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

FIRST SECTION

DECISION

Application no. 50598/13
IOFIL AE
against Greece

The European Court of Human Rights (First Section), sitting on 7 September 2021 as a Chamber composed of:

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 50598/13) against the Hellenic Republic lodged with the Court on 2 August 2013 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek limited liability company, Iofil AE ("the applicant company"), which on 16 December 2015 was acquired by the company Hellenic Quality Foods Anonymos Etaireia Trofimon;

the decision to give notice to the Greek Government ("the Government") of the complaint under Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant company,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns the imposition of tax on the applicant company for a transaction in which it sold some securities which it held in a subsidiary

company and repurchased securities the next day. The applicant company complained that the imposition of the tax had violated its right to the peaceful enjoyment of its possessions, as the above-mentioned transaction had merely served as a means of revaluing its assets in order to comply with its legal obligation to present in its balance sheet the real situation of its assets.

THE FACTS

2. The applicant is a limited liability company. It was trading under the name Iofil AE when it lodged its application with the Court, but in a merger of 16 December 2015 it was acquired by Hellenic Quality Foods Anonymos Etaireia Trofimon, trading as HQF. It was initially represented by Mr S. Tsakyrakis and Mr F. Tsintos and later by Mr F. Tsintos and Mr S. Skliris, lawyers practising in Athens.

3. The Government were represented by their Agent's delegates, Mr K. Georgiadis and Mrs A. Magrippi, Senior Advisor and Legal Representative at the State Legal Council respectively.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant company owned securities in a subsidiary company, BIS S.A., that was listed on the stock market. In 1999 the applicant company sold the securities in its subsidiary company to members of its own board of directors and repurchased securities the next day. In particular, on 11 November 1999 the applicant company sold 150,000 common securities to A.F. and D.F. for a total price of 2,721,160,800 drachmas (7,985,786.32 euros (EUR)), whereas their average value at the time of their acquisition had been 348,640,060 drachmas (EUR 1,023,153.44). On 12 November 1999 it repurchased securities. On 17 November 1999 the applicant company sold 800,000 common securities to I.F. for a total price of 13,290,220,800 drachmas (EUR 39,002,790.08), whereas their average value at the time of their acquisition had been 2,887,897,825 drachmas (EUR 8,475,109.20). On 18 November 1999 it bought securities again.

6. According to the applicant company, it performed the above transaction in order to comply with its obligation under Law no. 2190/1920 to present in its annual balance sheet the real situation (*πραγματική εικόνα*) of its assets, having regard to the fact that the value of securities had increased significantly from the price on the date of their acquisition, which was the one that featured in the annual balance sheet.

7. The above-mentioned transactions generated the rise in value of 12,774,843,800 drachmas (EUR 37,490,370 approximately). In its balance sheet, the applicant company registered the relevant rise in value in the account "Reserve funds" under the title "Non-taxable reserve funds of

special legal provisions" (code 41.08), after it had entered the relevant amount in the profit and loss account relating to securities for that financial year (*αποτελέσματα χρήσης*) (code 76.04).

8. On 9 November 2000 the applicant company submitted a tax return and included the relevant amount in the section concerning "Profits generated from selling securities listed on the stock market".

9. On 23 November 2000 the applicant company submitted an amended income tax return revoking the one of 9 November 2000 and attaching its amended balance sheet. In this tax return the applicant recorded the relevant rise in value in a different account called "Difference resulting from revaluation of securities" (code 41.97). In submitting this amended tax return the applicant company relied on opinion no. 297/2432/1998 of the National Board of Accountants, according to which amounts generated from the sale and repurchase of securities on the same day did not represent real profits but merely a rise in value (*υπεραξία*) and therefore should not be considered as real profits for a given year.

10. The tax resulting from the initial tax return amounted to 672,022,466 drachmas (EUR 1,972,183.27), whereas the tax resulting from the amended tax return amounted to 170,331,397 drachmas (EUR 499,871.28). According to the applicant company, the difference arose because, when recorded in the reserve account of the initial balance sheet, the amount generated by the above-mentioned transaction had also been recorded in the profit account relating to securities for that financial year. By contrast, when the transaction was entered in the reserve account of the amended balance sheet, the amount did not appear in the profit account and therefore did not affect the company's profits.

11. By decision no. 20032/2001 the relevant tax office rejected the amended tax return submitted by the applicant company. The applicant company lodged an appeal against that decision with the Athens Administrative Court of First Instance. It claimed that owing to an error of law (*νομική πλάνη*) concerning the interpretation and application of the relevant legal provisions, it had erroneously entered as profits in its tax return the amount resulting from the above-mentioned transactions. However, that amount corresponded to notional rather than real profits, having regard to the fact that it represented a rise in value from the sale and repurchase of securities in its subsidiary company. According to the applicant company, performing such transaction was the only way to comply with Law no. 2190/1920 and present the real value of the securities in its subsidiary company, which had significantly increased since the date on which they had been bought. By judgment no. 8931/2002 the Athens Administrative Court of First Instance granted the appeal, holding that, pursuant to Article 38 § 1 of Law no. 2238/1994, the relevant rise in value should not be taken into account in the determination of the net profits of the company and was therefore not subject to tax.

12. On 21 January 2000 the head of the relevant tax office lodged an appeal against the first-instance decision. He argued that opinion no. 297/2432/1998 of the National Board of Accountants was not applicable in the circumstances of the present case, as it only concerned the sale and repurchasing of securities which took place on the same day, whereas in the applicant company's case there had been no formal contract for the sale and repurchasing of securities on the same day. The sale and repurchase of securities in the subsidiary company had taken place on different business days, pursuant to the decisions of different general assembly meetings; therefore, the profits had been definitive and certain (*οριστικά και βεβαία*) and had not simply constituted a rise in value. In addition, in order for the applicant company to be able to benefit from Article 38 § 1 of Law no. 2238/1994 in conjunction with the relevant opinion of the National Board of Accountants regarding the sale of securities and the repurchase the next day, it should have credited a tax-free reserve (account 41.08) in its tax return.

13. By decision no. 2112/2004 the Athens Administrative Court of Appeal ("the Court of Appeal") granted the appeal and annulled judgment no. 8931/2002 of the Athens Administrative Court of First Instance. It held in particular as follows:

> "... Under the aforementioned legal provision, the profits generated by selling securities listed on the Athens Stock Exchange at a price higher than the price at which they were bought are exempted from tax, provided that they are entered in a special reserve account. Therefore, the respondent [applicant company], invoking Article 38 § 1 of Law no. 2238/1994, erroneously argued that it had committed an error in law and transferred the above-mentioned amount, which had resulted from the selling of securities, from the special reserve account in which it had correctly appeared initially, to the account entitled "Difference resulting from revaluation of securities" in its amended income tax return, which was correctly rejected by the attached decision of the tax authority. Consequently, the [contested] judgment erred by accepting the argument to the opposite effect. For this reason, the relevant ground of appeal should be accepted, the [contested] judgment should be set aside and the appeal [of the applicant company] should be dismissed".

14. On 9 September 2010 the applicant company lodged an appeal on points of law with the Supreme Administrative Court. It argued, *inter alia*, that the Court of Appeal had erroneously applied Articles 38 and 61 § 4 of Law no. 2238/1994 by holding that only account 41.08, in which the company had initially declared the amount generated by the transaction in question, was a special reserve account, and not account 41.97, in which the company had recorded the said amount in its amended balance sheet. It further argued that the Court of Appeal had not dealt with the issue of the revocation of the initial tax return; therefore, it had not addressed the question whether the amount generated from the sale and repurchase of securities should be considered profit. However, the applicant company had been required to pay tax on non-real profits, in violation of Articles 4 § 5

and 78 of the Constitution. The applicant company also maintained that the appellate court had granted the appeal on a ground not put forward by the appellant, who had merely argued that Article 38 § 1 of Law no. 2238/1994 was not applicable because the repurchase of securities had taken place a day after the sale. Lastly, in the applicant company's view, the appeal should have been dismissed as being lodged out of time.

15. The Supreme Administrative Court, by decision no. 518/2013, dismissed the appeal on points of law. In particular, it held that all the grounds for that appeal were based on incorrect premises, as the Court of Appeal had not based its reasoning on the nature of accounts 41.08 or 41.97 as special reserve accounts that satisfied or did not satisfy the conditions of Article 38 of Law no. 2238/1994, but on the conclusion that the amount generated from the sale of the securities at a price higher than the price at which they had been bought, regardless of the repurchase, had constituted profits and not a rise in value. Therefore, the tax authorities had correctly rejected the amended tax return, given that in the initial tax return the applicant company had included the profits in the correct account.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Constitution

16. The relevant Articles of the Constitution read as follows:

Article 4

"...

5. Greek citizens shall contribute without distinction to public charges in proportion to their means."

Article 78

"1. No tax shall be levied without a statute enacted by Parliament specifying the subject of the taxation and the income, type of property, expenses and transactions or categories thereof to which the tax pertains.

2. No tax or other financial charge may be imposed by retroactive application of a statute extending further back than the fiscal year preceding the imposition of the tax.

3. By way of exception, in the case of imposition or increase of an import or export duty or a consumer tax, collection thereof shall be permitted as of the date on which the bill is tabled in Parliament, on condition that the statute is published within the time-limit specified in Article 42 § 1, and in any case not later than ten days following the end of the parliamentary session.

4. The object of taxation, tax rates, tax abatements and exemptions and the granting of pensions may not be subject to legislative delegation. This prohibition does not preclude the determination by law of the manner of assessing the share of the State or public agencies in general in the automatic increase in the value of private immovable

property adjoining the site of construction of public works and resulting exclusively therefrom.

5. In exceptional cases it shall be permitted to impose balancing or counteractive charges or duties by means of delegation of framework legislation, and to impose, within the context of the country's international relations with economic organisations, economic measures or measures concerning the safeguarding of the country's foreign-exchange position."

B. Law no. 2238/1994

17. Law no. 2238/1994 (Income Taxation Code) as in force at the material time, provided as follows:

Article 38

"1. Profits from the selling of securities listed on the Athens stock market at a price higher than the price at which they were bought ... shall be exempted from tax. The exemption shall apply on condition that the profits are recorded in a special reserve account so as to be set off against future losses from the selling of securities that may or may not be listed on the Athens stock market. In the case of distribution of assets or dissolution of the company, those profits shall be taxed according to the applicable provisions...".

Article 61

"...

4. The [tax] return is binding on the taxpayer. However, he or she may revoke it in whole or in part, on grounds of excusable error, while bearing the burden of proving the facts which constitute that error."

C. Law no. 2190/1920

18. Article 42a of Law 2190/1920 on limited liability companies read as follows at the material time:

Article 42a

"...

2. The annual financial statements shall be prepared in accordance with the provisions of this Article, as well as Articles 42b, 42c, 42d, 42e, 43 and 43a, and shall show with absolute clarity the real situation of the company's asset structure, financial position and profit and loss account."

D. Law no. 2324/1995

19. Article 16 of Law no. 2324/95 reads as follows:

"A contract for the sale of securities listed on the stock market with a repurchase agreement on the same business day shall be allowed, provided that at least one client of the company listed on the stock market is a credit institution, an insurance

company, a mutual fund or a portfolio investment company, and that the transaction value exceeds an amount of one hundred million (100,000,000) drachmas, subject to the prior permission of the stock exchange, which shall verify compliance with the conditions set out in this order ..."

E. Opinion no. 297/2432/1998 of the National Board of Accountants

20. According to opinion no. 297/2432/1998 of the National Board of Accountants, a formal agreement for the sale of securities and the repurchase on the same day under Article 16 of Law no. 2324/95 does not generate real profits and therefore should not increase the company's profits, nor should the resulting amounts be distributed. Such agreements do not concern the real and definitive sale of securities but merely a rise in value of the said securities, that is to say the difference between the price at which they were originally bought, and which appears in the books, and their current price on the stock market. It follows that the above-mentioned difference in price (rise in value) should not be recorded in the profits account for the financial year, but directly in the special account 41.97 entitled "Difference resulting from the revaluation of securities". As regards the taxation of the amounts in question, the Ministry of Finance, which is competent in the matter, issued opinion no. 11192/10997/23.12.1998 to the effect that the increase in value falls within the scope of Article 38 of Law no. 2238/1994.

COMPLAINT

21. The applicant company complained under Article 1 of Protocol No. 1 to the Convention that the imposition of tax in respect of the sale and repurchase of securities in its subsidiary company had violated its right to the peaceful enjoyment of its property.

THE LAW

22. The applicant company complained that the imposition of tax in respect of a transaction that had served as a means of revaluing assets had violated its right to the peaceful enjoyment of its possessions as guaranteed by Article 1 of Protocol No.1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' arguments

23. The Government put forward a preliminary objection of non-exhaustion of domestic remedies. In their view, the applicant company had not invoked Article 1 of Protocol No. 1 to the Convention or any domestic provisions to the same effect before the domestic courts. In particular, the applicant company had not alleged before the domestic authorities that the tax imposed on the disputed transaction had violated its right to the peaceful enjoyment of its property, and had failed to lodge an application for damages under Article 105 of the Introductory Law to the Civil Code. In addition, in its appeal on points of law lodged with the Supreme Administrative Court, the applicant company had not contested the conclusion of the Court of Appeal that the amount generated by the transaction at issue had constituted profits and not simply a rise in value. Therefore, those arguments, raised for the first time before the Court, should be rejected pursuant to Article 35 § 1 of the Convention.

24. Turning to the substance of the complaint, the Government argued that the applicant company had sold and repurchased securities in its subsidiary company of its own accord, without being obliged to do so by law. The domestic authorities took the view that the said transaction had generated profits and they had thus imposed tax on that transaction pursuant to the applicable legislation; their interpretation had been confirmed by the domestic courts. The applicant company in essence complained about the interpretation of domestic law, without substantiating the alleged damage it had suffered.

25. Even assuming that there had been interference with the applicant company's right to the peaceful enjoyment of its property, that interference had served the general interest of preserving the stability and sustainability of the domestic economy through the collection of taxes.

26. As to the lawfulness of such interference, the Government submitted that, in order to support its view, the applicant company had invoked opinion no. 297/2432/1998 of the National Board of Accountants. However, that opinion had dealt with a different issue, namely the sale and repurchase of securities on the same business day. The applicant company's interpretation, that such transactions were exempted from tax even when performed with a difference of a few days, was only supported by Th.G., who had written a book in which he had included and commented on various opinions of the National Board of Accountants. Based on the above-mentioned considerations, the applicant company – if it had exercised due diligence – had known or ought to have known that the transaction it had concluded could be considered profit and be subject to tax.

27. The applicant company replied that, in so far as exhaustion of domestic remedies was concerned, it had raised before the domestic courts arguments to the same effect as those deriving from the Convention and had

invoked the violation of its rights in substance. Contrary to the Government's arguments, it had adequately contested the decision of the Court of Appeal before the Supreme Administrative Court. Moreover, Article 35 of the Convention required applicants to have recourse to remedies likely to be effective; in the circumstances of the present case, an application for damages would not have been effective.

28. The applicant company argued that it had found itself in a legal stalemate: on the one hand it was obliged, pursuant to Article 42a of Law 2190/1920, to present the real situation of the securities it had in its possession and, on the other hand, the value of securities had significantly increased from their price on the date of their acquisition, which was the price that should feature in the balance sheet. Therefore, the applicant company had had to proceed to a revaluation of the securities, and at the time the only possible way of doing so was to sell and repurchase. The imposition of the unduly paid tax on that transaction had thus amounted to an interference with its right to the peaceful enjoyment of its possessions.

29. With regard to the lawfulness of the interference, the applicant company argued that the applicable legal provisions were neither foreseeable nor precise, as it was called on to comply with contradictory obligations. It referred in that regard to the opinion of Th.G., author of a book on various opinions of the National Board of Accountants, including opinion no. 297/2432/1998 on the treatment of the sale and repurchase of securities on the same business day. Th.G. had included a comment in the book arguing that the completion of the transaction within the next few days indicated that it was notional and that therefore no real profit had been generated and no tax should be imposed. The applicant company further argued that an indication that the applicable legal provisions were not sufficiently accessible, foreseeable and precise lay in the fact that they had been amended by Article 2 of Law no. 3460/2006, which specifically provided that financial instruments could be valued at a fair value. In the present case, the transaction had merely served as a means for the applicant company to revalue its securities, as proven by the fact that securities had been sold to the members of the company's board and bought the next business day.

30. Lastly, with regard to the achievement of a fair balance, the applicant company noted that the imposition of tax on the transaction at issue had placed an unnecessary and excessive burden on it. There was no reason of public interest to justify requiring the applicant company to pay tax amounting to two-thirds of its annual tax bill because it had had its securities revalued in order to comply with its obligation to present the real situation of its assets.

B. The Court's assessment

31. The Court does not find it necessary to examine all the arguments raised by the parties in the present case since the application is in any event inadmissible for the reasons set out below.

1. General principles

32. The Court reiterates that taxation is in principle an interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1, since it deprives the person concerned of a possession, namely the amount of money which must be paid. While the interference is generally justified under the second paragraph of this Article, which expressly provides for an exception as regards the payment of taxes or other contributions, the issue is nonetheless within the Court's control, since the correct application of Article 1 of Protocol No. 1 is subject to its supervision (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 59, ECHR 2008).

33. The Court considers that when speaking of "law", Article 1 of Protocol No. 1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as case-law. It implies qualitative requirements, notably those of accessibility and foreseeability (see *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999).

34. According to the Court's well-established case-law, an instance of interference, including one resulting from a measure to secure payment of taxes, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including the second paragraph: there must be a reasonable relationship of proportionality between the means employed and the aims pursued (see *"Bulves" AD v. Bulgaria*, no. 3991/03, § 62, 22 January 2009). Consequently, the financial liability arising out of the raising of tax or contributions may adversely affect the guarantee secured under this provision if it places an excessive burden on the person or the entity concerned or fundamentally interferes with his or its financial position (see *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 102, 24 June 2014).

35. Accordingly, the Court cannot fail to exercise its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicant company's right to "the peaceful enjoyment of [its] possessions", within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Sporrong and Lönnroth*, cited above, § 69; *Lithgow and Others v. the United Kingdom*, 8 July 1986, §§ 121-22,

Series A no. 102; and *Intersplav v. Ukraine*, no. 803/02, § 38, 9 January 2007).

36. The Court further reiterates that a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *Wallishauser v. Austria (no. 2)*, no. 14497/06, § 65, 20 June 2013), as well as when framing and implementing policy in the area of taxation (see, among many other authorities, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 60, Series A no. 306-B, and *Stere and Others v. Romania*, no. 25632/02, § 51, 23 February 2006). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest" (see, for example, *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 57, 31 May 2011, and *Travers v. Italy*, no. 15117/89, Commission decision of 16 January 1995) and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Wallishauser*, cited above, § 65). Thus, it is firstly for the national authorities to decide on the type of tax or contributions they wish to levy. Decisions in this area normally involve, in addition, an assessment of political, economic and social problems which the Convention leaves to the competence of the member States, as the domestic authorities are clearly better placed than the Convention organs to assess such problems (see *Baláž v. Slovakia* (dec.), no. 60243/00, 16 September 2003).

2. Application in the present case

(a) The applicable rule

37. Article 1 of Protocol No. 1 in substance guarantees the right of property (see *Marckx v. Belgium*, 13 June 1979, § 63, Series A no. 31). Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *Sporrong and Lönnroth*, cited above, § 61; *James and Others v. the United*

Kingdom, 21 February 1986, § 37, Series A no. 98; and *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I).

38. It would appear to the Court to be the most natural approach to examine the applicant's complaint from the angle of a control of the use of property in the general interest "to secure the payment of tax", which falls within the rule in the second paragraph of Article 1 (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 79, *Reports of Judgments and Decisions* 1997-VII).

(b) Whether there was interference

39. The parties did not dispute that the imposition of tax by the Greek tax authorities on the impugned transaction of the applicant company constituted interference by a public authority with the applicant company's enjoyment of its possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

(c) Whether that interference was lawful

40. The Court observes that the applicant company's main argument was that the imposition of the tax had not been lawful, as it had sold and repurchased securities in order to comply with its obligation to present the real situation of its assets in the balance sheet and reflect the rise in the value of the securities which it owned. In this regard, the applicant company did not contest the provision on the basis of which the impugned tax had been imposed, but rather the interpretation of Article 38 § 1 of Law no. 2238/1994, complaining that the transaction it had performed should fall within the scope of the latter provision. It referred in that regard to opinion no. 297/2432/1998 of the National Board of Accountants and an opinion given by Th.G., who considered that the completion of a transaction over the following business days indicated that the transaction had been notional and had not generated real profits.

41. It transpires from the decisions adduced before the Court that the domestic courts considered the disputed transaction to be a real transaction which generated profits and thus fell outside the scope of Article 38 of Law no. 2238/1994, according to which such transactions were not subject to tax.

42. In this regard, the Court reiterates that its power to review compliance with domestic law is limited. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Zagrebačka banka d.d. v. Croati*a, no. 39544/05, § 263, 12 December 2013). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is

confined to ascertaining whether the effects of that interpretation are compatible with the Convention. This principle is particularly relevant in a case such as the present one, which involves a highly specialised and technical area of law (see, *mutatis mutandis*, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

43. Turning to the circumstances of the present case, the Court observes that the opinion of the National Board of Accountants refers to the tax treatment of the profits generated by a transaction falling within the scope of Article 16 of Law no. 2324/95, namely the sale and repurchase of securities within the same business day. It additionally observes that the tax authorities did not accept the amended tax declaration submitted by the applicant company, on the grounds that the transaction had generated profits and had been completed on different business days. Therefore, in the authorities' view, Article 38 § 1 of Law no. 2238/1994, taken in conjunction with opinion no. 297/2432/1998 of the National Board of Accountants, was not applicable (see the appeal lodged by the tax authority, paragraph 12 above). The Court of Appeal and subsequently the Supreme Administrative Court confirmed that interpretation.

44. In this regard, the Court notes that the interpretation in question flows directly from the wording of Article 16 of Law no. 2324/95 and opinion no. 297/2432/1998 of the National Board of Accountants. As regards the alternative interpretation put forward by the applicant company and based on the opinion of Th.G., the Court notes that an academic theory cannot replace the interpretation given to a legal provision by the authorities, especially in circumstances such as those in the present case in which it appears that the theory in question is not widely supported.

45. Contrary to what the applicant company alleged, there was no legal stalemate as it was entirely possible for a company to sell and repurchase securities in order to present its real assets without being taxed, under the specific conditions set out in Article 16 of Law no. 2324/95. The applicant company, however, did not comply with the conditions set out therein (paragraph 15 above). The domestic courts therefore confirmed the tax authorities' assessment that the transaction had generated profits and was subject to tax. In the Court's view, that assessment cannot be considered manifestly unreasonable or arbitrary.

46. The Court finds, therefore, that the applicable legal provisions were adequately accessible and foreseeable and concludes that the interference complained of had a sufficient legal basis in Greek law to comply with the requirements of the second paragraph of Article 1 of Protocol No. 1.

(d) The general interest

47. The Government argued that the interference with the applicant company's right to the peaceful enjoyment of its possessions had served the general interest of preserving the stability and sustainability of the domestic

economy through the collection of taxes. The applicant company did not contest that argument. The Court sees no reason to hold otherwise and thus concludes that the impugned tax served an aim in the general interest.

(e) Whether a fair balance was struck between the competing interests

48. Turning to the question of whether a fair balance was struck between the competing interests, the Court notes that the applicant company complained that the tax imposed on it in respect of the disputed transaction amounted to two-thirds of the tax it had been requested to pay for that financial year. However, in the Court's view that fact alone does not suffice to establish that the tax imposed was not proportionate. In particular, no complaint was made before the domestic courts or this Court to the effect that the percentage of tax imposed was disproportionate to the profit generated or to the overall financial situation of the applicant company. In these circumstances, the Court finds no indication that the authorities failed to strike a fair balance between the public interest of collecting taxes and the applicant company's right to the peaceful enjoyment of its property. The Court also notes that there is no evidence in the case file – and in any event it was not argued by the applicant company – that the levying of such a sum fundamentally undermined the applicant company's financial situation. This is one of the factors to which the Court has given weight when gauging whether a fair balance has been struck in a given case (see *N.K.M. v. Hungary*, cited above, § 42 with further references to the Court's case-law, and *Cacciato v. Italy* (dec.), no. 60633/16, 16 January 2018). In the light of the above, the Court cannot find that the tax which the applicant company was obliged to pay to the authorities can be regarded as adversely affecting its property rights to such an extent that it would be disproportionate or amount to an abuse of the State's right under Article 1 of Protocol No. 1 to levy taxes.

49. Taking into account the wide margin of appreciation which the States have in taxation matters, the Court therefore considers that the actions taken by the respondent State, in imposing tax on the transaction at issue because the sale and repurchase of securities had taken place on different business days and not on the same day, did not upset the balance which had to be struck between the protection of the applicant company's rights and the public interest in securing the payment of taxes.

C. Conclusion

50. In view of the foregoing considerations the Court finds that the interference with the applicant company's right to the peaceful enjoyment of its possessions was justified under Article 1 of Protocol No. 1 to the Convention.

51. It follows that the application is inadmissible under Article 35 §§ 3 (a) of the Convention as being manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Liv Tigerstedt Deputy Registrar	Ksenija Turković President