known case of *Darby v. Sweden*.[209] Peter Darby was resident in Finland but worked in Sweden and was therefore subject to Swedish church tax. As a non-resident, however, he was unable to contract out of the tax, although a resident in the same circumstances would have been entitled to contract out. He complained of a breach of Article 14 in conjunction with Article 1/1. The ECtHR held that the prohibition on discrimination was applicable to taxation by virtue of the right to the enjoyment of possessions guaranteed in Article 1/1. The Court went on to hold that there was no justification for this distinction between residents and non-residents and that there had been a violation.

The *Darby* case is somewhat unusual. Non-residents would not normally be in an objectively comparable position to residents. Outside of discrimination on grounds of sex, arguments based on Article 14 are unlikely to succeed in taxation matters. Even assuming that the applicant can persuade the Court that he is in an objectively similar position to another person who is taxed differently, the Court may still find that the difference in treatment is within the wide margin of appreciation.

VI. ARTICLE 8 (*RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE*)[210]

Article 8 provides as follows:

> Article 8: *right to respect for private and family life*
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[211]

Complaints of infringement of Article 8 have been made both with respect to the substantive tax rules of the country concerned, and also with respect to taxation procedures, particularly the seeking of information by revenue authorities. More cases have raised procedural aspects as opposed to substantive issues.

In the database, Article 8 was raised in 26 cases, the taxpayer being successful under Article 8 in two of those cases:[212] both cases involved information-seeking by revenue authorities where there were inadequate judicial safeguards.

A. Challenges to substantive tax rules

In all of the cases where a challenge was mounted to a substantive provision of the tax law, the complaint under Art-

206. Application No. 11088/84.
207. Application No. 11089/84.
208. Application No. 21663/93.
209. Application No. 11581/85.
210. See Table 2(4).
211. The French text of Article 8 reads as follows:
> 1. Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondence.
>
> 2. Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui.

212. *Funke etc. v. France* (Application No. 10828/84 and others) – which is treated as one case for this purpose - and *Huvig v. France* (Application No. 11105/84).

icle 8 was combined with other complaints under other provisions such as Article 1/1 or Article 14. The cases are discussed elsewhere in this article. In none of the cases was a substantive rule of tax law held to infringe the right to respect for private and family life.

Examples of cases relating to substantive rules of tax law in which Article 8 was raised include *X v. Ireland*[213] which involved the differential legacy duty for applicants adopted outside of Ireland, the two cases of *Hubaux v. Belgium*[214] and *Lindsay v. United Kingdom*[215] involving the systems for taxing the income of husbands and wives, and *Fielding v. United Kingdom*[216] on the widows' bereavement allowance (which is treated primarily as a case on Article 14).

B. Challenges to procedural tax rules

Far more challenges have been brought under Article 8 against information-seeking by revenue authorities. This discussion considers first the two cases in which the taxpayer was successful on a complaint under Article 8 and then a number of further cases where the Strasbourg organs have held that the information-seeking activities of the revenue authorities did not constitute an infringement of the Convention.

The leading case in this area is that of *Funke, Miailhe and Crémieux v. France*[217] in which parallel decisions were issued together on 25 February 1993. All three matters involved searches of premises by French Customs officers and seizure of documents found on the premises.[218] The ECtHR upheld the complaint in all three matters on the grounds that the powers of the Customs authorities to search premises were subject to insufficient judicial safeguards against abuse. The ECtHR said the following:

> 56. Undoubtedly, in the field under consideration – the prevention of capital outflows and tax evasion – States encounter serious difficulties owing to the scale and complexity of banking systems and financial channels and to the immense scope for international investment, made all the easier by the relative porousness of national borders. The Court therefore recognises that they may consider it necessary to have recourse to measures such as house searches and seizures in order to obtain physical evidence of exchange-control offences and, where appropriate, to prosecute those responsible. Nevertheless, the relevant legislation and practice must afford adequate and effective safeguards against abuse.
>
> 57. This was not so in the instant case ...[219] [220]

The point made in *Funke* that the administration of any tax system involves the supply of information by the taxpayer (and investigations by the revenue authorities) has been made on a number of occasions by the Strasbourg organs. There is a very clear statement to this effect in a case – albeit not on Article 8 – *JZ v. France*:[221]

> However, the Commission points out that in all tax systems taxpayers must provide information in order to make it possible to calculate taxes. When some of the taxpayer's financial transactions take place abroad, that is to say outside the jurisdiction of the tax administration, the latter does not have the same means of verification and control as it does for domestic transactions. It is thus equitable to link a correct taxation to the taxpayer's providing more detailed or more extensive information on his activities or assets located abroad. Such a requirement should not be considered to be disproportionate to the goal of ensuring the collection of tax. [unofficial translation]

The other case in which an applicant was successful under Article 8 was the case of *Huvig v. France*:[222] the taxpayers were suspected of tax fraud and a telephone tap was ordered. The applicants complained of an infringement of their right to respect for private life in Article 8. The French Government did not dispute that the telephone tapping amounted to an interference with the exercise of the applicants' right to respect for correspondence and private life. They sought to justify the interference, however, under Article 8(2). The ECtHR held that such an interference would contravene Article 8 unless it was "in accordance with law", pursued one or more of the legitimate aims referred to in Article 8(2), and was "necessary in a democratic society". The ECtHR held that the tapping in these circumstances was not in accordance with law since the French rules did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on public authorities to order telephone tapping.

One of the earlier but unsuccessful cases to raise Article 8 in the context of seeking information from a taxpayer was the case of *X v. Belgium*.[223] The applicant was requested by the tax authorities to supply information as to how he had used the proceeds from the sale of various properties. Having found the information supplied inadequate, the tax authorities asked the applicant for a detailed explanation of his private expenditure. The applicant contended that an obligation to give further details would compel him to

213. Application No. 5913/72.
214. Application No. 11088/84.
215. Application No. 11089/84.
216. Application No. 36940/97.
217. Application Nos. 10828/84, 12661/87 and 11471/85.
218. In *Funke*, but not in the other two cases, the ECtHR dealt also with complaints under Article 6 – this is discussed in the section relating to Article 6.
219. See 16 *EHRR* 297, at 328, paragraphs 56 and 57, page 332, at 354, paragraphs 37 and 38, and page 357, at 376, paragraphs 39 and 40 (footnotes omitted).
220. Though Article 8 was not raised in the case, there was a follow-up to the *Funke, Miailhe and Crémieux* case in *Miailhe v. France (No. 2)* (Application No. 18978/91). Various of the documents seized by the French Customs were passed to the revenue authorities who used them as a basis for further tax assessments and for a criminal prosecution. The applicant alleged a breach of Article 6. The ECnHR found a breach of Article 6(1). The case was then referred to the ECtHR, which found no breach of the article.
221. Application No. 12846/87. Available only in French. The French text reads:

> Toutefois, la Commission relève que dans tous les systèmes fiscaux, les contribuables sont tenus de fournir des renseignements afin de permettre le calcul des impôts. Lorsqu'une partie des opérations financières du contribuable est effectuée à l'étranger, c'est-à-dire en dehors de la sphère de juridiction de l'administration fiscale, cette dernière ne dispose pas des mêmes moyens de recoupement et de contrôle que pour les opérations effectuées à l'intérieur. Il est donc équitable de faire dépendre une juste taxation fiscale de la fourniture par le contribuable de renseignements plus précis ou étendus sur ses activités ou ses biens situés à l'étranger. Une telle exigence ne saurait être considérée comme disproportionnée au but consistant à assurer le paiement des impôts.

222. Application No. 11105/84.
223. Application No. 9804/82. It is known that the applicant in this case was called Hardy-Spirlet from the Belgian cases that preceded the application to the ECnHR, see Belgian *Cour de Cassation*, 19 November 1981.

reveal intimate aspects of his private life. The ECnHR approached the case as follows:[224]

> The Commission considers without hesitation that the fact that a tax authority is entitled to require the applicant to produce a list of his private expenditure, subject to the risk of a tax assessment measure, constitutes an interference with his private life.
>
> It must now examine the question whether this interference complies with paragraph 2 of Article 8.
>
> In this respect ... the Commission will seek to establish whether the interference was 'in accordance with the law', based on one of the legitimate objectives under Article 2 and was 'necessary in a democratic society' for the achievement of such objectives.

The ECnHR held that the interference was in accordance with law, that its purpose was the collection of tax which was necessary for the economic well-being of the country, and that it was necessary in a democratic society for a taxpayer to disclose to the tax administration the private use he had made of his assets. In the context of proportionality, the ECnHR noted in particular that the amount involved was a considerable one and that the approach of the tax authorities was therefore proportionate to the objective they were pursuing.

The decision of the ECtHR in *Funke* with respect to powers of search and seizure may be contrasted with a number of other cases where challenges to searches by the revenue authorities under Article 8 were unsuccessful. In *A v. France*[225] a search of the applicant's office and house by the revenue authorities following a tip off was held to be justified within the terms of Article 8(2). In *K v. Sweden*[226] a search of the house of the ex-wife of a defaulting taxpayer was also regarded as justified: the tax office had received information that the taxpayer and his ex-wife were still living together. A search of bank premises in order to obtain evidence to pass to another country under provisions for mutual administrative assistance was also held to be justified within Article 8(2) in the case of *R v. Austria*.[227] In *Schnabl v. Austria*[228] the applicant was suspected of aiding and abetting tax evasion: a search was ordered of his office, his house and the premises of his company. A complaint under Article 8 was held inadmissible as made out of time. In *Hildebrand v. Germany*[229] the applicant was suspected of tax evasion and his personal and professional premises were searched. The ECnHR held that the search was an interference with his right to privacy, but that it could be justified under Article 8(2).

There have been unsuccessful challenges under Article 8 to various other measures taken by the revenue authorities to obtain information or enforce taxes. For example, in *Visser v. the Netherlands*[230] the tax authorities asked the telephone service to supply the name and address of the applicant. The applicant complained of a breach of her right of privacy. The ECnHR acknowledged that there was an infringement, but that the infringement was justified in accordance with Article 8(2).

Overall, challenges under Article 8 to information-seeking powers of revenue authorities have been unsuccessful, except where those powers were subject to inadequate supervision.

One issue not fully resolved is how extensive that judicial supervision must be. Does the taxpayer have to be notified and be able to challenge the information-seeking actions, or is it enough that the revenue authorities must obtain judicial approval but without notice to the taxpayer? The answer may depend upon the circumstances. A search of the taxpayer's premises – without notice – is a substantial interference with his right to privacy. If such orders are to be obtained without notice, it would, presumably, need very particular circumstances – such as strong suspicion that evidence would be destroyed if notice were given – to justify such an interference.

VII. ARTICLE 9 (*FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION*)[231]

With Article 9, one has reached those articles of the Convention which appear to have nothing to do with taxation. Article 1/1 (*protection of property*) makes specific reference to taxation; even Article 8 (*right to respect for private and family life*) appears to have some relevance to taxation. It is hard to see what relevance Article 9 (and other articles that are discussed subsequently) might have.

Perhaps one should not underestimate the ingenuity of taxpayers (or their advisers) in bringing forward arguments under the Convention. Complaints under Article 9 were raised in 14 cases in the database: the applicant was unsuccessful in every one of these cases.

In a sense, the purpose of this part is to set out arguments that will not run under the Convention.

One point should be emphasized at the outset. The Strasbourg organs have on several occasions repeated that the freedom of religion in Article 9 cannot be construed as giving any particular taxpayer a freedom from taxation. An example of this is the case of *Association "Sivananda de Yoga Vedanta" v. France*,[232] which concerned an association involved in the teaching and practice of yoga and Hindu philosophy. The Association was assessed to tax and argued (unsuccessfully) that this taxation infringed its freedom of religion. It also argued that it was discriminated against having regard to the tax exemptions enjoyed by the Catholic Church in France. The arguments under both Articles 9 and 14 failed. In particular, the ECnHR had the following to say:

224. 31 *DR* 231, at 235.
225. Application No. 11429/85.
226. Application No. 13800/88.
227. Application No. 12592/86.
228. Application No. 21402/93.
229. Application No. 31513/96.
230. Application No. 12662/87.
231. See Table 2(5).
232. Application No. 30260/96. Available only in French. The French text reads:

> Toutefois, la Commission ne saurait lire dans l'article 9 de la Convention un droit à ce que toute activité d'une association qui aurait un caractère religieux ou culturel soit exonérée de tout impôt. Elle estime que le droit à la liberté de religion n'implique nullement que les églises ou leurs fidèles doivent se voir accorder un statut fiscal différent de celui des autres contribuables.

> However, the Commission cannot read in Article 9 of the Convention a right under which all of the activities of an association having a religious or cultural character would be totally exempt from tax. It is of the opinion that the right to freedom of religion in no way implies that churches or their members should be granted a different status from that of other taxpayers (see Application No. 17522/90, Decision 11.1.90, DR, page 256). [unofficial translation]

The Strasbourg organs have applied this principle and, on a number of occasions, rejected religious objections to payments of taxes or particular aspects of taxes.

In a relatively early case, *Reformed Church of X v. the Netherlands*,[233] the Reformed Church objected to compulsory contributions to old-age pension schemes on the grounds that there was a religious duty to provide for the elderly: the Netherlands parliament had, in fact, made express provision for conscientious objectors to opt out. The ECnHR held that there was no violation of Article 9.

The provision in the Netherlands legislation allowed a conscientious objector to opt out of the payment for old-age insurance and to pay a corresponding increase in income tax instead. In *X v. the Netherlands*[234] the applicant complained that he was not entitled to opt out since he could not fulfil the conditions required for exemption as he was not opposed to all forms of insurance. The ECnHR found that the applicant's complaints did not constitute a violation of any right which could be derived from Article 9 of the Convention.

There have been complaints under Article 9 against various of the church taxes which exist in some continental European countries. In *E and GR v. Austria*[235] the applicants complained of a violation of their right to freedom of religion because the Austrian Roman Catholic Church was entitled to impose a church tax upon them: they had no choice other than to pay the tax or to terminate their church membership. The ECnHR dealt with the matter as follows:[236]

> Insofar as the applicants invoke their right to freedom of religion as guaranteed by Article 9 of the Convention, the Commission observes that this provision protects in particular the right to manifest one's religion 'in worship, teaching, practice and observance'. The Commission finds that the collection of financial contributions from its members by a church does not, as such, interfere with any of these activities. The applicants are entirely free to practise or not to practise their religion as they please. ... The obligation [to pay contributions] can be avoided if they choose to leave the church, a possibility for which the State legislation has expressly provided. By making available this possibility, the State has introduced sufficient safeguards to ensure the individual's freedom of religion. ...
>
> The Commission therefore concludes that there is no appearance of any interference with the applicants' rights under Article 9 ... of the Convention ...

Similarly, in *Gottesmann v. Switzerland*[237] the applicants complained that they were required to pay Swiss local church tax as members of the Roman Catholic Church even though they said that they had left the church. The ECnHR found that the church tax was not contrary to the freedom of religion where the domestic law allowed the individual to leave the church concerned if he so wished; it was also permissible to require that such an abandonment of church membership should be unambiguously intimated to the authorities in order to opt out of the tax.

Finally, in *Kustannus Oy Vapaa Ajattelija AB and Others v. Finland*[238] an association of free-thinkers which had been incorporated as a limited liability company sought to challenge the Finnish church tax to which it was liable (and from which it could not opt out as a legal entity). The ECnHR held the case inadmissible on the grounds that a limited liability company did not enjoy the freedom of religion under Article 9.

In a number of cases Quakers have sought to argue that they should be exempted from paying that part of their taxes which would be utilized for military purposes: their religious convictions were opposed to any military activities, and they objected to paying taxes that would be used to fund those activities.[239]

In the case of *C v. United Kingdom*[240] the applicant was a member of the Quakers. He was not prepared to pay that proportion of his taxes which was used to finance armaments, weapons research and allied industries (which was estimated to be equivalent to 40% of the revenue raised by income tax in 1980/81). He was willing to pay an equivalent amount into a fund for non-military purposes. The ECnHR, in holding his application inadmissible, held that Article 9 primarily protected the sphere of personal beliefs and religious creeds but did not always guarantee the right to behave in public in a way which was dictated by those beliefs. Article 9 did not, therefore, provide a basis for refusing to pay that part of the tax.

The issue was revisited in the case of *Hibbs and Birmingham v. United Kingdom*[241] where two Quakers again sought to pay that percentage of their income tax which was used for military purposes (at that time estimated at 12%) into a fund for non-military purposes. Following its earlier decisions, the ECnHR held the matter inadmissible. The ECnHR stated its conclusion as follows:

> Article 9 primarily protects the sphere of personal belief and religious creeds, i.e. the area which is sometimes called the *forum internum*. In addition, it protects acts which are intimately linked to these attitudes, such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form.
>
> However, in protecting this personal sphere, Article 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief: for instance by refusing to pay certain taxes because part of the revenue so raised may be applied for military expenditure ...

233. Application No. 1497/62.
234. Application No. 2065/63.
235. Application No. 9781/82.
236. 37 *DR* 42, at 45.
237. Application No. 10616/83.
238. Application No. 20471/92.
239. The same issue has been raised (unsuccessfully) before the Human Rights Committee under the ICCPR: see *KV and CV v. Germany*, Communication No. 568/1993: Germany, 25/04/94, CCPR/C/50/D/568/1993 (and two earlier cases referred to in that decision).
240. Application No. 10358/83. There is a parallel, but unreported case, *Ross v. United Kingdom* (Application No. 10295/83), which appears to raise the identical point.
241. Application No. 11991/86.

> The obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no taxpayer can influence or determine the purpose for which his or her contributions are applied once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Article 1, 1st Protocol.

Article 9 protects both freedom of religion and freedom of thought and conscience. Two unsuccessful challenges were mounted against the Swiss military tax which was payable by those who failed to perform their compulsory military service.[242] In both cases the conscientious objector refused to perform compulsory military service. They were assessed to military tax in lieu of service, and, on non-payment, they were imprisoned. In both cases the ECnHR held the complaint under Articles 9 and 10 to be inadmissible.

Finally, two cases have sought to raise Article 9 in conjunction with Article 14 and to complain against discriminatory treatment where an exemption from tax on the income of a particular church was not extended to other religious groups. In *Ortega Moratilla v. Spain*[243] the Protestant Church in Spain sought the same exemption from property tax which was accorded to the Catholic Church. The ECnHR referred to the fact that the exemption for the Catholic Church arose out of a Concordat with the Holy See and that this difference in circumstances justified the difference in treatment between the Protestant and Catholic churches.

More recently, an association teaching yoga and Hindu philosophy[244] argued that it had been discriminated against by reference to the exemption from tax given to the Catholic Church in France. Once again, the ECnHR held that the Association was not in a comparable position with the Catholic Church.

VIII. MISCELLANEOUS ARTICLES OF THE CONVENTION[245]

This section considers a small number of cases which have raised, in a taxation context, articles of the Convention which have not yet been considered.

With the exception of six cases in which Article 5 (*right to liberty and security*) was raised, the applicants were unsuccessful in their arguments on all of these other articles. To a very large extent, therefore, this section considers arguments which have not persuaded the Strasbourg organs in the past.

A. Article 4 (*Prohibition of Slavery and Forced Labour*)

However ingenious one might consider taxpayers and their advisers to be, the prohibition of slavery and forced labour does not at first sight appear to offer particularly fertile ground for arguments in a taxation context. Nevertheless, Article 4 has been raised in at least three cases in the database.

In a case generally known as *Four Companies v. Austria*, [246] the four companies complained of the obligations imposed upon them to calculate and withhold taxes, social security contributions, and sums in execution of court judgment from the wages of their employees, and to pay to their employees family allowances and salaries in cases of sickness. They argued that these obligations constituted forced labour contrary to Article 4. The ECnHR rejected the application, stating that, even assuming that Article 4 might be applicable in these circumstances, Article 4(3)(d) expressly excluded from the definition of "forced or compulsory labour" ... "any work or service which forms part of normal civic obligations". The duties imposed upon the companies in this case did not go beyond normal civic obligations.

A similar issue was raised more recently in the case of *Borghini v. Italy*[247] where the applicant argued that the liability to withhold tax and, if asked to do so, prepare a tax return on behalf of his employees constituted forced labour. The ECnHR followed its decision in the *Four Companies* case and concluded that the work involved could not be considered as exceeding normal civic obligations.

There remains still the possibility that certain duties imposed in connection with taxation might be regarded as going beyond normal civic obligations. An example might be a revenue authority requiring a third party – and not the taxpayer concerned – to expend significant effort and incur significant expenditure in supplying information in connection with an investigation. To require third parties to incur significant costs for the purposes of providing information, and not to reimburse those third parties, may go beyond normal civic duties. In part this may depend upon whether it is the practice in most of the countries of the Council of Europe to compensate a third party who is required to supply information in connection with a tax investigation.

B. Article 5 (*Right to Liberty and Security*)

This article contains detailed rules dealing with the lawful detention of a person. It has been raised, as one might have expected, in connection with criminal tax investigations.

In four cases concerning the Community Charge[248] the applicant was detained for alleged wilful non-payment of Community Charge: in each of the cases Article 5 and Article 6 were both held to have been breached.

A breach of Article 5, but not of Article 6, was found in the case of *Neumeister v. Austria*[249] in connection with the

242. *RB v. Switzerland* (Application No. 16345/90), and *MB v. Switzerland* (Application No. 17889/91).
243. Application No. 17522/90.
244. *Association "Sivananda de Yoga Vedanta" v. France* (Application No. 30260/96), discussed at the beginning of this section.
245. See Table 2(6).
246. *Companies W, X, Y and Z v. Austria* (Application No. 7427/76).
247. Application No. 21568/93.
248. *Benham v. United Kingdom* (Application No. 19380/92), *SD v. United Kingdom* (Application No. 25286/94), *Poole v. United* Kingdom (Application No. 21890/95) and *Johnson v. United Kingdom* (Application No. 28455/95).
249. Application No. 1936/63.

unreasonable length of detention of a suspect who was prosecuted for criminal tax offences.

Finally, an argument under Article 5 was held admissible in the slightly bizarre circumstances of the case of *Walter Stocké v. Germany*. [250] The applicant alleged that he had been kidnapped and taken back to Germany by a conspiracy involving the German police and revenue authorities.[251]

C. Article 7 (*No Punishment without Law*)

Article 7 states:

> 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed ...[252]

Article 7 has been raised – unsuccessfully on every occasion – in a number of cases involving criminal tax investigations. The one case which perhaps merits comment is the case of *L-GR v. Sweden*[253] where the complaint under Article 7 was that the particular fiscal offence in question was not described in a statute. The ECnHR held, however, that the elements of the offence were adequately described in the existing case law, that the applicant could have discovered the precise legal elements of the offence, and that there was no breach of Article 7. Though this case would appear to confirm that the existence of a common law offence is not a prima facie breach of the Convention, the elements of the offence would have to be sufficiently clear for there to be no breach. The ECnHR put the matter as follows:

> However, as noted above, the concept of 'law' under Article 7 of the Convention comprises not only written but also unwritten law, most importantly the case-law of the national courts. Consequently, if the applicant, on account of the existing case-law, was able to foresee, with a reasonable degree of certainty, that the aiding and abetting in question would make him criminally liable, his conviction was not incompatible with Article 7.

It seems that the decision would have been different had the existing case law not defined the offence with sufficient clarity or, possibly, if the conviction in the particular case had extended the scope of the offence beyond that which had been previously recognized in the case law.

D. Article 10 (*Freedom of Expression*)

It is hard to see how freedom of expression could be relevant to taxation, and, frankly, the small number of cases in the database in which this article was raised could be regarded as hardly involving taxation matters. Brief mention might be made of two of them.

First, in *Barfod v. Denmark*[254] a journalist wrote an article criticizing the lack of competence of lay judges who constituted a tribunal in tax cases. The author was convicted of an offence of libelling members of the judiciary. The ECtHR held that there was no breach of Article 10 since the existence of the particular offence in question could be justified within the terms of Article 10(2) as being an offence prescribed by law and necessary in a democratic society.

Secondly, in *Andersson v. Sweden*[255] the applicant complained of an SEK 60 stamp duty imposed on a permit to hold a demonstration. His complaint was held inadmissible.

E. Article 12 (*Right to Marry*)

Article 12 is quite brief and provides as follows:

> Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

The right to marry has been raised in two cases concerning the taxation of husbands and wives, along with arguments based upon the non-discrimination provision in Article 14 (taken in conjunction with Article 1/1). In both cases it was argued that the current system of taxing husbands and wives in the countries concerned resulted in a higher tax burden on married couples than on co-habitees in a comparable position.[256] In both cases the ECnHR held that the tax rules in question failed to disclose an interference with the right to marry.

F. Article 2/4 (*Freedom of Movement*)

Article 2 of the 4th Protocol contains a number of rights in connection with the freedom of movement. Paragraph 2 provides as follows:

> Everyone shall be free to leave any country, including his own.

In *Sjöblad v. Sweden*[257] the applicants complained of the fact that they were unable to transport their property from Sweden when they moved to the United States without first obtaining a tax clearance. The ECnHR noted that the applicants had, as a matter of fact, been able to leave their country and that the right to take property out of the country was not embodied within Article 2 of the 4th Protocol.

G. Article 4/7 (*Right not to be Tried or Punished Twice*)

Article 4 of the 7th Protocol provides as follows:

> Article 4: *right not to be tried or punished twice*
>
> 1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which has already been finally

250. Application No. 11755/85.
251. The final outcome of the case is not known.
252. The French text of this provision is as follows:
> 1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international...

253. Application No. 27032/95.
254. Application No. 11508/85.
255. Application No. 12781/87.
256. The cases are *Hubaux v. Belgium* (Application No. 11088/84) and *Lindsay v. United Kingdom* (Application No. 11089/84).
257. Application No. 10653/83.

acquitted or convicted in accordance with the law and penal procedure of that State.[258]

This principle of double jeopardy has been raised in a small number of tax-related cases, though in none of them was the applicant successful.

In *KS and KS AG v. Switzerland*[259] both a company and its principal shareholder were held liable for additional tax and a 100%/200% penalty. The complaints included one that both applicants were punished for the same offence. The ECnHR rejected the application on the grounds of failure to exhaust domestic remedies.

In *HB v. Switzerland*[260] the applicant complained of double jeopardy on the grounds that he had been held liable for evading both Swiss Federal and Cantonal taxes. Only one tax declaration had to be filled in and both offences concerned the truthfulness of that declaration. The ECnHR noted that two different taxes were at issue, and there were two different jurisdictions both of which protected their different tax demands with a different penal law. The ECnHR held that the complaint under Article 4/7 was manifestly ill-founded.

In the case of *Liset v. France*[261] the applicant was initially acquitted of tax evasion with respect to certain taxation matters relating to a company of which he was the commercial director. A second charge was then brought against him in connection with tax fraud involving the company. He complained of a breach of Article 4/7. The ECnHR rejected the complaint both on the grounds that different matters were in issue in the second case and that the second case related to the year 1989 while the first case related to facts arising in the years 1985 to 1988.

One issue which has not been resolved entirely satisfactorily is the question whether there is double jeopardy where a person is liable for both administrative penalties and subject to criminal prosecution for tax evasion. This point was raised in *Ponsetti and Chesnel v. France*[262] where the applicants were both liable to substantial penalties (40%, and 80% in respect of certain years). In addition, they were subject to a criminal prosecution for their deliberate omission to submit tax returns. The ECtHR dismissed their complaints on the grounds that the criminal offences involved an additional element – not present in connection with the fines – that the omission to submit declarations was deliberate.

That case should, perhaps, be considered further in the light of the jurisprudence of the Strasbourg organs that substantial fiscal penalties constitute criminal charges. If the same factual matrix is at issue both in the imposition of substantial penalties and a criminal prosecution, then there does seem to be quite a good argument that a person subject both to prosecution and to substantial fines is being placed in a position of double jeopardy.[263]

IX. SPECIFIC TOPICS

This part picks up on a small number of specific topics which do not fall comfortably within the previous discussion of particular articles. There are a small number of specific topics which have interested the author and which seemed to him to merit separate consideration.

A. Human rights and tax treaties

It may seem strange to those of us who consider that the OECD Model Tax Convention ("OECD Model") is one of the greatest achievements of human society to think that such conventions might in any way be associated with infringements of human rights. Tax treaties have, however, formed the backdrop to complaints in a small number of cases in the database. In none of the cases was a breach of the Convention found, but the cases do raise some interesting issues which might, perhaps, merit further consideration.

In *Hanzmann v. Austria*[264] the applicant was an Austrian civil servant living across the border in Germany. As a result of the application of the Austria–Germany tax treaty of 1954, he was subject to taxation on his salary in Austria but, because he was resident in a foreign country, was subject only to a limited tax liability. The consequence was that certain tax allowances – which were available only to persons with full tax liability – were not extended to him. He complained that, as a result of the refusal of these allowances, he was discriminated against both in comparison with an equivalent civil servant resident in Austria, and a civil servant – such as a diplomat – who was both resident and working in a foreign country. He based his complaint on Article 14 in conjunction with Article 1/1. In very standard terms, the ECnHR noted the wide margin of appreciation in the field of taxation and found that the decision not to extend the allowance to a person subject to limited tax liability fell well within the margin of appreciation enjoyed by Austria.

Given the wide acceptance of the OECD Model as a basis for tax treaties between contracting states, one can assume that it is extremely unlikely that the conclusion of a tax treaty based upon the OECD Model would be regarded as falling outside of the state's margin of appreciation.

In the case of *H v. Sweden*[265] the applicant, who was a resident of Sweden, went to work in Germany for a period of four years. He did not report his income from his employment in Germany to the Swedish authorities. Following his return, he was assessed to additional tax plus penalties of between 40% and 50% for his failure to report the

258. The French text of this provision is as follows:
1. Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison d'une infraction pour laquelle il a déja été acquitté ou condamné par un jugement definitif conformément à la loi et à la procédure pénale de cet Etat.
259. Application No. 19117/91.
260. Application No. 28332/95, and see also Application No. 17951/91.
261. Application No. 32498/96.
262. Application Nos. 36855/97 and 41731/98.
263. This point is also considered in IV. in connection with Article 6.
264. Application No. 12560/86. It is interesting to compare this case with the Belgian Court of Arbitration decision of 21 November 1991, No. 34/91, referred to in Meussen, *supra* note 1, at 64. It is also interesting to compare this case with the decision of the European Court of Justice in *Gilly* (ECJ, 12 May 1998, *Mr and Mrs Robert Gilly v. Directeur des Services Fiscaux du Bas-Rhin* [1998] ECR I-2793.
265. Application No. 12670/87.

income. He appealed against his assessment and was given an oral hearing at the first trial, but no oral hearing on the subsequent appeals. He complained both of the absence of an oral hearing and of the failure of the Swedish tribunals to take account of the tax treaty between Sweden and Germany in determining whether he was liable to tax. The ECnHR dismissed the case on the grounds, *inter alia*, that the Commission had no jurisdiction to review a failure of the domestic tribunals to take account of the provisions of a tax treaty.[266]

One of the areas where human rights may be relevant to the operation of tax treaties is the exchange of information between revenue authorities and the right to respect for private and family life contained in Article 8.

In the case of *FS v. Germany*[267] the applicant complained under Article 8 of exchange of information between the German and Netherlands tax administrations under the provisions of the European Union Directive on Mutual Administrative Assistance.[268] The ECnHR agreed that the exchange of information was an infringement of the right to privacy but that it could be justified within the scope of Article 8(2) of the Convention: the measures in question were taken in the interests of the economic well-being of the country and were necessary in a democratic society. The ECnHR noted the current trend towards strengthening international cooperation in the administration of justice (and, one might add, in the administration of taxation) and concluded that there were relevant and sufficient reasons for the introduction of the Directive.

In that case, the measure concerned was an EC Directive. It seems highly likely that an identical result would have been reached had the issue concerned an exchange of information under the equivalent of Article 26 of the OECD Model.

The only point one might make with respect to the exchange of information relates to the question of whether there is adequate judicial supervision of exchange under the EC Directive or under a tax treaty. Though practice varies from country to country, in most countries a taxpayer is not informed that information which has been gathered by one revenue authority is being exchanged with the authorities of another country. In the absence of notification, the taxpayer is in no position to challenge the exchange of information. Bearing in mind the decision in *Funke* with respect to the importance of judicial safeguards on infringements of the right of privacy, one wonders whether the absence of any opportunity to challenge an exchange of information might constitute a breach of the Convention.

An issue has arisen in France, in particular, with respect to the disclosure to the taxpayer concerned of information obtained from another revenue authority. The view of the French administration is understood to be that provisions equivalent to Article 26 of the OECD Model provide for information which has been exchanged to be disclosed only to "persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the convention [that is, the tax treaty concerned]". The taxpayer in respect of whom the information has been exchanged is not such a person, so disclosure is not permitted to him, even if the information is made available to the tax tribunal hearing his appeal. Utilizing information obtained under administrative cooperation, but not making that information available to the taxpayer concerned, appears to be a prima facie breach of the principle of equality of arms (always assuming that Article 6 applies to the tax proceedings concerned).[269] It is understood that this issue remains to be resolved finally in France.

B. Representation before tax tribunals

The issue of representation before tax tribunals arose for discussion in the case of *Casotti and Others v. Italy*:[270] the case related to a change in Italian law which removed the right of labour consultants to represent clients before the tax courts. The consultants complained of a breach of Article 1/1. The ECnHR, in rejecting their application, doubted whether the right to represent a client before a tribunal was a "possession" protected by Article 1/1. Even if it was, however, the ECnHR held that the legislation removing the right to represent clients came within the second paragraph of Article 1/1 as it concerned the power of a state to regulate proceedings before tax courts. Following that approach, states clearly have a margin of appreciation in regulating who may present cases before tax tribunals.

C. Interest on tax repayments

There are two slightly contradictory decisions on the issue of interest on the repayment of tax. In the case of *Söderberg Byggnats AB v. Sweden*[271] a company was required to pay additional social security fees and VAT. These additional sums were eventually repaid to the company but with no interest on the overpayment of VAT. As a result of having to make these payments, the company suffered severe financial difficulties. It complained of a breach of Article 1/1 on the grounds that its assets had been effectively confiscated. The ECnHR noted that no interest was recovered on the VAT but pointed out that paragraph 2 of Article 1/1 authorized such laws as are deemed necessary to secure payment of taxes. In a brief decision, the ECnHR found no indication of a violation of the rights protected by Article 1/1. That case seems to indicate that a failure to pay interest on a tax repayment does not constitute an infringement of the rights guaranteed by the Convention.

266. Incidentally, this is one of the cases where the ECnHR held that it did not need to decide whether the 40% to 50% penalty was a criminal charge since, in any event, there was no breach of Article 6. The Convention does not give rise to a right to have an oral hearing at the appeal levels of a case.
267. Application No. 30128/96.
268. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the fields of direct and indirect taxation.
269. This issue is discussed in part in the case of *SA Diebold Courtage, Conseil d'Etat*, 8th and 9th subsections, 13 October 1999, Req. No. 191 191, *Revue de Droit Fiscal*, 1999, No. 52, Comm. 948. The case is printed with a partial translation in (2000) 2 *International Tax Law Reports* 365.
270. Application No. 24877/94.
271. Application No. 11692/85.

The point was not considered in detail in the decision, however.

In the case of *Ferretti v. Italy*[272] the taxpayer complained of the fact that it was taking the Italian Government approximately ten years to repay over-deductions of tax on his salary, and that the amounts were repaid with simple interest at a rate only slightly above the rate of inflation. The ECnHR held that the fact that the taxpayer had been paid interest which slightly exceeded inflation meant that the taxpayer had been adequately compensated. There was consequently no infringement of Article 1/1. The fact that compensation had been paid – albeit in the form of simple interest at a level only slightly above the level of inflation – was a factor which the ECnHR took into account in determining whether there had been a reasonable balance between the interests of the taxpayer and the interests of the state.

The emphasis on interest compensating the taxpayer in the latter case may partly be a reflection of the unreasonably long time it took for the repayment of the tax. It seems to be an open issue, however, whether a failure to pay any interest at all on tax repayments would constitute an unjustifiable infringement of the rights guaranteed by the Convention, notably Article 1/1.

D. The most bizarre cases

One is tempted to offer a prize for those cases which most vividly demonstrate the ingenuity of taxpayers or their advisers in raising bizarre and entirely unsupportable arguments under the Convention. Perhaps the following four candidates should all merit consideration.

First, in the case of *Holisz v. Poland*[273] the applicant complained of the fact that she was exempted from local forest tax. The non-imposition of the tax was, in accordance with her argument, a breach of Article 1/1. The failure to impose the tax deprived her of the opportunity to prove her ownership of the land in question (put in that way, one can actually understand why the argument was raised). The ECnHR held, not very surprisingly, that there was no breach of the right to enjoy one's possessions by the non-imposition of a tax.

The case of *APEH Üldözöttei-nek Szövetsége and others v. Hungary*[274] concerned an association which sought to register its name in the commercial court register. As those who speak Hungarian will appreciate, the name of the association means "the Association of Those Who Have Been Persecuted by the Hungarian Tax Authority". The registration of this name was opposed on various grounds, including the argument that it might have implied some connection between the Association and the Hungarian Tax Authorities! The Association and its founders complained of the refusal to register the name of the association on various grounds, including an infringement of their freedom of assembly and association in Article 11, and the absence of a fair trial in Article 6. The ECnHR held the complaint inadmissible under Article 11, but admissible under Article 6: a final outcome of the case is not yet known.

Perhaps some award should be made to the applicant in *Mahe v. France*[275] who argued (unsuccessfully) that the value added tax could not be enforced in Britanny due to the 1592 Treaty of Union with France.

Finally, perhaps pride of place should be given to the case of *Józef Lewandowski v. Poland*[276] who complained of an infringement of the right to life guaranteed by Article 2 on the basis that a visit from the tax bailiffs led to the death of his wife. The evidence, however, did not show the existence of any causal link between the visit of the bailiffs and the death of the applicant's wife. The ECtHR held the application inadmissible.

X. CONCLUSIONS/RECOMMENDATIONS

This article is, perhaps, not the type of article in which one can truly draw conclusions. The purpose has been to review the existing jurisprudence of the Strasbourg organs rather than to attempt to test any particular thesis or to draw conclusions from the case database.

Hopefully, however, it is not too ambitious to make one recommendation based upon the analysis in this article.

It is clear that the draughtsmen of the original Convention paid relatively little attention to taxation matters. The only reference to taxation is in Article 1/1. The Strasbourg organs since 1959 – and the domestic courts of some of the countries of the Council of Europe – have had to try to apply the Convention material to the field of taxation.

Applying material which was developed without taxation in mind runs the real risk of producing inappropriate results. The author would argue that this has occurred in connection with certain aspects of Article 6 where the recent jurisprudence (to the effect that substantial fiscal penalties involve the determination of criminal charges) has led to the application of some rules which are not entirely appropriate in the tax context. A good example of this is the application of the right to silence, which should undoubtedly apply to normal criminal cases, but which raises real difficulties in a tax investigation where fiscal penalties may possibly flow as a result of the investigation. Another example would be the recent cases which have held that penalties for tax evasion cannot be imposed on the heirs of a deceased taxpayer.[277]

From the author's point of view, the solution would lie in the preparation of a protocol to the European Convention dealing expressly with taxation matters. That protocol would resolve the issue, for example, as to whether Article 6 applies to ordinary tax proceedings. The author would recommend, for example, that the protocol should provide that in all tax proceedings the basic guarantees in *civil* cases operate: that is, the taxpayer should be entitled in the determination of his tax liability to a fair hearing within a

272. Application No. 25083/94.
273. Application No. 28248/95.
274. Application No. 32367/96.
275. Application No. 15707/89.
276. Application No. 43457/98.
277. See *EL, RL and JOL v. Switzerland* (Application No. 20919/92) and *AP, MP and TP v. Switzerland* (Application No. 19958/92).

reasonable time by an independent and impartial tribunal established by law. The protocol should also, in the author's view, provide that (contrary to the normal provisions in Article 6) hearings concerning tax liability should generally not be in public, but that the taxpayer could waive the right to a private hearing. The protocol on taxation matters might also deal with issues such as whether and when it is appropriate to require payment of tax before an appeal can be lodged. On substantive tax law matters, the protocol might, for example, clarify when retrospective legislation would not be regarded as a breach of the Convention: perhaps only when it is enacted to counter widespread tax avoidance devices.

A protocol on the application of the Convention to tax matters – effectively, a charter of the rights of taxpayers – would, in the author's view, have two clear advantages. First, it would ensure that inappropriate results are not reached by the application of provisions of the Convention and its protocols to taxation matters when the draughtsmen had not considered this context. Secondly, it would resolve a number of important issues without the costs and uncertainties associated with litigation before national courts which, in many cases, would have to continue on to the ECtHR in Strasbourg.

Postscript

The research for this article was mostly undertaken in the period prior to 1 April 2000. Subsequent to that date, one additional case and further details of two cases have come to light.

On 7 March 2000 the ECtHR held the application inadmissible in *M-T v. France* (Application No. 41545/98). The applicant complained, among other things, of the length of proceedings to challenge a supplementary assessment to VAT together with a penalty of FRF 5,749. The Court held, following the established jurisprudence, that the litigation related to a tax assessment and not to a civil right or obligation nor to a criminal charge: the amount of the penalty was too small to be regarded as criminal.

In the tables the case of *Walter Stocké v. Germany* (Application No. 11755/85) is mentioned, but the final outcome is stated to be unknown. In fact, the ECtHR held that there had been no breach of Article 5 or 6 (see 13 EHRR 839). This should, therefore, be regarded as a case where the applicant was unsuccessful.

Finally, the case of *Antonino Di Trapani v. Italy* (Application No. 27483/95) was unpublished when the article was written but is now available (in French only) on the HUDOC database. The applicant complained of the length of the tax proceedings (almost 13 years at the time of the decision); the ECnHR followed its jurisprudence that Article 6 did not apply to ordinary tax proceedings.

TABLE 1

The Tax Jurisprudence of the ECtHR and ECnHR: Complete List

Application Number (and Court Reference Number (If Any))[1]	Parties and Date[2]	Law Reports[3]	Articles Considered[4]	Summary of Complaint	Result[5]
511/59	Gundmundur Gundmundsson v. Iceland 20.12.60	Colln 4, 1	1/1, 1/1 + 14	Special 15% capital tax on wealthy persons.	Inadmiss. 1/1 does not restrict taxation of nationals.
551/59	X v. Germany 31.05.59	YB III 244; Colln 3, 1	1/1, 1/1+ 14, 6	100% levy on mortgage gains.	Inadmiss. Tax fell within 2nd para. of 1/1.
673/59	AX and BX v. Germany 28.07.61	YB IV 286	1/1, 14, 6	Levy on mortgage gains.	Inadmiss. Tax fell within 2nd para. of 1/1. 6 inapplicable to tax proceedings.
945/60	X v. Germany 10.03.62	Colln 8, 98	5, 6	Criminal tax investigation.	Inadmiss. Failure to exhaust domestic remedies.
1497/62	Reformed Church of X v. Netherlands 14.12.62	YB V 286	1/1, 8, 9	Compulsory contribution to old age pension scheme – religious objections.	Inadmiss. Tax was consistent with 1/1.
1904/63 and 3 others	ABCD v. Netherlands 23.05.66	YB IX 26; Colln 19, 106; E	6	Complaints over procedural issues of war profits tax.	Inadmiss. 6 does not apply to tax proceedings – follows 2145/64.
1936/63 2/1966/5/10	Fritz Neumeister v. Austria 27.06.68	YB VII 227; 1 EHRR 91; E; Series A, No. 8	5(3), 6(1)	Criminal tax prosecution – complaint of unreasonable length of detention and unreasonable length of proceedings (7 yrs at time of hearing).	**Breach of 5(3). No breach of 6 – case very complex. Just satisfaction ordered.**
2065/63	X v. Netherlands 14.12.65	YB VIII 266; E (Fr. only)	8, 9, 1/1	Conscientious objections to paying pension contributions.	Inadmiss. Follows 1497/62.
2145/64	X v. Belgium 01.10.65	Colln 18, 1; E (Fr. only)	6, 14	Belgian local tax – various complaints about appeal proceedings.	Inadmiss. 6 does not apply to public law disputes.
2248/64	X v. Netherlands 06.02.67	YB X 170; E	6, 1/1	Dutch national resident in Belgium – required to contribute to both countries' social security systems.	Inadmiss. 6 does not apply to social security proceedings – follows 2145/64 and 1904/63. Contributions within 2nd para. of 1/1.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
2522/65		Unpublished		Referred to in 2552/65.	6 does not apply to tax proceedings.
2552/65	X v. Germany 15.12.67	Colln 26, 1; E (Fr. only)	6	Whether farming activity was a hobby. Various complaints on procedures.	Inadmiss. 6 does not apply to tax proceedings.
2717/66	X & Co., Y, Z v. Germany 06.02.69	YB XIII 176	6, 13, 1/1 + 14	Tax on revalued capital. Complaints over tax and proceedings.	Inadmiss. on 6 – does not apply to tax proceedings. Admiss. on 1/1 (final outcome not known).
3500/68	X Co. v. Austria 05.02.71	YB XIV 168; Colln 37, 1; E (Fr. only)	1/1	Austrian trade tax – aspects declared unconstitutional with prospective effect only.	Inadmiss. Prospective rulings do not breach 1/1.
4130/69	X v. Netherlands 20.07.71	YB XIV 224; Colln 38, 9	1/1	Dutch contributions to old age pension schemes.	Inadmiss. Contributions fell within 2nd para. of 1/1.
4517/70	Herbert Huber v. Austria 14.07.71	Colln 38, 99; E	6	Length of criminal tax proceedings ($12^1/_2$ yrs)	Admiss. on length of proceedings but (?) no breach.
5168/71	X v. UK 14.07.72	Colln 42, 137	1/1 + 14	System of local rates. Alleged discrimination.	Inadmiss. Rates came within 2nd para. of 1/1.
5169/71	29.05.72	Unpublished			
5421/72	X v. Belgium 05.02.73	Colln 43, 94; E (Fr. only)	6(1)	Belgian tax proceedings.	Inadmiss. "Constant jurisprudence" that 6 does not apply to tax proceedings.
5599/72	16.12.74	Unpublished			
5913/72	X v. Ireland 18.12.73	Colln 45, 95; E	1/1 + 14, 8 + 14	Legacy duty higher because applicant adopted outside Ireland.	Inadmiss. Difference in treatment was based on objective and reasonable criteria.
6087/73	X v. Austria 13.05.76	5 DR 10	1/1 + 14	Viennese subway tax imposed on employers only.	Inadmiss. Employers are a distinct category from rest of population.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
6163/73	X v. Austria 19.12.74	1 DR 60	1/1 + 14	Austrian tax system allowed certain deductions only to employed persons.	Inadmiss. Difference in treatment was justified.
6244/73	13.03.75	Unpublished			
6975/75	12.07.76	Unpublished			
7287/75	X v. Austria 03.03.78	13 DR 27	1/1	Applicant liable to customs duty plus fine plus goods forfeited.	Inadmiss. Total of sanctions was not excessive.
7427/76	Companies W, X, Y & Z v. Austria 27.09.76	7 DR 148	4, 1/1, 1/1 + 14	Withholding of tax on employees' salaries.	Inadmiss. Was within normal civic duties and within 2nd para. of 1/1.
7714/76	? v. UK 12.12.77	Unpublished, see Digest at 693	1/1	Sec. 181(1) ICTA 1970, taxation of war widows pension.	(?) Inadmiss. Taxation was according to law.
7995/77	National Federation of the Self-Employed v. UK 11.07.78	15 DR 198	1/1, 1/1 + 14	Class 4 National Insurance Contributions. Complaint that self-employed received no benefit and was discriminatory.	Inadmiss. Contributions within 2nd para. of 1/1. Differences in treatment were justified.
8036/77	07.05.79	Unpublished			
8066/77	09.07.80	Unpublished, see Digest at 694	8	Rating; commercial rates v. domestic rates on neighbouring property.	
8466/79	04.07.79	Unpublished			
8472/79	12.10.79	Unpublished, see Digest at 693	1/1	National insurance old age pension in Guernsey.	
8531/79	ABCD v. UK 10.03.81	23 DR 203	6, 1/1, 1/1 + 14	Retrospective legislation in Sec. 31 FA 78 to prevent use of losses in partnerships.	Inadmiss. Legislation served a legitimate purpose. Differences in treatment were justified.
8651/79	09.03.81	Unpublished, see Digest at 694-5	1/1	Turnover tax not confiscatory.	

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
8724/79	X v. Germany 06.03.80	20 DR 226	1/1	Taxation on interest during period of inflation. Complaint that this ate into capital.	Inadmiss. Tax was within sovereign power of state.
8903/80	X v. Austria 08.07.80	21 DR 246	6(1)	Length of proceedings for reimbursement of turnover tax (21 yrs)	Inadmiss. 6 does not apply to tax proceedings.
9182/80	ES v. Germany 12.03.86	E	6(1)	Length of criminal tax proceedings (12 yrs)	Inadmiss. Delays taken into account in sentencing.
9553/81	03.03.83	Unpublished	14?	Luxembourg annual tax on bar-keepers selling alcohol served by female employees.	Inadmiss. (?). See IFA; Taxation and Human Rights (Deventer: Kluwer, 1988), at 63, fn. 14.
9781/82	E & GR v. Austria 14.05.84	37 DR 42	9, 1/1	Austrian church tax.	Inadmiss. Tax was not an interference with freedom of religion nor enjoyment of possessions.
9793/82	? v. UK 13.03.84	7 EHRR 135	1/1 + 14	Class 4 National Insurance Contributions. Self-employed person complained of discrimination as he could not deduct the contribution (whereas an employer can).	Inadmiss. A self-employed person was not in a comparable position with an employer.
9804/82	X v. Belgium (Hardy-Spirlet) 07.12.82	31 DR 231	8	Requirement to supply list of private expenditure.	Inadmiss. Interference was justified.
9889/82	X v. France 06.10.82	31 DR 237	1/1	Registration of mortgage on property to secure payment of duty.	Inadmiss. Measure was within 2nd para. of 1/1.
9908/82	X v. France 04.05.83	32 DR 266	6, 1/1 + 14	Presumptive taxation based on ostensible expenditure. Complaint of unfair procedures and confiscation.	Inadmiss. 6 does not apply to tax proceedings; no evidence of confiscation.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
9939/82	Association X & others v. Italy 04.07.83	34 DR 213	1/1 + 14	Special 10% tax on liquidators and administrators.	(?) - Only extracts of case reported.
10295/83	Ross v. UK 14.10.83	Unpublished	? 9	Quaker challenging UK tax system – see 10358/83 and 11991/86.	Inadmiss. (presumably)
10358/83	C v. UK 15.12.83	37 DR 142	9	Quakers seeking to pay part of taxes into a non-war fund.	Inadmiss. 9 gives no right to refuse to pay taxes according to law.
10378/83	K v. Denmark 07.12.83	35 DR 235	1/1	Applicant was convicted of fiscal fraud. After he fled the country his goods were seized.	Inadmiss. Measure was within exceptions in 1/1.
10473/83	Tom Lundvall v. Sweden 11.12.85	45 DR 121	8	Applicant placed on public register of defaulting taxpayers. Also complaint of use of PINs.	Inadmiss.
10616/83	Jean and Bertha Gottesmann v. Switzerland 04.12.84	40 DR 284	9	Swiss local church tax.	Inadmiss. No breach of 9 if can leave church and not pay the tax.
10653/83	Sjöblad v. Sweden 06.05.85	42 DR 224; 8 EHRR 310	1/1, 2/4	Applicants unable to move property from Sweden without tax clearance.	Inadmiss. Restrictions were within 2nd para. of 1/1. No breach of 2/4.
10828/84, 12661/87 and 11471/85 82/1991/334/407	Funke, Miailhe, Crémieux v. France 25.02.93	16 EHRR 297; E; Series A, No. 256-A, B & C	6, 8	Search and seizure by customs officials. Complaints of breach of right of silence and respect for private life.	**Breach of 6(1) (Funke only); breach of 8 (all 3 cases).**
10873/84 4/1988/148/202	Tre Traktörer AB v. Sweden 07.07.89	E; 13 EHRR 309; Series A, No. 159	6(1), 1/1	Tax investigation led to revocation of licence to sell alcohol.	**Breach of 6(1) as case involved a civil right. No breach of 1/1 – measure was within margin of appreciation.**
10884/84	H v. Germany 13.12.84	41 DR 252	6(1)	Length of criminal tax proceedings (8 yrs, 4 mths)	Inadmiss. Sentence had been reduced because of delays.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
11036/84	Svenska Management gruppen AB v. Sweden 02.12.85	45 DR 211	1/1	Swedish profit-sharing tax.	Inadmiss. Tax was within wide margin of appreciation.
11088/84	Baudouin Hubaux v. Belgium 09.05.88	E (Fr. only)	1/1 + 14, 8, 9, 12	Belgian tax system of aggregating income of husband and wife.	Inadmiss. Married couples and cohabitees not in a comparable position. No infringement of privacy etc.
11089/84	Lindsay v. UK 11.11.86	49 DR 181; 9 EHRR 555; E	1/1 + 14, 8, 12, 8 + 14	UK tax system of aggregating income of husband and wife	Inadmiss. Provisions within margin of appreciation. No infringement of other rights.
11105/84 7/1989/167/223	Jacques and Janine Huvig v. France 27.03.90	12 EHRR 528; Series A, No. 176-B; E	8	Telephone tapping during investigation for tax fraud.	**Breach of 8: law on tapping insufficiently clear.**
11189/84	Company S and T v. Sweden 11.12.86	10 EHRR 132; 50 DR 121; E	1/1	Swedish profit-sharing tax.	Inadmiss. Follows 11036/84.
11262/84	05.05.86	Unpublished	9?	Dutch farm levies.	Inadmiss (?). See IFA; Taxation and Human Rights (Deventer: Kluwer, 1988) at 70, fn. 33.
11429/85	A v. France 10.10.88	E	6, 8	Criminal tax proceedings – search & seizure of documents.	Inadmiss. Search and seizure were according to law and justified.
11439/85	Kurt Steinlechner v. Austria 05.10.87	E	6(1)	Criminal tax proceedings – complaints of length of proceedings & unfair trial.	Inadmiss. Applicant had died; wife and children were not victims.
11464/85	Max von Sydow v. Sweden 08.10.87	10 EHRR 542; 53 DR 85, 121; E	6, 13	Additional tax assessment + 50% tax supplement. No oral hearing.	**Admiss. on 6. Friendly settlement agreed.**
11508/85 13/1987/136/190	Bjørn Barfod v. Denmark 22.02.89	13 EHRR 493; Series A, No. 149; E	10	Article criticizing lay judges in a tax case. Writer convicted of offence.	No breach of 10. Restriction was necessary in a democratic society.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
11570/85	C and others v. Italy 12.10.88	E (Fr. only)	8, 8 + 14	Italian professionals required to keep records of clients: records accessible to revenue authorities. Complaint of breach of privacy.	Inadmiss. Professionals challenging rules were not victims.
11581/85	Peter Darby v. Sweden 23.10.90	13 EHRR 774; E	9, 9 + 14, 1/1 + 14	Swedish church tax – non-resident unable to opt out.	**Violation of 1/1 + 14: no justification for distinction.**
11592/85	BA Juby v. UK 16.07.87	E	1/1 + 14	National Insurance Contributions – complaint of discriminatory operation.	Inadmiss. Substantially the same as 2 earlier applications.
11692/85	Gunnar Söderberg Byggnads AB v. Sweden 05.10.87	E	1/1, 6, 14	Additional VAT & social security fees repaid, but without interest. Company suffered financial difficulties.	Inadmiss. Substantially the same as 2 earlier applications.
11755/85	Walter Stocké v. Germany	11 EHRR 46	5, 6	Applicant charged with tax evasion – fled to France. Applicant alleged he was kidnapped back to Germany by police conspiracy.	**Admiss. on 5 and 6. (Final outcome not known.)**
11760/85 58/1990/249/380	Editions Periscope v. France 26.03.92	14 EHRR 597; E; Series A, No. 234-B	6	Refusal of tax concession. Company went into liquidation and sued for compensation. Complaint of length of proceedings.	**Breach of 6: was a civil claim and length unreasonable. Just satisfaction ordered.**
11919/86	SM v. Austria 08.05.87	10 EHRR 538; E	6(2)	Conviction for tax evasion quashed on appeal – applicant refused costs.	Inadmiss.
11991/86	Beryl Hibbs and Maisie Birmingham v. UK 18.07.86	E	9	Quakers seeking to pay part of taxes into a separate fund.	Inadmiss. Followed 10295/83 and 10358/83
12040/86	GM v. UK 04.05.87	E	6, 8, 10	Applicant failed to pay income tax and was made bankrupt. Various complaints.	Inadmiss. 6 does not apply to tax proceedings.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
12130/86	U v. Netherlands 12.03.90	E	6(1)	Adjusted tax assessment plus 50% additional charge.	Inadmiss. 6 does not apply to tax proceedings – even if the 50% fine was a criminal charge, there was no breach here.
12337/86	Helmut Rantner v. Austria 06.03.89	E	6	Hobby farming – complaints of unfair hearing.	Inadmiss. 6 does not apply to tax proceedings.
12347/86	IJzergieterij- en Machinefabriek J. Zimmer en Zonen BV v. Netherlands 13.04.89	E	6(1)	Additional tax assessment plus 10% penalty. Notice of objection sent out of time.	Inadmiss. 6 does not apply to tax proceedings. If fine was a criminal charge, there was no violation.
12547/86 3/1993/398/476	Michel Bendenoun v. France 24.02.94	18 EHRR 54; E; Series A, No. 284	6	Following investigation, applicant subject to customs proceedings, tax proceedings and criminal proceedings. Complaint of unfair trial.	6 applicable to tax penalties, but no breach.
12560/86	Hugo Hanzmann v. Austria 16.03.89	60 DR 194	1/1 + 14	Austrian civil servant living in Germany. Double taxation convention resulted in taxation in Austria, but allowances denied.	Inadmiss. Taxation was within the margin of appreciation.
12592/86	R v. Austria 06.03.89	E; 60 DR 201	8	Search of bank premises for evidence to supply to another country.	Inadmiss. Search was according to law and necessary in a democratic society.
12593/86	R and R v. Austria 20.05.92	E	6(1)	Length of civil proceedings to recover property seized by customs officers (7 yrs, 10 mths; 9 yrs, 1 mth)	**Breach of 6(1).**
12662/87	Riemeke Visser v. Netherlands 02.05.89	E	8	Tax authorities obtained name and address from telephone service.	Inadmiss. Infringement was justified according to law, was reasonable and proportionate.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
12670/87	H v. Sweden 10.03.88	E	1/1, 6	Additional tax assessment plus 40/50% penalty. No oral hearing at appeal levels.	Inadmiss. Even if penalty was a criminal charge, no violation.
12693/87	Evert Källander v. Sweden 06.03.89	E	6, 7, 14	Additional tax assessment plus tax supplement. Various complaints.	Inadmiss. Even if penalty was a criminal charge, no violation.
12781/87	Rune Andersson v. Sweden 13.12.88	E	6, 10	SEK 60 stamp duty on permit to hold a demonstration.	Inadmiss.
12846/87	JZ v. France 14.12.89	E (Fr. only)	6, 1/1	Criminal tax proceedings. Complaint that legislation placed onus on taxpayer.	Inadmiss. Any system of taxation requires the taxpayer to supply information.
13013/87	Wasa Liv v. Sweden 14.12.88	58 DR 163; E	1/1, 1/1 + 14	One-off property tax on insurance companies. Complaint of confiscation and discrimination.	Inadmiss. Tax fell within margin of appreciation.
13120/87	DC v. Italy 20.10.92	E (Fr. only)	6(1)	Length of proceedings to recover tax credits (8 yrs, 3 mths; 6 yrs, 2 mths).	**Breach of 6(1). 6 applies as a civil claim.**
13550/88	Walter Schraft v. Germany 09.12.88	E	6(1)	Complaints about tax proceedings.	Inadmiss. 6 does not apply to tax proceedings.
13580/88 12/1993/407/486	Karlheinz Schmidt v. Germany 18.07.1994	18 EHRR 513; Series A, No. 291-B; E	14 + 4(3)(d), 14 + 1/1	Fire service levy in Baden-Württemberg. Levy imposed in lieu of fire service which was only required of men.	**Breach of Art. 14 (+ Art. 4(3)(d)). Since fire service was no longer required in practice, this levy was effectively imposed on men only and was discriminatory. Just satisfaction ordered.**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
13616/88 23/1993/418/497	Liliane Hentrich v. France 22.09.94	18 EHRR 440; E; Series A, No. 296-A	1/1, 6	Revenue's right of pre-emption if sale price alleged to be too low.	**Breach of 1/1 as measure not justified. Breach of 6 – no fair trial and length of proceedings unreasonable.**
13658/88	Marcel Beldicot v. France 05.10.90	E	6(1), (3)(b)	Complaints about tax appeals.	Inadmiss. 6 does not apply to tax proceedings.
13800/88	K v. Sweden 01.07.91	71 DR 105; E	6(1), 8, 1/1	Applicant's ex-husband failed to pay tax; her home searched and property seized.	Inadmiss. Applicant had waived rights under 6. Search justified under 8.
13943/88	AK v. Austria 09.05.89	E	1/1 + 14	Salzburg tax on holiday homes. Complaint of discrimination.	Inadmiss. Difference in treatment was justified.
14184/88	Karl Rezek v. Austria 01.09.93	E	6(1)	Length of criminal tax investigation (9 yrs and 10 yrs, 8 mths)	**Breach of 6(1). Just satisfaction ordered.**
14333/88	Lorenzo Riva v. Italy 02.12.92	E (Fr. only)	6	Tax proceedings – various complaints.	Inadmiss. 6 does not apply to tax proceedings.
14623/89	HK KG v. Austria 02.09.92	E	1/1, 6	Disabled persons equalization tax.	Inadmiss. Tax justified within 1/1. 6 does not apply to tax proceedings.
14669/89	Ivan Poupardin v. France 14.10.92	E (Fr. only)	6(1)	Length of criminal tax proceedings (9 yrs, 8 mths).	**Breach of 6(1). Just satisfaction ordered.**
15117/89	Riccardo Travers v. Italy 16.01.95	80-B DR 5; E (Fr. only)	1/1	13% (later 19%) withholding tax on payment of fees to consultants – long delays in repayment.	Inadmiss. Measure was reasonable and proportionate.
15306/89	Hedwig Kiraly v. Austria 09.12.91	E	6, 1/1	Length of criminal tax proceedings (more than 6 yrs)	**Breach of 6(1). Just satisfaction ordered.**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
15375/89 43/1993/438/517	Gasus Dosier und Fördertechnik GmbH v. Nether-lands 23.02.95	20 EHRR 403; E; Series A, No. 306-B	1/1	Revenue authorities seized property which had been sold with retention of title. Property sold off.	No breach of 1/1 – measure reflected a reasonable balance.
15464/89	AP v. Austria 08.10.91	E	1/1, 1/1 + 14	Tax declared unconstitutional prospectively.	Inadmiss. It was not discriminatory to declare law uncon-stitutional for future.
15652/89	Claus Bacher v. Germany 17.04.91	E	6(1)	Length of criminal tax proceedings (c.13 yrs).	**Breach of 6(1). Just satisfaction ordered.**
15707/89	Jean Mahe v. France 28.05.91	E (Fr. only)	6	Argument that VAT could not be enforced in Bri-tanny due to 1532 Treaty of Union	Inadmiss.
15874/89	Jean-Rodolphe Benes v. France 13.10.93	E (Fr. only)	6(1)	Length of criminal tax proceedings (16 yrs, 3 mths).	**Breach of 6(1).**
15886/89	Stanislava Krem-zow v. Austria 06.04.94	E	6(1)	Length of criminal tax proceedings (9 yrs, 1 mth).	**Breach of 6(1). Just satisfaction ordered.**
15967/90	Edward McLoughlin v. Ireland 06.07.92	E	6	Fixed penalty for failure to submit tax return. Allegation that this was a crim-inal charge, there-fore right to jury.	Inadmiss. Even if was a criminal charge, no right to a jury.
16052/90	Kurt Heydasch v. Germany 06.04.93	E	6(1)	Length of criminal tax investigation ($7^1/_2$ yrs).	**Breach of 6(1). Just satisfaction ordered. Though case was com-plex, no delays were due to applicant.**
16215/90	Hans Hess v. Switzerland 02.12.92	E	6	Abetting tax evasion.	Inadmiss.
16345/90	RB v. Switzerland 08.01.93	E (Fr. only)	9, 10	Swiss military tax – conscientious objector imprisoned for non-payment.	Inadmiss. Art. 4(3)(b) preserves right of state to require military ser-vice. Tax in lieu is permissible.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
16431/90	V v. Netherlands 07.11.90	E (Fr. only)	6(2)	Applicant required to pay road tax though had sold car. Presumption that person on register owned car.	Inadmiss. No breach of presumption of innocence.
16469/90	GK and RG v. Austria 02.07.90	E	6, 1/1	Convictions for tax evasion. Allegations of unfair trials.	Inadmiss. No basis for allegations.
17154/90	Antonio Amitrano and 159 others v. Italy 01.12.93	E (Fr. only)	1/1, 1/1 + 14	US-Italian agreement to withhold tax from salaries of those working on air base.	Inadmiss. Withholding was within margin of appreciation.
17314/90 52/1994/499/581	Jakob Leutscher v. Netherlands 26.02.96	E; Reports 1996-II	6(1), (2)	Conviction for false tax statements overturned on appeal as time-barred. Applicant refused legal costs.	No breach of 6: no right to costs of a criminal charge.
17443/90	CB and AM v. Switzerland 02.12.92	E	6, 7	Criminal tax evasion proceedings dropped but tax litigation continued. Complaint of unfair hearing.	Inadmiss. 6 does not apply to tax proceedings. (One issue – a fine – was considered further. Concluded that fine was not for a criminal charge).
17522/90	Ortega Moratilla v. Spain 11.01.92	72 DR 256; E (Fr. only)	9, 9 + 14	Protestant church sought same tax exemptions as agreed with Catholic church.	Inadmiss. 9 did not imply a freedom from paying taxes.
17617/91	Walter Poscher v. Austria 31.03.93	E	6(1)	Length of criminal tax proceedings (16 yrs).	Admiss. but subsequently struck out.
17694/91	Eero, Jorma and Pertti Korpoo v. Finland 13.10.93	E	6	Assessment of residual tax and conviction for tax fraud. Trial took place before Finland joined Convention.	Inadmiss. Acts complained of took place before Convention applied.
17819/91	H v. Austria 03.09.91	E	6	Equalization tax for failure to employ sufficient disabled persons.	Inadmiss. Imposition of tax justified under 2nd para. of 1/1.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
17888/91	ES v. Switzerland 17.01.95	E	6(1)	Length of criminal tax proceedings for fine based on amount of tax.	Inadmiss. Complaint depended on length of tax assessment proceedings – not within 6.
17889/91	MB v. Switzerland 05.05.93	E (Fr. only)	9, 10	Swiss military tax – conscientious objector imprisoned for non-payment.	Inadmiss. See also 16345/90.
17951/91 22/1996/641/825	HB v. Switzerland 17.05.96	E; Reports 1996-III	6	Applicant charged with tax evasion – case heard in private without taxpayer present.	No violation as applicant had waived right to a public hearing. Court declined to hear case as had already decided the issue in 28332/95.
18305/91	Karl Pichler v. Austria 10.02.93	16 EHRR CD 45; E	6(1)	Length of criminal tax investigation (?10 yrs).	**Admiss. Friendly settlement agreed.**
18572/91	Société L and MT v. France 08.01.93	E (Fr. only)	6, 8, 1/1	Tax investigation and proceedings (including 200% penalty) – various complaints.	Inadmiss. No appearance of breaches.
18656/91	Edda Perin v. France 01.12.92	E	6(1)	Tax penalties 30/50% of tax. Complaint of unfair procedure.	Inadmiss. 6 applied as involved a criminal charge, but procedure was fair.
18778/91	S v. Austria 01.12.93	E	1/1, 6(1)	Seizure of jewellery from a bank for payment of tax.	Inadmiss. Seizure fell within 2nd para of 1/1. 6(1) applied (as case involved civil rights) but no breach.
18978/91 47/1995/553/639	William Miailhe v. France (No. 2) 26.09.96	23 EHRR 491; E; Reports 1996-IV	6(1)	Documents seized by Customs were passed to Revenue and used for prosecution. Various complaints.	Admiss. but Court held no breach of 6.
19005 & 6/91 48/1993/443/522 and 49/1993/444/523	Schouten & Meldrum v. Netherlands 09.12.94	19 EHRR 432; E; Series A, No. 304	6	Social security contributions. Complaints of delay (4 yrs, 3 mths) and unfair hearing.	**Admiss. 6 applied to social security contributions. Breach of 6 by delay; no breach by unfair hearing.**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
19070/91	JB v. Germany 01.07.92	E	5, 6	Criminal tax charge – indictment thrown out but applicant awarded only part of his legal costs.	Inadmiss. No right to be reimbursed costs if prosecution was not unreasonable.
19087/91	Olav Kristjánsson, Gudmundur Thórdarson and Thysk-Íslenska hf. v. Iceland 01.09.93	E	6, 13	Criminal tax investigation – various complaints.	Inadmiss. 6 does not apply to proceedings to seize goods for payment of tax.
19117/91	KS and KS AG v. Switzerland 12.01.94	E	6, 4/7	Additional tax assessments plus 100%/200% penalties. Complaints of lack of oral hearing, breach of presumption of innocence.	Inadmiss. Failure to exhaust domestic remedies: no breach of presumption of innocence.
19165/91	Friedrich Kremzow v. Austria 28.06.95	E	6(1)	Length of criminal tax proceedings (8 yrs).	**Admiss. Friendly settlement agreed.**
19341/92	Eero, Jorma & Pertti Korpoo v. Finland 17.05.95	E	8, 4/7	Search and seizure during criminal tax investigation – applicants acquitted. Documents retained and new investigation started.	Inadmiss. Retention of documents justified. New investigation related to different offence. See 17694/91.
19380/92 7/1995/513/597	Stephen Benham v. UK 10.06.96	22 EHRR 293; Reports 1996-III; E	5(1), (5), 6	Community charge. Applicant committed to prison for wilful non-payment. No legal aid.	**Breach of 6(1), (3)(c) – no legal aid. No breach of 5.**
19630/92	AK v. Austria 14.10.94	E	6(1), (2)	Additional tax assessment and criminal conviction.	**Admiss. Friendly settlement agreed.**
19958/92 71/1996/690/882	AP, MP, TP v. Switzerland 29.08.97	26 EHRR 541; E; Reports 1997-V	6(2)	Tax penalties passing to heirs of deceased.	**Breach of 6(2). Just satisfaction ordered.**
20060/92 108/1995/614/702	Anton Van Raalte v. Netherlands 21.02.97	24 EHRR 503; E; Reports 1997-I	1/1 + 14	Child benefit contributions – unmarried men over 45 paid, but not women.	**Breach of 1/1 + 14.**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
20197/92	Ernst Körner v. Austria 06.09.95	E	6(1), 14	Length of criminal tax investigation; tax officer under investigation – alleged discrimination on promotion.	**Breach of 6(1); inadmiss. on 14. (Final outcome not available).**
20241/92	HWK v. Switzerland 29.11.95	E	6(1), (2)	Tax investigation and criminal charge for failure to supervise accountant.	Inadmiss. Failure to exhaust domestic remedies.
20363/92	Aldo Danielli v. Italy 06.09.93	E (Fr. only)	6(1)	Length of criminal tax proceedings (5 yrs, 3 mths).	**Breach of 6(1). Just satisfaction ordered.**
20471/92	Kustannus Oy Vapaa Ajattelija AB v. Finland 15.04.96	E	6(1), 9	Finnish church tax: company of free-thinkers.	Inadmiss. Company did not enjoy 9 rights; members not victims; 6 does not apply to tax.
20682/92	KH v. Germany 01.12.93	E	6(2)	Criminal tax charge: presumption of innocence.	Inadmiss.
20773/92	L v L v. Netherlands 02.09.94	E	6(1)	Length of criminal tax proceedings (5 yrs).	Inadmiss. Length of proceedings taken into account in sentencing.
20919/92 75/1996/694/886	EL, RL, JOL v. Switzerland 29.08.97	E; Reports 1997-V	6(2)	Tax penalties passing to heirs of deceased.	**Breach of 6(2). (Judgment has direct effect in Switzerland. Government is also changing the law on this point.)**
21154/93	Gerhard Höfler v. Austria 17.05.95	E	6(1)	Length of criminal tax investigation (7 yrs, 5 mths).	**Breach of 6(1). Just satisfaction ordered.**
21294/93	Voggenberger Transport GmbH v. Austria 12.10.94	E	1/1, 6	Road tax. Law amended to clarify that exemption inapplicable to applicant.	Inadmiss. Amendment to law was within sovereign power under 1/1. 6 does not apply to tax proceedings.
21319/93 and others 117/1996/736/933-5	National & Provincial Building Society and others v. UK 23.10.97	25 EHRR 127; E; Reports 1997-VII	1/1, 1/1 + 14, 6, 6 + 14	Retrospective legislation – Sec. 64 F (No. 2) A 1992.	No violations.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
21351/93 9/1997/793/994	JJ v. Netherlands 27.03.98	28 EHRR 168; E; Reports 1998-II	6(1)	Additional tax assessment plus 100% fiscal penalty. Applicant unable to appeal as court fee not paid.	**Breach of 6(1). (Netherlands Supreme Court has modified its practice to prevent violation.)**
21354/93	Schneider Austria GmbH v. Austria 30.11.94	E	1/1, 6	Company liable to pay fines for tax evasion by its managing director.	Inadmiss. Imposing fine on the company was legitimate and proportionate.
21402/93	Peter Schnabl v. Austria 30.11.94	E	6, 8, 1/1	Search of applicant's office and home; files seized.	Inadmiss. Seizure was according to law, proportionate and reasonable.
21568/93	Adriano Borghini v. Italy 29.11.95	E (Fr. only)	4	Employer required to withhold tax and prepare return for employees. Complaint of forced labour.	Inadmiss. Was within normal civic duties.
21663/93	Catharine Feteris-Geerards v. Netherlands 13.10.93	E	1/1 + 14	Dutch rule that deductions allocated to spouse with highest income therefore allocated to husband here.	Inadmiss. It was not discrimination to have a rule allocating deductions to spouse with highest income.
21961/93 81/1997/865/1076	Wilhelmus Hozee v. Netherlands 22.05.98	E; Reports 1998-III	6(1)	Length of criminal tax proceedings (for 100% penalty) (8½ yrs).	No breach. Complexity of case and no unreasonable delays.
22588/93	Matti & Eliina Försti v. Finland 18.10.95	E	1/1	Applicants liable to street tax even though no street led to their property.	Inadmiss. Tax was within state's right to tax.
22604/93	PW v. Austria 16.01.96	E	6(1)	Length of criminal tax investigation (4 yrs, 10 mths).	**Admiss. Friendly settlement agreed.**
22651/93	JR v. Germany 18.10.95	E	1/1 + 14	Tax measures found to be unconstitutional, but with prospective effect.	Inadmiss. Principle of legal certainty allows laws to be declared unconstitutional with prospective effect.
23189/94	Wilhelm Putz v. Austria 06.09.95	E	6(1), (3)	Conviction for tax evasion; various complaints.	Inadmiss.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
23194/94	Gerhard Stadler v. Austria 06.09.95	E	6(1), (3)	Conviction for tax evasion; various complaints.	Inadmiss.
23229/94	HH v. Netherlands 13.05.96	E	6(1)	Length of criminal tax proceedings (9 yrs, 6 mths).	No breach: delays not largely due to authorities.
23399/94	HWK v. Switzerland 31.08.94	E	6	Additional tax assessment plus 50% penalty. Complaint of lack of independent tribunal. See also 20291/92.	Inadmiss. Tribunal was independent and impartial.
23506/94	Friedrich Kremzow v. Austria 30.11.94	E	6(1), (2)	Criminal tax proceedings discontinued – complaint of no hearing. See also 19165/91.	Inadmiss.
23555/94	Eric Maurel-Février v. France 26.02.97	E (Fr. only)	6(1), (3)	Criminal tax proceedings. Applicant not informed of Court of Cessation hearing or time limit for submitting memorandum.	**Breach of 6(1). Duty on court to secure guarantees in Art. 6.**
23871/94	Knud Larsen v. Denmark 16.10.96	E	6(1)	Length of criminal tax proceedings (5 yrs, 5 mths).	**Admiss. Friendly settlement agreed.**
24472/94	Paul Rouviere v. France 27.11.96	E (Fr. only)	6(1)	Search and seizure by customs; documents passed to tax administration. Additional assessments plus penalties. Complaint of no access to documents.	Inadmiss. Applicant failed to ask for documents.
24828/94	AG v. UK 27.11.96	E	1/1, 6, 8 + 14	Applicant convicted of fraud on Customs – made criminally bankrupt. Complaints of length of bankruptcy proceedings and effect of bankruptcy.	Inadmiss. Length of proceedings due to applicant's requests for adjournments. Bankruptcy within 2nd para. of 1/1.
24834/94	Zekeriya Kurtça v. Turkey 15.05.96	E	6(1)	Accountant fined for assisting clients to claim refunds to which not entitled.	Inadmiss. 6 does not apply to tax proceedings – if it was a criminal charge, no breach.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
24877/94	Aflredo Casotti, Adolfo Florio & Consiglio Nazionale Dell'Ordine Dei Consulenti del Lavoro v. Italy 16.10.96	E	1/1	Change in law removed right of labour consultants to represent clients before tax courts.	Inadmiss. Even if the consultants had a possession, regulation of tax courts came within 1/1.
25083/94	Guido Ferretti v. Italy 26.02.97	E (Fr. only)	1/1	Claim for repayment of tax credits. Repayment took c. 10 years and repaid with simple interest.	Inadmiss. Provision could be justified – interest provided compensation.
25145/94	RT v. UK 29.11.95	E	6	Community charge – applicant tried in absence.	Inadmiss. No committal order made.
25163/94	Ottorino Savani v. Italy 09.04.97	E (Fr. only)	1/1, 6	Tax authorities threatened to seize applicant's property even after tax paid.	Inadmiss. Failure to exhaust domestic remedies.
25277/94 and others	Kevin Perks and others v. UK 12.10.96	E	6	Community charge – applicant denied legal aid and committed to prison.	**Breach not contested – issue of just satisfaction only.**
25283/94 and four others	MC v. UK 02.03.00	E	5(1), (5), 6(1), (3)(c)	Community charge – applicants denied legal aid and committed to prison.	Commission held admiss. on certain complaints. Struck out for failure to lodge memorial.
25286/94	SD v. UK 09.09.98	E	5, 6	Community charge – applicant denied legal aid and committed to prison.	**Breach of 5(1), (5), 6(1), (3)(c). (Final outcome not yet known.)**
25322/94	Jacobus Melkert and Zita van Kooten v. Belgium 28.02.96	E (Fr. only)	6(1)	Length of proceedings for additional tax plus 100% penalties (4 yrs, 9 mths).	Inadmiss. Failure to exhaust domestic remedies by raising Convention issue in domestic courts.
25373/94	Paul Smith v. UK 29.11.95	21 EHRR CD 74; E	6	Community charge. Summary warrant procedure. Complaint about procedures.	Inadmiss. 6 does not apply to tax proceedings or 10% surcharge.
25564/94	Giorgio Filippello v. Italy 24.10.95	E (Fr. only)	6(1)	Length of proceedings to annul tax assessment applicant had already paid (5 yrs, 4 mths).	**Breach of 6(1). Was a civil claim.**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
25602/94	ANM & Co. v. UK 29.11.95	E	6	Business rates – various complaints	Inadmiss. 6 does not apply to tax.
25737/94	Eirik Lindkvist v. Denmark 09.09.98	27 EHRR CD 103; E	5, 6, 1/1	Applicant arrested and detained and later prosecuted for tax evasion. Went to another country. Arrest warrant if he returned.	Inadmiss. Arrest warrant was within state power in 1/1.
25965/94	Helmut Radolf v. Austria 03.06.98	E	6(1)	Length of criminal tax proceedings (13 yrs, 5 mths).	**Breach of 6(1). Just satisfaction ordered.**
25994/94	Josef Jupin v. Sweden 22.10.97	E	6	Whether a 40% tax penalty is a "criminal charge"	Admiss. But subsequently struck out.
26210/95	Michel Molliex v. France 02.07.97	E (Fr. only)	6	Criminal tax proceedings plus administrative proceedings for tax and penalties. Various complaints.	Inadmiss. Failure to exhaust domestic remedies.
26242/95	Pierre Lemoine v. France 01.04.99	E	6(1), 1/1	Additional tax assessment. Complaint of delay in proceedings and charge on land to secure payment.	**Inadmiss. on 6 – does not apply to ordinary tax proceedings. Commission found breach of 1/1. Court held reference out of time. (Final outcome not yet known).**
26449/95	Špaček Sro v. Czech Republic 09.11.99	E	1/1	Publication of laws relating to tax but not in official gazette.	No violation of 1/1.
26560/95	Alfred Mika v. Austria 26.06.96	22 EHRR CD 208; E	1/1 + 14	Law preventing deduction of maintenance payments held unconstitutional prospectively.	Inadmiss. Principle of legal certainty permits prospective overruling.
26779/95	Pietrantonio Gianquitto v. Italy 04.09.96	E (Fr. only)	1/1, 1/1 + 14	Invalidity pension paid to retired carabinieri subject to tax. War pensions not taxable.	Inadmiss. Tax not excessive, within margin, not discriminatory.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
27032/95	L-GR v. Sweden 15.01.97	E	6, 7	Criminal tax investigation. Complaints of length of proceedings (c. 6 yrs), lack of presumption of innocence, offence not found in statute.	Inadmiss. Case complex and length not unreasonable. Offences were described in case law and were clear.
27109/95	Raimo Kaira v. Finland 15.05.96	E	1/1, 6	Finnish pharmacy duty, based on turnover for whole year though pharmacy sold during year.	Inadmiss. 6 does not apply to tax. Tax was within 2nd para. of 1/1.
27170/95	Nino Di Gregorio and Chiara Recchia v. Italy 18.10.95	E (Fr. only)	6(1)	Length of tax proceedings (10 yrs +).	Inadmiss. 6 does not apply to ordinary tax proceedings.
27284/95	De Warrene Waller v. UK 18.01.96	21 EHRR CD 96	5, 6	Community charge – unlawful imprisonment and no legal aid.	Inadmiss. Failure to exhaust domestic remedies; application out of time.
27372/95	MJ v. France 01.07.98	E (Fr. only)	6(1)	Length of tax proceedings including fines of c. 30%.	**Breach of 6(1). 6 applies as criminal charge. Delays unreasonable.**
27483/95	Antonino Di Trapani v. Italy 14.10.96	E (Fr. only)	6(1)	Length of tax proceedings (more than 13 yrs).	Inadmiss. 6 does not apply to tax (referred to in 30601/96).
27721/95	NAP Holdings UK Ltd v. UK 12.04.96	22 EHRR CD 114; E	1/1 + 14	Failure to apply legislation (reversing a decision of the courts) retrospectively.	Inadmiss. Decision not to apply legislation retrospectively was within state's discretion under 1/1.
27741/95	CB v. Switzerland 19.02.99	E	6(1)	Length of criminal tax investigation (more than 12 yrs).	**Breach of 6(1).**
27849/95	Yves Bideau v. France 02.07.97	E (Fr. only)	6(1)	Length of tax proceedings for additional tax plus c. 50% penalty (c. 7 yrs).	Inadmiss. Delays due to taxpayer.
27917/95	JW v. Poland 11.09.97	E	6, 1/1	Removal of custom duty exemption.	Inadmiss. Applicant was not the victim.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
27943/95	Maximilian Abas v. Netherlands 26.02.97	88-B DR 120; E	6	Information given in tax investigation used in subsequent criminal prosecution. Complaint of breach of right of silence.	Inadmiss. 6 does not apply to collection of information for tax purposes.
28190/95	Ian Poole v. UK 15.04.99	E	5, 6	Community charge – lack of legal aid.	**Breach of 5(1), (5) and 6(1), (3)(c). (Final outcome not yet known.)**
28248/95	Zofia Holisz v. Poland 20.05.98	E	1/1	Polish forest tax: non-imposition of tax deprived applicant of opportunity to prove her ownership.	Inadmiss. No breach of 1/1 by non-imposition of tax.
28332/95	HB v. Switzerland (No. 2) 14.01.98	E	6, 7, 4/7	Criminal tax proceedings for cantonal tax. Complaints of non-independent tribunal, length of proceedings (7 yrs, 10 mths), no clear law. Charged twice for same offence. See 17951/91.	Inadmiss. Applicant had waived the right to challenge the tribunal; length not unreasonable as applicant had caused delays. Not the same offence – one was Federal tax, the other Cantonal tax.
28411/95	Ianka Riener v. Bulgaria 11.04.97	E	6, 8, 1/1, 1/1 + 14	Assessment for unpaid excise duty. Applicant's passport seized to prevent her leaving. Various complaints.	Inadmiss. Complaint of seizure of passport was investigated further but fell within 2/4 to which Bulgaria was not a party.
28455/95	Shaun Johnson v. UK 09.09.98	E	5, 6	Community charge – detention for non-payment, legal aid not available.	**Breach of 5(1), (5), 6(1), (3)(c). (Final outcome not yet known.)**
28554/95	KG v. Bulgaria 15.05.96	E	1/1	Failure to register with revenue authority (applicant was in hospital). Fine imposed.	Inadmiss. Applicant had failed to register for 4 months after coming out of hospital.
28990/95	Elisabeth Fichter v. France 04.09.96	E (Fr. only)	6(1)	Proceedings for additional tax plus penalties. Court of Appeal struck down penalties. Various complaints.	Inadmiss. 6 does not apply if no penalties in issue.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
29350/95	Jean and Danielle Lechaczynski v. France 03.03.99	E (Fr. Only)	6(1)	Additional tax assessment plus 30%/50% penalty. Complaint of length of investigation (9 yrs, 5 mths).	**Breach of 6(1). Matter not complex; delays due to administration. (Final outcome not yet known.)**
29400/95	ML v. Finland 03.12.97	E	7, 6(1)	Criminal tax proceedings for tax fraud: complaint that law unclear, unfair trial and length of proceedings (4 yrs, 2 mths).	Inadmiss. Law was sufficiently clear, and not unreasonable length or unfair.
29634/96	Sarl Stem Turone and Roger Blanchet v. France 15.01.97	E (Fr. only)	6, 8	Search by competition inspectors – documents passed to revenue authority. Charges dismissed by criminal court, but some tax assessments remained.	Inadmiss. No basis for allegation of unfair trial.
29800/96	Husein Basic v. Austria 16.03.99	28 EHRR CD 118; E	6(1)	Applicant's watch seized by Customs; person he obtained it from had not paid customs duty. Two sets of criminal proceedings and possession action. Complaint of length of proceedings.	**Admiss. 6 applies as case did not concern applicant's tax liability. (Final outcome not yet known.)**
29998/96	Société d'Edition des Artistes Peignant de la Bouche et du Pied v. France 26.02.97	E (Fr. only)	6(1), (2)	Tax proceedings for additional tax plus interest but *not* penalties.	Inadmiss. 6 does not apply to ordinary tax proceedings.
30128/96	FS v. Germany 27.11.96	E	8, 1/1	Exchange of information under Mutual Assistance Directive.	Inadmiss. Interference with privacy was justified. No possession within 1/1.
30192/96	Johann Fontanesi v. Austria 08.02.00	E	8, 6	Lawyer charged with tax evasion. Bar association ordered him not to appear in certain courts. Prosecution later dropped.	Inadmiss. On 8, interference justified. 6 applied but no violation here.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
30260/96	Association Sivananda de Yoga Vedanta v. France 16.04.98	E (Fr. only)	9, 14	Society teaching yoga and Hindu philosophy. Claimed exemption from tax.	Inadmiss. 9 does not create a freedom from tax. Not comparable to catholic church.
30548/96	Helen MacGregor v. UK 03.12.97	E	1/1 + 14	Incapacitated spouse allowance only given to men – s.259 ICTA 1988.	**Admiss. Friendly settlement agreed.**
30601/96	Riccardo D'Andrea v. Italy 27.11.96	E (Fr. only)	6(1)	Length of proceedings for repayment of tax. Proceedings turned on interpretation of tax law.	Inadmiss. Not a civil case, therefore 6 did not apply.
31513/96	Winfried Hildebrand v. Germany 16.04.98	E	8	Search of personal and professional premises during investigation for tax evasion.	Inadmiss. Interference was justified.
32104/96	Ona Macioniene v. Lithuania 15.01.97	E	6	Complaint of unfair hearing of tax appeals.	Inadmiss. Events occurred before Lithuania ratified Convention.
32367/96	APEH Üldözötteinek Szövetsége and others. v. Hungary 31.08.99	28 EHRR CD 140; E	11, 6	Application to register Association of APEH-Persecutees. Application refused by court.	**Inadmiss. on 11. Admiss on 6. (Final outcome not yet known).**
32400/96	Michael Varley v. UK 06.01.2000	E	6	Community charge.	Struck out.
32498/96	Jeanne-Pierre Liset v. France 14.01.98	E (Fr. only)	6, 4/7	Acquittal of criminal tax fraud. Proceedings then brought for tax fraud of company.	Inadmiss. Charges were different as related to different years.
32509/96	Covexim SA v. France 21.05.97	E (Fr. only)	6(1), 1/1	Tax proceedings for additional tax plus 25% penalty.	Inadmiss.
32667/96	Harri Ruohola v. Finland 23.10.97	E	6, 1/1	Back tax investigation – complaints of failure to disclose documents.	Inadmiss. No exhaustion of domestic remedies (inter alia).
33600/96	HL v. Finland 20.01.2000	E	6(1)	Length of criminal tax proceedings (5 yrs, 10 mths).	**Admiss. – to be considered on merits. (Final outcome not yet known.)**

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
34070/96	MHS and RS v. France 09.09.98	E (Fr. only)	6(1)	Length of tax proceedings (6 yrs, 4 mths) for tax plus 50% fine.	**Breach of 6(1). 6 applied as a criminal charge; delays due to state.**
34805/97	Skandinavisk Metallförmedling AB v. Sweden 09.09.98	E	6, 1/1	Tax investigation led to freezing of company's assets. Company went bankrupt. Various complaints.	Inadmiss. Length of proceedings (6 yrs, 9 mths) not unreasonable – delays due to applicant taking procedural points.
35209/97	Mohamed Slimane Kaid v. France 16.03.99	E (Fr. only)	6, 1/1	Additional tax assessment plus penalties. Various complaints about proceedings.	**Inadmiss. Other than role of Commissaire du Gouvernement in C. d'E., and length of proceedings (to be examined further).**
35364/97	Désiré Collobert v. France 20.05.98	E (Fr. only)	6(1)	Length of tax proceedings (8 yrs).	Inadmiss. 6 does not apply to ordinary tax proceedings.
35673/97 and others	Schweighofer, Rauch, Heinemann & Mach v. Austria 24.08.99	E	6, 7	Criminal prosecution for smuggling gold and claiming VAT repayments. Complaint of length of proceedings (11 yrs, 1 mth).	**Admiss. on length of proceedings; Inadmiss. on other complaints. (Final outcome not yet known.)**
36118/97	Bruno Taddei v. France 29.06.98	E (Fr. only)	6(1)	Additional tax assessments plus 40% penalty for bad faith. Penalties assessed by revenue authority; court could not modify level of penalty.	Inadmiss. Legislation provided for different levels of penalties.
36120/97	Christopher Crossland v. UK 09.11.99	E	1/1 + 14	Widows' bereavement allowance only given to women – Sec. 262 ICTA 1988.	**Admiss. Friendly settlement agreed.**
36855/97 and 41731/98	Frédéric Ponsetti and Christian Chesnel v. France 14.09.99	E (Fr. only)	4/7, 6	Taxpayers failed to submit returns: liable for tax plus penalties plus criminal prosecution for deliberate failure to submit returns.	Inadmiss. 4/7 inapplicable as criminal offence had additional element of deliberate omission.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
36940/97	David Fielding v. UK 08.06.99	E	8 + 14; 1/1 + 14	Widows' bereavement allowance only given to women – Sec. 262 ICTA 1988.	**Admiss. (Final outcome not yet known.)**
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98	E	6, 1/1, 13, 14	Unconstitutional tax change in Austria: Constitutional Court did not hear all cases. Complaint that applicant could not claim its costs.	Inadmiss. 6 does not apply to tax; costs claim not in 1/1; 14 and 13 can't stand alone.
37607/97	WS v. Poland 15.06.99	E	6	Fines for wrong accounting entries.	Inadmiss. Not a criminal charge.
38070/97	Wolfhard Koop-Automaten, Goldene 7 GmbH & Co. KG v. Germany 30.03.99	E	1/1	Local entertainment tax on gaming machines. Complaint that tax imprecise and unjustified.	Inadmiss. No grounds for challenge under 1/1.
38434/97	Ephrem and Huguette Passet v. France 30.03.99	E (Fr. only)	6(1), (2), 4/7	Taxpayers failed to supply information. Assessments confirmed with penalties. Complaints of breach of right of silence, presumption of innocence and double penalties.	Inadmiss. Failure to exhaust domestic remedies and complaint manifestly ill-founded.
38841/97	Georgios Klavdianos v. Greece 21.09.99	E	3, 4, 6, 1/1, 1/1 + 14	Greek rule that director liable for tax due from his company. Director's house seized for tax payment. Various complaints.	**All grounds other than 6(1) inadmiss. 6(1) to be heard on merits. (Final outcome not yet known.)**
38986/97	PW v. Denmark 15.06.99	E	6, 7, 14, 2/7	Criminal tax evasion proceedings. Various complaints including length (6 yrs, 9 mths)	Inadmiss. Length not unreasonable: no undue delays.
39694/98	Francesco Pesoni v. Italy 26.01.99	E	6(1)	Length of criminal tax proceedings (11 yrs, 4 mths)	**Admiss. Friendly settlement agreed.**
39719/98	Caterina Andretta v. Italy 04.05.99	E	6(1)	Failure to pay Italian motor vehicle tax. Complaint that no appeal possible.	Inadmiss. An appeal was possible.

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports	Articles Considered	Summary of Complaint	Result
40477/98	Helene Musa v. Austria 10.09.98	27 EHRR CD 338; E	1/1; 1/1 + 14	Viennese auction tax on full auction price, even though applicant was part-owner of property.	Inadmiss. Tax measure was within 2nd para. of 1/1 and within margin of appreciation.
41041/98	Ugo Mastroeni v. Italy 14.12.99	E	6	Length of criminal tax proceedings (14 yrs)	**Admiss. Friendly settlement agreed.**
41601/98 and 41775/98	Vidacar SA and Opergrup SL v. Spain 20.04.99	E (Fr. only)	6(1), 14	Complaint that court would not hear action against increase in tax.	Inadmiss. 6 does not apply to tax proceedings; 14 cannot apply on its own.
43457/98	Józef Lewandowski v. Poland 15.06.99	E	2, 5, 6	Visit of tax bailiffs allegedly caused death of wife.	Inadmiss. No evidence of causal link with death.
43604/98	Camille Gantzer v. France 05.10.99	E (Fr. only)	6	Taxpayer liable to additional tax plus 50% penalty. Government argued purely a tax proceeding.	Inadmiss. Taxpayer was only contesting the amount of penalty.
46757/99	Giuliana Galeotti Ottieri Della Ciaja and others v. Italy 22.06.99	E	1/1 + 14	Italian inheritance tax alleged to discriminate against larger estates.	Inadmiss. Treatment not discriminatory and within margin of appreciation.

Editor's note: A question mark means that information is unavailable or that it cannot be confirmed from sources available to the author when writing the article.

1. A number in bold indicates a case decided by the ECtHR; all other cases were decided by the ECnHR.
2. The date is generally that of the last available decision in the case.
3. E = available on the HUDOC electronic data base (address http://www.echr.coe.int)
   Colln = Collection of Decisions (of the European Commission)
   YB = Yearbook of the European Convention on Human Rights
   EHRR = European Human Rights Reports
   DR = Decisions and Reports (European Commission)
   Digest = Digest of Strasbourg Case-law
   Reports = Reports of Judgments and Decisions (from 1996)
   Series A/B = Reports of judgments (up to 1995)
4. This column lists the principal articles considered in the case. Other articles may also have been raised but were subsidiary and are not mentioned here.
5. A result in bold is regarded as favourable to the taxpayer. This applies only to the last available decision in the case.

TABLE 2 (1)

Cases Involving Article 1 of the First Protocol ("1/1")

Application Number (and Court Reference Number (If Any))	Parties and Date
511/59	Gundmundur Gundmundsson v. Iceland 20.12.60
551/59	X v. Germany 31.05.59
673/59	AX and BX v. Germany 28.07.61
1497/62	Reformed Church of X v. Netherlands 14.12.62
2065/63	X v. Netherlands 14.12.65
2248/64	X v. Netherlands 06.02.67
3500/68	X Co. v. Austria 05.02.71
4130/69	X v. Netherlands 20.07.71
7287/75	X v. Austria 03.03.78
7427/76	Companies W, X, Y & Z v. Austria 27.09.76
7714/76	? v. UK 12.12.77
7995/77	National Federation of the Self-Employed v. UK 11.07.78
8472/79	12.10.79
8531/79	ABCD v. UK 10.03.81
8651/79	09.03.81
8724/79	X v. Germany 06.03.80
9781/82	E & GR v. Austria 14.05.84
9889/82	X v. France 06.10.82
10378/83	K v. Denmark 07.12.83
10653/83	Sjöblad v. Sweden 06.05.85
10873/84 **4/1988/148/202**	Tre Traktörer AB v. Sweden 07.07.89
11036/84	Svenska Management gruppen AB v. Sweden 02.12.85
11189/84	Company S and T v. Sweden 11.12.86
11692/85	Gunnar Söderberg Byggnads AB v. Sweden 05.10.87
12670/87	H v. Sweden 10.03.88
12846/87	JZ v. France 14.12.89

Application Number (and Court Reference Number (If Any))	Parties and Date
13013/87	Wasa Liv v. Sweden 14.12.88
13616/88 **23/1993/418/497**	Liliane Hentrich v. France 22.09.94
13800/88	K v. Sweden 01.07.91
14623/89	HK KG v. Austria 02.09.92
15117/89	Riccardo Travers v. Italy 16.01.95
15306/89	Hedwig Kiraly v. Austria 09.12.91
15375/89 **43/1993/438/517**	Gasus Dosier und Fördertechnik GmbH v. Netherlands 23.02.95
15464/89	AP v. Austria 08.10.91
16469/90	GK and RG v. Austria 02.07.90
17154/90	Antonio Amitrano and 159 others v. Italy 01.12.93
18572/91	Société L and MT v. France 08.01.93
18778/91	S v. Austria 01.12.93
21294/93	Voggenberger Transport GmbH v. Austria 12.10.94
21319/93 and others **117/1996/736/933-5**	National & Provincial Building Society and others v. UK 23.10.97
21354/93	Schneider Austria GmbH v. Austria 30.11.94
21402/93	Peter Schnabl v. Austria 30.11.94
22588/93	Matti & Eliina Försti v. Finland 18.10.95
24828/94	AG v. UK 27.11.96
24877/94	Aflredo Casotti, Adolfo Florio & Consiglio Nazionale Dell'Ordine Dei Consulenti del Lavoro v. Italy 16.10.96
25083/94	Guido Ferretti v. Italy 26.02.97
25163/94	Ottorino Savani v. Italy 09.04.97
25737/94	Eirik Lindkvist v. Denmark 09.09.98
26242/95	Pierre Lemoine v. France 01.04.99
26449/95	Špaček Sro v. Czech Republic 09.11.99
26779/95	Pietrantonio Gianquitto v. Italy 04.09.96
27109/95	Raimo Kaira v. Finland 15.05.96

Application Number (and Court Reference Number (If Any))	Parties and Date
27917/95	JW v. Poland 11.09.97
28248/95	Zofia Holisz v. Poland 20.05.98
28411/95	Ianka Riener v. Bulgaria 11.04.97
28554/95	KG v. Bulgaria 15.05.96
30128/96	FS v. Germany 27.11.96
32509/96	Covexim SA v. France 21.05.97
32667/96	Harri Ruohola v. Finland 23.10.97
34805/97	Skandinavisk Metallförmedling AB v. Sweden 09.09.98
35209/97	Mohamed Slimane Kaid v. France 16.03.99
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98
38070/97	Wolfhard Koop-Automaten, Goldene 7 GmbH & Co. KG v. Germany 30.03.99
38841/97	Georgios Klavdianos v. Greece 21.09.99
40477/98	Helene Musa v. Austria 10.09.98

TABLE 2(2)

Cases Which Have Considered Article 6

Application Number (and Court Reference Number (If Any))	Parties and Date
551/59	X v. Germany 31.05.59
673/59	AX and BX v. Germany 28.07.61
945/60	X v. Germany 10.03.62
1904/63 and 3 others	ABCD v. Netherlands 23.05.66
1936/63 **2/1966/5/10**	Fritz Neumeister v. Austria 27.06.68
2145/64	X v. Belgium 01.10.65
2248/64	X v. Netherlands 06.02.67
2552/65	X v. Germany 15.12.67
2717/66	X & Co., Y, Z v. Germany 06.02.69
4517/70	Herbert Huber v. Austria 14.07.71

Application Number (and Court Reference Number (If Any))	Parties and Date
5421/72	X v. Belgium 05.02.73
8531/79	ABCD v. UK 10.03.81
8903/80	X v. Austria 08.07.80
9182/80	ES v. Germany 12.03.86
9908/82	X v. France 04.05.83
10828/84, 12661/87 and 11471/85 82/1991/334/407	Funke, Miailhe, Crémieux v. France 25.02.93
10873/84 4/1988/148/202	Tre Traktörer AB v. Sweden 07.07.89
10884/84	H v. Germany 13.12.84
11429/85	A v. France 10.10.88
11439/85	Kurt Steinlechner v. Austria 05.10.87
11464/85	Max von Sydow v. Sweden 08.10.87
11692/85	Gunnar Söderberg Byggnads AB v. Sweden 05.10.87
11755/85	Walter Stocké v. Germany
11760/85 58/1990/249/380	Editions Periscope v. France 26.03.92
11919/86	SM v. Austria 08.05.87
12040/86	GM v. UK 04.05.87
12130/86	U v. Netherlands 12.03.90
12337/86	Helmut Rantner v. Austria 06.03.89
12347/86	IJzergieterij- en Machinefabriek J. Zimmer en Zonen BV v. Netherlands 13.04.89
12547/86 3/1993/398/476	Michel Bendenoun v. France 24.02.94
12593/86	R and R v. Austria 20.05.92
12670/87	H v. Sweden 10.03.88
12693/87	Evert Källander v. Sweden 06.03.89
12781/87	Rune Andersson v. Sweden 13.12.88
12846/87	JZ v. France 14.12.89
13120/87	DC v. Italy 20.10.92

Application Number (and Court Reference Number (If Any))	Parties and Date
13550/88	Walter Schraft v. Germany 09.12.88
13616/88 **23/1993/418/497**	Liliane Hentrich v. France 22.09.94
13658/88	Marcel Beldicot v. France 05.10.90
13800/88	K v. Sweden 01.07.91
14184/88	Karl Rezek v. Austria 01.09.93
14333/88	Lorenzo Riva v. Italy 02.12.92
14623/89	HK KG v. Austria 02.09.92
14669/89	Ivan Poupardin v. France 14.10.92
15306/89	Hedwig Kiraly v. Austria 09.12.91
15652/89	Claus Bacher v. Germany 17.04.91
15707/89	Jean Mahe v. France 28.05.91
15874/89	Jean-Rodolphe Benes v. France 13.10.93
15886/89	Stanislava Kremzow v. Austria 06.04.94
15967/90	Edward McLoughlin v. Ireland 06.07.92
16052/90	Kurt Heydasch v. Germany 06.04.93
16215/90	Hans Hess v. Switzerland 02.12.92
16431/90	V v. Netherlands 07.11.90
16469/90	GK and RG v. Austria 02.07.90
17314/90 **52/1994/499/581**	Jakob Leutscher v. Netherlands 26.02.96
17443/90	CB and AM v. Switzerland 02.12.92
17617/91	Walter Poscher v. Austria 31.03.93
17694/91	Eero, Jorma and Pertti Korpoo v. Finland 13.10.93
17819/91	H v. Austria 03.09.91
17888/91	ES v. Switzerland 17.01.95
17951/91 **22/1996/641/825**	HB v. Switzerland 17.05.96
18305/91	Karl Pichler v. Austria 10.02.93

Application Number (and Court Reference Number (If Any))	Parties and Date
18572/91	Société L and MT v. France 08.01.93
18656/91	Edda Perin v. France 01.12.92
18778/91	S v. Austria 01.12.93
18978/91 **47/1995/553/639**	William Miailhe v. France (No. 2) 26.09.96
19005 & 6/91 **48/1993/443/522 and** **49/1993/444/523**	Schouten & Meldrum v. Netherlands 09.12.94
19070/91	JB v. Germany 01.07.92
19087/91	Olav Kristjánsson, Gudmundur Thórdarson and Thysk-Íslenska hf. v. Iceland 01.09.93
19117/91	KS and KS AG v. Switzerland 12.01.94
19165/91	Friedrich Kremzow v. Austria 28.06.95
19380/92 **7/1995/513/597**	Stephen Benham v. UK 10.06.96
19630/92	AK v. Austria 14.10.94
19958/92 **71/1996/690/882**	AP, MP, TP v. Switzerland 29.08.97
20197/92	Ernst Körner v. Austria 06.09.95
20241/92	HWK v. Switzerland 29.11.95
20363/92	Aldo Danielli v. Italy 06.09.93
20471/92	Kustannus Oy Vapaa Ajattelija AB v. Finland 15.04.96
20682/92	KH v. Germany 01.12.93
20773/92	L v L v. Netherlands 02.09.94
20919/92 **75/1996/694/886**	EL, RL, JOL v. Switzerland 29.08.97
21154/93	Gerhard Höfler v. Austria 17.05.95
21294/93	Voggenberger Transport GmbH v. Austria 12.10.94
21319/93 and others **117/1996/736/933-5**	National & Provincial Building Society and others v. UK 23.10.97
21351/93 **9/1997/793/994**	JJ v. Netherlands 27.03.98
21354/93	Schneider Austria GmbH v. Austria 30.11.94
21402/93	Peter Schnabl v. Austria 30.11.94
21961/93 **81/1997/865/1076**	Wilhelmus Hozee v. Netherlands 22.05.98

Application Number (and Court Reference Number (If Any))	Parties and Date
22604/93	PW v. Austria 16.01.96
23189/94	Wilhelm Putz v. Austria 06.09.95
23194/94	Gerhard Stadler v. Austria 06.09.95
23229/94	HH v. Netherlands 13.05.96
23399/94	HWK v. Switzerland 31.08.94
23506/94	Friedrich Kremzow v. Austria 30.11.94
23555/94	Eric Maurel-Février v. France 26.02.97
23871/94	Knud Larsen v. Denmark 16.10.96
24472/94	Paul Rouviere v. France 27.11.96
24828/94	AG v. UK 27.11.96
24834/94	Zekeriya Kurtça v. Turkey 15.05.96
25145/94	RT v. UK 29.11.95
25163/94	Ottorino Savani v. Italy 09.04.97
25277/94 and others	Kevin Perks and others v. UK 12.10.96
25283/94 and four others	MC v. UK 02.03.00
25286/94	SD v. UK 09.09.98
25322/94	Jacobus Melkert and Zita Van Kooten v. Belgium 28.02.96
25373/94	Paul Smith v. UK 29.11.95
25564/94	Giorgio Filippello v. Italy 24.10.95
25602/94	ANM & Co. v. UK 29.11.95
25737/94	Eirik Lindkvist v. Denmark 09.09.98
25965/94	Helmut Radolf v. Austria 03.06.98
25994/94	Josef Jupin v. Sweden 22.10.97
26210/95	Michel Molliex v. France 02.07.97
26242/95	Pierre Lemoine v. France 01.04.99
27032/95	L-GR v. Sweden 15.01.97

Application Number (and Court Reference Number (If Any))	Parties and Date
27109/95	Raimo Kaira v. Finland 15.05.96
27170/95	Nino Di Gregorio and Chiara Recchia v. Italy 18.10.95
27284/95	De Warrene Waller v. UK 18.01.96
27372/95	MJ v. France 01.07.98
27483/95	Antonino Di Trapani v. Italy 14.10.96
27741/95	CB v. Switzerland 19.02.99
27849/95	Yves Bideau v. France 02.07.97
27917/95	JW v. Poland 11.09.97
27943/95	Maximilian Abas v. Netherlands 26.02.97
28190/95	Ian Poole v. UK 15.04.99
28332/95	HB v. Switzerland (No. 2) 14.01.98
28411/95	Ianka Riener v. Bulgaria 11.04.97
28455/95	Shaun Johnson v. UK 09.09.98
28990/95	Elisabeth Fichter v. France 04.09.96
29350/95	Jean and Danielle Lechaczynski v. France 03.03.99
29400/95	ML v. Finland 03.12.97
29634/96	Sarl Stem Turone and Roger Blanchet v. France 15.01.97
29800/96	Husein Basic v. Austria 16.03.99
29998/96	Société d'Edition des Artistes Peignant de la Bouche et du Pied v. France 26.02.97
30192/96	Johann Fontanesi v. Austria 08.02.00
30601/96	Riccardo D'Andrea v. Italy 27.11.96
32104/96	Ona Macioniene v. Lithuania 15.01.97
32367/96	APEH Üldözöttei-nek Szövetsége and others v. Hungary 31.08.99
32400/96	Michael Varley v. UK 06.01.00
32498/96	Jeanne-Pierre Liset v. France 14.01.98
32509/96	Covexim SA v. France 21.05.97
32667/96	Harri Ruohola v. Finland 23.10.97

Application Number (and Court Reference Number (If Any))	Parties and Date
33600/96	HL v. Finland 20.01.00
34070/96	MHS and RS v. France 09.09.98
34805/97	Skandinavisk Metallförmedling AB v. Sweden 09.09.98
35209/97	Mohamed Slimane Kaid v. France 16.03.99
35364/97	Désiré Collobert v. France 20.05.98
35673/97 and others	Schweighofer, Rauch, Heinemann & Mach v. Austria 24.08.99
36118/97	Bruno Taddei v. France 29.06.98
36855/97 and 41731/98	Frédéric Ponsetti and Christian Chesnel v. France 14.09.99
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98
37607/97	WS v. Poland 15.06.99
38434/97	Ephrem and Huguette Passet v. France 30.03.99
38841/97	Georgios Klavdianos v. Greece 21.09.99
38986/97	PW v. Denmark 15.06.99
39694/98	Francesco Pesoni v. Italy 26.01.99
39719/98	Caterina Andretta v. Italy 04.05.99
41041/98	Ugo Mastroeni v. Italy 14.12.99
41601/98 and 41775/98	Vidacar SA and Opergrup SL v. Spain 20.04.99
43457/98	Józef Lewandowski v. Poland 15.06.99
43604/98	Camille Gantzer v. France 05.10.99

TABLE 2(3)

Cases Which Have Considered Article 14

Application Number (and Court Reference Number (If Any))	Parties and Date
511/59	Gundmundur Gundmundsson v. Iceland 20.12.60
551/59	X v. Germany 31.05.59
673/59	AX and BX v. Germany 28.07.61
2145/64	X v. Belgium 01.10.65

Application Number (and Court Reference Number (If Any))	Parties and Date
2717/66	X & Co., Y, Z v. Germany 06.02.69
5168/71	X v. UK 14.07.72
5913/72	X v. Ireland 18.12.73
6087/73	X v. Austria 13.05.76
6163/73	X v. Austria 19.12.74
7427/76	Companies W, X, Y & Z v. Austria 27.09.76
7995/77	National Federation of the Self-Employed v. UK 11.07.78
8531/79	ABCD v. UK 10.03.81
9793/82	? v. UK 13.03.84
9908/82	X v. France 04.05.83
9939/82	Association X & others v. Italy 04.07.83
11088/84	Baudouin Hubaux v. Belgium 09.05.88
11089/84	Lindsay v. UK 11.11.86
11570/85	C and others v. Italy 12.10.88
11581/85 **17/1989/177/233**	Peter Darby v. Sweden 23.10.90
11592/85	BA Juby v. UK 16.07.87
11692/85	Gunnar Söderberg Byggnads AB v. Sweden 05.10.87
12560/86	Hugo Hanzmann v. Austria 16.03.89
12693/87	Evert Källander v. Sweden 06.03.89
13013/87	Wasa Liv v. Sweden 14.12.88
13580/88 **12/1993/407/486**	Karlheinz Schmidt v. Germany 18.07.94
13943/88	AK v. Austria 09.05.89
15464/89	AP v. Austria 08.10.91
17154/90	Antonio Amitrano and 159 others v. Italy 01.12.93
17522/90	Ortega Moratilla v. Spain 11.01.92
20060/92 **108/1995/614/702**	Anton Van Raalte v. Netherlands 21.02.97

Application Number (and Court Reference Number (If Any))	Parties and Date
20197/92	Ernst Körner v. Austria 06.09.95
21319/93 and others **117/1996/736/933-5**	National & Provincial Building Society and others v. UK 23.10.97
21663/93	Catharine Feteris-Geerards v. Netherlands 13.10.93
22651/93	JR v. Germany 18.10.95
24828/94	AG v. UK 27.11.96
26560/95	Alfred Mika v. Austria 26.06.96
26779/95	Pietrantonio Gianquitto v. Italy 04.09.96
27721/95	NAP Holdings UK Ltd v. UK 12.04.96
28411/95	Ianka Riener v. Bulgaria 11.04.97
30260/96	Association Sivananda de Yoga Vedanta v. France 16.04.98
30548/96	Helen MacGregor v. UK 03.12.97
36120/97	Christopher Crossland v. UK 09.11.99
36940/97	David Fielding v. UK 08.06.99
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98
38841/97	Georgios Klavdianos v. Greece 21.09.99
38986/97	PW v. Denmark 15.06.99
40477/98	Helene Musa v. Austria 10.09.98
41601/98 and 41775/98	Vidacar SA and Opergrup SL v. Spain 20.04.99
46757/99	Giuliana Galeotti Ottieri Della Ciaja and others v. Italy 22.06.99

TABLE 2(4)

Cases Which Have Considered Article 8

Application Number (and Court Reference Number (If Any))	Parties and Date
1497/62	Reformed Church of X v. Netherlands 14.12.62
2065/63	X v. Netherlands 14.12.65
5913/72	X v. Ireland 18.12.73
8066/77	09.07.80

Application Number (and Court Reference Number (If Any))	Parties and Date
9804/82	X v. Belgium (Hardy-Spirlet) 07.12.82
10473/83	Tom Lundvall v. Sweden 11.12.85
10828/84, 12661/87 and 11471/85 82/1991/334/407	Funke, Miailhe, Crémieux v. France 25.02.93
11088/84	Baudouin Hubaux v. Belgium 09.05.88
11089/84	Lindsay v. UK 11.11.86
11105/84 7/1989/167/223	Jacques and Janine Huvig v. France 27.03.90
11429/85	A v. France 10.10.88
11570/85	C and others v. Italy 12.10.88
12040/86	GM v. UK 04.05.87
12592/86	R v. Austria 06.03.89
12662/87	Riemeke Visser v. Netherlands 02.05.89
13800/88	K v. Sweden 01.07.91
18572/91	Société L and MT v. France 08.01.93
19341/92	Eero, Jorma & Pertti Korpoo v. Finland 17.05.95
21402/93	Peter Schnabl v. Austria 30.11.94
24828/94	AG v. UK 27.11.96
28411/95	Ianka Riener v. Bulgaria 11.04.97
29634/96	Sarl Stem Turone and Roger Blanchet v. France 15.01.97
30128/96	FS v. Germany 27.11.96
30192/96	Johann Fontanesi v. Austria 08.02.00
31513/96	Winfried Hildebrand v. Germany 16.04.98
36940/97	David Fielding v. UK 08.06.99

TABLE 2(5)

Cases Which Have Considered Article 9

Application Number (and Court Reference Number (If Any))	Parties and Date
1497/62	Reformed Church of X v. Netherlands 14.12.62
2065/63	X v. Netherlands 14.12.65
9781/82	E & GR v. Austria 14.05.84
10295/83	Ross v. UK 14.10.83
10358/83	C v. UK 15.12.83
10616/83	Jean and Bertha Gottesmann v. Switzerland 04.12.84
11088/84	Baudouin Hubaux v. Belgium 09.05.88
11581/85 **17/1989/177/233**	Peter Darby v. Sweden 23.10.90
11991/86	Beryl Hibbs and Maisie Birmingham v. UK 18.07.86
16345/90	RB v. Switzerland 08.01.93
17522/90	Ortega Moratilla v. Spain 11.01.92
17889/91	MB v. Switzerland 05.05.93
20471/92	Kustannus Oy Vapaa Ajattelija AB v. Finland 15.04.96
30260/96	Association Sivananda de Yoga Vedanta v. France 16.04.98

TABLE 2(6)

Cases Which Have Considered Other Articles of the Convention

Application Number (and Court Reference Number (If Any))	Parties and Date
945/60	X v. Germany 10.03.62
1936/63 **2/1966/5/10**	Fritz Neumeister v. Austria 27.06.68
2717/66	X & Co., Y, Z v. Germany 06.02.69
7427/76	Companies W, X, Y & Z v. Austria 27.09.76
10653/83	Sjöblad v. Sweden 06.05.85
11088/84	Baudouin Hubaux v. Belgium 09.05.88
11089/84	Lindsay v. UK 11.11.86
11464/85	Max von Sydow v. Sweden 08.10.87

Application Number (and Court Reference Number (If Any))	Parties and Date
11508/85 **13/1987/136/190**	Bjørn Barfod v. Denmark 22.02.89
11755/85	Walter Stocké v. Germany
12040/86	GM v. UK 04.05.87
12693/87	Evert Källander v. Sweden 06.03.89
12781/87	Rune Andersson v. Sweden 13.12.88
16345/90	RB v. Switzerland 08.01.93
17443/90	CB and AM v. Switzerland 02.12.92
17889/91	MB v. Switzerland 05.05.93
19070/91	JB v. Germany 01.07.92
19087/91	Olav Kristjánsson, Gudmundur Thórdarson and Thysk-Íslenska hf. v. Iceland 01.09.93
19117/91	KS and KS AG v. Switzerland 12.01.94
19341/92	Eero, Jorma & Pertti Korpoo v. Finland 17.05.95
19380/92 **7/1995/513/597**	Stephen Benham v. UK 10.06.96
21568/93	Adriano Borghini v. Italy 29.11.95
25283/94 and four others	MC v. UK 02.03.00
25286/94	SD v. UK 09.09.98
25737/94	Eirik Lindkvist v. Denmark 09.09.98
27032/95	L-GR v. Sweden 15.01.97
27284/95	De Warrene Waller v. UK 18.01.96
28190/95	Ian Poole v. UK 15.04.99
28332/95	HB v. Switzerland (No. 2) 14.01.98
28455/95	Shaun Johnson v. UK 09.09.98
29400/95	ML v. Finland 03.12.97
32367/96	APEH Üldözöttei-nek Szövetsége and others v. Hungary 31.08.99
32498/96	Jeanne-Pierre Liset v. France 14.01.98
35673/97 and others	Schweighofer, Rauch, Heinemann & Mach v. Austria 24.08.99

Application Number (and Court Reference Number (If Any))	Parties and Date
36855/97 and 41731/98	Frédéric Ponsetti and Christian Chesnel v. France 14.09.99
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98
38434/97	Ephrem and Huguette Passet v. France 30.03.99
38841/97	Georgios Klavdianos v. Greece 21.09.99
38986/97	PW v. Denmark 15.06.99
43457/98	Józef Lewandowski v. Poland 15.06.99

TABLE 3(1)

Cases in Which It Was Held That Article 6 Did Not Apply to Tax Proceedings

Application Number (and Court Reference Number (If Any))	Parties and Date
673/59	AX and BX v. Germany 28.07.61
1904/63 and 3 others	ABCD v. Netherlands 23.05.66
2145/64	X v. Belgium 01.10.65
2248/64	X v. Netherlands 06.02.67
2552/65	X v. Germany 15.12.67
2717/66	X & Co., Y, Z v. Germany 06.02.69
5421/72	X v. Belgium 05.02.73
8903/80	X v. Austria 08.07.80
9908/82	X v. France 04.05.83
12040/86	GM v. UK 04.05.87
12130/86	U v. Netherlands 12.03.90
12337/86	Helmut Rantner v. Austria 06.03.89
12347/86	IJzergieterij- en Machinefabriek J. Zimmer en Zonen BV v. Netherlands 13.04.89
13550/88	Walter Schraft v. Germany 09.12.88
13658/88	Marcel Beldicot v. France 05.10.90
14333/88	Lorenzo Riva v. Italy 02.12.92
14623/89	HK KG v. Austria 02.09.92

Application Number (and Court Reference Number (If Any))	Parties and Date
17443/90	CB and AM v. Switzerland 02.12.92
17888/91	ES v. Switzerland 17.01.95
19087/91	Olav Kristjánsson, Gudmundur Thórdarson and Thysk-Íslenska hf. v. Iceland 01.09.93
20471/92	Kustannus Oy Vapaa Ajattelija AB v. Finland 15.04.96
21294/93	Voggenberger Transport GmbH v. Austria 12.10.94
24834/94	Zekeriya Kurtça v. Turkey 15.05.96
25373/94	Paul Smith v. UK 29.11.95
25602/94	ANM & Co. v. UK 29.11.95
26242/95	Pierre Lemoine v. France 01.04.99
27109/95	Raimo Kaira v. Finland 15.05.96
27170/95	Nino Di Gregorio and Chiara Recchia v. Italy 18.10.95
27483/95	Antonino Di Trapani v. Italy 14.10.96
27943/95	Maximilian Abas v. Netherlands 26.02.97
28990/95	Elisabeth Fichter v. France 04.09.96
29998/96	Société d'Edition des Artistes Peignant de la Bouche et du Pied v. France 26.02.97
30601/96	Riccardo D'Andrea v. Italy 27.11.96
35364/97	Désiré Collobert v. France 20.05.98
37416/97 and others	Kappa Kanzlei und Bürobetriebs GmbH v. Austria 27.05.98
41601/98 and 41775/98	Vidacar SA and Opergrup SL v. Spain 20.04.99

TABLE 3(2)

Cases Which Considered the Length of Proceedings

Application Number (and Court Reference Number (If Any))	Parties and Date
1936/63 **2/1966/5/10**	Fritz Neumeister v. Austria 27.06.68
4517/70	Herbert Huber v. Austria 14.07.71
9182/80	ES v. Germany 12.03.86
10884/84	H v. Germany 13.12.84

Application Number (and Court Reference Number (If Any))	Parties and Date
12593/86	R and R v. Austria 20.05.92
13120/87	DC v. Italy 20.10.92
14184/88	Karl Rezek v. Austria 01.09.93
14669/89	Ivan Poupardin v. France 14.10.92
15306/89	Hedwig Kiraly v. Austria 09.12.91
15652/89	Claus Bacher v. Germany 17.04.91
15874/89	Jean-Rodolphe Benes v. France 13.10.93
15886/89	Stanislava Kremzow v. Austria 06.04.94
16052/90	Kurt Heydasch v. Germany 06.04.93
17617/91	Walter Poscher v. Austria 31.03.93
18305/91	Karl Pichler v. Austria 10.02.93
19005 & 6/91 48/1993/443/522 and 49/1993/444/523	Schouten & Meldrum v. Netherlands 09.12.94
19165/91	Friedrich Kremzow v. Austria 28.06.95
20197/92	Ernst Körner v. Austria 06.09.95
20363/92	Aldo Danielli v. Italy 06.09.93
20773/92	L v L v. Netherlands 02.09.94
21154/93	Gerhard Höfler v. Austria 17.05.95
21961/93 81/1997/865/1076	Wilhelmus Hozee v. Netherlands 22.05.98
22604/93	PW v. Austria 16.01.96
23229/94	HH v. Netherlands 13.05.96
23871/94	Knud Larsen v. Denmark 16.10.96
24828/94	AG v. UK 27.11.96
25564/94	Giorgio Filippello v. Italy 24.10.95
25965/94	Helmut Radolf v. Austria 03.06.98
27032/95	L-GR v. Sweden 15.01.97
27372/95	MJ v. France 01.07.98

Application Number (and Court Reference Number (If Any))	Parties and Date
27741/95	CB v. Switzerland 19.02.99
27849/95	Yves Bideau v. France 02.07.97
28332/95	HB v. Switzerland (No. 2) 14.01.98
29350/95	Jean and Danielle Lechaczynski v. France 03.03.99
29400/95	ML v. Finland 03.12.97
33600/96	HL v. Finland 20.01.00
34070/96	MHS and RS v. France 09.09.98
34805/97	Skandinavisk Metallförmedling AB v. Sweden 09.09.98
35209/97	Mohamed Slimane Kaid v. France 16.03.99
35673/97 and others	Schweighofer, Rauch, Heinemann & Mach v. Austria 24.08.99
38986/97	PW v. Denmark 15.06.99
39694/98	Francesco Pesoni v. Italy 26.01.99
41041/98	Ugo Mastroeni v. Italy 14.12.99

TABLE 3(3)

Cases Where Article 6 Applied to "the Determination of Civil Rights and Obligations"

Application Number (and Court Reference Number (If Any))	Parties and Date
10873/84 **4/1988/148/202**	Tre Traktörer AB v. Sweden 07.07.89
11760/85 **58/1990/249/380**	Editions Periscope v. France 26.03.92
12593/86	R and R v. Austria 20.05.92
13120/87	DC v. Italy 20.10.92
13616/88 **23/1993/418/497**	Liliane Hentrich v. France 22.09.94
18778/91	S v. Austria 01.12.93
19087/91	Olav Kristjánsson, Gudmundur Thórdarson and Thysk-Íslenska hf. v. Iceland 01.09.93
25564/94	Giorgio Filippello v. Italy 24.10.95
29800/96	Husein Basic v. Austria 16.03.99

Application Number (and Court Reference Number (If Any))	Parties and Date
30601/96	Riccardo D'Andrea v. Italy 27.11.96
34805/97	Skandinavisk Metallförmedling AB v. Sweden 09.09.98

TABLE 3(4):

Cases in Which Article 6 Applied to the Determination of a "Criminal Charge"

Application Number (and Court Reference Number (If Any))	Parties and Date
10828/84, 12661/87 and 11471/85 82/1991/334/407	Funke, Miailhe, Crémieux v. France 25.02.93
11464/85	Max von Sydow v. Sweden 08.10.87
12130/86	U v. Netherlands 12.03.90
12347/86	IJzergieterij- en Machinefabriek J. Zimmer en Zonen BV v. Netherlands 13.04.89
12547/86 3/1993/398/476	Michel Bendenoun v. France 24.02.94
12670/87	H v. Sweden 10.03.88
12693/87	Evert Källander v. Sweden 06.03.89
15967/90	Edward McLoughlin v. Ireland 06.07.92
17443/90	CB and AM v. Switzerland 02.12.92
18572/91	Société L and MT v. France 08.01.93
18656/91	Edda Perin v. France 01.12.92
19117/91	KS and KS AG v. Switzerland 12.01.94
19958/92 71/1996/690/882	AP, MP, TP v. Switzerland 29.08.97
20919/92 75/1996/694/886	EL, RL, JOL v. Switzerland 29.08.97
21351/93 9/1997/793/994	JJ v. Netherlands 27.03.98
23399/94	HWK v. Switzerland 31.08.94
25322/94	Jacobus Melkert and Zita Van Kooten v. Belgium 28.02.96
25994/94	Josef Jupin v. Sweden 22.10.97
27372/95	MJ v. France 01.07.98
27849/95	Yves Bideau v. France 02.07.97

Application Number (and Court Reference Number (If Any))	Parties and Date
28990/95	Elisabeth Fichter v. France 04.09.96
29350/95	Jean and Danielle Lechaczynski v. France 03.03.99
32509/96	Covexim SA v. France 21.05.97
34070/96	MHS and RS v. France 09.09.98
35209/97	Mohamed Slimane Kaid v. France 16.03.99
36118/97	Bruno Taddei v. France 29.06.98
37607/97	WS v. Poland 15.06.99
43604/98	Camille Gantzer v. France 05.10.99

TABLE 4

Essential Reading

Application Number (and Court Reference Number (If Any))	Parties and Date	Law Reports
10828/84, 12661/87 and 11471/85 82/1991/334/407	Funke, Miailhe, Crémieux v. France 25.02.93	16 EHRR 297; E; Series A, No.256-A, B & C
11581/85	Peter Darby v. Sweden 23.10.90	13 EHRR 774; E
11760/85 58/1990/249/380	Editions Periscope v. France 26.03.92	14 EHRR 597; E; Series A, No.234-B
12547/86 3/1993/398/476	Michel Bendenoun v. France 24.02.94	18 EHRR 54; E; Series A, No.284
13013/87	Wasa Liv v. Sweden 14.12.88	58 DR 163; E
13616/88 23/1993/418/497	Liliane Hentrich v. France 22.09.94	18 EHRR 440; E; Series A, No.296-A
19958/92 71/1996/690/882	AP, MP, TP v. Switzerland 29.08.97	26 EHRR 541; E; Reports 1997-V
20060/92 108/1995/614/702	Anton Van Raalte v. Netherlands 21.02.97	24 EHRR 503; E; Reports 1997-I
21351/93 9/1997/793/994	JJ v. Netherlands 27.03.98	28 EHRR 168; E; Reports 1998-II
27943/95	Maximilian Abas v. Netherlands 26.02.97	88-B DR 120; E