



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

Information Note on the Court's case-law 44

July 2002

Janosevic v. Sweden - 34619/97

Judgment 23.7.2002 [Section I]

Article 6

Criminal proceedings

Article 6-1

Criminal charge

Tax surcharges: *Article 6 applicable*

Access to court

Enforcement of tax surcharges prior to court determination of liability: *violation*

Article 6-2

Presumption of innocence

Imposition of tax surcharges on basis of objective liability and enforcement thereof prior to court determination: *no violation*

Facts: In 1995, following a tax audit of the applicant's taxi firm, the local tax authority drafted a report containing a supplementary tax assessment. After obtaining the applicant's observations, the tax authority increased his tax liability and, as the information supplied in his tax returns was found to be incorrect, also ordered him to pay tax surcharges. The total additional taxes amounted to over one million kronor (including over 160,000 kronor in surcharges). The applicant requested the tax authority to reconsider its decisions and also requested a stay of execution, since neither the request for reconsideration nor an appeal to a court had suspensive effect. The tax authority rejected his request for a stay of execution, as he failed to provide security. The County Administrative Court upheld this decision and the applicant was refused leave for a further appeal. The local Enforcement Office petitioned the District Court for a declaration of bankruptcy and the applicant was declared bankrupt in June 1996. His appeal was dismissed. The bankruptcy proceedings were subsequently terminated due to lack of assets. In February 1999 the tax authority confirmed its decisions concerning the supplementary taxes and surcharges and in December 2001 the County Administrative Court upheld the decisions. An appeal is pending before the Administrative Court of Appeal.

Law: Article 6 § 1: (a) Applicability – Generally, tax disputes fall outside the scope of "civil rights and obligations", despite the pecuniary effects which they produce. However, the question arose whether the tax surcharges imposed on the applicant involved the determination of a "criminal charge". As regards their domestic classification, they are

imposed under various tax laws rather than under the criminal law, are determined by the tax authorities and administrative courts and are apparently characterised as administrative sanctions. Consequently, they could not be regarded as belonging to criminal law in the domestic legal system. As regards the nature of the conduct, surcharges are imposed in accordance with legislation directed towards all taxpayers and not towards a given group with a special status. Moreover, while they are imposed on objective grounds without the need to establish criminal intent or negligence, that does not necessarily deprive an offence of its criminal character. The surcharges are not intended as pecuniary compensation; rather, their main purpose is to exert pressure on taxpayers to comply with their obligations and to punish breaches. The penalties are thus both deterrent and punitive. These elements sufficed to show that the applicant was "charged with a criminal offence", and this was further evidenced by the severity of the potential and actual penalty, notwithstanding the fact that the surcharges could not be converted into imprisonment. Article 6 was therefore applicable.

(b) Access to court – The tax authorities are administrative bodies which cannot be considered to satisfy the requirements of Article 6. However, a system whereby tax authorities are empowered to impose sanctions, even of large amounts, is not incompatible with Article 6 as long as any decision can be brought before a court with full jurisdiction. The administrative courts in Sweden are competent to examine questions relating to tax surcharges and although they consequently sit in proceedings that are of a criminal nature for the purposes of the Convention, despite not having criminal jurisdiction under domestic law, they have jurisdiction to examine all aspects of the matters before them, as well as power to quash decisions appealed against. Therefore, the judicial proceedings in the present case were conducted by courts that afforded the safeguards required by Article 6. However, it remained to be determined whether the application of the rules governing appeals had deprived the applicant of effective access to court. The decisions of the tax authority had serious implications for the applicant and some of the consequences were difficult to redress should he succeed in having the decisions overturned. Although he would have been declared bankrupt on the basis of the tax debts alone and the surcharges had never been paid, the enforcement measures taken and the situation in which he was placed made it indispensable for the proceedings to be conducted promptly. However, the tax authority did not confirm its decisions until three years after the applicant's request for reconsideration, by which time the enforcement and stay of execution proceedings had been finalised. The facts did not reveal any particular justification for such a delay. Having regard to what was at stake, the tax authority had failed to act with the required urgency and thereby unduly delayed a court determination of the issues, depriving the applicant of effective access to court.

Conclusion: violation (unanimously).

(c) Length of proceedings – The applicant was "substantially affected" when the tax authority drafted its audit report, which was immediately communicated to him. The proceedings were still pending and had therefore lasted almost six years and eight months. They concerned issues of some complexity but were nevertheless pending before the tax authority for three years and before the County Administrative Court for two years and nine months, and there was no indication that the applicant had contributed to the length. The enforcement measures called for a prompt examination and the length had to be attributed to the conduct of the authorities.

Conclusion: violation (unanimously).

Article 6 § 1 and § 2: (a) States may, in principle and under certain conditions, penalise a simple or objective fact as such, irrespective of whether it results from criminal intent or negligence. The Swedish system operates a presumption which it is up to the taxpayer to rebut. However, the relevant rules provide certain means of defence based

on subjective elements. Regard must also be had to the financial interests of the State: a system of taxation principally based on information supplied by the taxpayer would not function properly without some form of sanction against the provision of incorrect or incomplete information. The presumptions applied by Swedish law were therefore confined within reasonable limits.

(b) Article 6 cannot be seen as excluding, in principle, enforcement measures being taken before decisions on tax surcharges become final, but since early enforcement may have serious implications and adversely affect a subsequent defence in court proceedings, such enforcement must be confined within reasonable limits that strike a fair balance between the interests involved, in particular where they are based on administrative decisions and before a court determination. The financial interests of the State do not in themselves justify the immediate enforcement of tax surcharges, since surcharges are not intended as a separate source of income but are designed to exert pressure on taxpayers. Another factor to be taken into account is whether surcharges can be recovered and the original legal position restored in the event of a successful appeal. While Swedish law makes certain provisions in that connection, reimbursement may not always fully compensate for losses sustained and a system which allows enforcement of considerable amounts before any court determination is open to criticism. In the present case, however, no amount was actually recovered from the applicant, who would in any event have been declared bankrupt on the basis of his tax debt. In these circumstances, the possibility of securing reimbursement constituted a sufficient safeguard of his interests. His right to be presumed innocent had therefore not been violated.

Conclusion: no violation (6 votes to 1).

Article 41 – The Court considered that there was no causal link between the violations and any alleged pecuniary damage. It awarded the applicant 15,000 € in respect of non-pecuniary damage and also made an award in respect of costs and expenses.

(This judgment deals with the same issues as the *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, 23 July 2002.)

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