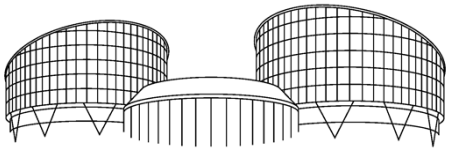

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

See eil
FIRST SECTION

CASE OF ITALGOMME PNEUMATICI S.R.L. AND OTHERS v. ITALY

(Applications nos. 36617/18 and 12 others – see appended list)

JUDGMENT

Art 8 • Home • Correspondence • Access and inspection of applicants' business premises, registered offices or premises used for professional activities, involving the examination, copying and seizure (in some cases) of accounting records, company books, invoices and other accounting documents as well as documents relevant for tax assessment purposes • "Quality of law" requirements not met • Domestic legal framework affording domestic authorities unfettered discretion with regard to impugned measures' scope and conditions • Lack of sufficient procedural safeguards • Contested measures not subject to an effective *ex post* judicial review of their legality, necessity and proportionality • Interference "not in accordance with the law"

Art 46 • General measures • Systemic problem • Respondent State to bring its legislation and practice into line with Court's findings • Need for specific rules in domestic law, indicating circumstances for accessing and conducting on-site audits and tax checks on business premises and premises used for professional activities, establishing safeguards and providing for effective judicial review

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2025

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 Italgomme Pneumatici S.r.l. and Others v. Italy,

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

Ivana Jelić*, President*,
Erik Wennerström,
Alena Poláčková,
Georgios A. Serghides,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the applications (nos. 36617/18, 7525/19, 19452/19, 52473/19, 55943/19, 261/20, 7991/20, 8046/20, 20062/20, 34827/20, 26376/21, 28730/21 and 20133/22) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by one Italian national and twelve legal entities ("the applicants"), whose particulars are set out in the appended table, on the various dates also indicated in the appended table;

the decision to give notice to the Italian Government ("the Government") of the applications;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by ITALIASTATODIDIRITTO (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court), an organisation which was granted leave to intervene by the President of the Section;

Having deliberated in private on 14 January 2025,

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

INTRODUCTION

1. The applications concern access to and the inspection of the applicants' business premises, registered offices or premises used for professional activities, and the examination, copying and seizure (in some cases) of their accounting records, company books, invoices and other mandatory documents relating to accounting, and several different types of documents relevant for tax assessment purposes. The contested measures were taken by officers or agents of the Revenue Police (*Guardia di Finanza*) or the Tax Authority (*Agenzia delle Entrate*) for the purpose of assessing the applicants' compliance with their tax obligations. The applicants complained of the excessively broad scope of the discretion conferred on the domestic authorities by the national legislation and of the lack of sufficient procedural safeguards capable of protecting them against any abuse or arbitrariness, and in particular that there had been no *ex ante* and/or *ex post* judicial or

independent review of the contested measures. They invoked Article 8 of the Convention, taken alone and in conjunction with Article 13 of the Convention, and Article 6 § 1 of the Convention.

THE FACTS

2. The details of the applicants and their representatives are set out in the Appendix.

3. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

4. The facts of the case may be summarised as follows.

I. CIRCUMSTANCES COMMON TO ALL APPLICATIONS

5. On different dates the applicants' business premises, registered offices or premises used for professional activities were accessed and inspected by officers or agents of the Revenue Police or the Tax Authority so that their compliance with their tax obligations could be assessed. All the applicants are legal entities, except for Mr Terrenzio, who lodged application no. 20062/20 on behalf of the company of which he is the sole proprietor (*ditta individuale*).

6. The authorisations to carry out the audits were issued by either the local head of the Tax Authority or the local head of the Revenue Police (see paragraphs 11-36 below) under Article 52 § 1 of Presidential Decree no. 633 of 26 October 1972 ("Decree no. 633/1972", see paragraph 41 below) and/or Article 33 § 1 of Presidential Decree no. 600 of 29 September 1973 ("Decree no. 600/1973", see paragraph 46 below).

7. The applicants and their representatives were asked to produce accounting records, company books, invoices and other mandatory documents concerning accounting, as well as several different types of documents relevant for tax assessment purposes relating to the years under audit. The requests did not concern only records and books which the applicants were legally obliged to keep, but "any other relevant document[s]" in their possession which were equivalent to accounts, such as records relating to transactions, assets or liabilities which were not on official statements (off-the-books records – *scritture extracontabili*).

8. The applicants and their representatives were informed that under Article 66 of Decree no. 633/1972 and Article 68 of Decree no. 600/1973 (see paragraphs 45 and 50 below), the officers or agents carrying out the audits were bound by professional secrecy as regards the information acquired, and that the audits were subject to the guarantees and safeguards provided for under section 12 of Law no. 212 of 27 July 2000 ("Law no. 212/2000", see paragraph 53 below).

9. They were further informed that: (i) pursuant to Article 52 § 5 of Decree no. 633/1972 and Article 32 § 4 of Decree no. 600/1973, in the event that they refused to produce the documents requested, they would be prevented from relying on them as evidence in their favour in any subsequent administrative and judicial proceedings (*preclusione probatoria*, see paragraphs 41 and 46 below); (ii) a refusal to produce books and documents whose possession was required by law or whose existence was known to the authorities would entail the imposition of the sanction provided for in Article 9 of Legislative Decree no. 471 of 18 December 1997 ("Decree no. 471/1997", see paragraph 52 below); and (iii) under Article 55 § 2 (1) of Decree no. 633/1972 (see paragraph 43 below) and Article 39 § 2 (c) of Decree no. 600/1973 (see paragraph 48 below), in the event of a failure to keep or produce the above-mentioned documents, the Tax Authority would be allowed to assess how many transactions had taken place and how much income had been received by resorting to presumptions (*presunzioni semplici*) based on the data and items which had been collected in other ways and were available to the authorities.

10. The applicants complied with the domestic authorities' requests, by letting the officers and agents carry out the audits and producing the documents requested. Those documents were copied if they were in electronic format and in some cases they were seized; in other cases, they were left with the applicants, but sealed and stored and kept at the tax and police authorities' disposal in order to be examined further (see paragraphs 11-36 below).

II. JUSTIFICATION AND SCOPE OF THE MEASURES

A. Application no. 36617/18

11. The relevant authorisation was issued on 18 May 2018 by the director of the Tax Authority in Foggia. It indicated that the applicant company was a "medium taxpayer" with a turnover of more than 5,164,000 euros (EUR) which had not been subject to tax assessment proceedings in the previous three years, and that it had declared a low income in 2015.

12. Officers accessed the premises on 22 May 2018. The applicant company's representative produced the documents requested. The officers inspected the premises and took note of the materials stored in the warehouse and the employees present on the premises. They also took copies of the employees' identity documents.

B. Application no. 7525/19

13. The relevant authorisation was issued on 21 January 2019 by the director of the Tax Authority in Bari. It indicated that the applicant company

was on the list of taxpayers who were to be subject to a tax assessment regarding their compliance with their tax obligations in 2015, owing to the low income declared.

14. Officers accessed the premises on the same day. The applicant company's representative produced the documents requested, some of which were in electronic format. The officers inspected the premises, took note of the material which was in the company's possession, and copied the data on its computer server. The data obtained were stored on the premises to be examined further by the authorities, and the applicant company's representative was informed that in the event that they were altered or removed, he would be held responsible under Articles 349 to 351 of the Criminal Code, concerning the breaking of seals and the removal, deletion, destruction or damage of evidence relating to an offence, deeds, documents or other movable objects kept in a public office or by a public official or employee performing a public service.

C. Application no. 19452/19

15. The relevant authorisation was issued on 27 February 2019 by the head of the Tax Authority in Bari (Adriatic Division). It stated that the purpose of the measure was to identify commercial operators "at risk" in the area of e-commerce, with particular reference to the online sale of products subject to the "reverse charge" regime and transactions concluded by the applicant company between 2016 and 2019.

16. Officers accessed the premises on 15 March 2019. The applicant company's representative produced the documents requested, and the officers copied the company's general ledger (*libro giornale*) for the years 2016 and 2017 onto an electronic device. The complete record of the operations (*processo verbale*) indicates that the applicant company's representative declared that, in his view, such access was unlawful.

D. Application no. 52473/19

17. The relevant authorisation was issued on 3 May 2019 by the head of the Tax Authority in Foggia. It stated that the applicant company had declared a low income and had never been subject to a general tax assessment. In particular, in 2016 it had declared an income of EUR 502 and losses of EUR 82,821.

18. Officers accessed various premises on 6, 13 and 15 May 2019. The complete record of the operations, dated 29 May 2019, indicated that they examined the documents acquired through the audit and identified several tax violations. It also indicated that in compliance with the relevant domestic provisions, the applicant company would be notified of those violations by means of a separate tax assessment notice or a notice imposing sanctions.

E. Application no. 55943/19

19. The relevant authorisation was issued on 23 April 2019 by the head of the Tax Authority in Foggia. It stated that the applicant company had not been subject to a general tax assessment in the previous five years, had reclaimed a large amount of VAT and was on the list of taxpayers to be assessed in 2019.

20. Officers accessed the premises on 6 June 2019. The applicant company's representative produced the documents requested, which were stored on the premises to be examined further by the authorities.

F. Application no. 261/20

21. The relevant authorisation was issued on 27 November 2019 by the head of the Revenue Police in Foggia. It stated that the measure in question was an autonomous initiative by the Revenue Police aimed at obtaining evidence for a tax assessment concerning the years 2017 to 2019.

22. Officers accessed the premises on 27 and 28 November 2019. They examined the documents provided by the applicant company and concluded in the complete record of the operations that it had failed to fully comply with its tax obligations for the year 2017.

G. Application no. 7991/20

23. The relevant authorisation was issued on 19 September 2019 by the head of the Tax Authority in Foggia. It stated that the measure in question aimed to check the applicant company's compliance with its tax obligations in 2014 and 2016, with regard to its business relations with another company which had also been subject to an audit.

24. Officers accessed the premises on eighteen different dates between 24 September and 25 November 2019. When they did so, the applicant company's representative requested that the audit be carried out in the office of the company's accountant. The accountant surrendered the relevant documents, which were then sealed to prevent them from being altered. They were stored on the applicant company's premises and kept at the authorities' disposal to be examined further.

H. Application no. 8046/20

25. The relevant authorisation was issued on 12 September 2019 by the head of the Tax Authority in Foggia. It stated that the audit in question aimed to check the applicant company's compliance with its tax obligations in 2014 and 2016, as the ongoing tax assessment for the year 2015 had revealed several inconsistencies and unreliable accounting.

26. Officers accessed the premises on 16 November 2019. When they did so, the applicant company's representative requested that the audit be carried out in the office of the company's accountant. The accountant surrendered the relevant documents, which were sealed to prevent them from being altered, stored on the applicant company's premises and kept at the authorities' disposal to be examined further.

I. Application no. 20062/20

27. The relevant authorisation was issued on 10 January 2020 by the director of the Tax Authority in Foggia. It stated that the audit in question aimed to check information relating to a tax credit received for the purpose of research and development – in particular, how much the company had received for the year 2017, and the applicant's eligibility to receive such a credit for the year 2018. The audit was also being carried out owing to the fact that the applicant's company had not been subject to general tax assessments in the previous four years.

28. Officers accessed the premises on 13 January 2020. The applicant surrendered the documents requested and undertook to produce others which were missing. The documents were copied by the officers and stored in a cabinet located on the premises of the applicant's company. The applicant's daughter, who was an employee of the company, was appointed as keeper of the documents and informed that in the event that they were altered or removed, she would be held responsible under Articles 349 to 351 of the Criminal Code. No inspection was carried out, as the officers acknowledged that there were no other employees or other relevant documents.

J. Application no. 34827/20

29. The relevant authorisation was issued on 8 January 2020 by the local head of the Revenue Police in Foggia. It stated that the measure in question was an autonomous initiative by the Revenue Police aimed at obtaining evidence for the tax assessment concerning the years 2017 to 2020.

30. Officers accessed the premises on the same day. The applicant company's representative produced the documents requested, which were seized and taken to the local station of the Revenue Police. The officers also inspected the premises, but no other relevant documents were found. The officers took note of the identity of the employees who were on the premises.

K. Application no. 26376/21

31. The relevant authorisation was issued on 22 April 2021 by the local head of the Revenue Police in Foggia. It stated that the measure in question

was an autonomous initiative by the Revenue Police aimed at obtaining evidence for the tax assessment concerning the years 2016 to 2021.

32. Officers accessed the premises on the same day. The applicant company's representative produced the documents requested, which were sealed and stored on the applicant company's premises and kept at the authorities' disposal. Several electronic documents were also copied by the officers. The applicant company's representative was appointed as keeper of the documents and informed that in the event that they were altered or removed, he would be held responsible under Articles 349 to 351 of the Criminal Code. The officers inspected the premises, but no other relevant documents were found. They also interviewed four employees and two shareholders of the company, and examined other documents. Other premises belonging to the applicant company (two sites) were also inspected.

L. Application no. 28730/21

33. The relevant authorisation was issued on 26 April 2021 by the head of the Revenue Police in Foggia. It stated that the measure in question was an autonomous initiative by the Revenue Police aimed at obtaining evidence for the tax assessment concerning the years 2017 to 2021. The complete record of the operations further indicated that the audit had been set in motion in the light of findings made in the context of an ongoing criminal investigation by the anti-mafia district prosecutor's office in Bari.

34. Officers accessed the premises on the same day. The applicant company's representative produced by email some of the documents requested, clarifying that he would produce the company's books and registers as soon as they were available. The documents produced, together with others found during an inspection of other premises belonging to the applicant company, were sealed and stored in a cabinet on the applicant company's premises. The applicant company's representative was appointed as keeper of the documents and informed that in the event that they were altered or removed, he would be held responsible under Articles 349 to 351 of the Criminal Code.

M. Application no. 20133/22

35. The relevant authorisation was issued on 28 March 2022 by the head of the Revenue Police in San Severo. It stated that the measure in question was aimed at acquiring data, information and documents concerning business relations between the applicant company and another company between 28 April 2017 and 28 March 2022.

36. Officers of the Revenue Police accessed the premises on 28 March 2022. The applicant company's representative produced invoices concerning transactions with another company, and provided explanations. When asked

to surrender the company's books, the applicant's representative replied that they were not stored on the premises which were being inspected, and undertook to produce them as soon as available. The officers acquired copies of the documents produced.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Law no. 4 of 14 January 1929 (General provisions for the repression of violations of financial laws)

37. The relevant provisions of Law no. 4 of 14 January 1929 ("Law no. 4/1929") read as follows:

Section 24

"[Persons are] notified of violations of provisions of financial laws by means of a complete record (*processo verbale*)."

Section 25

"Except [where] specifically provided for in financial laws, it is not permitted to seize books provided for by the Code of Commerce and other [books] that are necessary in a commercial context for carrying out commercial and industrial activities.

The previous provision does not apply in respect of violations of financial laws which amount to a criminal offence.

The competent authorities can in any case obtain a copy of the books at the expense of the taxpayer [being audited], or put their signature or initials on the parts relevant for identifying the breach, including the date and stamp of the [relevant] office; [they] can also impose specific measures aimed at preventing the books from being altered or removed."

Section 35

"In order to check compliance with the requirements imposed by laws or regulations on financial matters, officers or agents of the Revenue Police are authorised to access at any time establishments open to the public and any premises designated for industrial or commercial activities, in order to carry out audits (*verificazioni*) and inquiries (*ricerche*)."[1]

B. Constitution

38. The relevant provision of the Constitution reads as follows:

[1] See, however, section 12 of Law no. 212 of 27 July 2000, reproduced in paragraph 50 below.

Article 14

"[A person's] domicile is inviolable.

Inspections, searches or seizures may not be carried out [in the home], except in the cases and ways prescribed by law and in accordance with the guarantees established for the protection of personal liberty.

Checks and inspections for public health and safety, or for economic and fiscal purposes, shall be regulated by appropriate laws."

39. As consistently interpreted, the notion of "[a person's] domicile" within the meaning of Article 14 of the Constitution must be distinguished from other notions, such as "domicile" within the meaning of the relevant criminal provisions. It includes only places which are used as a "private residence" (*privata dimora*). In particular, it includes places which are used for activities which are characteristic of private life (*svolgimento di attività caratteristiche della vita privata*). By contrast, it does not include public places and places which are open to the public, or places that, although private, are not used as "private residences". In general, it does not include business premises and premises used for professional activities, unless they are also used as "private residences" within the meaning identified above[2].

C. The Code of Civil Procedure

40. Article 96 of the Code of Civil Procedure, which establishes the "aggravated liability" of a party in civil proceedings, reads as follows.

"If it is ascertained that the losing party brought or defended [proceedings] in court in bad faith or with gross negligence, the judge, at the request of the other party, shall award damages which [he or she (the judge) will] also calculate *proprio motu*, in addition to the costs of the proceedings.

...

In any case, when ruling on the costs of proceedings under Article 91, the judge, also *proprio motu*, may impose on the losing party an obligation to pay to the other party an amount determined on an equitable basis."

D. Presidential Decree no. 633 of 26 October 1972 (Imposition and regulation of value-added tax)

41. Under Article 51 § 2 (1) of Decree no. 633/1972, in order to exercise their function to verify compliance with tax obligations, the tax authorities are entitled to "access [premises] and carry out inspections and audits under Article 52" of the same Decree (*accessi, ispezioni e verifiche*).

[2] The domestic provisions applicable in the present case take into account this distinction. In particular, Article 51 § 1 of Decree no. 633/1972 provides that stricter conditions apply to access to business premises and premises used for professional activities which are also used as the "home" of an individual; in particular, the relevant authorisation must be issued by the public prosecutor (see paragraph 42 below).

42. The audits in question were regulated by Article 52 of Decree no. 633/1972, the relevant paragraphs of which read as follows:

Article 52

"1. VAT offices may order that financial administration employees [are permitted] to access premises intended for commercial, agricultural, artistic or professional activities, as well as those used by non-commercial entities ..., to carry out audits of documents (*ispezioni documentali*), checks (*verificazioni*) [and] inquiries (*ricerche*), and to collect any other data deemed to be useful (*ogni altra rilevazione ritenuta utile*) for the [relevant] tax assessment and [for] combating tax evasion and other tax violations. Employees accessing [such premises] must have special authorisation indicating the purpose of such access [which is] issued by the head of the office employing them. However, authorisation from the public prosecutor's office is required to gain access to premises that are also used as a home (*abitazione*). In any case, premises [where people] practise arts or professions must be accessed in the presence of the owner[s] ... or their representative[s].

2. Premises other than those indicated in the previous paragraph [private residences] may be accessed, subject to the authorisation of the public prosecutor, only in the case of serious indications of violations of the rules of the present Decree, for the purpose of finding books, records, documents, written statements and other evidence of tax violations.

3. In any case, it is necessary to obtain the authorisation of the public prosecutor or the nearest judicial authority in order to carry out body searches, open sealed documents, bags, safes, pieces of furniture, storage rooms and similar places by force, and examine documents and information in respect of which professional secrecy is invoked while [premises are being] accessed, without prejudice to the provision enshrined in Article 103 of the Code of Criminal Procedure.

4. Audit[s] of documents shall extend to all books, records, documents and written statements, including those which are not required to be kept and retained, that are located on the premises or are otherwise accessible by means of digital devices installed therein.

5. [Where a taxpayer refuses to produce] books, records [or] documents, [these] may not be considered in [his or her] favour for the purposes of a tax assessment in ... administrative and judicial proceedings. A declaration that the books, records, documents and written statements are not in the possession of the taxpayer, or the withholding [of these documents] from an audit, shall be taken as equating to a refusal to submit [such documents].

6. A complete record must be made in relation to each [occasion when premises are] accessed, describing the inspection and collection of data, as well as the requests made to the taxpayer or his or her representative and the answers received. The complete record must be signed by the taxpayer or his or her representative or state the reason why it is not signed. The taxpayer has the right to receive a copy.

7. Documents and records may be seized only if it is not possible to reproduce them or their content in the complete record, or if the content of the complete record is not signed or its content is disputed. Books and records may not be seized; the [officers implementing the measures] may make copies or [make copies of] extracts or have others make copies or [make copies of] extracts, may put their signature or initials in the relevant parts together with the date and official stamp, and may give appropriate warnings to prevent the books and records from being altered or removed.

...”

43. Under Article 55 § 2 (1), if the taxpayer, when requested to do so, omits to produce the documents, records and books necessary for the tax assessment, the Tax Authority is entitled to resort to presumptions based on the data and items otherwise collected in order to assess the tax owed.

44. Article 57 establishes the time-limits for issuing a tax assessment notice finding that a taxpayer has failed to comply with the relevant tax obligations in a specific fiscal year. In its current formulation, the first paragraph of that Article provides that the taxpayer must be notified of an assessment by 31 December of the fifth year following the year in which the relevant tax return was filed. In accordance with the second paragraph, where the taxpayer has completely omitted to file a return, he or she may be notified of the tax assessment by 31 December of the seventh year following the year in which the return should have been filed[3].

45. Under Article 66, officers of the Tax Authority and the Revenue Police are bound by professional secrecy with regard to the data and information acquired through exercising their functions.

E. Presidential Decree no. 600 of 29 September 1973 (Common provisions concerning the assessment of income tax)

46. Under Article 32 § 1 (1) of Decree no. 600/1973, in order to exercise their function to verify compliance with tax obligations, the tax authorities are entitled to “access [premises] and carry out inspections and audits under Article 33 [of the same Decree]”.

47. Article 33 § 1 of Decree no. 600/1973 provides that access to premises, inspections and audits in the context of income tax assessments are regulated by Article 52 of Decree no. 633/1973 (see paragraph 42 above). The fourth paragraph provides that documents, records and books which are requested by the authorities but not produced by a taxpayer cannot be considered in the taxpayer’s favour in subsequent administrative and judicial proceedings.

48. Under Article 39 § 2 (c), if the taxpayer omits to produce documents, records and books when requested to do so, the Tax Authority is entitled to resort to presumptions based on data which are otherwise available in order to determine the income in relation to which tax obligations must be assessed.

[3] The current formulation of this provision is the result of an amendment introduced by Law no. 208 of 28 December 2015. Years preceding 2016 are regulated by the previous version of the provision. In accordance with that version, a taxpayer had to be notified of an assessment by 31 December of the fourth year following the year in which the relevant tax return had been filed. Where a taxpayer had completely omitted to file a return, he or she could be notified of the tax assessment by 31 December of the fifth year following the year in which the return should have been filed.

49. Article 43 establishes the time-limits for concluding proceedings relating to income tax assessment (see paragraph 44 above).

50. Article 68 reiterates that administrative tax officers and revenue police officers have a duty of professional secrecy (see paragraph 45 above).

F. Legislative Decree no. 546 of 31 December 1992 (Provisions concerning proceedings before tax courts)

51. Article 19 of Decree no. 546/1992, as in force at the material time, includes an exhaustive list of official documents that can be challenged before the tax courts. Its relevant parts read as follows:

Article 19: Acts [official documents] that can be challenged and the subject of the complaint

"1. Complaints [to the tax courts] can be lodged against:

(a) a tax assessment notice;

(b) a tax liquidation notice;

(c) an order imposing sanctions;

(d) a tax collection notice;

...

(i) any other act which the law expressly states can be challenged.

...

2. Acts other than those expressly provided for cannot be challenged. Any act that can be challenged may be challenged solely on the basis of its own irregularities ..."

G. Legislative Decree no. 471 of 18 December 1997 (The reform of non-criminal tax sanctions in the field of direct taxes, value-added tax and the collection of taxes)

52. Where a taxpayer refuses to produce the documents requested by the authorities when they are accessing premises and carrying out inspections and audits, the sanction provided for by Article 9 of Decree no. 471/1997 is imposed on him or her. That provision reads as follows:

Article 9: Violation of bookkeeping obligations

"1. Any person who does not keep or retain, in accordance with the relevant duties, the accounting records, documents and books required by the relevant laws on direct taxes and value-added tax, or the accounting records, documents and books which are

required to be kept and retained under other tax provisions, shall be [given] an administrative fine of EUR 1,000 to EUR 8,000.[4]

2. The sanction provided for in the first paragraph of this provision shall also be imposed on [persons] who, while [the authorities] are accessing [premises] in the context of an assessment of direct taxes and value-added tax, refuse to produce or declare that they do not possess, or in any case withhold from the audit and check, documents, books and accounting records which may not be mandatory [but] certainly exist.

..."

H. Law no. 212 of 27 July 2000 (the Act on the Taxpayer's Rights)

53. The relevant provisions of Law no. 212/2000 read as follows:

Section 12: Rights and guarantees of the taxpayer subject to tax audits

"1. All access to premises [used] for commercial, industrial, agricultural, artistic or professional activities, and audits and tax checks on [those] premises, shall be ... on the basis of the actual needs of an investigation and on-site audit. Save for exceptional and urgent cases which are adequately documented, [those measures] shall be implemented during ordinary business hours and in such a manner as to cause the least possible disruption to the conduct of such activities and the business or professional relations of the taxpayer.

2. When an audit is initiated, the taxpayer has the right to be informed of the reasons justifying the audit and its scope, of [his or her] right to be assisted by a professional [who is] qualified to appear before the tax courts, and of [his or her] rights and obligations during audits.

3. At the request of the taxpayer, administrative and accounting documents may be examined in the office of the auditors or that of the professional who assists or represents the taxpayer.

4. The observations and remarks of the taxpayer and the professional who may assist [him or her] shall be noted in the [record] of the audit operations.

...

6. If the taxpayer believes that the auditors are proceeding in a manner that is not in accordance with the law, [he or she] may also appeal to the Taxpayer's Guarantor, under the provisions of section 13 ..."

Section 13: Taxpayer's Guarantor

"1. A Taxpayer's Guarantor is established at each directorate of revenues in the regions and autonomous provinces.

2. The Taxpayer's Guarantor, operating in full autonomy, is an [individual person acting as a] body [who is] chosen and appointed by the president of the regional tax

[4] The current wording of the provision, in particular the amount of the fine, is the result of the amendments introduced through Legislative Decree no. 158 of 24 September 2015, as modified through Law no. 208 of 28 December 2015.

court or its detached section in whose district the regional directorate of the tax authority is based ...

6. The Taxpayer's Guarantor addresses requests for documents or clarifications to the competent offices, [and does so] also on the basis of reports submitted in writing by the taxpayer or any other interested party who complains of malfunctions, irregularities, incorrectness, abnormal or unreasonable administrative practices, or any other behaviour likely to undermine the relationship of trust between citizens and the financial administration. [The competent offices] respond within thirty days, and [this] activates the self-correction procedures (*autotutela*) in respect of administrative assessments or collection notices of which the taxpayer has been notified. The Taxpayer's Guarantor communicates the outcome of the activity carried out to the regional or district directorates [of the tax authorities] or to the area headquarters of the Revenue Police, as well as to supervisory bodies, informing the person who reported [the irregularity].

7. The Taxpayer's Guarantor makes recommendations to tax office managers to protect the taxpayer and organise services in the best way.

..."

I. The power of self-correction (*autotutela*)

54. As part of its power of "self-correction" (*autotutela*), a public administrative body can annul or revoke decisions that have already been made, without the intervention of a judicial authority.

II. DOMESTIC PRACTICE

A. Guidelines of the Ministry of Economy and Finance concerning tax policy objectives

55. The Ministry of Economy and Finance has issued and published on its website guidance documents aimed at tax policy objectives. These documents are addressed to all bodies involved in revenue administration (the Finance Department of the Ministry, the Tax Authority, the Revenue Police) and outline operational guidelines aimed at improving services for taxpayers, promoting voluntary compliance with tax obligations, and preventing and combating tax evasion and avoidance.

1. 2016-2018 Guidelines

56. Paragraph 2 of the 2016-2018 Guidelines, dated 22 December 2015, provided that in the context of activities aimed at combating tax evasion and avoidance, the tax authorities had to "reduce intrusive checks" by "further developing an analysis of the relevant risks", including through the use of automated tools, such as databases.

2. 2018-2020 Guidelines

57. Point (f) of the General Criteria of the 2018-2020 Guidelines, dated 5 December 2017, set the following objective: the further implementation of computerised and automated systems enhancing the effectiveness of checks through the efficient use of databases whose ability to function effectively with other systems would be improved.

B. Circular no. 4/E of the Tax Authority of 7 May 2021

58. Circular no. 4/E of the Tax Authority of 7 May 2021 included "Operational guidelines on the prevention of and fight against tax evasion, and on activities related to tax disputes, advice and services for taxpayers". In Chapter I, the Circular gave instructions concerning the selection of small, medium and large businesses and individual taxpayers to be subjected to remote auditing and on-site audits. In general, it stated that while the situation generated by the COVID-19 pandemic should be taken into account, priority should be given to checking taxpayers who demonstrated a higher risk of non-compliance, or who had behaved in an uncooperative and non-transparent way in the past.

59. Similar guidelines were reiterated in Circular no. 21/E of the Tax Authority of 20 June 2022, following the COVID-19 pandemic.

III. DOMESTIC CASE-LAW

A. Case-law on the conditions for authorising access and inspections and the *ex ante* review of those measures

60. According to the case-law of the Court of Cassation, authorisation issued by a head of the revenue service or a public prosecutor which permits access to business premises and premises used for professional activities that are not private residences does not have to be reasoned, as the relevant legal provisions do not require specific conditions for the issue of such authorisation, and therefore the authorisation is a "mere procedural requirement (*mero adempimento procedimentale*) which is only necessary so that the measure can be approved by a hierarchically and functionally superior authority" (see Court of Cassation, Combined Divisions, judgment no. 16424 of 21 November 2002; see also Court of Cassation, judgments nos. 26829 of 18 December 2014, and 28563 of 6 November 2019). By contrast, reasoning is needed when the measure in question is authorised by a public prosecutor in respect of the residences of private individuals (see Court of Cassation, judgment no. 20096 of 30 July 2018).

61. The Court of Cassation also stated that under section 35 of Law no. 4/1929 (see paragraph 37 above), officers and agents of the Revenue Police, as members of the police, had the power to access business premises

and premises used for professional activities without written authorisation; such authorisation was only necessary for members of the revenue service, who were not police officers (see Court of Cassation, judgments nos. 16017 of 8 July 2009, 10137 of 28 April 2010, and 17525 and 17526 of 28 June 2019).

B. Case-law on the scope of the contested measures

62. According to the domestic case-law, reasons justifying access to premises which are indicated in the relevant authorisation do not circumscribe the scope of the evidence to be collected. While the authorisation may indicate that there are suspicions that specific tax violations have been committed (although this is not necessary), once the measure has been authorised, the authorities may also collect documents and other evidence capable of demonstrating other violations (see Court of Cassation, judgment no. 18155 of 7 August 2009, with further references).

C. Case-law on *ex post* remedies

1. Tax courts

63. According to the domestic case-law, in cases where a public prosecutor authorises access to and inspections of private residences, if the contested measures lead to the issuing of a tax assessment notice, the validity of that notice is conditioned by the validity of the authorisation permitting those measures, which qualifies as a preparatory document (*atto preparatorio*). Accordingly, the taxpayer in question would be allowed to argue before the competent tax courts that a tax assessment notice based on an unlawful inspection must be annulled (see, among many other domestic authorities, Court of Cassation, judgment no. 11082 of 7 May 2010).

64. By contrast, when such measures are authorised by an administrative authority in respect of business premises which are not private residences, if the authorisation is unlawful for formal or substantive reasons, this does not affect the validity of the final tax assessment notice or the use of documents and evidence acquired by means of the contested measures with the consent of the taxpayer (see Court of Cassation, judgments nos. 8344 of 19 June 2001, 27149 of 16 December 2011, 4066 of 27 February 2015, and 8547 of 29 April 2016). However, where there is no authorisation whatsoever, the final tax assessment notice should be annulled (see Court of Cassation, judgments nos. 15206 of 29 November 2001, and 18155 of 7 August 2009).

2. Civil courts

65. If tax authorities access premises but this does not lead to a tax assessment notice, including when violations are based on evidence which

was not discovered by gaining access to the premises, the relevant authorisation to access and inspect the premises must not be challenged before the tax courts, but before the civil courts, in line with judgment no. 11082/2010 of the Court of Cassation, cited in paragraph 63 above.

66. In judgment no. 8587 of 2 May 2016, the Combined Divisions of the Court of Cassation also ruled that the jurisdiction of the civil courts on unlawful access covered all cases in which tax assessment proceedings had not led to a tax assessment notice (*atto impositivo*) or such notices had not been challenged in court. In such cases, the relevant unlawful authorisation to access premises could be challenged before the civil courts. The Combined Divisions held that the opportunity to challenge such authorisation before the civil courts was based on their power to secure every "subjective right of a taxpayer not to be subjected to tax checks and audits entailing restrictions of [his or her] rights (some of which were guaranteed by the Constitution), except for in the cases expressly provided for by law and in situations expressly provided for by the laws conferring and restricting the scope of the powers of control conferred on the revenue service". This jurisdiction also meant that the civil courts were entitled to order the implementation of precautionary measures to protect taxpayers against unlawful access and inspections in the context of tax proceedings. The case in question concerned authorisation issued by a public prosecutor to access and inspect the premises of a law firm, where such authorisation violated the right to professional secrecy.

3. The Taxpayer's Guarantor

67. In judgment no. 25212 of 24 August 2022, the Court of Cassation clarified that the Taxpayer's Guarantor could not issue binding decisions. The relevant passages read as follows:

> "The legal system currently in force does not expressly provide for the Tax Authority or the entities which are entitled to collect taxes being obliged to implement a self-correction (*autotutela*) measure requested by the Taxpayer's Guarantor, or to comply with the decisions taken by the Taxpayer's Guarantor. Indeed, the [decisions] of the Taxpayer's Guarantor are not binding and therefore do not produce legal effects, but only constitute warnings entailing at most only an obligation to respond to the request for self-correction and/or review the file presented by the taxpayer. Ultimately, the Taxpayer's Guarantor is not recognised as having any active management powers. [He or she] cannot therefore exercise authoritative or sanctioning powers in respect of tax administration offices or, following the activation of a self-correction procedure, replace the tax administration in reviewing any illegitimate [notice]. In this regard, it has been said that the legislation establishing [the Taxpayer's Guarantor] does not give [it] the power to cancel tax notices by way of self-correction, nor does it establish a duty for the tax administration to decide [a case] in the manner requested by the Guarantor. According to the most acceptable interpretation, [the legislation] seems to limit itself to giving the Taxpayer's Guarantor the power to merely initiate the [self-correction] procedure. However, [once the relevant procedure has been initiated], the tax services would therefore be required to respond to the request of the Taxpayer's Guarantor by

issuing, at the very least, a notice indicating why they do not intend to follow up on [that request]."

THE LAW

I. JOINDER OF THE APPLICATION

68. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. The applicants complained under Article 8 of the Convention that the access to and inspection of their business premises or premises used for professional activities, and the copy or seizure of their accounting records, company books and other fiscal documents, had been unlawful, within the meaning of this provision, and had lacked proportionality. They argued, in particular, that the domestic legal framework did not sufficiently delimit the scope of discretion conferred on the domestic authorities, that the contested measures had not been subject to an *ex ante* judicial or independent check, and that there had been no effective *ex post* judicial or independent review.

70. The Court notes that some of the complaints were also raised under Article 13, in conjunction with Article 8. However, by virtue of the *jura novit curia* principle, the Court is the master of the characterisation to be given in law to the facts of the case (see, among other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). In this connection, it notes that it is settled case-law that, while Article 8 of the Convention contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *M.S. v. Ukraine*, no. 2091/13, § 70, 11 July 2017, and *Veres v. Spain*, no. 57906/18, § 53, 8 November 2022). In the present case, and in the light of its consistent approach (see, for example, *Brazzi v. Italy*, no. 57278/11, § 57, 27 September 2018), the Court finds it appropriate to examine the applicants' complaints solely under Article 8, the relevant parts of which read as follows:

"1. Everyone has the right to respect for his ... home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country, for the prevention of disorder or crime ..."

A. Admissibility

1. The Government's non-exhaustion objection

(a) The parties' submissions

71. The Government submitted that the applicants had failed to exhaust domestic remedies, as they had not challenged the measures in question before the tax courts or civil courts.

72. The applicants argued that an appeal before the tax courts would have been ineffective, as the availability of such an appeal had been uncertain and in any event would not have become available until some point in the future. As regards the civil courts, they submitted that the Government had failed to prove that such a remedy was available in practice, as they had not provided any case-law example in which the remedy had been used successfully in a similar case.

(b) The Court's assessment

73. The Court notes that the Government's objection as to whether the applicants had had at their disposal an effective remedy to challenge the contested measures is closely related to the substance of the applicants' complaints. Accordingly, it finds that this objection is to be joined to the merits.

2. Overall conclusions on admissibility

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

B. Merits

1. Applicability of Article 8 and existence of an interference

75. The parties did not dispute that there had been an interference with the applicants' right to respect for their "home" within the meaning of Article 8 of the Convention. Also, the Court recalls that in certain previous cases concerning complaints under Article 8 related to the search of business premises and the search and seizure of electronic data, it found an interference with "the right to respect for home" and "correspondence" (see *Bernh Larsen Holding AS and Others v. Norway*, no. 24117/08, § 105, 14 March 2013 and further references therein). The Court sees no reason to find otherwise and makes the following observations.

76. Article 8 is to be construed as including the right to respect for a company's registered office, branches or other business premises (see *Société Colas Est and Others v. France*, no. 37971/97, § 41, ECHR 2002-III; *Vinci*

Construction and GTM Génie Civil et Services v. France, nos. 63629/10 and 60567/10, § 63, 2 April 2015; and *Bernh Larsen Holding AS and Others*, cited above, §§ 104-05), and the right to respect for premises used for professional activities (see *André and Another v. France*, no. 18603/03, §§ 36-37, 24 July 2008, and *Xavier Da Silveira c. France*, no. 43757/05, § 32, 21 January 2010).

77. In the present case, the measures complained of were the authorities' "access", "inspections" and "audits" within the meaning of Articles 51 and 52 of Decree no. 633/1972 (see paragraphs 41-42 above) and Articles 32 and 33 of Decree no. 600/1973 (see paragraphs 46-47 above), and were therefore not coercive "searches".

78. In particular, the applicants or their representatives agreed to the officers' request to allow access to their premises and produce several documents (see paragraph 10 above). However, in the context of tax, the Court previously held that although the disputed measures were not equivalent to seizure in criminal proceedings and were not enforceable on pain of criminal sanctions, taxpayers were nonetheless under a legal obligation to comply with a request to allow such access, because otherwise a discretionary assessment would take place; it therefore considered that the imposition of that obligation on taxpayers constituted an interference with their "home" and "correspondence" (see *Bernh Larsen Holding AS and Others*, cited above, § 106, also with reference to § 43; see also paragraphs 43 and 48 above, as regards the domestic legal framework relevant to the present case).

79. In the present case, the applicants and their representatives were informed that a refusal to allow access would result in the imposition of an administrative sanction and other negative consequences (see paragraphs 9 and 52 above). Therefore, although the contested measures – the authorities' access to the applicants' business premises or premises used for professional activities, the inspections carried out therein, and the copying or seizure of documents and other data – were not equivalent to a search and seizure operation, the Court considers that they constituted an interference with the applicants' right to respect for their "home" and "correspondence" within the meaning of Article 8 of the Convention (see *Rustamkhanli v. Azerbaijan*, no. 24460/16, § 36, 4 July 2024, and *Bernh Larsen Holding AS and Others*, cited above § 106).

80. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being in accordance with the law, pursuing one or more of the legitimate aims listed therein, and being necessary in a democratic society in order to achieve the aim or aims concerned (see, among many other authorities, *Rustamkhanli*, cited above, § 39).

2. Nature of the interference

81. On the one hand, the Court reiterates that tax audits complement the duty of a taxpayer to provide the tax authorities with accurate information to enable them to make a correct tax assessment (see *Bernh Larsen Holding AS and Others*, cited above, §§ 67 and 160-161). In particular, the Court considers that the duty to submit tax returns is supplemented by the taxpayer's duty to provide information during audits which makes it possible to verify and depart from the information which he or she has provided. Reviewing documents, accounts and archives (which have to be kept for the purpose of such a review) and off-the-books records (which constitute a departure from transparent accountancy) is a necessary means of ensuring efficiency in checking information which taxpayers submit to the tax authorities. Inspections of warehouses and offices also aim to check whether the nature and amount of materials, money and employees have been correctly reflected in the returns submitted to the authorities.

82. Moreover, the Court reiterates that the nature of the interference complained of in the present case was not of the same seriousness and degree as is ordinarily the case in search and seizure operations carried out under criminal law (ibid., § 173).

83. Therefore, in this context, it is recognised that the domestic authorities have a wider margin of appreciation where the business premises of a legal person or premises used for professional activities are concerned, rather than those of an individual (ibid., § 159).

84. On the other hand, the Court has previously acknowledged that where a large amount of information is seized, this is a factor militating in favour of strict scrutiny on its part (ibid., § 159). In the present case, it is undisputed that the domestic authorities requested a significant amount of information which went beyond the scope of the access in question (see paragraphs 7, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34 and 36 above).

3. Whether the interference was "in accordance with the law"

(a) The parties' submissions

(i) The applicants

85. The applicants complained that the contested measures had not been "in accordance with the law" within the meaning of Article 8.

86. As regards delimiting the scope of discretion conferred on the authorities, the applicants argued that the applicable domestic provisions merely indicated which authority had the power to authorise the measures, but did not regulate the conditions that had to be respected, thereby conferring unlimited discretion to assess the appropriateness, object and scope of the measures. The only condition to be respected – namely the authorisation of measures for the purpose of preventing, investigating and combating tax violations – was extremely wide and generic. Moreover, the domestic legal

framework did not require that the authorisation contain specific reasoning or that measures be justified on the basis of evidence or at least suspicions that tax obligations had been violated, thereby preventing any assessment of the justification for those measures.

87. As regards an *ex ante* review, the applicants submitted that the authorisation to implement the measures had not been subject to the prior scrutiny of a judicial authority or, at least, an independent authority.

88. As regards an *ex post* review, the applicants first observed that the possibility of challenging the authorisations or asking the civil courts for suspensive measures had been purely theoretical, as there were no case-law examples indicating that the remedy had been used successfully. Secondly, the applicants submitted that an appeal to the tax courts would not have been effective, as it could not have been lodged until after they had been notified of the relevant tax assessment notice, therefore many years after the alleged violations. Moreover, if the tax courts had found that the measures had been unjustified, they would not have been able to award compensation. Lastly, the applicants argued that lodging a complaint with the Taxpayer's Guarantor would not have amounted to an effective remedy, as under domestic law, that body was not a judicial authority and did not issue binding decisions.

(ii) Government

89. The Government argued that the measures had had a basis in domestic law and that that basis complied with the quality requirements of the Convention.

90. They submitted that the relevant domestic provisions sufficiently delimited the scope of discretion conferred on the authorities, as the contested measures: (i) could be implemented for the purpose of a "tax assessment" and to "combat tax evasion and other tax violations"; (ii) had to fulfil the criteria of legality, effectiveness, efficiency and transparency, on the basis of a "risk analysis" undertaken in compliance with the principles of proportionality and adequacy; and (iii) had to be implemented in compliance with the rights and guarantees provided to the taxpayer. Moreover, every year those measures were planned on the basis of guidelines issued by the Tax Authority and the Ministry of Economy and Finance, which were easily accessible and complemented the relevant legislative provisions on the prior identification of cases where on-site audits were possible. In the Government's view, such a procedure constituted the means chosen by the legislature to strike the necessary balance between the State's interest in combating tax evasion and an individual's interest in not suffering undue interference with the enjoyment of his or her rights, and should be assessed by the Court in the light of the wider margin of appreciation afforded in cases concerning legal persons.

91. According to the Government, the measures had been subject to an *ex ante* check, since the relevant domestic provisions required the authorisation of the competent management body, which had to indicate the

purpose of the measures and assess that they were proportionate to the "effective on-site audit and needs of the check".

92. Lastly, the Government submitted that an *ex post* judicial review had been available in respect of the measures. As clarified by the Court of Cassation, the available remedy depended on whether or not the measures in question resulted in the issuing of a tax assessment notice which was also consequently challenged by the taxpayer. If the measures led to the issuing of a tax assessment notice, they could be challenged before the competent tax courts, as the authorisation for access and an inspection would qualify as a preparatory document whose validity affected the validity of the tax assessment. If, by contrast, the contested measures did not lead to tax assessment notices, they could be challenged before the civil courts. Where tax assessment notices were unlawful, the taxpayer could obtain compensation for the damage suffered by invoking the "aggravated liability" of the public administration under Article 96 of the Code of Civil Procedure. In particular, in judgment no. 13899 of 3 June 2013, the Combined Divisions of the Court of Cassation had held that such compensation could be awarded in the case of "reckless" behaviour on the part of the tax authorities, namely when tax had been imposed in "bad faith or with gross negligence". Lastly, the Government emphasised that under section 13 of Law no. 212/2000, the alleged unlawfulness of a contested measure could be reported to the Taxpayer's Guarantor, who could recommend that the domestic authorities comply with domestic law.

(iii) ITALIASTATODIDIRITTO

93. The third party emphasised that according to domestic case-law (see paragraph 61 above), written authorisation was required only when Tax Authority officials accessed and inspected business premises and premises used for professional activities, while no authorisation was necessary where the measures in question were implemented by officers of the Revenue Police.

94. It further submitted that the domestic legal framework did not clearly indicate which remedies a taxpayer could use to suspend contested measures in the event of unlawfulness, and that there were no case-law examples indicating that such a remedy had been used successfully before the civil courts, as the only available decision had been appealed against and quashed.

(b) The Court's assessment

(i) General principles

95. The Court reiterates at the outset that the expression "in accordance with the law", within the meaning of Article 8 § 2 of the Convention, requires firstly that the impugned measure should have some basis in domestic law. Secondly, the domestic law must be accessible to the person concerned.

Thirdly, the person affected must be able, if need be with appropriate legal advice, to foresee the consequences of the domestic law for him or her, and fourthly, the domestic law must be compatible with the rule of law (see, among other authorities, *De Tommaso v. Italy* [GC], no. 43395/09, § 107, 23 February 2017, *Heino v. Finland*, no. 56720/09, § 36, 15 February 2011, and *Brazzi*, § 39, cited above).

96. The Court further points out that the concept of "law" must be understood in its "substantive" sense, not its "formal" one. It therefore includes everything that goes to make up the written law, including enactments of lower rank than statutes, and the relevant case-law (see, for example, *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, nos. 48151/11 and 77769/13, § 160, 18 January 2018). Accordingly, in assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard to both the text of the law and the manner in which it was applied and interpreted by the domestic authorities. It is the practical interpretation and application of the law by the domestic courts that must give individuals protection against arbitrary interference (see *Rustamkhanli*, cited above, § 42).

97. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights, it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Bernh Larsen Holding AS and Others*, cited above, § 124, with further references).

98. In cases concerning searches and inspections in general which are carried out on the premises of legal entities, the Court has clarified that an element to be taken into consideration is whether a search was based on a warrant issued by a judge and was based on reasonable suspicion (see *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 57, ECHR 2007-IV; *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, § 83, 2 October 2014; and *Naumenko and SIA Rix Shipping v. Latvia*, no. 50805/14, §§ 54-55, 23 June 2022). Moreover, the Court has examined whether the scope of a warrant was reasonably limited (see *DELTA PEKÁRNY a.s.*, § 83, and *Wieser and Bicos Beteiligungen GmbH*, § 57, both cited above), in particular whether it indicated the pieces of evidence that the authorities expected to find in connection with the offences being investigated

(see *DELTA PEKARNY a.s.*, cited above, § 88), and whether the domestic law limited the type of information that the authorities could seize or copy (see *UAB Kesko Senukai Lithuania v. Lithuania*, no. 19162/19, § 118, 4 April 2023).

99. However, the Court has stated that those guarantees apply less stringently to on-site tax audits, in view of how such audits complement a taxpayer's duty to provide accurate information (see paragraph 81 above) and the needs of efficiency at the early stages of tax proceedings (see *Bernh Larsen Holding AS and Others*, § 130, and *Rustamkhanli*, § 44, both cited above). In this context, the Court has generally held that while States may consider it necessary to have recourse to such measures in order to obtain relevant evidence, the relatively wide powers in the initial phases of tax proceedings cannot be construed as conferring on the tax authorities an unfettered discretion (see *Bernh Larsen Holding AS and Others*, § 130, and *Rustamkhanli*, § 44, both cited above).

100. Therefore, in tax audit cases, the Court has examined whether the relevant domestic legal framework provided for sufficient procedural safeguards capable of protecting the applicants in question against any abuse or arbitrariness (see *Bernh Larsen Holding AS and Others*, § 172, cited above).

101. In this context, the Court has found that where prior judicial authorisation was not required by domestic law this could be compensated by other effective and appropriate safeguards against abuse such as a complaint procedure subject to judicial review (ibid., §§ 18-60, 165 and 172).

(ii) Application of the above principles to the present case

102. The Court reiterates that in cases arising from individual petitions, its task is usually not to review the relevant legislation or an impugned practice in the abstract. Instead, it must confine itself as far as possible, without losing sight of the general context, to examining the issues raised by the case before it (see *Naumenko and SIA Rix Shipping*, cited above, § 57). Here, therefore, the Court's task is not to review, *in abstracto*, the compatibility with the Convention of the domestic legislation regulating access to and the inspection of business and commercial premises and premises used for professional activities as it stood at the material time, but to determine, *in concreto*, the effect of the interference with the applicants' rights under Article 8 of the Convention.

103. The Court notes that the applicants did not complain about the domestic legislation in the abstract. They raised their complaints in relation to the content of the authorisations permitting access to and the inspection of their business premises, commercial premises and premises used for professional activities. In their view, those authorisations had been extremely wide and generic and had deprived them of the requisite guarantees against arbitrariness.

104. The Court further observes that it is undisputed between the parties that the contested measures had a basis in domestic law, that is, section 35 of Law no. 4/1929 as regards the Revenue Police (see paragraph 37 above), and Article 51 § 2 (1) and Article 52 of Decree no. 633/1972 (see paragraphs 41-42 above), and Article 32 and Article 33 § 1 (1) of Decree no. 600/1973 as regards the Tax Authority (see paragraphs 46-47 above). However, the parties disagreed as to whether the legal basis for the contested measures, as derived from those domestic provisions, complied with the requirements of the "quality of law" under Article 8 of the Convention.

105. Taking into account the scope of the applicants' complaints, the Court deems it necessary to assess whether the legal basis delimited the scope of discretion conferred on the domestic authorities, and whether it provided for sufficient procedural safeguards capable of protecting the applicants against any abuse or arbitrariness.

(α) Delimitation of the scope of discretion conferred on the domestic authorities

106. As regards the scope of discretion conferred on the domestic authorities, the Court will assess whether the domestic legal framework indicated in a clear and foreseeable manner the circumstances in which and the conditions on which the domestic authorities were allowed to implement the contested measures, and whether it delimited the object and scope of those measures.

– *Circumstances in which and conditions on which the domestic authorities were allowed to implement the contested measures*

107. The Court notes at the outset that under section 35 of Law no. 4/1929, officers and agents of the Revenue Police are authorised to access "at any time" premises used for commercial and industrial purposes in order to carry out "audits" and "inquiries" therein (see paragraph 37 above). The same power is conferred on Tax Authority officials by Articles 51 and 52 of Decree no. 633/1972 (see paragraphs 41-42 above) and Articles 32 and 33 of Decree no. 600/1973 (see paragraphs 46-47 above), so that they can "access [premises]" and carry out "inspections" and "audits". In accordance with the latter provisions, authorisation permitting the tax authorities to access commercial and business premises can be issued for the purpose of "a tax assessment and to combat tax evasion and other tax violations" (see paragraph 41 above). Moreover, section 12 of Law no. 212/2000 provides that such measures shall be implemented "on the basis of the actual needs of an investigation and on-site audit" (see paragraph 53 above).

108. The Court also observes that the second paragraph of Article 52 of Decree no. 633/1972 demands stricter requirements when such measures are authorised with regard to "homes" in the strict sense, namely the private residences of individuals. In similar cases, authorisation may be issued only in the case of "serious indications of violations" of tax provisions, which must

be indicated in the authorisation, and must be issued by a public prosecutor, a member of the judiciary in Italy (see paragraph 42 above). However, those stricter conditions are not required when the measure relates to legal entities or premises used for professional activities, as in the present case.

109. In the Court's view, the conditions indicated in the above legislative provisions (see paragraph 107 above), taken alone, are insufficient to delimit the scope of discretion conferred on the domestic authorities. Indeed, relying on the text of such provisions, the Court of Cassation clarified that the domestic legal framework did not require any specific justification for authorising the measures in question in relation to premises used for commercial and industrial purposes, and that accordingly the relevant authorisation did not have to be reasoned (see paragraph 60 above). Moreover, according to the Court of Cassation, when the measures were implemented by officers of the Revenue Police, no written authorisation was required (see paragraph 61 above).

110. However, reiterating that the concept of "law" within the meaning of the Convention includes enactments of lower rank than statutes (see paragraph 96 above), the Court observes that in the context of tax, the conditions laid down in the applicable legislative provisions may be wider and generic, provided that they are subsequently specified and clarified in other instruments of lower rank or the relevant domestic case-law.

111. In this context, the Court observes that the guidelines published by the Ministry of Economy and Finance and submitted by the Government provided that in the relevant years, taxpayers in relation to whom the measures in question were to be implemented were selected on the basis of some objective operational criteria, namely the nature and scale of the particular business, and on the basis of an analysis of the relevant risk (see paragraphs 56-57 above). Such elements had to be assessed prior to on-site audits, and on the basis of an analysis of the available databases. Moreover, Circular no. 4/E of the Tax Authority of 7 May 2021 clarified that priority should be given to checking taxpayers who demonstrated a higher risk of non-compliance, or who had behaved in an uncooperative and non-transparent way in the past (see paragraph 58 above). In the light of the above, the Government submitted that when authorising such a measure, domestic authorities were asked to indicate the taxes being audited and the reference years. They also had to indicate the reasons underlying the audit which was being authorised, such as the inclusion of the taxpayer on a list of taxpayers of a particular scale, the fact that the taxpayer had not been subject to tax audits in previous years, and the fact that the taxpayer had declared low profitability in the fiscal year being audited.

112. The Court is prepared to accept that when the measures in question are implemented for tax assessment purposes (see paragraph 99 above), conditions such as the ones laid down in the guidelines submitted by the Government might be sufficient to complement the applicable domestic

provisions in order to delimit the scope of discretion conferred on the domestic authorities and prevent abuse and arbitrariness, provided that they are binding on the authorities. However, the Court notes that no scrutiny is possible on the basis of only the above-mentioned selection criteria and in the absence of any transparent public information as to which business premises are inspected over time and which are not, and one cannot exclude the possibility that tax agents exercise unfettered discretion behind apparent respect for such criteria. The Court also notes that Circular no. 4/E of the Tax Authority of 7 May 2021 was issued after the inspections in the present applications had been authorised, with the exception of the inspection in application no. 20133/22. Therefore, the Circular cannot be taken into account for the purposes of the examination of the present case.

113. Be that as it may, it is not necessary for the Court to examine in detail the criteria laid down in these guidelines, since it cannot but note that in the light of the Court of Cassation's case-law, respect for these criteria is not a condition for the authorisation of such measures being lawful, as no reasoning is required (see paragraph 109 above). As interpreted in the domestic case-law, it follows that the relevant domestic provisions, including as complemented by the relevant administrative guidelines, did not require that the authorities justify the exercise of their powers, and the provisions therefore allowed them to exercise unfettered discretion (see *Bernh Larsen Holding AS and Others*, cited above, § 130).

114. Indeed, many of the authorisations issued in the applicants' cases did not include any reasoning justifying the measures, apart from reference to an autonomous initiative by the Revenue Police aimed at obtaining evidence relevant for tax assessment purposes (see paragraphs 21, 29, 31 and 33 above). In the Court's view, those authorisations confirm that the domestic legal framework allowed for exploratory access and inspections only.

115. In the light of the above, the Court considers that the legal basis for the contested measures was incapable of sufficiently delimiting the scope of discretion conferred on the domestic authorities, and accordingly it does not meet the "quality of law" requirement under Article 8 of the Convention.

– *Delimitation of the object and scope of the contested measures*

116. As regards the delimitation of the object and scope of the contested measures, the Court notes that under Article 52 § 3 of Decree no. 633/1972, audits can extend to all books, records, documents and written statements, including those which are not required to be kept and retained, that are located on the relevant premises or are otherwise accessible by means of digital devices installed therein (see paragraph 41 above). According to the Court of Cassation's case-law, the scope of the evidence and documents which can be acquired by the domestic authorities is not limited to those concerning the fiscal years under audit or specific violations, but can extend to any other

document which the authorities implementing the measures may deem relevant (see paragraph 62 above).

117. In the applicants' cases, such a legal framework allowed the issuing of authorisations permitting access to premises and inspections which were couched in very broad terms. They authorised, in a general and unlimited manner, requests for the production of all accounting records, company books, other documents and invoices concerning a business and its professional activities in the relevant years (see paragraph 7 above). Although the authorities restricted the scope of the investigations to specific issues in three of the cases (see paragraphs 23, 27 and 35 above), in the majority of the cases, the scope of the measures included all documents and evidence concerning general compliance with the applicants' tax obligations over several years, without restricting the scope of the inspections conducted on their premises in any way.

118. In this context, the Court is mindful that the very nature of tax audits, which complement the duty of a taxpayer to provide the tax authorities with accurate information to enable them to make a correct tax assessment, calls for the auditing of documents and the inspection of premises going well beyond a mere review of mandatory accounting records, with particular reference to off-the-books records and materials in storage (see *Bernh Larsen Holding AS and Others*, cited above, §§ 160-161, to be read in the light of § 67; see also paragraph 81 above). The Court is also aware that a taxpayer's consent is needed to inspect data and premises, and that documents are not usually removed (see paragraph 37 above). Nonetheless, although reiterating the need to allow relatively wide powers in the initial phases of tax proceedings (see paragraph 99 above), the Court considers that those powers should be delimited so as to avoid unfettered discretion (see *Bernh Larsen Holding AS and Others*, cited above, § 130).

119. In the present case, the Court notes that the domestic authorities were not asked to indicate what they expected to find in relation to the years being audited, nor was there any indication that indiscriminate access should be avoided. In addition, beyond a mere obligation of professional secrecy imposed on agents, no provision was made for documents and items not related to the purpose of the contested measures, notably tax assessment purposes, to be removed or declared otherwise inadmissible as evidence against the taxpayer (contrast *Rustamkhanli*, cited above, § 45), of course without prejudice to the authorities' power to initiate separate administrative proceedings or, if appropriate, criminal proceedings in the event that the conditions for such proceedings were met.

120. In this context, the Court is not satisfied that the domestic legal framework provided adequate and effective safeguards against the Tax Authority and the Revenue Police exercising unfettered discretion, since in relation to access and inspections, their power to assess the appropriateness, number, length and scale of such operations and the information that was

requested from taxpayers and then copied or seized was not regulated. In this context, the Court considers that the conditions provided for by law appear too lax to sufficiently delimit such discretion (see, *mutatis mutandis*, *Funke v. France*, 25 February 1993, § 57, Series A no. 256-A; *Crémieux v. France*, 25 February 1993, § 40, Series A no. 256-B; and *Miailhe v. France (no. 1)*, 25 February 1993, § 38, Series A no. 256-C).

(β) Existence of sufficient procedural safeguards capable of protecting the applicants against any abuse or arbitrariness

121. As regards the existence of sufficient procedural safeguards capable of protecting the applicants against abuse or arbitrariness, the Court notes that under domestic law, there was no requirement to have prior judicial authorisation in the instant case (compare *Bernh Larsen Holding AS and Others*, cited above, § 130). In particular, the Court notes that the authorisations for the contested measures were issued by the local head of the Tax Authority or the local head of the Revenue Police. As already observed, the Court of Cassation clarified that such authorisations did not require any reasoning if they concerned only business premises, as the relevant domestic provisions did not impose any conditions that had to be assessed. Therefore, in accordance with the domestic legal framework, the authorisations were not issued following an assessment of the formal and substantive legality of the measures, as such authorisation was a "mere procedural requirement" (see paragraphs 10 and 60 above).

122. The Court considers that considerations of efficiency in the context of tax might justify the lack of *ex ante* judicial or independent scrutiny of such measures. However, in this context, the Court must assess whether there were other effective and adequate safeguards against abuse and arbitrariness (see *Bernh Larsen Holding AS and Others*, cited above, § 172).

123. In particular, and taking into account the applicants' complaints, the Court must assess whether the contested measures were subject to an *ex post* review (see paragraph 101 above). It will therefore examine whether the remedies relied on by the Government – a complaint to the tax courts, a complaint to the civil courts, and a complaint to the Taxpayer's Guarantor – complied with the requirements imposed under the Convention.

– *Complaint to the tax courts*

124. As regards a complaint to the tax courts, the Court observes that under Article 19 § 2 of Decree no. 546/1992 (see paragraph 51 above), authorisations permitting access and inspections cannot be challenged before the tax courts.

125. The Court takes note of the case-law submitted by the Government, according to which where the measures at issue in the present case lead to a tax assessment notice, the taxpayer in question is allowed to challenge the relevant authorisation permitting an inspection before the tax courts. In

particular, as the authorisation is considered to be a preparatory document whose lawfulness affects the validity of the tax assessment notice, the taxpayer is allowed to raise his or her complaints against the authorisation by challenging the tax assessment notice, under Article 19 § 2 of Decree no. 546/1992 (see paragraphs 63-64 above).

126. Having carefully examined the material submitted to it, the Court is not persuaded by the Government's argument that this would amount to an effective *ex post* judicial remedy within the meaning of its case-law.

127. Firstly, the Court notes that the Court of Cassation's judgment submitted by the Government concerned a case in which the authorisation in question had been granted by a public prosecutor, as it referred to an inspection carried out in a private individual's residence (see paragraph 108 above). By contrast, given that the relevant domestic law does not require any conditions for authorising the contested measures in respect of business or commercial premises (see paragraphs 60-61and 121 above), and that the Government did not provide any case-law example of a case in which such a remedy had been used successfully, the Court does not see what the grounds for the unlawfulness of such authorisation would be which would affect the lawfulness of a tax assessment, except for a complete lack of authorisation. Indeed, according to the Court of Cassation's case-law, the lawfulness of the authorisation does not affect the validity of the final tax assessment notice or the possibility of using the documents acquired by means of the contested measure as evidence, except for where there has been no authorisation whatsoever (see paragraph 64 above).

128. Secondly, even assuming that the tax courts have the power to annul a tax assessment notice where the authorisation for the contested measures is unlawful, the Government observed that the availability of such a remedy would depend on whether the inspection in question had led to the issuing of a tax assessment notice challenged by the taxpayer, and whether that notice was based on evidence gathered by means of the inspection. Therefore, the Court finds that the existence of such a remedy is merely potential and uncertain, as is its accessibility (see, *mutatis mutandis*, *Société Canal Plus and Others v. France*, no. 29408/08, § 40, 21 December 2010).

129. Lastly, under Article 57 of Decree no. 633/1972 (see paragraph 44 above) and Article 43 of Decree no. 600/1973 (see paragraph 49 above), a tax assessment notice can be issued within several years after the filing of a tax return, or from the moment when a tax return should have been filed. In this regard, the Court reiterates that an effective remedy must become available within a reasonable period of time (see, *mutatis mutandis*, *Société Canal Plus and Others*, cited above, § 40, and *Compagnie des gaz de pétrole Primagaz v. France*, no. 29613/08, § 28, 21 December 2010), and considers that a remedy which would (probably) become available after several years cannot be considered to be sufficiently prompt.

130. The foregoing is sufficient to conclude that a complaint to the tax courts would not amount to an effective *ex post* judicial remedy. There is therefore no need for the Court to examine whether the domestic legal framework provided for appropriate and sufficient redress in the event of a finding of an irregularity. In any case, the Court reiterates that the question of whether redress is appropriate and sufficient has generally been considered to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010, and *Contrada v. Italy (no. 4)*, no. 2507/19, §§ 55 and 62-65, 23 May 2024).

– *Complaint to the civil courts*

131. As regards a complaint to the civil courts, the Court notes that the Government relied on the Court of Cassation's case-law, according to which the jurisdiction of the civil courts on unlawful access covered all cases in which tax assessment proceedings had not led to a tax assessment notice or in which such a notice had not been challenged in court. In such cases, unlawful authorisation to access premises could be challenged before the civil courts (see paragraphs 65-66 above).

132. However, the Court reiterates that the existence of domestic remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *mutatis mutandis*, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023). It falls to the respondent State to establish that these conditions are satisfied (see *Teliatnikov v. Lithuania*, no. 51914/19, § 68, 7 June 2022). In particular, the Government should normally be able to illustrate the practical effectiveness of a remedy with examples of domestic case-law (see *M.N. and Others v. San Marino*, no. 28005/12, § 81, 7 July 2015).

133. In the present case, the only case-law examples provided by the Government concerned cases in which the authorisation had been issued by a public prosecutor in respect of private residences (see paragraphs 65-66 above), which demand stricter conditions (see paragraph 108 above). Therefore, even assuming that the remedy in question – a complaint to the civil courts – existed in practice in the present case, where the applicable provisions required no conditions or reasoning prior to the implementation of the contested measures, the Court does not see how such courts could have carried out any meaningful review of those measures (see paragraph 127 above). Lastly, as regards the possibility of requesting the precautionary suspension of the contested measures, both the applicants and the third-party intervener argued that there were no case-law examples, and the Government failed to produce any.

134. In any event, the Court takes note of the fact that the Combined Divisions of the Court of Cassation, in judgment no. 8587 of 2 May 2016,

held that the possibility to challenge such authorisation before the civil courts was based on their power to secure every "subjective right of a taxpayer not to be subjected to tax checks and audits entailing restrictions of [his or her] rights (some of which were guaranteed by the Constitution), except for in the cases expressly provided for by law and in situations expressly provided for by the laws conferring and restricting the scope of the powers of control conferred on the revenue service" (see paragraph 66 above). In this context, the Court considers that it might be called upon to re-examine this issue once the scope of the powers of control conferred on the revenue service has been effectively restricted in respect of audits carried out on business premises and premises used for professional activities.

– *Complaint to the Taxpayer's Guarantor*

135. As regards a complaint to the Taxpayer's Guarantor under section 13 of Law no. 212/2000(see paragraph 53 above), the Court notes that as stated in the Court of Cassation's judgment no. 25212 of 24 August 2022 (see paragraph 67 above), that authority does not issue binding decisions, but mere recommendations to the tax authorities.

136. Therefore, the Court finds that a complaint to the Taxpayer's Guarantor would not constitute an effective remedy for the purpose of the guarantees against arbitrariness required by Article 8 of the Convention in such cases (see paragraph 101 above and, *mutatis mutandis*, *Centrum för rättvisa v. Sweden* [GC], no. 35252/08, § 273, 25 May 2021; *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 359, 25 May 2021; and *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 120, ECHR 2006-VII).

(iii) Overall conclusions

137. In the light of the above, the Court finds that the contested measures were not subject to an effective *ex post* judicial review of their legality, necessity and proportionality.

138. For the above reasons, the Government preliminary objection of non-exhaustion of domestic remedies (see paragraph 73 above) should be dismissed.

139. As to the merits, the Court concludes that even if it could be said that there was a general legal basis in Italian law for the impugned measures, that law does not meet the quality requirements imposed under the Convention. In particular, even taking into account the Contracting States' wider margin of appreciation in respect of legal persons, the less serious nature of the interference (owing to the absence of coercive powers), and the importance of the aim of similar measures in the context of tax, the Court considers that the domestic legal framework afforded the domestic authorities unfettered discretion with regard to both the conditions in which the contested measures

could be implemented and the scope of those measures. At the same time, the domestic legal framework did not provide sufficient procedural safeguards, as the contested measures, although open to some judicial remedies, were not subject to a sufficient review. Therefore, the domestic legal framework did not provide the applicants with the minimum degree of protection to which they were entitled under the Convention. The Court finds that in these circumstances, it cannot be said that the interference in question was "in accordance with the law" as required by Article 8 § 2 of the Convention.

140. There has therefore been a violation of Article 8 of the Convention.

141. Having regard to the above conclusion, the Court does not consider it necessary to review compliance with the other requirements of Article 8 § 2 (see *De Tommaso*, § 127, and *Brazzi*, § 51, both cited above).

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

142. As regards applications nos. 36617/18, 7525/19, 19452/19, 52473/19, 55943/19, 261/20, 7991/20 and 8046/20, the applicants also complained that the lack of an effective judicial remedy by which to complain of the interference with the right to respect for their home violated their right of access to justice under Article 6 § 1 of the Convention.

143. Having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraphs 137 and 139 above), the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156).

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

144. The relevant parts of Article 46 of the Convention read:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ..."

145. Under Article 46 §§ 1 and 2 of the Convention, a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a duty to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be taken in its domestic legal order to end the violation and make all feasible reparation for its consequences by restoring as far as possible the situation which would have obtained if it had not taken place. Furthermore, it follows from the Convention, and from its Article 1 in particular, that in ratifying the Convention and its Protocols the Contracting States undertake to ensure that their domestic law is compatible with them (see, among other authorities,

Maestri v. Italy [GC], no. 39748/98, § 47, ECHR 2004-I, and *Ekimdzhiev and Others v. Bulgaria*, no. 70078/12, § 427, 11 January 2022). Subject to monitoring by the Committee of Ministers, the respondent State in principle remains free to choose the means by which it will discharge its obligations under Article 46 § 1 of the Convention, provided that such means are compatible with the "conclusions and spirit" set out in the Court's judgment (*Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 153 and 195, 29 May 2019). However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 255, ECHR 2012, with further references).

146. In the present case, the Court is of the view that the shortcomings identified are liable to give rise to further justified applications in the future (see, *mutatis mutandis*, *N. v. Romania (no. 2)*, no. 38048/18, § 84, 16 November 2021). Since the breach of Article 8 found in this case appears to be of a systemic character, in the sense that it resulted from the content of the relevant domestic law, as interpreted and applied by the domestic courts, it seems appropriate for the Court to give some indications as to how breaches of this kind are to be avoided in the future (see *Stoyanova v. Bulgaria*, no. 56070/18, § 78, 14 June 2022).

147. For these reasons, in the light of its finding of a violation of Article 8 of the Convention (see paragraph 139 above), the Court finds it crucial that the respondent State adopt the appropriate general measures with a view to bringing its legislation and practice into line with the Court's findings. In this context, the Court considers that the following issues must be clearly regulated in the domestic legal framework. In particular, the Court considers that most of the necessary measures are already provided for in the domestic legislation, in particular sections 12 and 13 of Law no. 212/2000 (see paragraph 53 above), but the general principles affirmed in this legislation need to be implemented by means of specific rules in the domestic statute law, while the case-law should be brought in line with these principles and those established by the Court.

148. First of all, the domestic legal framework, if necessary by means of relevant administrative practice directions, should clearly indicate the circumstances in which and the conditions on which the domestic authorities are allowed to access premises and carry out on-site audits and tax checks on business premises and premises used for professional activities (see paragraph 97 above). The stringency of the criteria imposed by the law can, however, take into account that in the context of tax, considerations of efficiency might justify relatively wide powers in the initial phases of tax proceedings (see paragraph 99 above). However, the domestic legal framework should impose on the domestic authorities an obligation to provide reasons and accordingly justify the measure in question in the light

of such criteria (see paragraph 113 above). Although, in tax matters, checks and inspections may extend beyond a mere inspection of mandatory accounts (see paragraph 118 above), safeguards should be established to avoid indiscriminate access or at least the retention and use of documents and items not related to the purpose of the measure in question, without prejudice to the exercise of the authorities' power to initiate separate administrative proceedings or, if appropriate, criminal proceedings (see paragraphs 98 and 119-120 above). Should the domestic legislation not distinguish between announced or pre-planned audits or inspections and audits or inspections of which the taxpayer is not informed in advance (contrast *Rustamkhanli*, cited above, § 21), the taxpayer, at the latest when the audit is initiated, must have the right to be informed of the reasons justifying the audit and its scope, his or her right to be assisted by a professional, and the consequences of refusing to allow the audit. The foregoing is without prejudice to the authorities' power to access data relating to the taxpayer which have been lawfully obtained by means of access to tax databases, banking and financial databases, and cooperation with other authorities, including on a cross-border basis.

149. Secondly, the domestic legal framework should clearly provide for an effective judicial review of a contested measure, and in particular a review of the domestic authorities' compliance with the criteria and restrictions concerning the conditions justifying that measure and their scope (see paragraph 101 above). The Court, having noted the various restrictions on the jurisdiction of the tax and civil courts (see paragraphs 127-130 and 133-134 above), considers that the existence and availability of such remedies should not be conditional on whether a measure has led to the issuing of a tax assessment notice (see paragraph 128 above), nor should they become available only when tax assessment proceedings have been concluded (see paragraph 129 above). If a taxpayer believes that the persons carrying out an audit are not acting in accordance with the law – a possibility already alluded to in section 13 of Law no. 212/2000 – some form of simplified interim and binding review should be available before the audit is finalised.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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

151. The applicants asked the Court to award a sum determined on an equitable basis in respect of the non-pecuniary damage which they had suffered on account of the violations.

152. The Government argued that the claim was unsubstantiated.

153. The Court, ruling on an equitable basis, awards each of the applicants 3,200 euros (EUR) in respect of the non-pecuniary damage suffered on account of the violation of Article 8 of the Convention, plus any tax that may be chargeable.

B. Costs and expenses

154. The applicants did not submit any claim in respect of costs and expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT

1. *Decides,* unanimously, to join the applications;

2. *Decides*, unanimously, to join the preliminary objection concerning non-exhaustion of domestic remedies to the merits, and *dismisses* it;

3. *Declares*, unanimously, the complaint under Article 8 of the Convention admissible;

4. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

5. *Holds*, by six votes to one, that there is no need to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention;

6. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,200 (three thousand two hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

7. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge G. Serghides is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants, twelve companies and one individual, complained about the access to and the inspection of their business premises, registered offices or other premises used for professional activities, and the examination, copying and seizure (in some cases) of their accounting records, company books, invoices and other mandatory documents relating to accounting, and various types of documents kept for tax assessment purposes. The contested measures were taken by officers or agents of the Revenue Police (*Guardia di Finanza*) or the Tax Authority (*Agenzia delle Entrate*) for the purpose of assessing the applicants' compliance with their tax obligations. The applicants complained of the excessively broad scope of the discretion conferred on the domestic authorities by the national legislation and of the lack of sufficient procedural safeguards capable of protecting them against any abuse or arbitrariness. They argued that the contested measures had been unlawful, within the meaning of Article 8 and had lacked proportionality. They also argued that the domestic legal framework did not sufficiently delimit the scope of discretion conferred on the domestic authorities, that the contested measures had not been subject to an *ex ante* judicial or independent check, and that there had been no effective *ex post* judicial or independent review. They relied on Article 8 of the Convention, taken alone and in conjunction with Article 13 of the Convention, and on Article 6 § 1 of the Convention.

2. I voted in favour of point 4 of the operative provisions of the judgment, holding that there has been a violation Article 8 of the Convention, as well as the other operative provisions, apart from point 5, holding that there is no need to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention, and point 7 dismissing the remainder of the applicants' claim for just satisfaction.

3. Regarding the applicants' complaint that the lack of an effective judicial remedy by which to complain of the interference with their right to respect for their home had violated their right of access to justice under Article 6 § 1 of the Convention, the judgment in paragraph 143 gives the following explanation as to why it did not examine it: "Having regard to the facts of the case, the submissions of the parties, and its findings above ... the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 156)".

4. Since I have already explained, in several of my separate opinions, my disagreement with the finding that there is no need to examine complaints raised by applicants on the basis that the Court has addressed the main issues in the case, it is sufficient, to avoid repetition, to refer to my arguments in

paragraphs 4-8 of my partly dissenting opinion in *Adamčo v. Slovakia (no. 2)*, nos. 55792/20, 35253/21, and 41955/22, 12 December 2024.

5. There is another issue on which I disagree with the judgment, dealt with in paragraph 70, a point which, however, is not reflected in its operative provisions. Although some of the complaints were also raised under Article 13, in conjunction with Article 8, the Court, by employing the principle that "the Court is the master of the characterisation to be given in law to the facts of the case" found it appropriate to examine the applicants' complaints solely under Article 8. The judgment does not say what ultimately happened with the complaint under Article 13 read in conjunction with Article 8. What is clear is that this complaint was bypassed and therefore was not ultimately examined by the Court. It is also clear that, in the operative provisions of the judgment, this complaint was not dismissed either as inadmissible or on the merits, nor was there a point similar to point 5 regarding the complaint under Article 6 § 1, which would have stated that there was no need to examine the admissibility and merits of the complaint under Article 13 read in conjunction with Article 8. The explanation given by the Court for not examining that complaint is the following: "while Article 8 of the Convention contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8" (paragraph 70 of the judgment). However, if this explanation implies a form of absorption of Article 13 into Article 8, I entirely disagree, as this cannot be sustained. A complaint under Article 13 addresses different dimensions of State responsibility under the Convention. Article 8 deals with substantive rights, while Article 13 with procedural rights. The latter focuses on ensuring the availability of effective remedies for human rights violations. Failing to examine a complaint under Article 13 would undermine the procedural guarantees that are integral to the Convention system. Consequently, the two Articles require separate consideration. An Article 13 complaint cannot simply be absorbed into an Article 8 complaint.

6. In paragraph 5 of my partly dissenting opinion in *Mandev and Others v. Bulgaria*, nos. 57002/11 and 4 Others, 21 May 2024, I argued that the Court in that case used its practice or principle, namely, that "it is the master of the characterisation to be given in law to the facts of the case", not in line with its aim, but in a misguided manner. I would argue the same in the present case. In my submission, this practice or principle, as applied so far, save in a few cases, has been used and developed as a facet or manifestation of the principle of effectiveness. Its aim is to save complaints where, though their factual basis is established in the applicants' pleadings, the appropriate legal basis is not relied upon: the Court would then consider these complaints of its own motion, under the appropriate Convention Articles or provisions. Surely, the aim of this practice or principle is not to reject or refrain from examining prima facie admissible complaints, but rather to allow the Court

to examine an application under the Convention Article or provision that it considers most applicable, even if the applicants omitted to refer to it in their pleadings. For instance, the Court, in its judgment in the landmark Grand Chamber case of *Guerra and Others v. Italy* (19 February 1998, §§ 44 and 46, *Reports of Judgments and Decisions* 1998-I), by following the aforementioned practice or principle, held that it had jurisdiction to consider the case not only under Article 10 of the Convention, which was expressly relied on by the applicants, but also under Articles 8 and 2 of the Convention, which were not expressly invoked by them. In the end, the Court found a violation of Article 8 of the Convention and considered that it was unnecessary to consider the case under Article 2. Concerning the complaint under Article 10, the Court did not refrain from examining it, unlike the present judgment regarding the complaint under Article 13 in conjunction with Article 8, but, on the contrary, it thoroughly examined it (see paragraphs 47-54 of that judgment) and ultimately concluded that Article 10 was not applicable in the case before it.

7. What is concerning in the present case is that the judgment, for one reason or another, refrained from examining any complaint on procedural human rights, namely Articles 6 and 13 of the Convention. Procedural human rights are as significant as substantive human rights and the former are the shield for the protection of the latter, ensuring that individuals have the means to seek justice and have a fair trial. Failure to examine procedural rights alongside substantive rights could lead to a lack of effective legal remedies, undermine the rule of law, and allow human rights violations to persist without proper recourse or fair hearing.

8. Lastly, a finding that there have been further violations, in the present case, namely of Article 6 § 1 and of Article 13 in conjunction with Article 8, could be reflected in an increase in the amount awarded for non-pecuniary damage. That is why I also voted against point 7 of the operative provisions of the judgment which dismisses the remainder of the applicants' claim for just satisfaction.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth/Registration Place of Residence Nationality	Represented by
1.	36617/18	Italgomme Pneumatici S.r.l. v. Italy	18/07/2018	**ITALGOMME PNEUMATICI S.R.L.** 2009 Foggia Italian	Ornella BONASSISA
2.	7525/19	Tecnonet S.r.l. v. Italy	25/01/2019	**TECNONET S.R.L.** 2014 Cerignola Italian	Cristiano STASI
3.	19452/19	Tecnonet S.r.l. v. Italy	02/04/2019	**TECNONET S.R.L.** 2014 Cerignola Italian	Ornella BONASSISA
4.	52473/19	Riviera del Gargano S.r.l. v. Italy	02/10/2019	**RIVIERA DEL GARGANO S.R.L.** 2007 San Severo Italian	Cristiano STASI
5.	55943/19	Bio Ecoagrim S.r.l. v. Italy	16/10/2019	**BIO ECOAGRIM S.R.L.** 2010 Lucera Italian	Cristiano STASI
6.	261/20	Ortofrutta Lezzi S.R.L. v. Italy	12/12/2019	**ORTOFRUTTA LEZZI S.R.L.** 1994 Cerignola Italian	Cristiano STASI
7.	7991/20	Monirr S.r.l. v. Italy	29/01/2020	**MONIRR S.R.L.** 2002 Lucera Italian	Cristiano STASI
8.	8046/20	Bio Ecoagrim	29/01/2020	**BIO ECOAGRIM S.R.L.**	Cristiano

		S.r.l. v. Italy		2010 Lucera Italian	STASI
9.	20062/20	Terrenzio v. Italy	05/05/2020	**Eligio Giovann Battista TERRENZIO** 1959 Rignano Garganico Italian	Cristiano STASI
10.	34827/20	Studio Commerciale Rinaldi-Varraso&Associati v. Italy	29/07/2020	**STUDIO COMMERCIALE RINALDI-VARRASO&ASSOCIATI** Foggia Italian	Cristiano STASI
11.	26376/21	Enoagrimm Import-Export S.r.l. v. Italy	14/05/2021	**ENOAGRIMM IMPORT-EXPORT S.R.L.** 2016 Foggia Italian	Cristiano STASI
12.	28730/21	Monirr S.r.l. v. Italy	14/05/2021	**MONIRR S.R.L.** 2002 Lucera Italian	Cristiano STASI
13.	20133/22	Holding Gestione Immobiliare Srl v. Italy	15/04/2022	**HOLDING GESTIONE IMMOBILIARE SRL** 2016 San Severo Italian	Cristiano STASI