



Making French nationals settled in Monaco liable for payment of the wealth tax was not contrary to the Convention

In today's **Chamber judgment**¹ in the case of [Arnaud and Others v. France](#) (applications nos. 36918/11, 36963/11, 36967/11, 36969/11, 36969/11, 36970/11 and 36971/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights alone or taken in conjunction with **Article 14 (prohibition of discrimination)**.

The case concerned new legislation which made French nationals who had settled in the Principality of Monaco liable, from 2005, to pay the solidarity tax on wealth on the same basis as if they were domiciled or resident in France.

The Court held that this legislation had been enacted in the context of a longstanding and close relationship between France and Monaco in tax matters, particularly in respect of the French nationals who had settled in the Principality, for reasons related to that State's specific geographical and fiscal features. It considered that the taxpayers had received prior notification, enabling them to comply with their obligations to the best of their abilities and noted that, in order to mitigate the amount of tax payable from 2005, arrangements for payment had been introduced and no sanctions had been imposed for the preceding period. The Court therefore concluded that the contested tax liability had not upset the fair balance which was to be struck between the applicants' interests and the general interest.

Principal facts

The applicants are eight French nationals, Paule Arnaud, Alan Grant, Simone and Robert Lavail, Monique and Pierre Le Lan, Geneviève Matignon and Rose Mettey, who were born in 1928, 1947, 1935, 1928, 1937, 1933, 1942 and 1920 respectively. They live in Monaco.

In the course of 2001 France and Monaco negotiated a change to the Franco-Monegasque Tax Convention of 18 May 1963. That convention provided that French nationals residing in Monaco were liable to pay income tax on the same basis as if they were domiciled or resident in France. The amendment to the convention (a Protocol signed on 26 May 2003, hereafter "the Protocol") provided that those French nationals who were domiciled or resident in Monaco from 1 January 1989 would be liable to pay the solidarity tax on wealth (ISF) from 1 January 2002. This measure was announced publicly on 24 October 2001, with an indication that it would take effect from 1 January 2002. The taxpayers concerned were informed by a letter of 5 May 2002, in which the Under-Secretary for the Budget and Budgetary Reform informed the delegates from Monaco on the *Conseil supérieur des Français de l'étranger* (the CSFE, the representative body of French nationals living abroad) of the forthcoming enactment of the law in 2005 and the envisaged retrospective effect. They were informed that it was preferable to anticipate the entry into force of this law by submitting tax returns and paying their tax from 2002. The tax authorities specified in April 2005

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

that no penalties would be applied for the period prior to ratification of the Protocol. A decree promulgating the text of the Protocol was published in the Official Gazette on 23 August 2005.

The eight applicants, who had filed ISF tax returns for the 2005 tax year (two of their number) and for the tax years 2002 to 2005 (the others) and had then voluntarily paid the relevant tax, applied to the tax authorities for reimbursement of the sums thus paid.

By judgments of 18 December 2008, the Aix-en-Provence Court of Appeal upheld judgments by the Nice *tribunal de grande instance*, which had dismissed a claim by the applicants in 2008. It noted that there had been nothing unlawful in the collection of the sums paid voluntarily and in advance by the applicants. It considered that the ISF was not contrary to Article 1 of Protocol No. 1 to the European Convention on Human Rights, in that it applied to French nationals who were resident in Monaco or to those living in France. With regard to compliance with Article 14 (prohibition of discrimination) of the Convention, it added that the aim of the Protocol to the Franco-Monegasque Convention was to put French nationals who lived in Monaco in the same position as their compatriots who were resident in France. It also considered that there was nothing discriminatory about the text, which applied to all French nationals and was intended to prevent tax evasion. Lastly, it held that, given that no criminal offence had been created or tax penalties applied for the period 2002-2005, the retrospective nature of the measure did not amount to an excessive interference with the right of property, since it was not confiscatory in nature and the applicants had been informed since 2001 that the provision was due to be introduced.

In 2010 the Court of Cassation dismissed an appeal on points of law by the applicants.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), taken alone and together with Article 14 (prohibition of discrimination), the applicants alleged that the fact of being required to pay the wealth tax with retrospective effect had infringed their right to the peaceful enjoyment of their possessions and amounted to unlawful discrimination.

The application was lodged with the European Court of Human Rights on 22 April 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1](#)

The interference in the applicants' right as guaranteed by Article 1 of Protocol No. 1 had been expressly provided for by law, since approval of the Protocol to the Tax Convention had been authorised by the legislature and its text published by decree. This interference had been intended to combat tax evasion, namely the settling of French nationals in Monaco with the aim of avoiding liability for the ISF in respect of their assets located outside France.

The Court reiterated that the States had a lot of room for manoeuvre (“wide margin of appreciation”) in tax affairs and that the retrospective application of a tax law did not in itself constitute a violation of Article 1 of Protocol No. 1. Thus, the applicants’ contested liability for the ISF from 1 January 2002 onwards, although legislative validation for the Protocol in question was given only in 2005, had not been contrary to the Convention.

The Court had therefore to examine whether a fair balance had been struck between the applicants’ interests and the general interest. It observed, firstly, that the contested Protocol had been enacted in the context of a longstanding and close relationship between France and Monaco in tax matters, particularly in respect of the French nationals who had settled in the Principality, for reasons related to that State’s specific geographical and fiscal features. It noted that, like the Franco-Monegasque Tax Convention of 1963, the new text, negotiated in 2001, provided that French nationals were liable for tax under the same conditions as if they were domiciled or resident in France. The Court further noted with regard to the amounts paid by all of the applicants – with the exception of the Le Lan spouses – that the taxpayers had received prior notification, enabling them to organise payment of the tax each year from 2002 or to prepare to make the payments in respect of 2002 to 2005 after the new texts had entered into force. Moreover, in order to mitigate the amount of tax payable from 2005, arrangements for payment had been introduced and no sanctions had been imposed for the period preceding the ratification of the Protocol. Thus, there had been no fundamental interference with the applicants’ financial position.

In consequence, the Court concluded that the contested tax liability had not upset the fair balance which had to be struck between the applicants’ interests and the general interest. There had not therefore been a violation of Article 1 of Protocol No. 1.

Article 14

According to the applicants, their retrospective liability for the ISF had amounted to unlawful discrimination. They argued that the French nationals resident in other foreign States were only liable for payment of this tax in respect of assets located in France and were exonerated from it in respect of their financial investments in that country. The Court considered that French nationals living abroad could not be regarded as forming a single category, the members of which were in an identical situation, and that it was necessary to distinguish between them on the basis of the country in which they had chosen to settle. Thus, it could not be claimed that the applicants were in a situation analogous to that of the other French nationals living abroad.

It followed that there had not been a violation of Article 1 of Protocol No. 1 taken together with Article 14.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.