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

Press Release
issued by the Registrar of the Court

ECHR 380 (2017)
07.12.2017

Companies' complaint about Netherlands' austerity tax on high salaries declared inadmissible

The case of **P. Plaisier B.V. v. the Netherlands** (application no. 46184/16) and two other applications concerned complaints by three companies about an additional tax which employers had to pay on salaries above 150,000 euros that was part of budget austerity measures approved during an economic crisis.

In its decision in the case, the European Court of Human Rights joined the cases and unanimously declared the application inadmissible. The decision is final.

Financial holding companies P. Plaisier B.V. and D.E.M. Management Services B.V., and professional football club employer, Feyenoord Rotterdam N.V., complained that the tax, approved in 2013 but applied to 2012 salaries, was unforeseeable, unfair and discriminatory.

The Court found overall that the decisions taken by the Netherlands had not gone beyond the limit of the discretion allowed to authorities in questions of taxation and had not upset the balance between the general interest and the protection of the companies' individual rights. It noted that it had accepted various countries' austerity measures and that the steps taken by the Netherlands had also been part of the country's goal to meet obligations under European Union budget rules.

Principal facts

All three applicant companies are registered in the Netherlands. P. Plaisier B.V. and D.E.M. Management Services B.V. are financial holding companies with one employee who is also the sole shareholder while the third company, Feyenoord Rotterdam N.V., owns and operates the football club of the same name.

The case arose after the Netherlands authorities decided in 2012 to take measures to combat the financial effects of the economic crisis which had struck Europe and reduce the 2013 budget deficit by about 12 billion euros. The measures were wide-ranging and included a rise in the pension age, a freeze on public sector wages and tax rises.

One of the tax measures was a "crisis levy" tax surcharge on salaries above 150,000 euros, which was to be paid by employers. It was imposed on 2012 earnings and impacted the 2013 budget. Although supposed to be a one-off measure, it was imposed again for the 2014 budget.

P. Plaisier B.V. paid a tax surcharge of 22,969 euros and D.E.M. Management Services B.V. paid 140,555 euros. Feyenoord Rotterdam N.V. paid salaries of over 150,000 euros to twenty-five employees in 2012 and had to pay a high-salary surcharge of 593,472 euros.

The companies challenged the tax, first by lodging objections with the Tax Inspector, then appealing in court against the Tax Inspector's dismissal of their objections, and ultimately taking their cases to the Supreme Court. The companies relied in particular on provisions of the European Convention and the International Covenant on Civil and Political Rights.

All three made similar arguments, stating that the tax was unforeseeable as it had been applied retrospectively, had discriminated against employers who paid more than 150,000 euros and had not been justified by a proper assessment of how to distribute the tax burden. Feyenoord Rotterdam N.V. also argued that it was an unreasonable burden on it given the state of its finances.

All three companies lost their cases. The domestic courts found that the tax measure had been justified by the need to reduce the budget deficit, had been within the legislature's wide margin of appreciation to impose it and that the levy had not been without a reasonable foundation, despite the retrospective elements.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 28 July 2016.

Relying on Article 1 of Protocol No. 1 (protection of property), the three companies complained that they had been subjected to a tax with retrospective effect and that the tax surcharge had been imposed without regard for individual hardship. They also stated that the tax had been targeted at an unaccountably small group and had been disproportionate in relation to the amount actually raised. Under Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1, they complained that the tax surcharge had been applied arbitrarily to a small number of taxpayers.

The decision was given by a Chamber of seven, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands)*, Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

The Court first noted that any interference with the right to property had to strike a fair balance between the general interests of the community and the protection of individuals' fundamental rights. It also observed that in several previous judgments it had accepted various countries' austerity measures as being in line with the European Convention, including "haircuts" on the value of Greek Government bonds, public sector wage cuts in Romania and the reduction of public sector pension allowances in Portugal.

It accepted that the tax surcharge of which the companies complained had had retrospective effects, but noted that Article 1 of Protocol No. 1 did not as such prohibit legislation that acted in that way. The Court had also accepted in the past that the interests of an individual in knowing his or her tax burden in advance could be overridden if there were specific and compelling reasons. In this case, the Netherlands had been concerned to meet its obligations under EU law in circumstances that had been aggravated by an economic and financial crisis.

The Court rejected the argument that the tax had been imposed without taking account of individual circumstances, noting that neither P. Plaisier B.V. nor D.E.M. Management Services B.V. had alleged any particular hardship and that the domestic courts had examined and dismissed Feyenoord Rotterdam's complaint that it had faced an individual and excessive burden. It found that the authorities had examined imposing a wider tax but had rejected the idea, meaning the choice of the tax on high salaries not been "devoid of reasonable foundation".

As to the companies' argument that the tax had had a disproportionate impact compared with the amount actually raised, the Court noted that the levy had been expected to account for 4% of the total 12 billion euros of deficit-cutting measures, which was not insignificant. Moreover, it did not appear that the individual impact of the measure on the applicant companies was anything like as dramatic as that of the "haircut" on private investors holding Greek Government bonds. The Court thus found that the harm done by the measure was not disproportionate in relation to its benefits and did not accept the companies' argument that the legislative interference affected so few taxpayers that its impact on the State budget was minimal. It was also not the Court's place to say whether the legislation in question was the best solution to the problem and whether legislative discretion should have been exercised in another way.

The Court found that the companies' complaint was manifestly ill-founded and was therefore to be rejected as inadmissible.

Article 14 taken together with Article 1 of Protocol No. 1

The Court noted that the complaint coincided with the one under Article 1 of Protocol No. 1 alone, which it had already addressed. The complaint was therefore likewise manifestly ill-founded and had to be rejected as inadmissible.

The decision is available only in English.

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