

Press release issued by the Registrar

CHAMBER JUDGMENTS IN THE CASES OF  
JANOSEVIC v. SWEDEN and  
VÄSTBERGA TAXI AKTIEBOLAG & VULIC v. SWEDEN

The European Court of Human Rights has today notified in writing two Chamber judgments<sup>1</sup> in the cases of: *Janosevic v. Sweden* (application no. 34619/97) and *Västberga Taxi Aktiebolag and Vulic v. Sweden* (no. 36985/97).

In each case the Court held:

- unanimously, that there had been a **violation of Article 6 § 1** concerning all the applicants right of access to a court;
- unanimously, that there had been a **violation of Article 6 § 1** concerning the length of the proceedings in respect of all the applicants;
- by six votes to one, that there had been no violation concerning the applicants' right to be presumed innocent.

Mr Janosevic was awarded 15,000 euros (EUR) for non-pecuniary damage and EUR 35,000 for costs and expenses. The other two applicants were jointly awarded EUR 20,000 for non-pecuniary damage and EUR 20,000 for costs and expenses. (The judgments are available only in English.)

## 1. Principal facts

Velimir Janosevic, a Swedish national, is the former owner of a taxi company. Västberga Taxi Aktiebolag is a taxi company and Nino Vulic, a Swedish national, is its former company director.

As part of a large-scale investigation of taxicab operators in 1994 and 1995, the tax authority of the County of Stockholm carried out audits of the two taxi companies. Concluding that their tax returns were incorrect, the tax authority revised upwards the turnover of their business and increased their liability to certain taxes. As they were found to have supplied incorrect information, they were also ordered to pay tax surcharges totalling about 160,000 (Mr Janosevic) and 35,000 Swedish kronor (SEK) (Västberga Taxi Aktiebolag). As a consequence of the assessments concerning Västberga Taxi Aktiebolag, Mr Vulic's liability

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

to income tax was increased and, for the same reasons as the company, he was ordered to pay tax surcharges totalling almost SEK 58,000. The tax authority's decisions were taken in August, October and December 1995.

The applicants all disputed the tax authorities' assessments and appealed to the administrative courts. Since the amounts of taxes and surcharges imposed were substantial and due immediately, the applicants also requested that the execution of the amounts be stayed pending the outcome of their appeals. This was refused, by the tax authority and the administrative courts, as the applicants were unable to provide a banker's guarantee as security. As they had no assets to cover the tax debts in question, Mr Janosevic were declared bankrupt in June 1996 and Västberga Taxi Aktiebolag was declared insolvent in February 1997. During 1996 and 1997, money was seized from Mr Vulic's bank savings account and monthly salary to cover his tax liability. At that time, there had not yet been a court determination of the applicants' liability to pay the various taxes and tax surcharges. Moreover, Mr Janosevic was declared bankrupt before his request for a stay of execution had been determined by a court.

In February 1999, upon reconsideration of its original decisions on taxes and tax surcharges concerning Mr Janosevic, the tax authority refused to change them and referred the matters to the County Administrative Court, which upheld the tax authority's decisions, finding, with regard to the tax surcharges, that there had been reasons to impose them and that no legal basis for remitting them had been shown. The case is now pending before the Administrative Court of Appeal.

In June 1997 the tax authority decided to stand by its original decisions concerning Västberga Taxi Aktiebolag. In July 2000 the County Administrative Court dismissed the company's appeal, considering that, as it had been dissolved following the bankruptcy, it lacked legal capacity to act as a party. The company appealed and, in April 2002, the Supreme Administrative Court granted leave to appeal. Consequently, the latter court will decide whether the company will have legal capacity to challenge the tax authority's decisions and thus have a court determination of its tax liability.

Also in June 1997 the tax authority refused to change its decisions as regards Mr Vulic. In March 2000 the County Administrative Court dismissed his appeal on the same grounds as the appeal lodged by Mr Janosevic. That judgment was upheld by the Administrative Court of Appeal in December 2000 and leave to appeal was refused by the Supreme Administrative Court in May 2002.

## **2. Procedure and composition of the Court**

The applications was lodged with the European Commission of Human Rights on 28 November 1996 and 20 May 1997 respectively. They were transmitted to the European Court of Human Rights on 1 November 1998. A public hearing was held in the case *Janosevic v. Sweden* on 26 September 2000. On 26 September 2000 *Janosevic v. Sweden* was declared admissible and, on 3 April 2001, *Västberga Taxi Aktiebolag and Vulic v. Sweden* was declared partly admissible.

Judgments were given by a Chamber of seven judges, composed as follows:

Wilhelmina **Thomassen** (Dutch), *President*,  
Elisabeth **Palm** (Swedish),  
Gaukur **Jörundsson** (Icelandic),  
Riza **Türmen** (Turkish),  
Corneliu **Bîrsan** (Romanian),  
Josep **Casadevall** (Andorran),  
Rait **Maruste** (Estonian), *judges*,

and also Michael **O’Boyle**, *Section Registrar*.

### 3. Summary of the judgments<sup>1</sup>

#### Complaints

The applicants all claimed that it was contrary to Article 6 (right to a fair hearing) of the Convention to enforce the decision of the tax authorities before a final court judgment had established their liabilities. They also complained that the tax proceedings were not concluded within a reasonable time and that they had been deprived of their right to be presumed innocent until proved guilty according to law.

#### Decision of the Court

##### Article 6

As, according to the Court’s case-law, tax disputes generally fall outside the scope of “civil rights and obligations” under Article 6 of the Convention, the applicability of Article 6 depended on whether the tax surcharges imposed on the applicants could be considered to involve a “criminal charge” within the meaning of that Article. The Court found that the general character of the legal provisions on tax surcharges and the purpose of the penalties, which were both deterrent and punitive, showed that, for the purposes of Article 6, the applicants were charged with a criminal offence. The criminal character of the offence was further evidenced by the severity of the potential and actual penalty.

##### Access to court

**Janosevic v. Sweden** - Noting that enforcement measures were taken against the applicant and a stay of execution was refused, the Court concluded that the tax authority’s decisions concerning taxes and tax surcharges had serious implications for the applicant and entailed consequences which were liable to become more serious as the proceedings progressed and would be difficult to estimate and redress should he succeed in his attempts at having the decisions overturned. It was therefore indispensable if he were to have effective access to the courts that the procedures he had set in motion were conducted promptly. The Court considered that, in taking almost three years to decide the applicant’s requests for reconsideration of the assessments, the tax authority failed to act with the urgency required by the circumstances of the case and thereby unduly delayed a court determination of the main issues concerning the imposition of additional taxes and tax surcharges. There had therefore been a breach of Article 6 § 1 in respect of the applicant’s right of access to a court.

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1. This summary by the Registry does not bind the Court.

***Västberga Taxi Aktiebolag, and Vulic*** - The Court considered that the tax authority and the County Administrative Court had failed to act with the urgency required by the circumstances of the cases and thereby unduly delayed court determinations of the main issues concerning the imposition of additional taxes and tax surcharges. Regarding the first applicant, even if a court determination were to be provided in the future, the overall delay in obtaining such a determination meant that the access to the courts thereby acquired could not be considered effective. There had therefore been a breach of Article 6 § 1 in respect of both applicants' right of access to court.

#### Length of the proceedings

***Janosevic v. Sweden*** - The Court considered that the period to be taken into consideration began on 1 December 1995 when the tax authority drafted an audit report containing a supplementary tax assessment, which included tax surcharges. The court proceedings on taxes and tax surcharges were still pending, currently before the Administrative Court of Appeal. To date, the proceedings had lasted almost six years and eight months.

***Västberga Taxi Aktiebolag and Vulic*** - The proceedings started when, on 20 February and 11 August 1995 respectively, the applicants were informed by the tax authority of its intention to impose additional taxes and tax surcharges on them. With respect to the first applicant, the relevant period had not yet ended as the proceedings concerning the company's tax assessment were pending before the Supreme Administrative Court. Regarding the second applicant, the relevant period ended on 3 May 2002 when the tax assessment proceedings were concluded as a consequence of the Supreme Administrative Court's decision to refuse him leave to appeal. The proceedings concerning the taxi company had therefore lasted about seven years and five months and those concerning Mr Vulic almost six years and nine months.

In both cases the Court considered that there had been a breach of Article 6 § 1 in respect of the length of the proceedings.

#### Presumption of innocence

The applicants had claimed that their right to be presumed innocent had been breached partly because they allegedly had an almost insurmountable burden of proof in claiming that no tax surcharges should be imposed and partly because the tax authority's decisions concerning tax surcharges were enforced prior to a determination by a court of their liability to pay them.

With regard to the applicants' first contention, the Court acknowledged that the applicants were faced with a presumption that inaccuracies found in a tax assessment are due to an inexcusable act of the taxpayer and that it is not manifestly unreasonable to impose a tax surcharge as a penalty for that act. However, although that presumption was difficult to rebut, the applicants were not left without any means of defence as they could have put forward grounds for reductions or remission of the surcharges and adduced supporting evidence. In balancing the interests involved in tax matters, the Court had further regard to the financial interests of the State. The Court noted that 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, and the large number of tax returns processed annually coupled with the interest in ensuring a foreseeable and uniform application of the sanctions required that they be imposed according to standardised

rules. The Court concluded that the presumptions applied in Swedish law with regard to tax surcharges were confined within reasonable limits, but noted that that conclusion in general required that the courts make a nuanced and not too restrictive assessment in each individual case as to whether there are grounds for setting aside or remitting the surcharges.

With regard to the applicants' second contention, the Court noted that neither Article 6 nor, indeed, any other provision of the Convention could be seen as excluding, in principle, enforcement measures being taken before decisions on tax surcharges had become final. However, considering that the early enforcement of tax surcharges might have serious implications for the person concerned and might adversely affect his or her defence in the subsequent court proceedings, States were required to strike a fair balance between the interests involved, especially where enforcement measures were taken before there had been a court determination of the liability to pay the surcharges in question. In assessing whether a fair balance had been struck in the applicants' cases, the Court first considered that the financial interests of the State could not by itself justify the immediate enforcement of tax surcharges, as, contrary to the taxes themselves, they were not intended as a source of income for the State, but were designed to exert pressure on taxpayers to comply with their obligations under the tax laws and to punish breaches. The Court then noted that Swedish law provided for the possibility of having amounts paid reimbursed and bankruptcy decisions quashed in the event of a successful appeal against the decisions to impose surcharges. Considering that reimbursement may not fully compensate the individual taxpayer for his or her losses in cases where considerable amounts have been the subject of enforcement and that a system allowing such enforcement before a court has determined the liability to pay the surcharges is open to criticism, the Court nevertheless noted that no amount was actually recovered from Mr Janosevic and Västberga Taxi Aktiebolag and only a minor amount from Mr Vulic. Moreover, due to a lack of assets, Mr Janosevic and Västberga Taxi Aktiebolag would have been declared bankrupt on the basis of the tax debt alone. The Court therefore found that the possibility of reimbursement of any amount paid constituted a sufficient safeguard of the applicants' interests.

The Court therefore considered that the applicants' right to be presumed innocent had not been violated and that there was no breach of Article 6 §§ 1 and 2 in this respect.

Judge Thomassen's concurring opinion and Judge Casadevall's partly dissenting opinion are annexed to the judgments.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*