Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Katerina Perrou, Doctor at the *University of Athens Law School* and Natalia Vorobyeva, Former Lawyer at the *European Court of Human Rights*, both reporter of the OPTR Unit for the European Court of Human Rights.

This report contains a summary of court cases, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 2019, in 12 relevant areas identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*":

European Court of Human Rights: this report condenses cases decided in 2019, as well as a non-exhaustive list of cases dealing with tax issues communicated to the Court in tax matters throughout 2019, relevant for the European Charter of Human Rights.

IBFD REPORT

ECtHR Case Law on Taxation (February – December 2019)

General comment: In 2019, most of the tax-related cases were examined by a Committee of the Court rather than by a Chamber (a committee examines those cases where well-established case law exists). This means that the trend of simplifying the Court's procedure is ongoing; the judgments and decisions are delivered faster. However, one should remember that the Committee's judgments become final on the date of their delivery and cannot be challenged before the Grand Chamber.

ECHR Article	Case	Date	Facts	Decision	Comments
Article 7 Article 1 of Protocol no. 1	***Lopac and Others v. Croatia***, nos. 7834/12 and 3 others (Committee)	10 October 2019	All applicants had permanent residence in countries other than Croatia. Customs Administration, having found that their registered domicile was in Croatia, initiated administrative proceedings against them and ordered the applicants to pay import duties for having imported a vessel or a car into Croatia. The third applicant was also found guilty and fined for having committed an administrative offence (importing a car into Croatia without paying relevant taxes). All applicants complained to the Constitutional Court about the breach of their rights but to no avail.	**Article 1 of Protocol no. 1** (1st, 2nd and 4th applicants complained that they had been living abroad and thus, in accordance with Annex C to the Istanbul Convention, had not been bound to pay import taxes). Non-exhaustion plea by Government: rejected. The first and the fourth applicants did not claim the breach of their constitutional right to property in their complaints to the Constitutional Court. However, they argued that the administrative authorities' decisions ordering them to pay import taxes had been founded on an erroneous interpretation of the term "person resident" in Article 5 of Annex C to the Istanbul Convention. This was	**Main issue – quality of law in fiscal matters** (foreseeability). See on this issue *Shchokin v. Ukraine* (no. 23759/03 and 37945/06, § 56, 14 October 2010) and *Serkov v. Ukraine* (no. 39766/05, § 42, 7 July 2011). This case is a follow-up to *Zaja v. Croatia* (no. 37462/09, 04 October 2016). The case concerns the **interpretation of term "resident of a Contracting State"** (Article 4 of the OECD Model Convention) and term **"person resident"** (Article 5 of Annex C to the Istanbul Convention on Temporary

				sufficient for the Court to conclude that the applicants had raised in substance the issue at the domestic level. <u>Violation of Article 1 of Protocol no. 1</u>: interference with the applicants' rights was based on law, which did not meet the qualitative requirement of foreseeability. In the *Zaja* case the Court has already found that the practice of application of Article 5 of Annex C to the Istanbul Convention in Croatia at the relevant time had been inconsistent. It had given rise to uncertainty and ambiguity as to who may benefit from the exemption from import duties (in particular, whether the decisive element was *domicile* or *residence*). **Article 7** (4th applicant complained that his actions did not amount to an administrative offence and that he domestic authorities had wrongly interpreted Article 5 of Annex C to the Istanbul Convention): **violation** for the same reasons as above (unforeseeability of law).	Admission).

				Article 41 (award of pecuniary and non-pecuniary damage): <u>claims rejected</u>. The Court considered that the most appropriate way of redress would be reopening of the proceedings complained of at the domestic level.	
Article 6 Article 1 of Protocol no. 1	***Baltic Master Ltd. v. Lithuania***, no. 55092/16 (Committee)	26 March 2019	In 2013 the Vilnius customs office carried out an audit of the applicant company's accounting data, related to import of certain goods from a company registered in the USA. As a result of the audit, the applicant company was ordered to pay customs tax, VAT, late payment interest and a fine in total amount of EUR 646,361. The customs office found that the applicant company and the seller in the USA were related and refused to approve 23 import declarations because the value of the goods had been considerably lower than that declared by other importers. Following the applicant's complaint, the Tax Disputes Commission exempted the applicant company from paying late interest (EUR 7,854). The applicant company later lodged	**Article 6 § 1** The applicant complained that the Supreme Administrative Court had refused to refer a question to the CJEU for a preliminary ruling and had failed to provide adequate reasons for its refusal. <u>Applicability of Article 6</u> The Court considered that proceedings in that case were "criminal" in nature, taking into account (i) the general character of the legal provisions imposing fines for tax law violations, (ii) the purpose of the penalty which was deterrent and punitive, and (iii) severity of the sentence (criminal offence for which the applicant company was fined in the amount of EUR 47,236). Article 6 was therefore applicable under its criminal head. The Court found **a violation of Article 6 § 1** in the applicant company's case. It noted, firstly,	**Main issue – the right under the Convention to have a case referred to the CJEU for a preliminary ruling.** The judgment contains a comprehensive recap of the Court's general principles concerning the domestic courts' refusal to seek a preliminary ruling from the CJEU. In particular, the domestic courts are obliged to state the reasons why they have considered it unnecessary to seek a preliminary ruling.

			a complaint to the Vilnius Regional administrative court, asking it to request a preliminary ruling from the CJEU as regards the interpretation of the EU customs law. The court rejected the complaint as unfounded, stating that no question as to the interpretation of the EU law had arisen. In its appeal against this decision, the applicant company indicated that the case law of the CJEU regarding the application of the Community Customs Code was inconsistent and suggested to refer six detailed questions to the CJEU. The Supreme Administrative Court rejected the appeal, pointing out that the application of the EU law in that case was clear enough and there was no need to refer a question to the CJEU for a preliminary ruling.	that the applicant company's request to seek a preliminary ruling from the CJEU was very specific and included 6 questions. Secondly, the Supreme Administrative Court failed to make extensive references to the relevant case law of the CJEU to show that it was well-developed. It was therefore unclear on what specific legal grounds the Supreme Administrative Court considered the application of the EU law so obvious that no doubts could arise. **Article 1 of Protocol no. 1** The applicant company complained that because of the Supreme Administrative Court's refusal to request a preliminary ruling from the CJEU, it had had to pay various taxes and had been deprived of EUR 638,507. The Court rejected this complaint as manifestly ill-founded without providing any reasons.	
Article 1 of Protocol no. 1	***S.C. Totalgaz Industrie S.R.L. v. Romania***, no. 61022/10 (Committee)	3 December 2019	In 2003, the applicant company imported industrial machinery and IT technology for it. It declared the import operations to customs and paid the duties and taxes, including the VAT. Pursuant to the decision no.	The applicant company complained that the IT technology it had imported was arbitrarily subject to VAT and that the amount of the surcharges and penalties was disproportionate. The Court noted that the parties	**Main issue – proportionality of interference with the right to property of a taxpayer company, which acted in good faith** (excessive and disproportionate burden).

			368/1998 of the General Directorate of Customs, the value of the imported IT technology was not taken into account because it was exempt from the VAT. Following the audit carried out by the tax administration, the applicant was obliged to pay approximately EUR 37,000 in respect of the VAT for the import of IT technology, and EUR 52,000 in respect of penalties. The tax administration stated that the decision no. 368/1998 had been repealed and replaced by the decision no. 7/2006, which made import of IT technology subject to VAT. The applicant company complained to the court, which allowed its complaint because it had complied with the legal provisions in force at the material time and the decision no. 7/2006 could not be applied retroactively. The appellate court revoked this judgment, having found that the IT technology was a separate product subject to the VAT under law no. 345/2002. The	disagreed on whether the interference with the applicant company's rights had been lawful. It accepted that the interference was provided for by law no. 345/2002, and that it was aimed at collecting VAT, which was in public interest. When assessing the proportionality of interference, the Court took into account the following. First of all, the applicant company acted with due diligence: it declared to customs all the imported goods, including IT technology, and provided all documents to the authorities, which enabled them to calculate the duties and taxes linked to import. There was therefore no intention on its part to evade payment of import duties. Secondly, the applicant company was not obliged to remedy the misinterpretation of the VAT legislation by the customs authorities because it had submitted all necessary documents to it. The applicant company could not foresee that the tax authorities would in the future consider the calculation of VAT by customs' authorities incorrect. Lastly, the amounts of surcharges	

			decision no. 7/2006 had no importance in that case. As a result, the applicant had to pay EUR 37,000 in respect of VAT and EUR 84,000 in respect of surcharges and late payment interest.	and penalties were significantly higher than the amount claimed in respect of VAT. They are manifestly excessive, given that the applicant acted in good faith. The Court concluded that the applicant company had to bear an excessive and disproportionate burden in that case and found a **violation of Article 1 of Protocol no. 1**.	
Article 8 Article 13	***Ilieva v. Bulgaria***, no. 22536/11 (Committee)	12 December 2019	The applicant's flat and the premises of the company managed by her and her partner was searched by the police officers; they seized numerous items. This was done without presentation of a search warrant or explanation whether the applicant was being investigated for an offence. Subsequently the applicant was informed that the records of search and seizure of 19 October 2010 had been approved by the judge on 20 October 2010. It became clear later that the applicant and her partner were being investigated by the prosecution authorities for tax evasion.	The applicant complained that the search-and-seizure operation of 19 October 2010 had been unlawful, and that she had had no effective means to contest it. The Court found a **violation of Article 8** in that case. The interference with the applicant's rights to home and private life was not "in accordance with the law" because it was carried out without prior judicial warrant. It considered that since the investigation against the applicant and her partner concerned alleged tax evasion, there could be doubts as to the urgency of the situation. The Court also found a violation of Article 13, taken in conjunction with Article 8, because the applicant had no effective remedy to complain of unlawful search and	**Search of the applicant's home and office without prior judicial warrant** (suspicion of tax evasion). The case is a follow-up to *Gutsanovi v. Bulgaria* (no. 34529/10, 15 October 2013).

				seizure.	
Article 6	***Grytsa and Shadura v. Ukraine****, nos. 3075/13 and 63879/13 (Committee) *Only the case of Ms. Shadura is relevant	27 June 2019	The applicant moved from the territory of the Republic of Moldova controlled by the so-called "Moldavian Republic of Transdnestria" (MRT) to Ukraine to take up permanent residence. Under domestic law, repatriating Ukrainians were entitled to the tax-free and duty-free import of their foreign-registered vehicles. However, the customs office refused to apply this tax exemption in the applicant's case on the grounds that the car had not been registered by the appropriate authorities of the Republic of Moldova. She challenged this refusal before the administrative courts. The first-instance court allowed her claim, this judgment was upheld on appeal but the Higher Administrative Court later quashed both decisions and dismissed the claim.	<u>Article 6 § 1: breach of the equality of arms in the course of the appeal proceedings</u>. The Court found a **violation** of that provision because the applicant had never received a copy of the customs' authorities appeal to the Higher Administrative Court and had not been notified of the proceedings before that court by any means. The domestic courts therefore deprived the applicant of the opportunity to respond to the appeal lodged in her case and fell short of their obligation to respect the principle of equality of arms.	
Article 4 of Protocol no. 7	***Ragnar Thorisson v. Iceland***, no. 52623/14 (Committee)	12 February 2019	Following the audit of the applicant's tax return for 2006, the Directorate of Tax Investigation informed the	The applicant complained that he was punished twice for the same offence. Following the test developed in its	**Main issue – duplication of tax and criminal proceedings for failure to provide accurate information in a tax return.**

			applicant about the reassessment of his taxes. The applicant was also informed about possible criminal proceedings. Following this report, the Directorate of Internal Revenue found that the applicant had failed to declare significant capital gains received in 2006. It accordingly revised the declared amounts, re-assessed the applicant's taxes and imposed a 25% surcharge. The applicant paid the additional tax and the surcharge. The decision became final in February 2012 (the applicant did not appeal). In March 2012, the Directorate of Tax Investigation reported the matter to the Special Prosecutor and the applicant was interviewed by the police. In October 2012, he was indicted for aggravated tax offences. By the judgment of 16 May 2013, the District Court found the applicant guilty for having under declared his income in his tax return and sentenced him to three months' imprisonment, suspended for two years, and the payment of	previous case law, the Court found that: (i) both sets of proceedings in that case concerned a "criminal" offence (following the "Engel criteria"); (ii) the applicant's conviction and the imposition of tax surcharges were based on the same failure to declare income; the tax proceedings and the criminal proceedings concerned the same period of time and the same amount of evaded taxes (the *idem* part is present); (iii) not necessary to determine whether and when the tax proceedings became "final"; (iv) the tax proceedings and the criminal proceedings did not progress concurrently at any point and the police's investigation was independent; therefore, there was no sufficiently close connection in substance and in time between them to be compatible with the *bis* criterion. Accordingly, **the Court found a violation of Article 4 of Protocol no. 7**. <u>Article 41</u> The Court considered that the	This case is a follow-up to ***A and B v. Norway*** ([GC], no. 24130/11 and 29758/11, 15 November 2016) and ***Jóhannesson and Others v. Iceland*** (no. 22007/11, 18 May 2017). It concerns the 4th criterion of the *ne bis in idem* test, namely the duplication of proceedings.

			EUR 152,000. In May 2014 the Supreme Court upheld the applicant's conviction but reduced the fine to EUR 136,000, taking into account the tax surcharge imposed.	finding of a violation cannot be said to fully compensate the applicant for the sense of injustice and frustration that he must have felt. He was awarded EUR 5,000 for non-pecuniary damage.	
Article 4 of Protocol no. 7	***Bjarni Ármannsson v. Iceland***, no. 72098/14 (Committee)	16 April 2019	The applicant was the CEO of the Iceland's largest banks, Glitnir, from 1997 to 2007. In July 2009, the Directorate of Tax Investigation initiated an audit of the applicant's tax returns. In October 2010, the applicant was informed about the referral of the case to the Directorate of Internal Revenue for possible reassessment of his taxes and possible criminal proceedings. In an e-mail of 11 November 2010, the Directorate of Tax Investigation accepted that a decision on possible criminal procedure would be postponed until the Directorate of Internal Revenue had issued its notification letter on the reassessment of the applicant's taxes. In January 2012, the applicant received the final notification letter. On 1 March 2012, the Directorate of Tax Investigation reported the	The applicant complained that he was punished twice for the same offence. Following the test developed in its previous case law, the Court found that: (i) both sets of proceedings in that case concerned a "criminal" offence (following the "Engel criteria"); (ii) the applicant's conviction and the imposition of tax surcharges were based on the same failure to declare capital income; the tax proceedings and the criminal proceedings concerned the same period of time and the same amount of evaded taxes (the *idem* part is present); (iii) not necessary to determine whether and when the tax proceedings became "final"; (iv) the police conducted its own independent investigation, which resulted in criminal conviction; the tax proceedings and the criminal	**Main issue – duplication of tax and criminal proceedings for failure to provide accurate information in a tax return.** This case is a follow-up to ***A and B v. Norway*** ([GC], nos. 24130/11 and 29758/11, 15 November 2016) and ***Jóhannesson and Others v. Iceland*** (no. 22007/11, 18 May 2017). It concerns the 4th criterion of the *ne bis in idem* test, namely the duplication of proceedings.

			matter to the Special Prosecutor for criminal investigation. The Directorate of Internal Revenue ruling was issued on 15 May 2012; it stated that the applicant had failed to declare significant capital income received from 2006 to 2008. The applicant's taxes were re-assessed and he was imposed a 25% surcharge, which he paid. In August 2012, this decision became final. In September 2012, the police interrogated the applicant for the first time. In December 2012, he was indicted for having failed to declare income in his tax returns of 2007 to 2009. By a judgment of 28 June 2013 the applicant was convicted as charged and sentenced to six months' imprisonment, suspended for 2 years, and the payment of a fine (about EUR 241,000), the amount of which was fixed with regard to the tax surcharges imposed. On 15 May 2014, the judgment became final.	proceedings progressed in parallel only between 1 March 2012, when the matter was reported to the Special Prosecutor, and August 2012, when the Directorate of Internal Revenue's decision became final (for a period less than 5 months). The applicant was indicted 4 months after this decision became final and convicted more than a year after the decision of the Internal Revenue was issued. There was therefore no sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings to be compatible with the *bis* criterion. The Court found a **violation of Article 4 of Protocol no. 7**. <u>Article 41</u> The Court considered that the finding of a violation cannot be said to fully compensate the applicant for the sense of injustice and frustration that he must have felt. He was awarded EUR 5,000 for non-pecuniary damage.	

European Court of Human Rights: inadmissibility decisions

Article 1 of Protocol no. 1	***Katona v. Hungary***, no. 606/14 (Committee)	12 November 2019	The applicant terminated her employment at a State-owned company. A certain part of her revenue due on dismissal was taxed at a 98% rate (in the amount of ~EUR 21,800). This amount of special tax was levied at the source by the employer. The applicant applied to have the special tax obligation erased. The tax authority ordered the deletion of the amount of special tax, and, in its stead, levied a 25% flat-rate public charge in the amount of ~EUR 5,500. It reimbursed the remaining special tax to the applicant.	The applicant complained that the imposition of a 98% tax on part of her remuneration due on termination of her employment breached her rights under Article 1 of Protocol no. 1. The Court found that her **application is manifestly ill-founded and rejected it as inadmissible**. It noted that this case is not similar to ***R.Sz. v. Hungary*** (no. 41838/11, 2 July 2013) because the applicant's tax obligation under the 98% special tax regime was ultimately replaced by a flat-rate public charge of 25%, which is not excessive. Moreover, she was reimbursed the remaining tax by the authorities.	**Main issue – special tax regime for severance pay for state employees in Hungary** See cases ***R.Sz. v. Hungary*** (no. 41838/11, 2 July 2013) and ***M.A. v. Hungary*** (dec.) (no. 36642/14, 28 November 2017).
Article 1 of Protocol no. 1 Article 6	***Formela v. Poland***, no. 31651/08 (Chamber)	5 February 2019	The applicant, an active taxpayer at the time, purchased goods from supplier K. and services from supplier S. These transactions appeared to constitute a taxable supply under the VAT Act. Both suppliers issued invoices to the applicant, which he paid in full. He also recorded all transactions in his accounting records and retained the originals of the invoices. Later	**Article 1 of Protocol no. 1** The applicant complained that, in spite of having fully complied with his statutory VAT reporting obligations, the domestic authorities had deprived him of the right to offset the input VAT because the two suppliers had either not complied, or had been late in complying, with their own VAT reporting and payment obligations. Government's preliminary	**Main issues – legitimate expectation of the taxpayer to have the input VAT paid to the supplier deducted** and the **proportionality of interference with the applicant's rights by the refusal of the VAT deduction**. This case is a follow-up to *"Bulves" AD v. Bulgaria* (no. 3991/03, 22 January 2009) and *Atev v. Bulgaria* ((dec.),

			the applicant filed his VAT returns with the tax office. The applicant's output VAT in the said tax returns was reduced by his input VAT in the amount shown on the relevant invoices of suppliers K. and S. Later supplier K. informed tax authorities that the invoices in question had been stolen; the company was later investigated for issuing fraudulent invoices. Supplier S. filed its VAT forms with the tax office after the statutory deadline and paid the VAT amounts arising from the respective transactions with the applicant. In 2004, the tax authorities decided to conduct a VAT audit of the applicant's business. They issued tax assessments for the applicant, refusing him to offset the input VAT paid to K. because the supplier had not kept copies of the invoices and had paid a lower amount of input VAT for four months. While the authorities clearly established that supplier K. had breached the VAT regulations, they considered that the applicant was liable to pay VAT	objection as to *ratione materiae*: since the applicant has not complied with the statutory conditions for the VAT deduction, he did not have "possessions" (even within the meaning of a "legitimate expectation"). As regards the applicant's transactions with supplier S., the Court noted that (i) domestic courts established that S. had not had a valid VAT registration; (ii) unlike in *"Bulves" AD* the domestic authorities undertook a thorough review of the relevant circumstances; and (iii) the State provided legal and practical means for taxpayers to check the VAT status of their business partners. The applicant failed to use the relatively straightforward verification mechanism, which was put in place by the State. He therefore did not have a "legitimate expectation" to be allowed to deduct VAT as regards his transactions with supplier S.: this complaint was rejected as incompatible *ratione materiae*. As regards the applicant's transactions with supplier K., the Court did not examine the Government's objection *ratione*	no. 39689/05, 18/03/2014). In the present case, the Court supports a more rigid approach of the domestic authorities towards diligent traders with the aim of securing the collection of taxes (and protecting fiscal stability of the state). In particular, a purchaser is liable for any illegal actions on the part of its supplier within the VAT reporting system.

			on the received supply. They ordered the applicant to pay VAT arrears into the State budget, together with interest (about EUR 14,679), pointing out that a purchaser was liable for any illegal actions on the part of its supplier. The administrative courts upheld this decision. As regards the applicant's transactions with supplier S., the authorities also refused him the right to offset the input VAT that he had paid to S. The reason was that at the time of the transactions, S. had not been a registered VAT payer, had not filed its VAT declaration and had not paid the output VAT. The tax authorities ordered the applicant to pay the VAT arrears into the State budget, together with interest (about EUR 731). The administrative courts upheld this decision, pointing out that a buyer could seek compensation from a dishonest business partner by means of a civil law action.	*materiae*. It considered that this complaint was manifestly ill-founded on the following grounds. The Court examined the complaint against the *"Bulves" AD* criteria (§ 71) and found that the applicant did comply with his own statutory VAT obligations. The issue in the present case was however whether the application of clearly established rules of Polish VAT law on the applicant imposed an excessive burden on him. The supplier's non-compliance with the statutory requirements resulted in the refusal for the applicant to deduct the input VAT. However, this situation was balanced by the existence of a remedy within the framework of civil proceedings for damages, allowing the applicant to seek and obtain compensation from his supplier (see *Atev*, § 36). **Article 6** The applicant's complaint about the unfairness of the proceedings regarding the tax assessment was rejected as incompatible *ratione materiae,* with reference to *Ferrazzini v. Italy* (§§ 29-31).	
Article 6	***Bley v. Germany***, no. 68475/10	25 June 2019	The applicant was a manager and co-proprietor of a company	**Article 6 § 1** The applicant complained that the	**Main issues – the right under the Convention to have a case**

Article 7	(Committee)		that supplied milk, based in the former German Democratic Republic (GDR). From 1996, his company marketed less milk than the individual quota set for it by the Council of the European Communities. At the same time, certain milk suppliers from the Land of Hesse (in the former Federal Republic of Germany), who delivered milk to the same dairy, exceeded their individual quotas and risked paying a levy of 115% on the surplus ("milk levy"). Under the German law, there was a prohibition on transferring quotas between the territories of the former GDR and the former FRG. The applicant invented a leasing scheme, as a result of which the milk supplier in Hesse was in position to deliver milk which was counted against the applicant's quota. In 2006, the applicant was convicted of tax evasion. As a result of his scheme, the farmers in Hesse had avoided paying more than EUR 283,000 of surplus levy. During the proceedings the applicant argued that he had	Federal Constitutional Court had failed to refer questions to the CJEU for a preliminary ruling on the lawfulness of the surplus levy imposed under EU law, and had failed to provide adequate reasoning for its refusal to do so. The Court rejected this complaint as manifestly ill-founded for the following reasons. The Convention does not guarantee as such any right to have a case referred to the CJEU for a preliminary ruling under Article 234 of the TFEU. However, the refusal of a request for such a referral may infringe the fairness of proceedings if it appears to be arbitrary. In the present case the Federal Constitutional court refrained from exercising its competence of review in respect of the milk levy, for that levy was based fully on EU law and therefore subject to review by the CJEU. In any case, the levy in question had already been assessed in the light of the right to property, and the correct application of EU law was so obvious as to leave no scope for any reasonable doubt. The Federal Constitutional Court's refusal to refer the case for a preliminary	**referred to the CJEU for a preliminary ruling; the need to seek professional advice in tax matters; foreseeability of law setting criminal liability for tax evasion.**

			sought an advice from a tax accountant who reassured him that there were no problems in terms of tax law. However, the courts, after questioning the tax accountant, considered that the applicant was obliged to inform him about the problematic situation, or to consult a lawyer. Alternatively, he could have made enquiries with the tax office or with the Chamber of Agriculture. The Federal Constitutional Court rejected his complaint. It did not examine whether the surplus levy violated the applicant's property rights or other basic rights, as the amount of surplus levy to be charged for excess milk production was established in Council Regulation (EEC) no. 3950/92.	ruling to the CJEU was not arbitrary. **Article 7** The applicant complained that the provisions relied upon by the domestic courts were insufficiently precise to justify his criminal conviction. The Court rejected this complaint as manifestly ill-founded because the criminal implications of the applicant's actions were sufficiently foreseeable for him as a dairy farmer working in a highly regulated market. He had clearly known about the prohibition of transferring quotas of dairy producers in the former GDR to those in the former FRG. In any case, the applicant could have sought and obtained appropriate advice, for example from a lawyer or the Chamber of Agriculture.	
Article 6 Article 7	***Karalar v. Turkey***, no. 1964/07 (Committee)	11 June 2019	The applicant, a certified public accountant, was accused of complicity in tax evasion for confirming the contents of forged invoices and being part of a scheme set up to obtain unlawful tax refunds from the State. Later the courts dropped these charges. Meanwhile, the	**Article 6 § 3 (b) and (c**) The applicant complained that she had been prevented from challenging the tax penalty imposed on her, as she had been served with the expert report on which the penalty had been based when she had been in prison. **Article 6 § 2**	**Main issue – delay with lodging an appeal against tax penalty cannot be justified by the fact of being in prison.** Interestingly, the Court chose to dismiss this complaint as lodged out of time rather than for non-exhaustion of

			tax office issued a tax penalty notice against the applicant, ordering her to pay a tax penalty for potential lost revenue and for causing loss of tax and complicity in tax evasion. The applicant failed to lodge an action against the tax penalty before the tax courts within the statutory period of 30 days. After having been served with the payment order for the tax penalty, she lodged an action to the courts seeking annulment of this order. Her action was dismissed because complaints concerning the levying and assessment of tax could not be examined in actions lodged against payment orders.	The imposition of a tax penalty on the applicant for potential lost revenue at a time when the criminal proceedings against her had been ongoing had infringed her right to the presumption of innocence. **Article 7** The Supreme Administrative Court failed to take into account the annulment of a specific provision of the Tax Procedure Act. The Court dismissed all of her complaints as time-barred (six-month rule). It considered that the applicant should have challenged the tax penalty imposed on her within the thirty-day time limit before the tax courts. The mere fact of being in prison is not sufficient to constitute a "special circumstance" absolving her from the requirement to use the above-mentioned domestic remedy.	domestic remedies. The second reason could have been more logical in this case.

PART B: Cases communicated in 2019

ECtHR Communicated cases 2019			
Article	**Case**	**Date Communicated**	**Issues**
Article 1 Protocol 1	Application no. 38785/18, Silvano RADOBULJAC against Croatia	6 September 2019	Was the fact that the State did not pay its debt to the applicant and at the same time collected its claim against him by way of enforcement in accordance with the requirements of Article 1 of Protocol No. 1 to the Convention? In particular, was the decision refusing to extinguish the applicant's tax debt by offsetting it with his enforceable claim against the State lawful and proportionate to the aim in the general interest? Did this decision impose a disproportionate and excessive burden on the applicant?
Article 1 Protocol 1	Application no. 69776/17 HI TECH CORPORATION DOO against North Macedonia	24 May 2019	In 2009 the applicant company was subject to a tax audit in which it was ordered to pay further income tax in the amount of 1,9 million denars (MKD) for 2007. In 2012, the authorities reopened the proceedings for that year on the basis of new evidence. A fresh tax audit was carried out for 2007, the resulting effect of which was a new decision of the tax authorities ordering the applicant company to pay income tax amounting to 20,6 million MKD, plus interest. The applicant company unsuccessfully challenged this decision before the Ministry of Finance and the administrative courts complaining, inter alia, that the evidence which had served as basis for reopening of the proceedings had been already admitted in the 2009 tax audit and assessed by the tax authorities
Article 1 Protocol 1 Article 13	Application no. 25311/17 IMMOREKS MAKEDONIJA DOO SKOPJE against North Macedonia	2 September 2019	The applicant company complains under Article 1 of Protocol No.1 to the Convention and Article 13 of the Convention that the domestic authorities established its tax obligation in respect to the VAT deduction entitlement contrary to the relevant domestic law and that no effective procedure to challenge that decision was available to it.
Article 1 Protocol 1	Application no. 44521/11 E-İLETİŞİM	8 March 2019	The application concerns the applicant company's request for the reimbursement of a certain amount of tax paid to the Istanbul Metropolitan Municipality. The applicant company's request was partially granted by the Istanbul Tax Court for the years 2005 and 2006.

	HİZMETLERİ TİC. VE SAN. A. Ş. against Turkey		The applicant company complains of a violation of its rights under Article 1 of Protocol No. 1 to the Convention on account of the lack of any interest applied to the amount reimbursed.
Article 1 Protocol 1	Application no. 52464/15 Anatoliy Anatolyevich AGAPOV against Russia	29 January 2019	As regards the domestic courts' decision to impose the duty to pay the tax arrears, penalty and a fine, owed by the limited liability company in which the applicant was the general director, on the latter, has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 276-304, 28 June 2018)?
Article 1 Protocol 1	Application no. 6215/18 Mihály NAGY against Hungary	19 November 2019	The application concerns the attachment of two motorbikes which the applicant bought from a company. He submits that the attachment was unjustified since it ensued from the tax debts of the previous owner and was already statute-barred. Moreover, the claim in question was a minor sum and did not justify the attachment of two valuable motorbikes worth several thousand euros. As a result, he could not exercise his owner's rights from April 2014 to July 2017
Article 1 Protocol 1	Application no. 83901/17 HOLLAND FARMING MAKEDONIJA DOO and Stefan DIMKOVSKI against North Macedonia	2 September 2019	The application concerns customs misdemeanour proceedings in which the applicants were fined for failing to report to the authorities 240 bumblebees imported by the applicant company (whose estimated value was 10,824 denars (MKD)), thereby evading customs duties in the amount of MKD 1,949. The applicant company was fined with EUR 5,000 and its manager (the second applicant) was fined with EUR 1,000. The undeclared goods were seized. On 28 June 2017 the Higher Administrative Court finally upheld the fines imposed on the applicants. The applicants complain under Article 6 of the Convention that the fines were a disproportionate interference with their right to property. The Court considers that the complaint falls to be examined under Article 1 of Protocol No.1 to the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018)
Article 1 Protocol 1	Application no 72968/14 GOSPODĂRIA ŢĂRĂNEASCĂ « ALCAZ G.A. » against Moldova	13 June 2019	The request concerns a decision by the tax authorities that the applicant company was obliged to pay value added tax a second time. The applicant company alleges under Article 1 of Protocol No. 1 to the Convention that, despite full compliance with its legal obligations with regard to VAT reporting, the national authorities deprived it of the right to deduct VAT that it had paid on a delivery of goods, because the supplier did not comply with its own obligations with regard to VAT declaration.

Article 6 (access to a court)	Application no. 63398/10 ARI-TEM LTD. ŞTİ. against Turkey	18 December 2019	The application concerns the alleged breach of the applicant company's right of access to a court whereby it challenged the tax penalty imposed on it. The applicant complains under Article 6 of the Convention that the domestic courts dismissed its cases in which it contested the validity of the service of the tax penalty notices issued in respect of it to an employee of a different company registered at a different address.
Article 6§1 (fair trial)	Application no. 11200/19 Francisco Javier MELGAREJO MARTINEZ DE ABELLANOSA against Spain	2 July 2019	The application concerns tax proceedings against the applicant. After he paid the required amount, the tax decision that imposed on him the obligation to pay the main debt was declared null and void. As a consequence, the amount of the main debt was refunded to him. In parallel proceedings, the amounts he paid as default interest and as surcharge for late payment were not annulled. The appeal of the applicant before the *Audiencia Nacional* was dismissed in a judgment of 19 June 2017 and so was his appeal for the annulment of the proceedings in a decision of 3 June 2018. By contrast, in the case of his siblings, who according to the applicant were in exactly the same situation and followed the same line of appeals, the *Audiencia Nacional* ruled in their favour and declared the default interest and the surcharge for late payment null and void. The reasoning of the *AudienciaNacional* in their case was that once the main debt had been annulled, the default interest and the surcharge for late payment should be annulled as well.
Article 6§2 (presumption of innocence)	Application no. 48431/18 Antonio a.k.a Anthony a.k.a Tony BUSUTTIL against Malta	26 August 2019	The applicant complains under Article 6 § 2 of the Convention that a presumption of guilt was applied against him on the basis that he was the director of company M., despite the fact that the situation had been hidden from him.
Article 6§2 (presumption of innocence) Article 7 Article 1 of	Applications nos 42552/13 et 48707/13 MAMIDOIL - JETOIL ANONYMOS	1 April 2019	The applicant alleges that Article 6 § 2 of the Convention (the guarantee of the presumption of innocence provided for in Article 6 § 2) has not been observed, having regard in particular to the applicant's allegations that the domestic courts have introduced a "presumption of guilt" which reverses the burden of proof and which is not provided for in domestic law. The applicant alleges that there has been a violation of Article 7 of the Convention, in particular given the applicant's allegations that he was "found guilty" of smuggling and that he was imposed a fine on the basis of an

Protocol 1 Article 6§1 (reasonable time)	ELLINIKI ETAIRIA PETRELAIOIDON a gainst Greece		obligation which was not provided for by law. The applicant alleges that his right to the peaceful enjoyment of her possessions been violated, within the meaning of Article 1 of Protocol No. 1. The applicant alleges that the length of the proceedings before the Piraeus Administrative Court of First Instance and the Piraeus Administrative Court of Appeal were not compatible with the condition of judgment within a "reasonable time" within the meaning of Article 6 § 1 of the Convention.
Article 6§2	Application no 56564/15 Carlos PAIVA DE ANDRADA REIS against Portugal	29 April 2019	The application concerns tax adjustment proceedings opened against the applicant. By a judgment of July 3, 2012, the Lisbon Tax Court ordered him to pay the tax authorities the sum of 240,573 euros (EUR) in respect of value added tax (VAT) on the services of a company. of which he was the manager. The applicant appealed against the judgment. He relied on a judgment of the Lisbon court of 16 July 2012, which acquitted him of the offense of breach of tax confidence on the grounds that he had not exercised de facto management of the company during the period in question. By a judgment of May 7, 2015, the Central Administrative Court of the South (TCAS) confirmed the judgment of the Lisbon Tax Court, considering that there was no reason to take into account the acquittal judgment of the Lisbon Court being given that the applicant had not contested his capacity as manager in his statement of claim (petição inicial). The applicant alleges that by refusing to take into account the judgment of the Lisbon court of 16 July 2012, the TCAS infringed his right to the presumption of innocence guaranteed by Article 6 § 2 of the Convention.
Article 4 §1 Protocol 7	Application no. 12951/18 Bragi Guðmundur KRISTJÁNSSON against Iceland	30 August 2019	The application concerns the alleged violation of the applicant's right not to be tried or punished twice for the same offence under Article 4 of Protocol No. 7 of the Convention. Following an audit by the Directorate of Tax Investigations, the applicant's taxes were re-assessed with a 25% surcharge by the Directorate of Internal Revenue by a decision of 30 November 2012. That decision was referred by the applicant to the State Internal Revenue Board, which rendered its decision on 12 March 2014. On 12 November 2012, the Directorate of Tax Investigation referred the applicant's case to the Special Prosecutor, who indicted the applicant on 21 May 2014 for aggravated tax offences. The applicant was convicted by the District Court of Reykjavík on 15 March 2016. His conviction was upheld on appeal by the Supreme Court, by judgment of 21 September 2017.