



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

THIRD SECTION

CASE OF ŠPAČEK, s.r.o. v. THE CZECH REPUBLIC

(Application no. 26449/95)

JUDGMENT

STRASBOURG

9 November 1999

In the case of Špaček, s.r.o. v. the Czech Republic,

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

Mr J.-P. COSTA, *President*,

Mr P. KŮRIS,

Mrs F. TULKENS,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mrs H.S. GREVE,

Mr K. TRAJA, *Judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 October 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 26449/94) against the Czech Republic lodged with the Commission under former Article 25 of the Convention by Špaček, s.r.o. (“the applicant company”), on 22 November 1994. The application was registered on 6 February 1995.

The Commission’s request referred to former Articles 44 and 48 of the Convention and to the declaration whereby the Czech Republic recognised the compulsory jurisdiction of the Court (former Article 46). The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 to the Convention.

2. On 14 January 1999 a Panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court¹, that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court assigned the case to the Third Section. The Chamber constituted within the Section included *ex officio* Mr K. Jungwiert, the judge elected in respect of the Czech Republic (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr J.-P. Costa, the Acting President of the Section and the President of the Chamber (Rules 12 and 26 § 1 (a)). The other members designated by

¹ Note by the Registry : The Rules of Court came into force on 1 November 1998.

the latter to complete the Chamber were Mr P. Kūris, Mrs F. Tulkens, Mr W. Fuhrmann, Mrs H.S. Greve and Mr K. Traja (Rule 26 § 1 (b)).

3. On 9 March 1999 the President of the Third Section invited the parties to submit memorials on the issues arising in the case (Rule 59 § 3). The applicant company was further invited to submit its claims for just satisfaction under Article 41 of the Convention (Rule 60 § 1). The Government replied on 5 May and 8 June 1999. The applicant company submitted its memorial on 5 May 1999.

4. On 2 March 1999 the Court (Third Section) decided, pursuant to Rule 59 § 2, to hold a hearing in the case.

5. The hearing took place in public in the Human Rights Building, Strasbourg, on 15 June 1999. There appeared before the Court:

(a) *for the Government*

Mr E. SLAVÍK, Ministry of Justice,	<i>Agent,</i>
Mr A. DVOŘÁK,	
Mrs A. SVOBODOVÁ,	
Mr Y. LEMEUX,	
Mr A. JEŘÁBEK,	<i>Advisers</i>

(b) *for the applicant company*

Mr B. MAZOUREK,	<i>Counsel,</i>
Mr J. SVOBODA,	<i>Adviser</i>

The Court heard addresses by Mr Mazourek and Mr Slavík.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a limited liability company incorporated under Czech law with its head office in Prague.

7. In 1991 Špaček SW (the predecessor of the applicant company) maintained its accounts by single-entry book-keeping in accordance with section 25 of Private Business Activities Act (No. 105/1990) (*zákon o soukromém podnikání občanů*) ("the Private Business Activities Act") and the Private Business Accounting Rules (*zásady vedení účetnictví při soukromém podnikání občanů*) ("the Rules") published in the Ministry of Finance's Financial Bulletin No. 5 on 15 June 1990.

8. On 31 May 1991 Špaček SW was registered in the Register of Commerce (*podnikový rejstřík*) pursuant to section 13(3) of the Private Business Activities Act.

9. On 1 January 1992 Špaček SW passed to double-entry book-keeping. On 19 November 1992 it ceased to exist, and the applicant company, Špaček, s.r.o. (*společnost s ručením omezeným*) was incorporated.

10. On 22 April 1993 the Prague 5 Finance Office (*finanční úřad*) notified the applicant company that it was required to pay additional income tax of CZK 385,600, including a penalty of CZK 37,200, for the 1991 tax year because Špaček SW had not increased the income tax base for the 1991 tax year by including certain assets amounting to CZK 713,971 even though, pursuant to section 4(e) of the Regulations on the procedure for passing from single to double-entry book-keeping (*postup přechodu z jednoduchého na podvojně účetnictví*) ("the Regulations") of 17 April 1991, published in Financial Bulletin No. 6/7 on 30 May 1991, it had been required to do so. The Finance Office held that Špaček SW had violated both section 25 of the Private Business Activities Act and the Regulations.

11. On 17 August 1993 the Prague Finance Department (*finanční ředitelství*) dismissed the applicant company's appeal. It stated that the Finance Office had correctly decided the case in accordance with the Rules published in Financial Bulletin No. 5 and the Regulations published in Financial Bulletin No. 6/7. It also stated that the Rules and Regulations were issued in order to clarify obligations arising from section 25 of the Private Business Activities Act.

12. On 14 October 1993 the applicant company appealed to the Prague Municipal Court (*městský soud*). It submitted that in 1991 Špaček SW had maintained single-entry book-keeping in accordance with section 25 of the Private Business Activities Act and section 1(2) of the Rules issued by the Ministry of Finance on 18 April 1990 under number V/2-4900/90. It claimed that the Rules provided for single-entry book-keeping by businesses which were not registered in the Register of Commerce, or businesses which were registered in the Register of Commerce under section 13(3) of the Private Business Activities Act (i.e. voluntarily and not pursuant to the obligation to register under section 13(1) of the Act). The applicant company also submitted that, even though the contents of the Rules were not legally binding, businesses were applying them for the sake of convenience. It further maintained that the Prague Finance Department, having applied the Regulations which were not legally binding, had breached section 2(1) of Administration of Taxes Act (No. 337/1992) as amended (*zákon o správě daní a poplatků*), which had provided that tax administrators were obliged to act and decide in compliance with statutes (*zákony*) and other legislative or regulatory instruments binding in general (*obecně závazné právní předpisy*), and section 4(1) of the Income Tax Act (No. 157/1989) as amended (*zákon o důchodové dani*), as it had concluded that the profits of the applicant company had been increased by amounts by which its expenses had not been increased contrary to the law.

13. On 22 December 1993 the Prague Municipal Court rejected the applicant company's appeal. It considered that in 1991 the Ministry of Finance was entitled to regulate the way in which accounts were to be kept

and that there was no law obliging the Ministry to publish principles and regulations concerning this matter in the Official Gazette. Under section 8(1)(b) of the Official Gazette Act (No. 131/1989) (*zákon o sbírce zákonů*), measures (*opatření*) of central administrative authorities and other central authorities were to be published only where statute so required. As the applicant company did not increase its income tax base for 1991, it had not complied with the Regulations, and there was a breach of section 25(2) of the Private Business Activities Act.

14. On 1 March 1994 the applicant company lodged a constitutional appeal alleging a violation of its right under Article 2(4) of the Constitution, according to which “everyone shall be allowed to do anything which is not forbidden by law, and no one shall be forced to do anything which is not required by law”. It also invoked Article 4(1) of the Charter of Fundamental Rights and Freedoms, according to which “obligations shall be imposed only by law, within its limits, and by observing fundamental rights and freedoms”. The applicant company claimed that the Prague Municipal Court had not decided whether the Regulations met the requirements of the Official Gazette Act regarding generally binding legislative or regulatory instruments, and had not taken into consideration the principle that any secondary legal act must be published in the Official Gazette (*sbírka zákonů*), must have an appropriate title and form, and must be intended to become valid and enforceable in order to be binding on individuals and legal entities not subordinate to the issuing body.

15. The applicant company also criticised the opinion of the Prague Municipal Court that it was obliged to observe internal regulations (*interní normativní akty*) which were not accessible to it and whose contents could not objectively be found out and applied. The applicant company concluded that in 1991 it had been required to fulfil obligations imposed on it by the Regulations, of which it had not been, and could have not been, aware as they had been imposed in a manner and form incompatible with the Official Gazette Act.

16. On 2 June 1994 the Constitutional Court (*Ústavní soud*) dismissed the applicant company's constitutional appeal as ill-founded. The Court found *inter alia* that:

"Section 25 of the Private Business Activities Act ... established the obligation to keep single or double-entry book-keeping in compliance with accounting rules as prescribed by law. In 1991 the ... Ministry of Finance was entitled to set up conditions and requirements for accounting ... To specify obligations set out in section 25 ..., the ... Ministry of Finance issued the Private Business Accounting Rules, ... published in Financial Bulletin No. 5. This measure ... further defined obligations on businesses in respect of book-keeping. Moreover, section 29(1) and (3) define the responsibility of businesses for the state of their accounting records and set out the sanctions arising from a violation of the obligations under ... section 25 ... or from a failure to observe the Rules. This measure, which sets up standards of book-keeping for private businesses, was followed by the Ministry of Finance Regulations ... of 17 April 1991, ... published in Financial Bulletin No. 6/7 ... The date of the entry into force of these Regulations is not specifically given; nevertheless, it states that the transfer from

single to double entry book-keeping shall always take place on 1 January of an accounting year ...

... as regards any insufficiency in the publication of those Regulations ..., the Court can, in general, agree with the applicant that ordinary legal acts become valid only when published in the Official Gazette. In cases where there is no reason to publish generally binding legal acts of central administrative authorities, such legal acts must be announced in the Official Gazette. The present case concerned a regulation of a ... central administrative authority which, in the light of section 8(1)(b) of the Official Gazette Act, had to be published in the Official Gazette only if so provided by law. This was not the case for section 25 of the Private Business Activities Act."

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Czech tax legislation has adopted the principle that taxes and contributions may be imposed only on the basis of statute (*zákon*), as enunciated in Article 11(5) of the Charter of Fundamental Rights and Freedoms.

-18. At the material time income tax was governed by the Income Tax Act (No. 157/1989) which came into force on 1 January 1990. Under section 4(1)(a), the tax base was the profits resulting from the activities caught by the tax, as established in the taxpayer's accounts, together with any amounts by which the expenses shown in those accounts had been increased or the revenues reduced in violation of the law. The Act was successively amended by Acts Nos. 108/1990, 574/1990 and 578/1991.

19. On 1 January 1993 the Administration of Taxes Act (No. 337/1992) came into force. It governed, *inter alia*, the procedure for the assessment of tax obligations and the calculation of taxes to be applied by financial authorities and taxpayers. Under section 2(1), tax administrators were obliged to act in compliance with statutes and other generally binding legislative and regulatory instruments, and to protect the interests of the State while maintaining the rights and legal interests of taxpayers and other persons involved in tax proceedings. The Act was successively amended by Acts Nos. 35/1993, 157/1993 and 302/1993.

20. The obligation for businesses to keep single or double-entry book accounts in compliance with prescribed accounting principles was laid down by section 25(2) of the Private Business Activities Act (No. 105/1990), which came into force on 1 May 1990. According to the first paragraph of this provision, businesses were required to keep accounts showing their revenues, their expenses and the results of their business activities, and the assets used for, and the liabilities ensuing from, those business activities. The Act specified neither the legal form under which accounting principles be adopted nor the authority entitled to issue them.

21. The Ministry of Finance had jurisdiction over accounting matters by virtue of section 14 of the Socio-economic Information Act (No. 21/1971), as amended by Act No. 128/1989, which empowered the Ministry to

regulate accounting, budgeting, calculation and matters of financial reporting, and to issue model accounts, related guidelines and other accounting standards. The Act did not require the Ministry to publish measures taken by it in the Official Gazette.

22. The Private Business Accounting Rules (“the Rules”), published in Financial Bulletin No. 5 on 15 June 1990, introduced the requirement for businesses to use single or double-entry book-keeping and indicated that the base accounting period was to be the calendar year. The Rules came into effect on 1 June 1990. They referred to the Private Business Activities Act and the fact that they were issued by the Ministry of Finance for the purposes of specifying the obligations introduced by section 25 of the Act. They did not, however, make transitional regulations for businesses which were starting to use double-entry book-keeping. They set out the sanctions arising from a violation of the obligations under section 25 and from a failure to observe the Rules.

23. The Regulations on the procedure for passing from single to double-entry book-keeping (“the Regulations”), published in Financial Bulletin No. 6/7 on 30 May 1991, made provision for the transition from single to double-entry book-keeping. Amongst other matters, Section 4(e) provided that, when the transition was made, the business’ income tax base for the current year was to be increased, apart from non-deductible and deductible items specified by statute, by the value of materials, depreciating assets and stock, if the relevant invoices were entered in the accounting books and had been paid before 31 December of the previous year. The Regulations did not contain any reference to the Private Business Activities Act and did not specify the date on which they would become effective.

24. Neither the Rules nor the Regulations were published or announced in the Official Gazette.

25. The Official Gazette Act (No. 131/1989), as amended by Act No. 426/1990, governed, *inter alia*, the manner of promulgating legislative or regulatory instruments binding on individuals and legal entities in general, as well as the measures of central authorities.

26. According to section 2, the full wording of all constitutional and other statutes (*zákony*) enacted by Parliament and legal measures (*zákonná opatření*) taken by the Parliamentary President’s office, orders issued by the Government (*nařízení vlády*) and legislative statutory instruments taken by central administrative or other central authorities - decrees (*vyhlášky*), save for the exceptions enumerated in section 3, must be published in the Official Gazette.

27. According to section 3, in the case of rulings (*výnosy*) issued by the central administrative or other central authorities, an announcement in the Official Gazette of their delivery will suffice if they concern, *inter alia*, a small number of recipients, or govern details of labour and social security rights and obligations of a group of closely linked persons.

28. Section 6 provides that the legal acts enumerated in sections 2 and 3 become valid on the day of their publication in the Official Gazette and are

enforceable on the fifteenth day after such publication, unless otherwise postponed.

29. Section 8(1)(b) provides that measures (*opatření*) taken by the central administrative or other central authorities can either be published in full in the Official Gazette, or simply announced there where a statute so requires. According to section 8(2), such measures or internal instructions (*vnitřní směrnice*) are not to be described as “decrees” or “rulings”.

PROCEEDINGS BEFORE THE COMMISSION

30. The applicant company applied to the European Commission of Human Rights on 22 November 1994. It complained about the imposition of additional tax on it based on administrative provisions which had never been published or announced in the Official Gazette. It alleged a violation of Article 1 of Protocol No. 1 to the Convention.

31. The Commission declared the application (no. 26449/95) admissible on 14 October 1996. In its report of 15 April 1998 (under former Article 31), it concluded, by 27 votes to 2, that there had been no violation of Article 1 of Protocol No. 1¹.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

32. In their memorial the Government asked the Court to declare that there had been no violation of Article 1 of Protocol No. 1 to the Convention.

33. The applicant company’s memorial was limited to the questions of just satisfaction.

AS TO THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTIONS

34. At the hearing before the Court the Government contended that the applicant company did not have the status of “victim” within the meaning of Article 34 of the Convention and that the application must therefore be rejected as being incompatible *ratione personae*. They submitted that the decision of the Prague 5 Finance Office of 22 April 1993, by which Špaček SW was ordered to pay additional income tax of CZK 385,600, including a

¹ Note by the Registry: A copy of the Commission’s report is obtainable from the Registry.

penalty of CZK 37,200, was not directed against the applicant company. The Government also expressed their doubts as to whether the applicant company's representatives who participated in the hearing before the Court on 15 June 1999 had been entitled to represent it according to Czech law, in view of the bankruptcy proceedings in respect of the applicant company commenced by the Prague Commercial Court (*krajský obchodní soud*) on 16 March 1998. They submitted that only the administrator could represent the applicant company before the Court, unless the applicant company presented a power of attorney issued by the administrator.

35. The applicant company disputed the Government's arguments.

36. The Court observes that the Government's objection that the applicant company cannot claim to be a "victim" within the meaning of Article 34 of the Convention was not raised, as it could have been, when the admissibility of the application was being considered by the Commission. There is therefore an estoppel (see, among others authorities, the *Zana v. Turkey* judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2546, § 44, and the *Nikolova v. Bulgaria* judgment of 25 March 1999, § 44, to be published in the Court's official reports).

37. As to the Government's second objection, the Court considers that the fact that the applicant company is the subject of bankruptcy proceedings instituted against it by the Czech judicial authorities on 16 March 1998 cannot affect its status as a "victim" in respect of the complaints it submitted to the Commission on 22 November 1994.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

38. The applicant company complained that the additional assessment of income tax and the penalty imposed on it by the national authorities violated its right under Article 1 of Protocol No. 1 to the Convention, which provides:

"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. Whether there was an interference

39. There is no dispute between the parties that the assessment of additional income tax and the penalty imposed on the applicant company by the Czech tax authorities constituted an interference by a public authority

with the applicant company's enjoyment of its possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

B. Whether the interference was lawful

40. In the present case, only the question of the lawfulness of the interference with the applicant company's rights, within the meaning of the second paragraph of Article 1 of Protocol No. 1, is at issue.

41. The Court recalls that taxation, as an interference with the rights guaranteed in Article 1 of Protocol No. 1, is justified under the second paragraph of Article 1. This provision expressly reserves the right of Contracting States to enforce such laws as they may deem necessary to secure the payment of taxes (see the *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* judgment of 23 February 1995, Series A no. 306-B, p. 48, § 59).

42. The applicant company argued that it had used single-entry book-keeping in 1991 and double-entry book-keeping in 1992, as provided for by section 25 of the Private Business Activities Act. It stressed that this provision did not require the income tax base to be increased when the business was making the transition from single to double-entry book-keeping. That obligation was only introduced by the Regulations on the procedure for passing from single to double-entry book-keeping ("the Regulations"), which had not acquired the status of a generally binding legislative or regulatory instrument within the meaning of the Official Gazette Act.

43. The applicant company criticised the national authorities' submission that the Private Business Accounting Rules ("the Rules") had been issued by the Ministry of Finance in order to clarify the obligations arising from section 25 of the Private Business Activities Act, that the Regulations had only complemented the Rules and that the Private Business Activities Act did not require the publication of the Rules and Regulations in the Official Gazette. It also disputed the Government's argument, presented to the Commission, that the Rules and Regulations, having been published in the Financial Bulletin, had been available through the retail units of the SEVT a.s. (*Státní evidenční vydavatelství tiskopisů, a.s.*), publishers of official documents, in the same way as the Official Gazette. According to the applicant company, the fact that a ministerial measure had become legally binding by virtue of being distributed by the SEVT a.s., or by way of a declaration by a State authority that it had supplemented another ministerial measure, would only have been known to the Ministry concerned. As for the public's ability to obtain information on new, legally binding, ministerial measures at the Ministry's premises, the applicant company argues that this was unacceptable: information about obligations imposed by the State must be available to the public immediately and from an official source, without intermediary intervention by State authorities or specialists such as legal or tax advisers.

44. The applicant company claimed that the Regulations and the Rules, published in the Financial Bulletin, did not have the character of generally binding legislative or regulatory instruments (*obecně závazné právní předpisy*) because they had not been published in the Official Gazette; they had not been designated as statute (*zákon*), governmental order (*nařízení vlády*), decree (*vyhláška*) or ruling (*výnos*), as provided for in sections 2 and 3 of the Official Gazette Act; they had never entered into force or become effective, and they had not been accessible through the Official Gazette in each municipality.

45. The applicant company claimed that the fact that the Financial Bulletin – a mere means of Ministry of Finance information, unlike the Official Gazette which is, by law, the official source of generally binding legislative and regulatory instruments – was available through the retail units of the SEVT a.s. could not satisfy the requirement of publicity within the meaning of the Official Gazette Act. Moreover, it pointed out that, at present, the distribution of the Official Gazette and the Financial Bulletin is in the hands of different companies.

46. The applicant company noted that, at the drafting stage, the Ministry of Finance had suggested that the obligation for businesses to increase the income tax base by the value of stock when passing from single to double-entry book-keeping should be included in an amendment to the Income Tax Act which would have come into effect on 1 January 2000.

47. The applicant company finally noted that it had applied the Rules in order to maintain records of its finances, assets, debts and obligations and to fulfil the requirements of the Private Business Activities Act. It concluded that a State complies with the spirit of the Convention only where “the law” ensuring the payment of taxes complies with the formal and publication requirements laid down in the constitutional order of that State.

48. The Government submitted that, after a long period with a centrally planned economy, private business activity was a novelty which had required speedy adaptation to new accounting and tax rules. The Private Business Activities Act had been the first statute providing for private business activities. Section 25 had obliged businesses to use single or double-entry book-keeping in compliance with prescribed accounting principles. Correct accounting had been the key requirement for making an accurate tax return. The accounting principles had been issued by the Ministry of Finance, which had been empowered to regulate accounting by section 14 of the Socio-economic Information Act (No. 21/1971), as amended.

49. The Government further submitted that the Official Gazette Act had not obliged the Ministry of Finance to publish the accounting principles in the Official Gazette. The Act had provided for publication of measures of the central administrative authorities where statute so provided, but that had not been the case here. Accordingly, the accounting principles had been published in the Financial Bulletin. The Government noted that the Financial Bulletin had been created with the intention of informing the

public about the measures adopted by the Finance Ministry. In the present case, it had been the sole generally known source of detailed information about accounting methods and had been accessible to businesses in the same way as the Official Gazette. The Government stressed that business undertakings – like Špaček SW which had not denied the accessibility or clarity of the principles published in the Financial Bulletin – would systematically consult the Financial Bulletin.

50. The Government submitted that the principles concerning the procedure for passing from single to double-entry book-keeping had been published in Financial Bulletin No. 6/7 in May 1991 in the form of the Regulations. When Špaček SW passed to double-entry book-keeping, the Regulations had been generally known among businesses for more than six months. It had clearly been following the Financial Bulletin, since it had kept its accounts according to the Rules and had changed its accounting method on 1 January 1992, and not on its registration in the Register of Commerce in May 1991. Thus, it must have been aware of the Regulations.

51. The Government added that businesses were expected to make enquiries about tax and accounting legislation. The majority of them had engaged experts in order to maintain their accounts and to draft tax returns, given that the accounting principles had been addressed to a specialist audience and it had been desirable to entrust their application and progress to those specialists.

52. The Government concluded that the interference with the applicant company's possessions, having been based on the Income Tax Act, the Administration of Taxes Act and the Private Business Activities Act, which required businesses to keep their accounts in compliance with accounting principles, had been lawful within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. Although publication of the principles contained in the Regulations had not been required by statute, it could not be said that they had not been binding: the obligation to keep accounts in compliance with prescribed accounting principles had been ordered by statute and the Rules and Regulations had been issued for that purpose.

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 (see the *Cantoni v. France* judgment of 15 November 1996, *Reports* 1996-V, p. 1627, § 29, with reference to the *S.W. and C.R. v. the United Kingdom* judgments of 22 November 1995, Series A no. 335-B and 335-C, pp. 41-42, § 35, and pp. 68-69, § 33, respectively).

55. The Court observes that at the relevant time the taxation of private companies was governed by the Income Tax Act (No. 157/1989), as amended. That Act and the subsequent amending legislation were published in the Official Gazette.

56. The Court notes that the obligation for businesses to keep accounts in compliance with prescribed accounting principles was laid down by section 25 of the Private Business Activities Act. Even though this provision specified neither the authority entitled to issue the accounting principles nor the legal form under which they should be adopted, the Court accepts the Government's argument that there was a general authorisation for the Ministry of Finance to regulate accounting pursuant to section 14 of the Socio-economic Information Act, as amended. Under this general authorisation, and in order to clarify the obligations arising from section 25 of the Private Business Activities Act, the Ministry of Finance issued the Rules, which defined two possible forms of book-keeping, and the Regulations, which established, *inter alia*, the obligation for businesses to increase their income tax base when they passed from single to double-entry book-keeping. The Court adds that even though the increase of the income tax base as such falls into the category of matters governed by tax legislation, it is in fact an accounting operation, the regulation of which was fully within the competence of the Ministry of Finance.

57. The Court further observes that, although intended for the public, neither the Rules nor the Regulations were published in full or announced in the Official Gazette in the form of a "decree" or "ruling". They could not, therefore, constitute legislative or regulatory instruments binding on citizens and legal entities in general under the Official Gazette Act. The Court recalls, however, that the term "law" is to be understood in its substantive sense and not in its formal one (see the *Kruslin and Huvig v. France* judgments of 24 April 1990, Series A no. 176-A and 176-B, p. 21, § 29, and p. 53, § 28, respectively). It also recalls that the Convention does not contain any specific requirements as to the degree of publicity to be given to a particular legal provision. Furthermore, it is not for the Court to express a view on the appropriateness of the methods chosen by the legislature of a Contracting State, or to decide on whether the manner of publishing tax and accounting principles is compatible with the requirements of Czech law. Its task is confined to determining whether the methods applied by the Contracting State are in conformity with the Convention.

58. The Court notes that, according to the Government, the Financial Bulletin was created for the purpose of informing the public about measures adopted by the Ministry of Finance. It was intended for the public and, at the relevant time, was distributed, like the Official Gazette, to subscribers and sold by the retail units of the SEVT a.s. Accordingly, Financial Bulletins No. 5 and No. 6/7 were given the same publicity as the Official Gazette. The Official Gazette Act did not require the publication of such measures in the Official Gazette itself, given the silence on the matter in the empowering law - section 25 of the Private Business Activities Act.

59. The Court further notes that in 1991 Špaček SW, the predecessor of the applicant company, applied the accounting principles included in the Rules which were published in Financial Bulletin no. 5. It considers therefore that, even assuming that the Rules and Regulations published in the Financial Bulletin did not constitute legislative or regulatory instruments binding on citizens and legal entities in general, within the meaning of the national law then in force, Špaček SW had accepted the Financial Bulletin as an official public source of binding regulations, and had followed it for the purposes of keeping its accounts “in compliance with accounting principles”, pursuant to section 25 of the Private Business Activities Act. The Court considers that Špaček SW, when changing from single to double-entry book-keeping, had been aware of the way in which the Ministry of Finance published its accounting principles and could easily have sought information about any possible transitional provisions, if necessary with the advice of specialists (see, *mutatis mutandis*, the above-mentioned *Cantoni v. France* judgment of 15 November 1996, *Reports* 1996-V, p. 1629, § 35). Indeed it has never been alleged that either Špaček SW or the applicant company had been unaware of the provisions of the relevant Financial Bulletins. 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.

60. The Court finds that the Regulations were adequately accessible and foreseeable, and concludes that the interference complained of had a sufficient legal basis in Czech law to comply with the requirements of the second paragraph of Article 1 of Protocol No. 1.

61. Accordingly, the Court finds that there was no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government’s preliminary objections;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, then sent as a certified copy on 9 November 1999, according to Rule 77 §§ 2 et 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President