



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

FIRST SECTION

CASE OF RUSTAMKHANLI v. AZERBAIJAN

(Application no. 24460/16)

JUDGMENT

Art 8 • Respect for home and correspondence • Unannounced on-site tax audit of publishing house and the seizure of various documents and items by the tax authority without a court order • Lack of adequate and effective safeguards against unfettered discretion in practice • Tax authority's failure to comply with relevant domestic law provisions during search and seizure • Domestic courts' failure to carry out meaningful assessment of legality and scope of seizure • Interference "not in accordance with the law"

Art 1 P1 • Control of the use of property • Freezing of company's bank accounts by tax authorities, imposed and kept without a proportionality assessment • Impugned measure imposed for an indefinite period of time without any possibility of its review at regular intervals

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 July 2024

FINAL

04/10/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Rustamkhanli v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,
Alena Poláčeková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 24460/16) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Shahbaz Khudu oglu Rustamkhanli (*Şahbaz Xudu oğlu Rüstəmxanlı* – “the applicant”), on 16 April 2016;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 11 June 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the conduct of an unannounced on-site tax audit and the freezing of the bank accounts of the Qanun Magazine Editorial Office by the tax authority. The applicant raises various complaints under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Baku. He is the founder, director and sole owner of the Qanun Magazine Editorial Office (*Qanun Jurnalı Redaksiyası*) (“the company”), a limited liability company established in Azerbaijan in 1992 and a well-known publishing house.

3. The applicant was represented by Mr K. Agaliyev, a lawyer based in Azerbaijan.

4. The Government were represented by their Agent, Mr Ç. Əsgərov.

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

I. THE UNANNOUNCED ON-SITE TAX AUDIT

6. It appears from the documents in the case file that on 31 October 2013 the Tax Audit Department of the Ministry of Taxes took decision no. 1300777001700174, deciding to conduct an unannounced on-site tax audit (*növbədənənar səyyar vergi yoxlaması*) of the activities of the company covering the period between 2011 and 2013. The Court was not provided with a copy of that decision by the parties.

7. At approximately 11 a.m. on 1 November 2013 a group of employees of the Tax Audit Department arrived at the company office, where they informed the applicant of their decision to conduct an unannounced on-site tax audit. According to the applicant, they showed him the decision, but did not provide him with a copy of it.

8. On the same day they searched the company's office and seized electronic devices, documents, stamps, notebooks, journals and booklets. It appears from the documents in the case file that record no. 1300777013701082 dated 1 November 2013 on seizure of documents and items was drawn up by the tax authority. The Court was not provided with a copy of that record by the parties.

9. Expert examinations having been carried out, the seized documents and items were returned to the applicant approximately six months after they had been removed.

II. RESULTS OF THE TAX AUDIT AND IMPOSITION OF RESTRICTIONS ON THE COMPANY'S BANK ACCOUNTS

10. On 23 December 2013 the Tax Audit Department of the Ministry of Taxes issued report no. 1300777026700238 concerning the results of the tax audit conducted on 1 November 2013. The report referred to decision no. 1300777001700174 (see paragraph 6 above) and cited Article 38.3.5 of the Tax Code as the legal grounds for the carrying out of the unannounced on-site tax audit of the company. The report indicated that during the audit it had been necessary to seize documents and items as sample, in accordance with Article 43.2 of the Tax Code, and that the director of the company (the applicant) had suggested that the tax authorities take the originals of those documents and items because they wanted to take so many documents and items and it would not have been possible to make copies of them. Moreover, as various documents concerning other companies were held in the same office, it had been impossible to distinguish the documents belonging to one company from those belonging to another. Accounting documents and notebooks, journals and booklets containing information relating to sales had been packed in six cardboard boxes and removed together with two electronic devices (computer processors). According to the

report, record no. 1300777013701082 (see paragraph 8 above) concerning that seizure was drawn up, but the applicant refused to sign it.

11. The report also indicated that as the company had failed to keep accounting records in compliance with the established rules, it had not been possible to identify the transactions which were taxable and it had therefore been decided that the company's taxes would be assessed on the basis of related information and that the tax authorities would identify a company carrying out similar activities for comparison, in accordance with Article 67 of the Code. In that connection, ANS Press Publishing House, a limited liability company, was chosen as a company carrying out similar activities and the information provided by it was used for the purposes of the tax audit. As regards the results of the audit, the report found numerous irregularities in the company's accounting records as to the number of employees and the amount of their salaries. In particular, the company had not declared the actual salaries of some of its employees but had recorded the salaries at a lower figure than the actual salaries paid. In that connection, the report referred to the difference between the official salaries of those employees as recorded by the company and the salaries of those employees as indicated in the certificates that the company had given to its employees for their own banking records. Having regard to the above-mentioned irregularities in the company's accounting records, the report concluded that the company had a tax debt of 31,238.02 Azerbaijani manats (AZN) (at the relevant time approximately 29,000 euros (EUR)) and proposed to impose a penalty of AZN 15,675.50 (at the relevant time approximately EUR 14,500), which was equivalent to 50% of the company's tax debt, for breach of the tax legislation.

12. It appears from the documents in the case file that, relying on the findings of report no. 1300777026700238 (see paragraph 10 above), on 27 January 2014 the Tax Audit Department of the Ministry of Taxes took decision no. 1400777023720186, deciding that the company had a tax debt of AZN 31,238.02 and imposing on it a penalty of AZN 15,675.50 for breach of the tax legislation. The Court was not provided with a copy of that decision, nor does it have information as to the date of the notification of that decision to the applicant.

13. It appears from the documents in the case file that following decision no. 1400777023720186 (see paragraph 12 above), on an unspecified date the tax authority took decisions to freeze the company's bank accounts in so far as debit transactions were concerned and to claim the tax debt from the money available in the company's bank accounts. It appears from the document provided by the applicant that at the relevant time the company's bank accounts had a credit balance of AZN 32,540 which was then transferred to the tax authority on 6 February 2015. The Court was not provided with a copy of any decision concerning the freezing of the company's bank accounts or the satisfaction of the tax debt from the money available in those accounts.

14. There is no information in the case file about further developments concerning the freezing of the company's bank accounts.

III. REMEDIES USED BY THE APPLICANT

15. On 24 February 2014 the company lodged a complaint with Baku Administrative-Economic Court No. 1, asking the court to declare unlawful the findings of the tax audit carried out on 1 November 2013. In that connection, it argued that there had been no reason for conducting the unannounced on-site tax audit during which numerous documents and items had been unlawfully seized, leading to the interruption of the company's activities. The company contested the amount of the tax debt and the penalty, arguing that they had not been correctly calculated since the tax authority had relied on information provided by another publishing house which did not publish the same type of material. The company also asked the court to declare the freezing of its bank accounts and the tax authority's attempts to enforce the tax debt and the penalty without waiting for the final decision of the court to have been unlawful. Furthermore, it argued that if no action was taken by the court, the restrictions imposed on its bank accounts by the tax authority would paralyse the company's business activities.

16. On 10 October 2014 the court dismissed the company's complaints, finding that the tax audit had been carried out in accordance with the requirements of the Tax Code and that its results had been lawful. In that connection, the court referred to the findings of the tax authorities and the irregularities indicated in report no. 1300777026700238 (see paragraphs 10 and 11 above). It also held that the order for the freezing of debit transactions on the company's bank accounts had been lawful, without giving any further explanation.

17. On 26 January 2015 the company appealed against that judgment, reiterating its previous arguments.

18. On 8 April 2015 the Baku Court of Appeal upheld the first-instance court's decision of 10 October 2014, holding that the lower court's judgment had been justified.

19. On 22 September 2015 the Supreme Court dismissed a cassation appeal brought by the company.

20. The Supreme Court's decision was served on the applicant on 18 October 2015.

RELEVANT LEGAL FRAMEWORK

I. THE TAX CODE

21. Article 38.3 of the Tax Code contains an exhaustive list of circumstances allowing the conduct of an unannounced on-site tax audit by

the tax authority. It includes, among other circumstances, when the tax authority obtains information from a known source (*mənbəyi bəlli olan hər hansı məlumat*) that the taxpayer's income or taxable transactions have been concealed or underdeclared (Article 38.3.5).

22. Tax authority officials conducting an on-site tax audit in premises or buildings (with the exception of residential buildings or areas) used by the taxpayer for the performance of commercial activities should present their identification documents and a decision of the head or deputy head of the tax authority to conduct an on-site tax audit of the taxpayer in question, or a court order (Article 40.1).

23. Article 43 regulates the seizure of documents and items as sample during a tax audit. If in the course of an on-site tax audit extra time is required for the examination of documents and items presented by the taxpayer which relate to the object of the audit and are required for the calculation of taxes, or which show evidence of any breach of the tax legislation or those breaches are connected with items, the tax authority official conducting the audit may seize the documents and items provided to him in accordance with Article 42 of the Tax Code. The seizure of documents and items as sample provided by a taxpayer to a tax authority official conducting an on-site tax audit may be carried out on the basis of a reasoned decision of the head or deputy head of the tax authority (Article 43.2).

24. It is forbidden to seize documents and items which are not necessary for the calculation of taxes during an on-site tax audit (Article 43.5). The tax authority official must provide a reasoned decision by the head or deputy head of the tax authority to seize the documents or items before they are removed (Article 43.7).

25. Article 65 deals with the procedure for collecting tax debts. If a taxpayer fails to pay the tax due within the time frame specified by the Code, the tax authority must send the taxpayer notification of what tax, interest and penalties must be paid within five days, as calculated or re-calculated in accordance with the provisions of the Tax Code (Article 65.1). Article 65.2 gives the tax authority power to issue an order (*sərəncam*) constituting an enforceable document (*icra sənədi*) requiring credit institutions or persons that are carrying out banking operations to freeze debit transactions from the taxpayer's current or other accounts, whether national or foreign currency accounts, protecting up to 105% of the debt sum. In accordance with Article 65.7, if the order is directed at accounts in a foreign currency, the credit institutions or persons carrying out banking functions should freeze the account and immediately inform the tax authority of what they have done.

II. THE CONSTITUTIONAL COURT'S DECISION OF 17 MARCH 2016

26. On 17 March 2016 the Constitutional Court took a decision on the compliance of Article 65.2 of the Tax Code with the Constitution of the

Republic of Azerbaijan and ruled that the tax authority's power to issue an order constituting an enforceable document requiring credit institutions or persons that are carrying out banking operations to freeze debit transactions from the taxpayer's current or other accounts, whether national or foreign currency accounts, protecting up to 105% of the debt sum, was not contrary to the relevant provisions of the Constitution. The relevant part of that decision reads as follows:

“...

As stated above, under Article 65.1 of the Tax Code, if a taxpayer does not comply with a tax obligation within the time frame specified by this Code, the tax authority shall send the taxpayer a notification to pay, within a period of five days, any tax, interest and penalties, as calculated or re-calculated in accordance with this Code.

Under Article 65.2 of this Code, if there is a failure to comply with a tax obligation within the period provided by the Tax Code, the tax authority may issue, as a way to collect tax debts, one of the following orders in respect of the taxpayer's current or other accounts in national or foreign currency:

- for the transfer of the tax debt from the taxpayer's current or other accounts in national or foreign currency to the State budget;
- to freeze all debit transactions on the taxpayer's current or other accounts in national or foreign currency so as to protect 105% of the amount of the debt.

That Article provides that orders made under it by the tax authority are enforceable and must be complied with by credit institutions or persons carrying out banking functions.

...

It is also necessary to take into account that Article 60 of the Constitution and Article 62 of the Tax Code ensure the right of the taxpayer to lodge a complaint with the court against the decisions and actions (inactions) of the tax authority and its officials.

The existence of subsequent judicial review as a means of protection of the taxpayer's rights also shows that the rule of collection of tax payments without dispute [court proceedings] is not against the requirements of the Constitution.

...”

THE LAW

I. PRELIMINARY ISSUE

27. The Court observes at the outset that in the present case the Government did not contest the applicant's victim status. However, this issue concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017, and *Akshin Garayev v. Azerbaijan*, no. 30352/11, § 36, 2 February 2023).

28. The Court notes that the company was the relevant party in the disputed proceedings, whereas the applicant lodged the present application in his own name, complaining of a violation of his own rights. The Court notes that while the applicant did not claim that there were any obstacles to the company applying to the Court, it is also not in dispute between the parties that the applicant was the sole owner and the director of the company.

29. The Court reiterates that as a general rule a shareholder of a company cannot claim to be a victim of an alleged violation of the company's rights under the Convention (see *Agrotexim and Others v. Greece*, 24 October 1995, §§ 59-72, Series A no. 330-A). The "piercing of the corporate veil", or the disregarding of a company's legal personality, will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (*ibid.*, § 66). However, the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the disputed measures taken with regard to his or her company are concerned, because in the case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the existence and nature of infringements of the Convention rights or the most appropriate way of reacting to such infringements (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI, and *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 135-37, 7 July 2020).

30. Turning to the circumstances of the present case, the Court notes that the applicant is the sole owner of the company. In such circumstances, having regard to the absence of competing interests which could create difficulties, and in the light of the circumstances of the case as a whole, the Court considers that the applicant was so closely identified with the company fully owned by him that it would be artificial to distinguish between them in this context. For these reasons, the Court considers that the applicant can claim to be a victim of the alleged violations within the meaning of Article 34 of the Convention (compare *Jafarli and Others v. Azerbaijan*, no. 36079/06, §§ 38-41, 29 July 2010; *Beguš v. Slovenia*, no. 25634/05, § 26, 15 December 2011; *Vladimirova v. Russia*, no. 21863/05, § 40, 10 April 2018; *Madžarović and Others v. Montenegro*, nos. 54839/17 and 71093/17, §§ 72-73, 5 May 2020; and *Akshin Garayev*, cited above, § 38).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. Relying on Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that his Convention rights had been breached as a result of the search and seizure carried out on the premises of the company. Having regard to the circumstances of the case and the

parties' submissions, the Court considers that this complaint falls to be considered solely under Article 8 of the Convention which reads as follows:

“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.”

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant maintained his complaint, arguing in particular that the search of the company's premises and the seizure of various documents and items which were not relevant to the audit had been unlawful and could not be considered as necessary in a democratic society.

34. The Government accepted that there had been an interference with the applicant's right to respect for his home and correspondence as a result of the audit, but disputed that there had been an interference with his right to respect for his private life. In that connection, they submitted that the seized documents and devices did not include copies of personal e-mails or the correspondence of employees or other persons working for the company and that the applicant had never complained of an interference with his private life in the domestic courts or before the Court.

35. The Government submitted that the search and seizure had been based on Articles 40 and 43 of the Tax Code, pursued the legitimate aim of the economic well-being of the country and were necessary in a democratic society. They noted that the applicant had refused to provide the tax authority with the relevant documents and that the tax authority could not have identified the documents in which the relevant information could have been found because of the company's failure to keep proper accounting records in compliance with the established rules. If the tax authority had not taken the documents for audit, they would have faced difficulties in conducting the audit and the on-site tax audit would have been particularly time consuming.

2. *The Court's assessment*

(a) **Whether there has been an interference**

36. The Court reiterates that, according to its well-established case-law, search and seizure carried out on the premises of a company constitute an interference with the rights protected by Article 8 of the Convention – more specifically, the right to respect for home and correspondence (see *Bernh Larsen Holding AS and Others v. Norway*, no. 24117/08, § 106, 14 March 2013; *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, § 46, 23 June 2022; and *UAB Kesko Senukai Lithuania v. Lithuania*, no. 19162/19, § 109, 4 April 2023).

37. In the present case, the Government acknowledged that the audit at the company's premises and the seizure of various documents and items had constituted an interference with the applicant's right to respect for his home and correspondence (see paragraph 34 above) and the Court has no reason to find otherwise.

38. As to the question whether there was also an interference with the applicant's right to respect for his private life, the Court observes that as it has not been provided with a copy of record no. 1300777013701082 dated 1 November 2013 on the seizure of documents and items drawn up by the tax authority (see paragraph 8 above), it cannot clearly establish the nature of the documents and items seized during the on-site audit. In these circumstances, the Court does not consider it necessary to determine for the purposes of the present case whether there has also been an interference with the applicant's right to respect for his private life (compare *Bernh Larsen Holding AS and Others*, cited above, § 107).

(b) **Whether the interference was justified**

39. An interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being in accordance with the law, pursuing one or more of the legitimate aims listed therein, and being necessary in a democratic society in order to achieve the aim or aims concerned.

40. The Court reiterates that the expressions “prescribed by law” and “in accordance with the law” in Articles 8 to 11 of the Convention require that the impugned measure must have some basis in domestic law and also be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and is inherent in all its Articles (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020, with further references).

41. The expression “in accordance with the law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law. This implies that where a national law authorises intervention, it must be sufficiently accessible, precise and foreseeable in its

application, in order to avoid all risk of arbitrariness. A law is “foreseeable” if it is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (see *Bernh Larsen Holding AS and Others*, cited above, § 123). In addition, compatibility with the rule of law requires that the domestic law provide adequate protection against arbitrary interference with Article 8 rights (see *Erduran and Em Export Dış Tic A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, § 80, 20 November 2018).

42. In assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard both to the text of the law and to the manner in which it was applied and interpreted by the domestic authorities. The practical interpretation and application of the law by the domestic courts must give individuals protection against arbitrary interference (see *Guliyev v. Azerbaijan*, no. 54588/13, § 51, 6 July 2023).

43. Turning to the circumstances of the present case, the Court notes that while the Government submitted that the search and seizure had been carried out in accordance with Articles 40 and 43 of the Tax Code, the applicant argued that the interference had been unlawful. The Court observes that Articles 40 and 43 of the Tax Code provide for the conditions in which tax authority officials may have access to the premises of a taxpayer and may seize documents and items relevant to an audit (see paragraphs 22 and 23 above).

44. In that connection, the Court notes that the domestic law authorised the tax authority to conduct the search and seizure during an unannounced on-site tax audit after a decision by the head (or deputy head) of the tax authority without a court order (see paragraphs 22 and 23 above), which could have restricted or controlled the search and seizure in question (compare *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, § 86, 2 October 2014). The Court reiterates that while States may consider it necessary to have recourse to such measures in order to obtain relevant evidence, nevertheless the relevant legislation and practice must provide adequate and effective safeguards against abuse (see, *mutatis mutandis*, *Société Colas Est and Others v. France*, no. 37971/97, § 48, ECHR 2002-III; *Société Canal Plus and Others v. France*, no. 29408/08, § 54, 21 December 2010; and *Naumenko and SIA Rix Shipping*, cited above, § 50). Moreover, considerations of efficiency of the tax audit which may justify a relatively wide power in the initial phases of tax proceedings cannot be construed as conferring on the tax authorities an unfettered discretion (see *Bernh Larsen Holding AS and Others*, cited above, § 130).

45. However, in the present case the Court is not satisfied that there were adequate and effective safeguards against unfettered discretion in practice. As regards the provisions of the domestic law, the Court notes that while it did limit the seizure of documents and items to those necessary for the calculation of taxes, providing that it is forbidden to seize documents and

items which are not necessary for the calculation of taxes during an on-site tax audit (see paragraph 24 above), the tax authority failed to comply with those provisions. In particular the Court notes that although it was not provided with a copy of the relevant decisions of the tax authority concerning the search and seizure (see paragraphs 6 and 8 above), it is clear from the facts of the case and the parties' submissions (see paragraphs 10, 33 and 35 above) that the tax authority disregarded those provisions in that they seized numerous documents and items during the search without making any distinction between the documents and items as to whether they were necessary for the calculation of taxes.

46. The Court also does not lose sight of the fact that, while examining the company's complaints, the domestic courts did not address the failure of the tax authority to comply with the relevant provisions of the domestic law during the search and seizure. In particular, they did not carry out any meaningful assessment of the legality and scope of the seizure conducted by the tax authority.

47. The foregoing considerations are sufficient to enable the Court to conclude that the interference in question was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. In view of this conclusion, the Court is dispensed from having to examine whether the interference pursued any of the legitimate aims referred to in Article 8 § 2 and was necessary in a democratic society.

48. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

49. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complained that the freezing of the company's bank accounts had amounted to a violation of his rights protected under the Convention. Article 1 of Protocol No. 1 to the Convention reads as follows:

"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."

A. Admissibility

50. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

51. The applicant maintained that the freezing of the company's bank accounts had been an unlawful and disproportionate measure.

52. The Government submitted that the interference with the applicant's rights had been lawful and justified. The interference related to the control of the use of property which fell within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention. The interference was based on Article 65.7 of the Tax Code and those provisions of the domestic law were sufficiently accessible, precise and foreseeable in their application. They further maintained that the freezing of the applicant's assets constituted a restriction made in the public interest, with a view to ensuring the proper administration of justice.

2. *The Court's assessment*

53. The Court observes at the outset that it was not provided with a copy of any decision of the tax authority concerning the freezing of the company's bank accounts. However, it appears from the decisions of the domestic courts that there was a freezing order made in respect of the company's bank accounts (see paragraphs 16-19 above). Moreover, the Government accepted that there had been an interference with the applicant's property rights on account of the freezing of the company's bank accounts and submitted that the interference in question related to the control of the use of property, which fell within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see paragraph 52 above).

54. In these circumstances, having regard to the documents in the case file and the parties' submissions, the Court considers that there had been an interference with the applicant's property rights as a result of the freezing of the company's bank accounts by the tax authority. In that regard, the Court reiterates that the freezing of bank accounts has to be regarded as a measure of control of the use of property (see *Uzan and Others v. Turkey*, nos. 19620/05 and 3 others, § 194, 5 March 2019, and *Yunusova and Yunusov v. Azerbaijan* (no. 2), no. 68817/14, § 167, 16 July 2020).

55. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 to the Convention is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see, among other authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II, and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 112, 13 December 2016). This concept requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned, precise, and foreseeable. Although it is primarily for the national authorities to interpret

and apply domestic law, the Court is required to verify whether the way in which the domestic law is interpreted and applied produces consequences consistent with the principles of the Convention, as interpreted in the light of the Court's case-law (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 109 and 110, ECHR 2000-I; *Batkivska Turbota Foundation v. Ukraine*, no. 5876/15, § 56, 9 October 2018; and *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 67, 14 October 2021).

56. Turning to the circumstances of the present case, the Court notes that while the Government submitted that the interference was lawful under Article 65.7 of the Tax Code, the applicant argued in a general way that it had been unlawful.

57. The Court observes at the outset that Article 65.7 of the Tax Code provides for the imposition of an obligation on credit institutions or persons carrying out banking operations to freeze a taxpayer's bank account under an order issued by the tax authorities. Moreover, Article 65.2 of the Tax Code allowing the tax authority to issue orders for the purposes of collection of tax debts empowers the tax authority to issue an order concerning the freezing of the bank accounts in the absence of a court order (see paragraph 25 above). The Court thus accepts that those provisions of the domestic law were clear, accessible and sufficiently precise.

58. Furthermore, the Court observes that the freezing of the company's bank accounts served to secure the payment of a tax debt and, accordingly, accepts that the interference at issue pursued a legitimate aim within the meaning of the second paragraph of Article 1 of Protocol No. 1.

59. As to the proportionality of the measure, Article 1 of Protocol No. 1 requires of any interference that there should be a reasonable relationship of proportionality between the means employed and the aim pursued. This fair balance will be upset if the person concerned has to bear an individual and excessive burden (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 300, 28 June 2018, and *Uzan and Others*, cited above, § 203).

60. In addition, the importance of the procedural obligations under Article 1 of Protocol No. 1 must not be overlooked. Thus the Court has, on many occasions, noted that, although Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. An interference with the rights provided for by Article 1 of Protocol No. 1 cannot therefore have any legitimacy in the absence of adversarial proceedings that comply with the principle of equality of arms, allowing discussion of aspects that are important for the outcome of the case. In order to ensure that this condition is satisfied, the applicable procedures should be considered from a general

standpoint (see *G.I.E.M. S.r.l. and Others*, cited above, § 302, and *Shorazova v. Malta*, no. 51853/19, § 105, 3 March 2022).

61. Turning to the circumstances of the present case, the Court observes that although it was not provided with a copy of the relevant decision of the domestic authorities concerning the freezing of the company's bank accounts, it is clear from the documents in the case file that the freezing of the company's bank accounts was ordered by the tax authority in the absence of a court order.

62. The Court reiterates that while the fact that freezing orders are made without notice being served on the person affected by them does not in itself raise an issue in terms of safeguards, given the one-sidedness of the proceedings, the freezing order's potentially far-reaching consequences, and the fact that it takes effect immediately, careful consideration of the requests for such orders is called for in each individual case (see, *mutatis mutandis*, *Apostolovi v. Bulgaria*, no. 32644/09, § 98, 7 November 2019, and *Shorazova*, cited above, § 115).

63. In that connection, the Court also considers it necessary to draw attention to the Constitutional Court's decision of 17 March 2016 in which the Constitutional Court clearly underlined the importance of the existence of the subsequent judicial review as an important safeguard in this context (see paragraph 26 above).

64. However, in the instant case, when examining the company's complaint against the tax authority's decision to freeze its bank accounts, the domestic courts conducted no assessment of the proportionality of the measure taken by the tax authority and merely confined themselves to considering the disputed measure lawful, without giving any further explanation in support of their findings (see paragraphs 16-19 above). In particular, the domestic courts' decisions do not contain any assessment as regards possible adverse effects of the freezing of the company's bank accounts on its activities in spite of the company's argument in that connection (see paragraph 15 above).

65. Moreover, it appears from the documents in the case file that the domestic authorities subjected the company to that measure for an indefinite period of time and in the absence of any possibility of its review at regular intervals. In particular, the Court draws attention to the fact that at the time of the latest communication with the Government in September 2021, it had not been informed by the Government of the lifting of the measure taken in respect of the company's bank accounts. The Government also did not argue that the domestic law provided for any possibility of a regular review of the continuation of the freezing of the company's bank accounts, which could address the proportionality of the measure taking into account its duration and other particular circumstances of the case (compare *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 124, 2 June 2016).

66. Accordingly, the Court cannot but conclude that the freezing of the company's bank accounts was imposed and kept without a relevant assessment of the proportionality of that measure by the domestic authorities.

67. The foregoing considerations are sufficient to enable the Court to conclude that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

68. Relying on Article 6 of the Convention, the applicant complained that the domestic proceedings had not been fair in that his right to a reasoned decision had been violated.

69. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Aktiva DOO v. Serbia*, no. 23079/11, § 89, 19 January 2021).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

71. The applicant claimed 53,504 euros (EUR) in respect of pecuniary damage for the transfer of funds to satisfy the alleged tax debt and the penalty imposed on the company and EUR 15,000 in respect of non-pecuniary damage.

72. The Government submitted that the amounts claimed by the applicant were unsubstantiated and excessive and that a finding of a violation would constitute sufficient just satisfaction.

73. The Court observes at the outset that it does not dispose of any information as to whether funds available in the company's bank accounts subjected to the freezing order were actually transferred for satisfying its tax debts. Be that as it may, the Court's findings in the present case do not concern the lawfulness of the imposition of a tax debt and a penalty as a result of the tax audit carried out by the domestic authorities. Accordingly, the Court does not discern any causal link between the violations found and the

pecuniary damage alleged in respect of the transfer of funds to satisfy the tax debt and the penalty imposed on the company (compare *Democracy and Human Rights Resource Centre and Mustafayev*, cited above, § 120).

74. However, the Court has no doubt that the freezing of the company's bank accounts disturbed its activities and entailed pecuniary losses for it. At the same time, it would be speculative to calculate the exact amount of those losses (see *Democracy and Human Rights Resource Centre and Mustafayev*, cited above, § 121). The Court also considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making an assessment on an equitable basis and in the light of all the information in its possession, the Court considers it reasonable to award the applicant an aggregate sum of EUR 12,000, all heads of damage combined, plus any tax that may be chargeable on those amounts (compare *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 116, 25 June 2020, and *Yunusova and Yunusov (no. 2)*, cited above, § 206).

B. Costs and expenses

75. The applicant claimed EUR 5,983 for the costs and expenses incurred before the domestic courts and the Court. In support of his claim, he submitted two contracts with the lawyer who represented the company before the domestic courts and the lawyer who represented the applicant before the Court.

76. The Government considered that the amount claimed by the applicant was unsubstantiated and excessive and asked the Court to apply a strict approach in respect of the applicant's claim.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the amount of work carried out by the applicant's representatives and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 to the applicant, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President