



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

THIRD SECTION

CASE OF STERE AND OTHERS v. ROMANIA

(Application no. 25632/02)

JUDGMENT

STRASBOURG

23 February 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stere and Others v. Romania,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs A. GYULUMYAN,

Mrs R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 2 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 25632/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mr Mihail Stere, Mr Romeo Stoica and Mr Emil Marin Enache (“the applicants”), on 21 June 2002.

2. The applicants, who had been granted legal aid, were represented by Mrs Adnana Calugar, a lawyer practising in Alba Iulia. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu, and subsequently Mrs B. Rămășcanu, of the Ministry of Foreign Affairs.

3. On 14 December 2004 the Court (Third Section) decided to communicate the application to the Government. Under Article 29 § 3 it decided to examine the admissibility of the application and the merits of the case at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1960, 1956 and 1948 respectively and live in Alba Iulia.

5. In connection with the restructuring of the armed forces, which had begun in 1995, a number of legislative measures were passed with a view to

encouraging professional soldiers to apply for reassignment to the reserve force and thereby to take early retirement.

6. In addition to their retirement pension, section 7 of Government Ordinance no. 7 of 26 January 1998 (“Ordinance no. 7/1998”) granted those concerned a tax-free “income replacement allowance” calculated in relation to their gross monthly pay. Under section 31 (1) of Law no. 138 of 20 July 1999 (“Law no. 138/1999”), they were additionally entitled to a tax-free “maintenance allowance”, also calculated in relation to their gross monthly pay. The method of calculating those allowances was amended by Government Emergency Ordinance no. 136 of 14 September 2000 (“Ordinance no. 136/2000”), which provided that the net monthly pay would be used as the basis of calculation.

7. At their request, the applicants were assigned to the reserve force and thereby took early retirement, on 31 March 2000 for the first and third, and on 31 May 2000 for the second, with entitlements to the above-mentioned pension and allowances. However, when those sums were paid out, the Ministry of Defence deducted income tax, calculated in accordance with Ordinance no. 73 of 27 August 1999 concerning income tax (“Ordinance no. 73/1999”), thereby depriving the first applicant of 85,804,572 Romanian lei (ROL), the second of ROL 77,945,656 and the third of ROL 59,605,499.

8. In an action against the Ministry of Defence, the applicants claimed the reimbursement of those sums, which they alleged had been wrongfully deducted, on the ground that their allowances were exempt from tax under Ordinance no. 7/1998 and Law no. 138/1999. The Ministry disputed their claim, contending that the taxation in question was consistent with Ordinance no. 73/1999.

9. In a judgment of 11 January 2001 the Alba Iulia Court of First Instance allowed the applicants’ action and ordered the Ministry to reimburse the amounts deducted for tax. The court considered that on the date of their retirement, that is to say some time before the entry into force of Ordinance no. 136/2000, the applicants had acquired an entitlement to tax-free allowances calculated in relation to their gross monthly pay. Moreover, the court observed that section 5 of Ordinance no. 73/1999 provided that maintenance allowances were likewise tax exempt.

10. The Ministry of Defence appealed, arguing that the tax exemption provision in respect of the income replacement allowance, under section 7 of Ordinance no. 7/1998, had been expressly repealed by section 86 of Ordinance no. 73/1999, which had also implicitly abolished the exemption in respect of maintenance allowances under section 31 (1) of Law no. 138/1999.

11. In a final decision of 27 March 2001 the Alba County Court upheld the merits of the judgment at first instance on the following grounds:

“Even assuming, purely for the sake of argument, that the provisions of section 7 of Ordinance no. 7/1998 had been repealed, those of section 31 (1) of Law no. 138/1999

– which also provide for tax exemption and for the calculation [of the allowance] in relation to gross monthly pay – would remain as a legal basis. The Ministry contends that the provision in question was implicitly repealed, but that view has not been substantiated, because Ordinance no. 73/1999 post-dates Law no. 138/1999 and if the legislature had wished to repeal the section in question, nothing would have prevented it from making express provision to that effect, as was the case for other legislative instruments referred to in section 86 of Ordinance no. 73/1999. ... In any event, a Government Ordinance, being of secondary legislative importance in relation to statute law, cannot repeal a statute.

In addition, the Ministry wrongly contends that Ordinance no. 73/1999 constitutes a *lex specialis* in relation to Ordinance no. 7/1998 and to Law no. 138/1999. In actual fact, Ordinance no. 73/1999 is the framework instrument concerning taxation, and, in relation to the other two instruments mentioned above, which grant tax relief to a specific category of employees, it lays down the ordinary rules from which the special provisions of those instruments derogate.

Moreover, section 6 of Ordinance no. 73/1999 states that income replacement allowances and maintenance allowances, such as those concerned in the present case, are exempt from income tax, thus indicating the legislature's intention that they should not be taxable.

The provisions of Ordinance no. 136/2000 to the effect that the allowance is calculated in relation to net pay do not apply in the case of the applicants, who retired before the entry into force of the Ordinance, which does not have retrospective effect ... The possibility of discrimination [between servicemen who retired after the entry into force of Ordinance no. 136/2000, whose allowances were calculated in relation to net pay, and those who retired before that date, who were entitled to allowances based on gross pay] is not left to the discretion of the employer or of the courts, but is a matter for the legislature, which should have taken this into account and found an appropriate solution in the course of the legislative process, by means of precise and specific regulatory provisions. Accordingly, neither an employer nor a court can substitute itself for the legislature in harmonising the various provisions which have come into force at different times but which concern situations that are similar, although they arose, changed or ceased to exist under different statutes."

12. The court also considered that the two allowances in issue could not be characterised as a "salary" or "income treated as a salary" for the purposes of sections 22 and 23 of Ordinance no. 73/1999, especially as they were not included among the forms of taxable income referred to in section 4 of that Ordinance.

Lastly, the court looked at the practice of other courts in similar disputes and found that it supported the claims of the former servicemen.

13. As the judgment of 11 January 2001 had become *res judicata* and had been endorsed with a writ of execution, the applicants received, on an unspecified date, the amounts they had claimed.

14. On 11 September 2001 the Procurator-General of Romania applied to the Supreme Court of Justice to have the 11 January 2001 judgment of the Alba Iulia Court of First Instance and the 27 March 2001 decision of the Alba County Court quashed.

15. He considered that in construing domestic law the two courts had committed serious errors of law which had vitiated the settlement of the dispute. He argued that section 86 of Ordinance no. 73/1999 had superseded the provisions of section 7 of Ordinance no. 7/1998 and section 31 of Law no. 138/1999, and added that under sections 4 and 23 of Ordinance no. 73/1999 the allowances and other entitlements of military personnel were treated as salaries and were therefore liable to the taxation provided for in that Ordinance.

16. The applicants sought the dismissal of the Procurator-General's application to have the judgments quashed, disputing his arguments that the above-mentioned provisions had been superseded and that the allowances were treated as salaries. They argued that, in any event, even assuming that the allowances could have been treated as salaries, they should not have been liable to tax, since section 6 (f) of Ordinance no. 73/1999 exempted from tax any allowances that were calculated in relation to net monthly pay. Moreover, under section 24 (2) of that Ordinance, net earnings were not defined as gross earnings minus tax but as gross earnings minus social-insurance contributions. Accordingly, they considered that the Ministry of Defence had wrongly deducted tax from their allowances.

17. In a judgment of 30 January 2002 the Supreme Court of Justice allowed the Procurator-General's application, quashed the impugned judgments and ordered the reimbursement of the sums that the Ministry of Defence had paid to the applicants on the basis of those judgments. The relevant passage of the decision provided:

“Whilst section 31 of Law no. 138/1999 provides that, upon their reassignment to the reserve force, servicemen benefit from a tax-free maintenance allowance, calculated in relation to their gross monthly pay, that provision must be read in the light of the provisions of section 5 of Government Ordinance no. 73/1999 and of the Government Order [no. 1066 of 29 December 1999 – “Order no. 1066/1999”], which, whilst providing that income from maintenance allowances is exempt from tax, specify which forms of income are included in that category and exclude any salaries or income treated as such.

Considering that Law no. 138/1999 pertains precisely to salaries and entitlements relating to the status of Ministry of Defence employee, it is clear that the grant of a maintenance allowance under section 31 of the above-mentioned Law stems from employee status, and that such allowances are accordingly liable to tax, in accordance with Ordinance no. 73/1999.

That conclusion is confirmed by Government Order no. 1066/1999 which, referring to section 5 of Ordinance no. 73/1999, specifies what forms of income are exempt from tax, among them maintenance allowances. It can be seen from the enumeration in that provision that the maintenance allowances contemplated in Ordinance no. 73/1999 are confined to those granted for special purposes, such as maintenance allowances for soldiers' spouses, welfare benefits, emergency relief granted by the State or local councils in cases of hardship, funeral grants, etc.

The above-mentioned provision makes no reference to maintenance allowances paid to servicemen upon their reassignment to the reserve force and calculated in relation to their gross monthly pay.

Consequently, since such allowances are comparable to a salary and are calculated on the basis of gross monthly pay, they are taxable like any gross income.

In addition, section 86 of Ordinance no. 73/1999 expressly provides that any provision contrary to that Ordinance is superseded, thereby confirming once again that the legislature's intention was to render such income taxable.

As regards the income replacement allowances granted to the applicants under section 7 of Ordinance no. 7/1998, being tax-exempt and likewise calculated in relation to gross monthly pay, it should be noted that section 86 of Ordinance no. 73/1999 expressly superseded that provision as regards the tax exemption of such income. Accordingly, the applicants are also liable for tax on such income.

Furthermore, it is to be observed that section 6 (f) of Ordinance no. 73/1999 exempts from income tax only those income replacement allowances and maintenance allowances that are calculated in relation to net monthly pay, whereas the allowances granted to the applicants were calculated in relation to their gross monthly pay. It follows that this income was also taxable."

18. As the authorities failed to bring any action for the enforcement of the judgment of the Supreme Court of Justice, the applicants have not, to date, reimbursed the disputed amounts.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure

19. Article 330 of the Code of Civil Procedure provided:

Article 330

"The Procurator-General may, of his own motion or on an application by the Minister of Justice, apply to the Supreme Court of Justice for any final judicial decision to be quashed on any of the following grounds:

1. that the court in question has exceeded its jurisdiction;
2. that the decision concerned by the application has seriously breached the law, leading to erroneous findings on the merits of the case, or that the decision is ill-founded."

This Article was repealed by Government Emergency Ordinance no. 58 of 25 June 2003.

B. Government Ordinance no. 7 of 26 January 1998 on certain measures of social protection for the benefit of military and civilian personnel during the restructuring of the armed forces

20. The relevant provisions read as follows:

Section 6

“During the restructuring of the armed forces, officers, non-commissioned officers and instructors [having completed at least 20 years of service] may request to be reassigned to the reserve force, before reaching the statutory age-limit, with a military pension entitlement ...”

Section 7

“Military personnel reassigned to the reserve force who are entitled to a military pension ... shall receive, in return for their service in the armed forces, the compensation provided for in the statutory provisions on remuneration of military personnel. Moreover, for each remaining year of service until the age of fifty-five, they shall be entitled to a tax-free income replacement allowance of which the amount shall be double that of their last gross monthly pay.”

Section 8

“Military personnel having completed less than twenty years of service may request to be reassigned to the reserve force or may be assigned thereto automatically ... and shall receive a tax-free income replacement allowance, calculated on the basis of their length of service and their last gross monthly pay.”

C. Law no. 138 of 20 July 1999 on the remuneration and other entitlements of military and civilian personnel in the armed forces

21. Section 31 of Law no. 138 provides:

Section 31

“Military personnel reassigned to the reserve force who are entitled to a military pension, ... shall receive a tax-free maintenance allowance calculated according to their length of service ... and their last gross monthly pay ...

Military personnel reassigned to the reserve force, with a military pension entitlement, before reaching the statutory age-limit, shall also receive, for each remaining year of service until that age, a tax-free maintenance allowance of which the amount shall be double that of their last gross monthly pay.

The provisions of the second paragraph shall not apply to military personnel receiving the income replacement allowance provided for by Ordinance no. 7/1998.”

**D. Government Ordinance no. 73 of 27 August 1999 on income tax
(entered into force on 1 January 2000)**

22. The relevant provisions read as follows:

Section 4

“The category of taxable income shall consist of income from self-employment, rent from property, salaries, interest, dividends and other income.”

Section 5

“The following shall not be considered taxable income and shall not be liable to taxation:

(a) maintenance allowances, grants and other forms of benefit for special purposes, being paid from the State budget, the social insurance fund, special funds, local councils, other public funds or third-party sources ...”

Section 6 (f)

“The following shall be considered tax-free income: ... sums constituting income replacement allowances calculated on the basis of net monthly pay and granted to military personnel assigned to the reserve force in connection with the restructuring of the armed forces, and maintenance allowances calculated on the basis of net monthly pay and granted to military personnel assigned to the reserve force with or without a pension entitlement”.

Section 22

“A salary shall be defined as any income in money or in kind received by an individual who pursues an activity under a contract of employment, regardless of the term of the contract, the designation given to the income or the means of payment ...”

Section 23 (b)

“The following shall be treated as salaries for tax purposes: monthly pay, allowances, bonuses, subsidies and other statutory entitlements of armed-forces personnel.”

Section 24 (2)

“The net amount of taxable salaries shall be calculated by subtracting the following from the gross amount ...:

(a) statutory contributions to supplementary pension, unemployment benefit and medical insurance funds;

(b) a 15% deduction in respect of professional expenses”

Section 86

“The present Ordinance, upon its entry into force, shall supersede ... the provisions on tax exemption in respect of the income replacement allowances provided for in section 7 and section 8 (1) of Ordinance no. 7/1998 ..., together with any other provisions that may be incompatible.”

E. Government Order no. 1066 of 29 December 1999 (published in the Official Gazette of 5 January 2000) on the implementation of Ordinance no. 73/1999

23. The Order in question provides:

“Tax-free income [for the purposes of section 5 (a) of Ordinance no. 73/1999] shall include: ... maintenance allowances for soldiers’ spouses, welfare benefits, emergency relief granted by the State or local councils in cases of hardship, unemployment benefit, professional reintegration allowances, funeral grants, humanitarian, medical or social relief ...”

F. Government Emergency Ordinance no. 136 of 14 September 2000 on the calculation of income replacement and maintenance allowances paid to military personnel

24. The relevant provisions read as follows:

Section 1

“The amount of the income replacement allowance provided for in sections 7, 8 and 11 of Ordinance no. 7/1998 ... and that of the maintenance allowance provided for in section 31 and section 32 (1) of Law no. 138/1999 shall be calculated on the basis of net monthly pay.”

Section 2

“The amount of the net monthly pay shall be calculated by subtracting the statutory monthly tax from the amount of the gross monthly pay in respect of the last month of service.

The amount of the monthly tax shall be calculated as provided in Ordinance no. 73/1999 on income tax”.

THE LAW

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

25. The applicants complained of a lack of independence and impartiality on the part of the Supreme Court of Justice and alleged that the Procurator-General's application to have judgments quashed had been allowed because of pressure from the Finance and Defence Ministries. They relied on Article 6 § 1 of the Convention, which provides:

“.... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ...”

26. The Government argued that Article 6 was not applicable to the proceedings in issue since they concerned taxation (see *Ferrazzini v. Italy* [GC], no. 44759/98, §§ 21-30, ECHR 2001-VII).

27. The applicants made no observations under that head.

28. The Court reiterates that tax disputes fall outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produce for the taxpayer (see *Ferrazzini*, cited above, §§ 29-31).

29. In the present case, the Court finds that, even though the dispute was referred to the civil courts it concerned the tax liability attaching to the applicants' allowances. The applicants were thus disputing tax liabilities.

30. Accordingly, having regard to the circumstances of the case, the Court considers that the subject of the dispute was essentially a matter of public law and more specifically tax litigation (see, *mutatis mutandis*, *Cabinet Diot and S.A. Gras Savoye v. France* (dec.), nos. 49217/99 and 49218/99, 3 September 2002).

31. Moreover, the Court does not consider the proceedings to have any “criminal connotation” (contrast *Bendenoun v. France*, judgment of 24 February 1994, Series A no. 284, p. 20, § 47).

32. Accordingly, Article 6 § 1 of the Convention is inapplicable in the present case.

33. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected under Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1

34. The applicants complained of interference with their right to the peaceful enjoyment of their possessions on account of the obligation to repay the amounts they had received by virtue of a decision that had become *res judicata*. They relied on Article 1 of Protocol No. 1, 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. Admissibility

35. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover considers that no other ground for declaring it inadmissible has been established and therefore declares it admissible.

B. Merits

36. The Government acknowledged that in accordance with the final decision of the Alba County Court of 27 March 2001 the applicants had a right to payment from the State and that the annulment of this obligation by the Supreme Court of Justice had interfered with the applicants’ right to the peaceful enjoyment of their possessions.

37. The Government considered that the interference amounted to a control of the use of property to secure the payment of taxes, that it thus fell under the second paragraph of Article 1 of Protocol No. 1 and that it was compatible with that Article in so far as the measure was lawful and proportionate to the legitimate aim pursued.

38. As regards the principle of lawfulness, the Government submitted that the interference was based on the provisions of Government Ordinance no. 73/1999, as interpreted by the Supreme Court of Justice in exercising its discretion and applying domestic law.

39. Concerning the “fair balance” to be struck between the demands of the general interest and the protection of the applicants’ fundamental rights, the Government alleged that the obligation to pay a tax retrospectively, by virtue of a judicial decision, amounted to the retrospective application of tax legislation, which was not proscribed *per se* by Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Di Belmonte (n° 2) v. Italy* (dec.), no. 72665/01, 3 June 2004, and *M.A. and Others v. Finland* (dec), no. 27793/95, 10 June 2003).

40. The Government also considered that the obligation to pay a tax corresponding to some 40% of the amount of the allowances did not, in the circumstances of the case, constitute an excessive burden for the applicants. In this connection, it asserted that the allowances represented neither a form

of remuneration for the applicants' work nor a social-security entitlement, but rather an incentive grant by the State to encourage military personnel to take early retirement and to help them return to civilian life.

41. The applicants argued that the Supreme Court of Justice had interpreted the provisions of Ordinance no. 73/1999 incorrectly and that the taxation of their allowances had had no legal basis. They maintained that they had been deprived of their right to receive payment, which they had acquired lawfully by virtue of a final judicial decision.

42. The Court first notes that it is not in dispute that, by virtue of a final decision of 27 March 2001, the applicants had a claim against the State that was sufficiently established to be enforceable. The Ministry of Defence, moreover, paid them the amounts owed and they had peaceful enjoyment of those amounts until the Supreme Court of Justice ordered their reimbursement in a judgment of 30 January 2002. That judgment therefore constituted interference with the applicants' right to receive such payment and, accordingly, with their right to the peaceful enjoyment of their possessions.

43. Concerning the applicable rule under Article 1 of Protocol No. 1, the Court reiterates that this Article comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

44. The Court observes that the applicants complained of being deprived of their right to payment, within the meaning of the second sentence of the first paragraph of Article 1. It is true that interference with the exercise of rights deriving from claims against the State can be regarded as constituting such a deprivation of property (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 22, § 34). However, as regards the levy of a tax, the most natural approach is to examine the complaints from the perspective of a control of the use of property in the general interest "to secure the payment of taxes", as contemplated by the rule in the second paragraph of Article 1 (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, judgment of 23 October 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2353, § 79).

45. However, the three above-mentioned rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with

particular instances of interference with the right to peaceful enjoyment of property and are therefore to be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, judgment of 23 February 1995, Series A no. 306-B, pp. 46-47, § 55).

46. The Court reiterates that Article 1 of Protocol No. 1 requires, above all, that any interference by public authorities with the right to the peaceful enjoyment of one's possessions must be lawful. The second paragraph recognises the right of States to control the use of property by enforcing "laws". In exercising its supervisory jurisdiction, the Court has the power, albeit limited, to review compliance with domestic law (see, for example, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 16, § 47).

47. In the present case, it finds that the parties took diverging positions. The Government considered that the provisions of Ordinance no. 73/1999, as interpreted by the Supreme Court of Justice, constituted the legal basis for the interference. The applicants alleged, for their part, that the interpretation given by the Supreme Court was erroneous.

48. The Court observes that the applicants submitted identical arguments to those on which they had relied in the Supreme Court of Justice, which dismissed the arguments in its judgment of 30 January 2002. On that point, the Court notes that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

49. Having regard to the above-mentioned judgment of the Supreme Court of Justice, which found that the provisions of section 31 of Law no. 138/1999 and section 7 of Ordinance no. 7/1998, concerning the tax exemption of the allowances in question, had been superseded, the Court considers that the interference was provided for by law – in this case by Ordinance no. 73/1999 – as required by Article 1 of Protocol No. 1.

50. The Court must also establish whether a "fair balance" was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence. There must accordingly be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see the *Building Societies* judgment, cited above, pp. 2353-54, § 80).

51. Moreover, in determining whether that requirement is met, it has been recognised that a Contracting State, not least when framing and implementing policy in the area of taxation, enjoys a wide margin of appreciation (see, among many other authorities, *Gasus Dosier- und Fördertechnik GmbH*, cited above, pp. 48-49, § 60).

52. However, the Court notes that in the present case the applicants were ordered to reimburse amounts which had been lawfully paid to them after being recognised as due debts in a final decision that had become *res judicata*.

53. In this connection it should be recalled that the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). It presupposes respect for the principle of legal certainty, particularly as regards judicial decisions that have become *res judicata*. No party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, for example, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 72, ECHR 2002-VII, and *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). Were that not the case, the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law.

54. Admittedly, the retrospective application of tax legislation is not proscribed *per se* by Article 1 of Protocol No. 1 (see *Di Belmonte* (no. 2) and *M.A. and Others*, both cited above). However, the Court notes that the present case does not concern the retrospective application of tax legislation but the quashing of a final decision which had become *res judicata* and had established the applicants' right to payment from the State.

55. Having regard to the fact that the intervention of the Procurator-General after the end of the proceedings – to which he had not been a party – led to the total annulment of that entitlement, the Court considers that such serious interference with the rights of the applicants upset, to their detriment, the fair balance that must be struck between the protection of property and the requirements of the general interest (see, *mutatis mutandis*, *S.A. Dangeville v. France*, no. 36677/97, § 61, ECHR 2002-III, and *Kliafas and Others v. Greece*, no. 66810/01, § 30, 8 July 2004).

56. Notwithstanding the wide powers of the State in the field of taxation, the exercise of those powers, in the circumstances of the case, infringed the principles of legal certainty and the rule of law.

57. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicants each claimed 10,000 euros (EUR) in respect of the non-pecuniary damage caused to them by the interference with the peaceful enjoyment of their possessions.

60. The Government made no observations under that head.

61. The Court considers that the applicants sustained indisputable non-pecuniary damage as a result of being ordered to reimburse the amounts in issue.

62. Having regard to the circumstances of the case, and ruling on an equitable basis as required by Article 41, the Court awards EUR 1,000 to each of the applicants under this head.

B. Costs and expenses

63. The applicants claimed EUR 1,200 for the costs and expenses they had incurred in the domestic proceedings.

64. The Government made no observations under that head.

65. In accordance with the Court's case-law, an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the fact that the applicants failed to produce any supporting documents, the Court dismisses the claim for costs and expenses in respect of the domestic proceedings.

C. Default interest

66. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 1 of Protocol No. 1 admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 23 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President