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

SECOND SECTION

CASE OF J.B. v. SWITZERLAND

(Application no. 31827/96)

JUDGMENT

STRASBOURG

3 May 2001

FINAL

03/08/2001

In the case of J.B. v. Switzerland,

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

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr L. WILDHABER,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 April 2000 and 12 April 2001,

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

PROCEDURE

1. The case originated in an application (no. 31827/96) against the Swiss Confederation lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, J.B. ("the applicant"), on 6 June 1996.

2. The applicant was represented by Mr U. Behnisch and Mr M. Lustenberger, lawyers practising in Zürich. The Swiss Government ("the Government") were represented by their Deputy Agent, Mr F. Schürmann, head of the Human Rights and Council of Europe Section of the Federal Office of Justice. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that the proceedings in which he was involved were unfair and contrary to Article 6 § 1 of the Convention in that he was obliged to submit documents which could have incriminated him.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 6 April 2000 the Chamber declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, a Swiss national born in 1914, is a retired ski instructor and mountain guide living in X, Switzerland.

A. Administrative proceedings instituted against the applicant

9. In 1987 the Federal Tax Administration (*Eidgenössische Steuerverwaltung*) consulted the case file of the financial manager, P. It was noted that between 1979 and 1985 the applicant had made investments with P. and his companies. However, these amounts had not been declared in the taxation periods between 1981/82 and 1987/88.

10. In view of this, on 11 December 1987 the X District Tax Commission (*Bezirkssteuerkommission*) instituted tax-evasion proceedings (*Steuerhinterziehungsverfahren*) in respect of the applicant's federal taxes. He was requested to submit all the documents which he had concerning these companies.

11. On 22 December 1987 the applicant admitted that he had "in fact made investments with P. and his companies from 1979 to 1985 and that he had not properly declared the income in his personal tax return". However, the applicant did not submit the requested documents.

12. On 24 June 1988 the applicant was again asked to declare the source of the income, amounting to 238,000 Swiss francs (CHF), which he had invested with P. The applicant did not reply.

13. On 2 September 1988 the District Tax Commission decided to issue an assessment to supplementary tax (*Nachsteuer*) on the interest derived from the income which the applicant had invested with P. in the years 1979 to 1985. In letters dated 29 September and 11 October 1988, the applicant was informed of the assessment of his taxes (*Steuerveranlagung*) and of the supplementary tax due.

14. Following an intervention of the Federal Tax Inspector, the President of the District Tax Commission withdrew the supplementary tax decision in two letters dated 7 and 20 October 1988. At the same time the President again requested the applicant to explain the source of the invested income. A further such request was served on the applicant on 19 January 1989.

15. The applicant not having reacted to any of these requests, the Cantonal Administration for Direct Federal Taxes (*kantonale Verwaltung für die direkte Bundessteuer*) imposed on the applicant on 28 February 1989 a disciplinary fine (*Ordnungsbusse*) of CHF 1,000. It relied on Article 131 § 1 of the decree of the Federal Council on the imposition of a direct federal tax (*Bundesratsbeschluss über die Erhebung einer direkten Bundessteuer*). The applicant duly paid the fine.

16. On 7 April 1989 and on 19 June, 17 July and 16 August 1990 the District Tax Commission again admonished the applicant as he still had not submitted the required information.

17. On 3 August and 5 September 1990 the applicant replied that, in his view, the decision to impose supplementary taxes on him had acquired legal force (*Rechtskraft*) on 29 September and 11 October 1988, so that he was not obliged to provide further information.

18. Thereupon, on 29 November 1990 the Cantonal Administration for Direct Federal Taxes imposed a second disciplinary fine, of CHF 2,000, on the applicant in respect of federal taxes, based on Article 131 § 1 of the decree of the Federal Council.

19. On 4 December 1990 and 22 January 1991 the Cantonal Tax Administration imposed a third disciplinary fine, of CHF 2,000, in respect of cantonal taxes.

20. The applicant's appeal against the second disciplinary fine, imposed on 29 November 1990, was dismissed by the Tax Appeals Commission (*Steuerrekurskommission*) of the Canton of Valais on 18 December 1992.

21. In its decision, the Tax Appeals Commission found that the applicant had intentionally not complied with the order of the tax authorities to provide information. However, according to Article 131 § 1 of the decree of the Federal Council, persons liable to pay taxes were obliged to cooperate with the tax authorities, in particular to submit accounts, documents and other receipts in their possession which could be of relevance when determining the taxes. Moreover, the decision to impose supplementary taxes on the applicant had not acquired legal force as it had been withdrawn on 7 and 20 October 1988 by the President of the District Tax Commission.

B. Proceedings before the Federal Court

22. The applicant filed an administrative-law appeal with the Federal Court in which he complained, *inter alia*, under Article 6 of the Convention that as an accused he should not be obliged to incriminate himself.

23. Meanwhile, the applicant also filed an objection against the third disciplinary fine, imposed on 4 December 1990 and 22 January 1991, although the proceedings before the competent district court (*Bezirksgericht*) were suspended pending the outcome of the proceedings before the Federal Court.

24. On 7 July 1995 the Federal Court dismissed the applicant's administrative-law appeal, the decision being served on the applicant on 12 December 1995.

25. In its decision, the Federal Court considered it undisputed that the applicant had made investments with P. and his companies which he, the applicant, had not declared. The tax authorities had not been in a position to assume that the means invested stemmed from income and assets which had already been taxed. They had therefore quite correctly asked the applicant to demonstrate the source of these moneys.

26. The Federal Court then recapitulated the relevant case-law. Tax-evasion proceedings constituted true criminal proceedings in respect of which the procedural guarantees, including those of Article 6 of the Convention, applied. Thus, the offence of tax evasion led to a fine which had to be paid in addition to the taxes evaded. The fine constituted a sanction which had both preventive and repressive functions; its amount was up to four times the amount of the taxes evaded and it had the same effect for the person concerned as a criminal conviction.

27. On the other hand, in the Federal Court's opinion the obligation to pay a supplementary tax did not amount to a criminal sanction. The supplementary tax was not separate in nature from the original tax debt; rather, it was an additional tax resulting from an examination of the tax assessment of the person concerned and serving to bring in outstanding taxes. As such, it had no punitive function. The judgment continued:

> "even though the supplementary tax is not a criminal sanction within the meaning of Article 129 of the federal decree, the tax will be determined in tax-evasion proceedings in respect of which the guarantees of criminal procedure will apply. The question thus arises whether the person who has to pay taxes may be obliged, in the tax-evasion proceedings and with a view to the determination of the supplementary tax, to supply information on his financial circumstances."

28. The Federal Court then reiterated the principle of tax proceedings, according to which the burden of proof fell on the tax authorities to demonstrate that a person had not declared certain taxable income. It could not be said that the person concerned was obliged to incriminate himself. Rather, the person had merely to provide information as to the source of untaxed income which the tax authorities already knew existed. If in such a situation the person concerned had the right to remain silent, the entire tax system would be called into question. The regular tax-assessment proceedings would then have to be conducted according to the principles of criminal proceedings. The right to remain silent would complicate control, or even render it impossible. This could not be the purpose of Article 6 of the Convention.

29. According to the Federal Court, there were a number of provisions in criminal law obliging a person to act in a particular way so as to enable the authorities to obtain his conviction. Reference was made in particular to

lorries which had to be equipped with a tachograph recording speed and driving hours. If there was an accident, the lorry driver was obliged to hand over the device. Similarly, a motorist might be obliged to submit to a blood or a urine test, and he would be punished if he refused to do so.

30. The Federal Court noted an essential difference from *Funke v. France* (judgment of 25 February 1993, Series A no. 256-A), namely, that in that case the tax authorities believed that certain documents existed although they were not certain of the fact. In the present case, the authorities were aware of the income which the applicant had invested. The purpose of their intervention was to ascertain whether this income itself stemmed from income or assets which had been duly taxed. All the applicant had to do was to explain the source of this income. In fact, he should have done so during the regular tax-assessment proceedings.

31. Finally, the Federal Court referred to *Salabiaku v. France*, according to which presumptions of fact and law were compatible with Article 6 § 2 of the Convention as long as they were confined within reasonable limits and the rights of the defence were maintained (judgment of 7 October 1988, Series A no. 141-A, pp. 15-16, § 28).

32. The Federal Court concluded that there was no breach of the applicant's right to the presumption of innocence or of his right not to incriminate himself.

C. Subsequent developments

33. On 5 June 1996 the cantonal authorities imposed a fourth fine, of CHF 5,000, on the applicant, although this fine never acquired legal force.

34. Following the Federal Court's decision of 7 July 1995, an agreement was reached between the applicant and the cantonal tax authorities on 28 November 1996 which closed all tax and criminal tax proceedings for the years 1981/82 until 1995/96. On the one hand, the agreement fixed the amount to be paid by the applicant, namely a total sum of CHF 81,878.95, including a fine amounting, after reduction by one-third, to CHF 21,625.95. On the other hand, it was agreed that all pending proceedings were cancelled, including the proceedings concerning disciplinary fines; and that the fine already paid was to be deducted from the total amount of taxes and criminal penalties. Finally, the agreement stated :

> "... the proceedings which are already pending before the Strasbourg organs of the European Convention on Human Rights against the decision of the Federal Court on account of a disciplinary fine will not be affected by this agreement."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Supplementary-tax proceedings and tax-evasion proceedings

35. Supplementary-tax proceedings (*Nachsteuerverfahren*) serve the purpose of imposing a supplementary tax (*Nachsteuer*) where certain taxes have not been duly paid. Tax-evasion proceedings (*Steuerhinterziehungsverfahren*) may lead, in addition to the supplementary tax, to a fine the amount of which will depend on the amount of the tax evaded.

B. Decree of the Federal Council on the imposition of a direct federal tax

36. The Federal Council's decree of 1940 on the imposition of a direct federal tax in force at the relevant time referred in its Part 9 to "contraventions" (*Widerhandlungen*).

37. Articles 129 and 130 in Part 9 concerned "tax evasion" and provided for liability to a fine. For instance, Article 129 § 1 concerned persons who evaded taxes by not filling in the tax return correctly. Article 130 *bis* concerned "tax and inventory fraud" (*Steuer- und Inventarbetrug*) and provided for liability to a fine or to imprisonment.

38. Article 131 § 1 of the decree stated:

> "A person ... liable to pay taxes or to give information who contravenes, intentionally or negligently, the official decisions and orders made pursuant to this Decree, in particular as to:
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> – handing in a tax return;
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> – submitting or presenting accounts, preparing or submitting vouchers and other receipts;
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> – complying with a summons or a prohibition to act;
>
> – giving information; or
>
> – making payments and furnishing securities;
>
> will be fined between CHF 5 and 10,000. The same punishment will be incurred if the obligation under Article 90 §§ 5, 6 and 8 to provide information is not complied with."

39. Article 90 §§ 5, 6 and 8 of the federal decree concerned the obligation, *inter alia*, of third parties to provide information. Article 89 stated that the taxpayer should provide truthful information and that he could be requested to submit documents etc. which might be relevant for the assessment of taxes. Article 132 regulated the procedure in case of tax

evasion and provided that the cantonal tax administration would undertake any necessary investigations.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicant alleged that the proceedings in which he was involved were unfair in that he was obliged to submit documents which could have incriminated him. He relied on Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ..."

41. The Government contested that submission.

A. Applicability of Article 6 § 1

1. The parties' submissions

(a) The applicant

42. The applicant submitted that the proceedings at issue concerned both the imposition of a supplementary tax and tax-evasion proceedings leading to a fine. The former matter did not fall within the scope of the Convention whereas, according to the case-law of both the Court and the Federal Court, the tax-evasion proceedings amounted to criminal proceedings within the meaning of Article 6 § 1 of the Convention, requiring the necessary guarantees. Reference was made in particular to *A.P., M.P. and T.P.* and *E.L., R.L. and J.O.-L. v. Switzerland* (judgments of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, pp. 1487-88 and pp. 1519-20 respectively). The amount of the fine for tax evasion was determined on the basis of the amount of supplementary tax. In his case, the fine of CHF 21,625.95 imposed on him had the same effect as a criminal conviction.

(b) The Government

43. In the Government's opinion, the proceedings at issue were *sui generis*, although they bore a closer resemblance to administrative proceedings than to criminal proceedings. The Federal Court had accepted that Article 6 of the Convention applied to such proceedings, without stating

that they determined a "criminal charge". In the Government's view, when deciding on the applicability of this provision, it had to be considered which type of "criminal charge" was at issue. In such proceedings, both a person's taxes and any tax evasion were examined in one and the same, mixed procedure. To the extent that the proceedings concerned the determination of a supplementary tax, they involved no criminal element. On the other hand, to the extent that a fine could be imposed for tax evasion, the proceedings were of a criminal nature within the meaning of Article 6 § 1 of the Convention. In the present case, Article 6 § 1 of the Convention was not applicable to the proceedings at issue. The Government referred in particular to *M.-T.P. v. France* ((dec.), no. 41545/98, 7 March 2000, unreported) in which, as in the present case, that applicant was not prosecuted for tax evasion. In that case, moreover, the Court had considered that the tax measures imposed on the applicant were not criminal as they did not attain the necessary level of prejudice.

2. The Court's assessment

44. The Court reiterates that the concept of "criminal charge" within the meaning of Article 6 is an autonomous one. In its earlier case-law the Court has established that there are three criteria to be taken into account when it is being decided whether a person was "charged with a criminal offence" for the purposes of Article 6. These are the classification of the offence under national law, the nature of the offence and the nature and degree of severity of the penalty that the person concerned risked incurring (see, among other authorities, *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, p. 18, § 50). In *A.P., M.P. and T.P. v. Switzerland* (cited above), the Court moreover found that proceedings leading to the imposition of a fine on account of the criminal offence of tax evasion fell in principle to be examined under Article 6 § 1 of the Convention.

45. In the present case it was not in dispute between the parties that any tax-evasion proceedings instituted against the applicant, inasmuch as they determined a "criminal charge" within the meaning of Article 6 of the Convention, would fall to be examined under this provision.

46. The Government, however, contended that the proceedings in the present case were of a *sui generis* nature and outside the scope of Article 6 of the Convention. The Federal Court, on the other hand, considered in its judgment of 7 July 1995 that Article 6 of the Convention applied to the proceedings in question.

47. The Court observes that, in the present case, the proceedings served the various purposes of establishing the taxes due by the applicant and, if the conditions therefor were met, of imposing on him a supplementary tax and a fine for tax evasion. Nevertheless, the proceedings were not expressly classified as constituting either supplementary-tax proceedings or tax-evasion proceedings.

48. The Court furthermore considers, and this was not in dispute between the parties, that from the beginning and throughout the proceedings the tax authorities could have imposed a fine on the applicant on account of the criminal offence of tax evasion. According to the settlement reached on 28 November 1996, the applicant did indeed incur such a fine amounting to CHF 21,625.95. The penalty was not, however, intended as pecuniary compensation; rather, it was essentially punitive and deterrent in nature. Moreover, the amount of the fine incurred was not inconsiderable. Finally, there can be no doubt that the fine was "penal" in character (see *A.P., M.P. and T.P. v. Switzerland*, cited above).

49. In the Court's opinion, whatever other purposes served by the proceedings, by allowing the imposition of such a fine on the applicant, the proceedings amounted in the light of the Court's case-law to the determination of a criminal charge.

50. As a result, the Court finds that Article 6 is applicable under its criminal head.

51. Accordingly, the question arises as to whether Article 6 § 1 of the Convention was complied with.

B. Compliance with Article 6 § 1

1. The parties' submissions

(a) The applicant

52. The applicant contended that the right to remain silent in criminal proceedings guaranteed by Article 6 § 1 of the Convention was breached as he had been punished for remaining silent. A procedure in which the fine determined for tax evasion depended on the amount of supplementary tax, and in which both proceedings were decided by the same authorities, could not be considered fair.

53. In the applicant's opinion, it was clear that in his case the authorities suspected the existence of further items of income and assets which they could not prove, for which reason they requested information on all bank documents. The applicant queried why the authorities, if they already knew everything about his investments, asked for the documents in question. The fines served as a substitute for the tools normally at the disposal of criminal investigating authorities, and were disproportionate. They were particularly high when compared with the amounts imposed in *Funke* (cited above, p. 22, § 44). The applicant submitted that he had not been in a position to submit the documents at issue as they either had already been destroyed or were deposited with third parties, in particular with banks which were not obliged to hand over the documents.

54. The applicant considered that requiring the information amounted to "fishing expeditions" on the part of the authorities. When the applicant refused to supply the information, he was punished with a fine, contrary to Article 6 § 1 of the Convention. It was up to the authorities to prove any criminal conduct on his part, and he was entitled to remain silent. In fact, the authorities had originally promised the applicant that they would not undertake further investigations if he admitted the amounts, and it was unfair to then request further documents in the hope of finding additional taxable income and assets.

55. The applicant was aware that he would be fined for tax evasion. However, as the amount of the fine depended on the amount of the supplementary tax rather than the applicant's culpability, the authorities sought to establish further tax debts as this would have enabled them to impose a higher fine. In the applicant's view it was unclear why in tax-evasion proceedings, in which fines of millions of Swiss francs were imposed, other principles should apply than those in regular criminal proceedings. In fact, the new Tax Act of the Canton of Berne separated these two proceedings if the taxpayer did not agree to combine them. This separation was not considered impracticable.

56. Finally, in respect of the agreement reached between the applicant and the tax authorities after the Federal Court's decision of 7 July 1995, the applicant pointed out that the fines imposed for refusing to submit information had not been included. In view of the enormous sum involved in the settlement – over CHF 80,000 – it could not be said that the agreement amounted to an acquittal of the applicant.

(b) The Government

57. The Government contended that the guarantees of Article 6 § 1 had been complied with. Thus, there was no difference between proceedings concerning taxation and those concerning tax evasion. The obligation to submit further information applied equally to both proceedings and served the purpose of determining the tax debt, in particular the amount of taxable items which the person concerned had not declared. A breach of the obligation to submit information led to a fine under Article 131 § 1 of the decree of the Federal Council. This fine, which could be imposed in either kind of proceedings, had to be distinguished from the fine resulting from tax evasion. In the present case, the proceedings originally instituted against the applicant concerned tax evasion in view of the fact that the applicant had declared neither certain investments with P. nor the resulting income. When the applicant failed to submit the requested information, a disciplinary fine was imposed on him in accordance with Article 131 § 1 of the decree of the Federal Council.

58. The Government submitted that in 1987, when the tax-evasion proceedings were instituted against the applicant, the tax authorities were

aware of the investments made with P. as well as the resulting income for the years 1979-85. The applicant himself had referred to these amounts on 22 December 1987. It was clear that the applicant's fortune could not have been obtained in any other manner than by means of undeclared income. From the beginning, the tax authorities could have imposed a fine on the applicant for tax evasion, even without punishing him for not submitting the necessary information in accordance with Article 131 § 1 of the decree of the Federal Council. The subsequent requests by the tax authorities concerned information of which they were already aware. The requests had as their only purpose the clarification of the source of the amounts invested with P., which would have permitted the determination of the amount of back-payment of taxes. The documents requested from the applicant would have served to confirm this knowledge rather than to obtain the applicant's conviction.

59. The Government considered that in such cases, as a matter of political choice, the tax authorities had no powers of investigation, so as not to penalise the person concerned. They could not search a person's premises, confiscate objects, hear witnesses or order detention. Bank secrecy remained intangible. To compensate for these shortcomings, the authorities could oblige a person to furnish relevant documents. The fine provided for in Article 131 of the federal decree was the only coercive measure left to the authorities. In this respect, the Government distinguished the present case from *Funke* (cited above) and *Bendenoun v. France* (judgment of 24 February 1994, Series A no. 284), where the French authorities imposed more severe fines and had far-reaching powers, such as that of searching premises and confiscating documents.

60. The Government submitted that a separation of the proceedings as practised, for instance, in Germany – regular tax proceedings, on the one hand, and criminal tax-evasion proceedings, on the other – would be impractical as the administration would have to conduct two different sets of proceedings, and the taxpayer would have to defend himself twice. The additional problem arose as to whether or not information gathered in the regular tax proceedings could be used in the criminal proceedings. Indeed, if a breach of Article 6 of the Convention were to be found in the present case, the legislative changes would be disproportionate and would not serve the cause of human rights, since the tax authorities would be obliged to resort to all the means normally reserved for the criminal investigation organs.

61. In the Government's view, it could not be said that the authorities went out on a "fishing expedition". To the extent that the applicant had himself admitted the amounts which he had not declared, without having been obliged to do so, the tax authorities could not be reproached with having breached his right to remain silent and not to incriminate himself. In this respect also the present case differed from *Funke* (cited above, p. 22, § 44). While it could not be excluded that the information provided by the

applicant on 22 December 1987 was incomplete, the authorities did not automatically presume such an offence. With reference, *mutatis mutandis*, to *Condron v. the United Kingdom* (no. 35718/97, § 55, ECHR 2000-V), the Government concluded that the requests for information did not breach the requirements of a fair trial.

62. Finally, the Government drew attention to the settlement reached between the applicant and the tax authorities after the Federal Court's decision of 7 July 1995. The back-payments of taxes mentioned therein in respect of the years 1981 to 1988 were known to the authorities from the beginning of the proceedings, and the fine imposed on the applicant amounted to two-thirds of the back-payments of taxes. On the other hand, the tax authorities had not taxed the undeclared amounts which the applicant had invested with P.

2. The Court's assessment

63. The Court recalls at the outset that in proceedings originating in an individual application it has to confine itself, as far as possible, to an examination of the concrete case before it (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, p. 17, § 35). Accordingly, what is at stake in the present case is not the fairness of the proceedings as such which were instituted against the applicant. Rather, the Court is called upon to examine whether or not the imposition of a fine on the applicant for having failed to provide certain information complied with the requirements of the Convention. It follows that the Court is not deciding in the present case the issue whether a State can oblige a taxpayer to give information for the sole purpose of securing a correct tax assessment.

64. Although not specifically mentioned in Article 6 of the Convention, the right to remain silent and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 § 1. The right not to incriminate oneself in particular presupposes that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the "person charged". By providing the accused with protection against improper compulsion by the authorities these immunities contribute to avoiding miscarriages of justice and securing the aims of Article 6 (see *Funke*, cited above; *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports* 1996-I, p. 49, § 45; *Saunders v. the United Kingdom*, judgment of 17 December 1996, *Reports* 1996-VI, pp. 2064-65, §§ 68-69; and *Serves v. France*, judgment of 20 October 1997, *Reports* 1997-VI, pp. 2173-74, § 46).

65. In the present case, when on 11 December 1987 the X District Office instituted tax-evasion proceedings against the applicant, he was requested to submit all documents concerning the companies in which he had invested money. When the applicant failed to do so, he was requested on three

further occasions to declare the source of the income invested. The applicant not having reacted to these requests, a disciplinary fine of CHF 1,000 was imposed on him on 28 February 1989. After four additional admonitions, a second disciplinary fine, of CHF 2,000, was imposed on the applicant. The latter fine he eventually contested unsuccessfully before the Federal Court. Subsequently he received two further disciplinary fines.

66. Thus, it appears that the authorities were attempting to compel the applicant to submit documents which would have provided information as to his income with a view to the assessment of his taxes. Indeed, according to the Federal Court's judgment of 7 July 1995, it was in particular important for the authorities to know whether or not the applicant had obtained any income which had not been taxed. While it is not for the Court to speculate as to what the nature of such information would have been, the applicant could not exclude that, if it transpired from these documents that he had received additional income which had not been taxed, he might be charged with the offence of tax evasion.

67. It is true that the applicant and the authorities reached an agreement on 28 November 1996 which closed various tax and criminal tax proceedings, including proceedings concerning disciplinary fines. However, the agreement expressly excluded the present application before the European Court which is directed against the judgment of the Federal Court of 7 July 1995 concerning the disciplinary fine imposed on the applicant on 29 November 1990.

68. The Court notes that in its judgment of 7 July 1995 the Federal Court referred to various provisions in criminal law obliging a person to act in a particular way so as to enable the authorities to obtain his conviction, for instance the obligation to install a tachograph in lorries, or to submit to a blood or a urine test. In the Court's opinion, however, the present case does not involve material of this nature which, like that considered in *Saunders*, has an existence independent of the person concerned and is not, therefore, obtained by means of coercion and in defiance of the will of that person (see *Saunders*, cited above, pp. 2064-65, § 69).

69. The Government have further submitted that the applicant had not been obliged to incriminate himself, since the authorities were in fact already aware of the information in question and he had admitted the amounts concerned. The Court remains unconvinced by this argument in view of the persistence with which the domestic tax authorities attempted to achieve their aim. Thus, between 1987 and 1990 the authorities found it necessary to request the applicant on eight separate occasions to submit the information concerned and, when he refused to do so, they successively imposed altogether four disciplinary fines on him.

70. Finally, the Government have submitted that a separation of proceedings – regular tax proceedings, on the one hand, and criminal tax-evasion proceedings, on the other – would be impractical. The Court recalls

that its task is to determine whether the Contracting States have achieved the result called for by the Convention, not to indicate which means a State should utilise in order to perform its obligations under the Convention (see *De Cubber v. Belgium*, judgment of 26 October 1984, Series A no. 86, p. 20, § 35).

71. As a result, and against the above background, the Court considers that there has been a violation of the right under Article 6 § 1 of the Convention not to incriminate oneself.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 4,000 Swiss francs (CHF) for the two disciplinary fines incurred of CHF 2,000 each. The Government accepted reimbursement of the first fine but not the second, concerning cantonal and communal taxes, since only the first fine had been contested before the Federal Court.

74. The Court agrees with the Government and awards the applicant CHF 2,000 under this head.

B. Costs and expenses

75. Under this head, the applicant claimed a total of CHF 33,909.80, namely, CHF 409.80 for costs in the proceedings before the Tax Appeals Commission; CHF 2,000 for costs in the proceedings before the Federal Court; and CHF 31,500 for the cost of legal representation before the Federal Court and in the Strasbourg proceedings.

76. The Government submitted that the agreement reached by the applicant and the authorities brought to an end all pending tax proceedings, with the exception of the proceedings before the European Court of Human Rights. This agreement covered in particular costs in the proceedings before the Tax Appeals Commission and the Federal Court. For the same reason, and with reference to *The Sunday Times v. the United Kingdom (no. 1)* (Article 50), the Government considered that the cost of legal representation before the Federal Court could not be taken into account (see the judgment of 6 November 1980, Series A no. 38, pp. 12-13, § 22). The Government

moreover recalled that in its admissibility decision of 6 April 2000 the Court declared inadmissible the applicant's complaint under Article 4 of Protocol No. 7 to the Convention. As a result, the Government considered the sum of CHF 5,000 to be adequate for the expenses incurred by the applicant.

77. In accordance with its case-law, the Court will consider whether the costs and expenses claimed were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

78. The Court considers, on the one hand, that the costs of CHF 2,409.80 incurred in the proceedings before the Tax Appeals Commission and the Federal Court were necessary in so far as the applicant had to raise his complaints before these instances in order to comply with the requirements of Article 35 of the Convention. Neither these costs nor the costs of legal representation before the Federal Court were identified as such in the settlement reached on 28 November 1996, which concerned the applicant's taxes and fines for tax evasion, but excluded the present application directed against the Federal Court proceedings. On the other hand, as regards the costs of legal representation in Strasbourg, the Court agrees with the Government that the award of costs and expenses should take into account the fact that part of the applicant's complaints was declared inadmissible. Making an assessment on an equitable basis, the Court awards him CHF 8,000 in respect of costs of legal representation.

79. As a result, the Court awards the applicant a total of CHF 10,409.80 under the head of costs and expenses.

C. Default interest

80. According to the information available to the Court, the statutory rate of interest applicable in Switzerland at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 of the Convention is applicable and that there has been a violation of Article 6 § 1;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) CHF 2,000 (two thousand Swiss francs) in respect of pecuniary damage;

(ii) CHF 10,409.80 (ten thousand four hundred and nine Swiss francs eighty centimes) in respect of costs and expenses;

(b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 3 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President