CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

# FIRST SECTION

# DECISION

# AS TO THE ADMISSIBILITY OF

Application no. 34619/97
by Velimir JANOSEVIC
against Sweden

The European Court of Human Rights (First Section), sitting on 26 September 2000 as a Chamber composed of

Mrs W. Thomassen, *President*,
Mrs E. Palm,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mr J. Casadevall,
Mr R. Maruste, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 28 November 1996 and registered on 28 January 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the parties' oral submissions at the hearing on 26 September 2000,

Having deliberated, decides as follows:

## THE FACTS

The applicant is a Swedish national, born in 1964 and living in Huddinge. He is represented before the Court by Mr Jan Thörnhammar, a lawyer practising in Stockholm. The respondent Government are represented by Ms Inger Kalmerborn as Agent.

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

### A. Particular circumstances of the case

a. Additional taxation and the imposition of tax supplements

In the autumn of 1995, the Tax Authority of the County of Stockholm carried out a tax audit concerning the applicant's taxi enterprise. Having discovered in the course of the audit certain irregularities in the applicant's tax returns for the assessment year 1994, the Tax Authority, on 1 December 1995, drafted an audit report and invited the applicant to submit comments. The applicant challenged the report and requested that further investigative measures be carried out.

Having regard to the findings of the audit and the observations submitted by the applicant, the Tax Authority, by means of additional taxation, on 22 December 1995 levied on the applicant additional value-added tax with 192,966 Swedish *kronor* (SEK) and employment tax with SEK 253,783. Subsequently, on 27 December 1995, the Tax Authority levied additional income tax with SEK 286,959. Moreover, as the information supplied by the applicant in his tax returns had been found to be incorrect and because the turnover of the applicant's business was raised under a discretionary assessment procedure, the Tax Authority ordered him to pay a special charge (*skattetillägg, avgiftstillägg*) which, depending on what type of tax was involved, amounted to 20 or 40 per cent of the tax imposed as a result of the additional taxation. The additional taxes levied on the applicant, including interest, and the special charge totalled SEK 1,010,779, SEK 161,261 of which referred to the special charge. The amount was payable in three instalments due in February, March and April 1996, respectively.

Claiming that there existed inconsistencies in certain documents relied upon by the Tax Authority to calculate the turnover of his business, the applicant, on 8 March 1996, requested the Authority to reconsider its decision. On 24 February 1999 the Tax Authority maintained its position for which reason the applicant requested that the matter be brought before the courts of law for determination. The dispute is at present pending before the County Administrative Court (*länsrätten*).

b. Proceedings relating to the request for a stay of payment

Due to the amount involved the applicant had in his above request of 8 March 1996 furthermore requested that he be granted a stay in the payment of the additional taxes, a possibility open to him under section 49 of the 1953 Tax Collection Act (*uppbördslagen*; hereinafter "the 1953 Act").

This request was prompted by the fact that under section 103 of the 1953 Act, neither an appeal nor a request for reconsideration would in itself have any suspensive effect on the obligation to pay the taxes imposed as a result of the impugned decision. Moreover, chapter 5, section 13, subsection 1 of the 1990 Taxation Act (*taxeringslagen*; hereinafter "the 1990 Act") provided that, for tax collection purposes, a special charge should be treated as final or additional tax under the 1953 Act. Consequently, in the absence of a stay of payment, not only the actual tax debt but also the special charge would remain payable and enforceable irrespective of the fact that an appeal or a request for reconsideration had been lodged in respect of the Tax Authority's decision.

In letters to the applicant's counsel the Tax Authority, on 19 April 1996, stated the following in respect of the applicant's requests for a stay of payment:

(Translation)

> "... The Tax Authority considers that the prerequisites laid down in section 49, subsection 1 (2) or (3) of the [1953] Act for granting a stay of payment have been fulfilled.
>
> According to section 49, subsection 2 of the [1953] Act the Tax Authority may, in certain cases, require that security be provided for an amount, the payment of which is sought to be stayed.
>
> Having regard to the information contained in [the applicant's] tax return and considering the other circumstances in the case, the Tax Authority finds that [the applicant's] ability to pay is open to serious doubt.
>
> The Tax Authority is of the opinion that [the applicant] has to provide security for the amount ... in respect of which he has requested a stay of payment. ... Only a banker's guarantee will be accepted as security.
>
> You are hereby invited to provide security. This should be done no later than 8 May 1996.
>
> Should you fail to provide security by the date mentioned above, your request will be rejected."

On 21 May 1996, no security having been furnished, the Tax Authority rejected the applicant's request for a stay of payment.

The applicant appealed against this decision to the County Administrative Court of the County of Stockholm (*Länsrätten i Stockholms län*), requesting that he be relieved of the obligation to provide security and that a stay of payment be granted. Both requests rested on the contention that it would be unreasonable if enforcement proceedings were instituted against the applicant without a court having first determined whether he was at all liable for the debt.

By judgment of 11 July 1996, the County Administrative Court upheld the Tax Authority's decision of 21 May 1996. The court noted at the outset that the formal prerequisites for granting a stay of payment under section 49, subsection 1 (3) of the 1953 Act had been fulfilled. However, subscribing to the reasons given by the Tax Authority, the court found that the applicant's request could not be granted unless security was provided.

The applicant, who did not furnish security, appealed to the Administrative Court of Appeal in Stockholm (*Kammarrätten i Stockholm*).

On 21 May 1997 the Administrative Court of Appeal refused leave to appeal against the County Administrative Court's judgment of 11 July 1996. The applicant's request for leave to appeal against the appellate court's decision was refused by the Supreme Administrative Court (*Regeringsrätten*) on 3 November 1998.

c. Enforcement proceedings

In March 1996 – portions of the debt being outstanding and no stay of payment having yet been granted – the applicant had been registered as being in arrears with some of the taxes and charges imposed on him as a result of the additional taxation.

On 29 March 1996 the Enforcement Authority of the County of Stockholm (*Kronofogdemyndigheten i Stockholms län*), representing the State, filed a petition with the District Court of Huddinge (*Huddinge tingsrätt*), requesting that the applicant be declared bankrupt. According to a statement submitted by the Enforcement Authority, the applicant's tax debt as of 29 March 1996 amounted to SEK 653,144, SEK 89,323 of which referred to the special charge. The Authority referred to the fact that, upon investigation, the applicant had been found to own only some vehicles, but not enough property in order to recover the said debt.

The applicant was summoned to appear before the District Court on 23 April 1996. The court commenced its examination of the case but, at the request of the applicant who referred to the fact that his request for a stay of payment was still pending before the Tax Authority, the bankruptcy proceedings were adjourned until 21 May 1996. On that day the District Court held a second hearing in the case. When heard by the court the applicant now stated that he had been unable to comply with the Tax Authority's condition for granting a stay of payment, i.e. that security be provided. By decision of 10 June 1996, having rejected the applicant's request for a further adjournment of the proceedings, the District Court declared the applicant bankrupt. In so doing the court had regard to the fact that, under section 103 of the 1953 Act, the applicant was under an obligation to pay the debt, that he would not be granted a stay of payment by the Tax Authority and that he must be considered insolvent as he had been found to be in possession of no assets.

The applicant appealed to the Svea Court of Appeal (*Svea hovrätt*), claiming, *inter alia*, that the District Court's decision amounted to a violation of Article 6 of the Convention, in that the enforcement proceedings had been allowed to continue irrespective of the fact that the Tax Authority's decision of 22 December 1995 had been challenged by him.

The applicant's appeal was rejected by the appellate court on 18 June 1996.

Leave to appeal against the appellate court's decision was refused by the Supreme Court (*Högsta domstolen*) on 18 September 1996.

According to a report from the bankruptcy administrator of 30 January 1998, all vehicles, except a leased car representing no value to the applicant, had been sold by him shortly before he was declared bankrupt. The value of the remainder of the applicant's assets listed in the estate inventory was estimated at SEK 8,800, while the debts amounted to about SEK 1,690,000.

On 18 February 1998 the bankruptcy was written off due to indigence.

d. Criminal proceedings

On 30 October 1997 the applicant was sentenced by the District Court of Huddinge to 10 months' imprisonment for tax fraud and bookkeeping crime. The tax fraud concerned the above-mentioned value-added tax.

The judgment was upheld by the Svea Court of Appeal on 16 November 1998. Leave to appeal to the Supreme Court was refused on 4 March 1999.

## B. Relevant domestic law

The following account refers to the law as it stood at the material time.

a. Tax and special charge

The relevant domestic rules on taxes and special charges were primarily laid down in the 1990 Act, the 1953 Act, the 1984 Act on Collection of Social Security Charges from Employers (*lagen om uppbörd av socialavgifter från arbetsgivare*; hereinafter "the 1984 Act"), the 1968 Act on Value-added Tax (*lagen om mervärdeskatt*; hereinafter "the 1968 Act") and the 1994 Act on Value-added tax (*mervärdesskattelagen*; hereinafter "the 1994 Act"). The 1968 Act was replaced by the 1994 Act as of 1 July 1994. The 1953 Act, the 1984 Act and parts of the 1994 Act were replaced by the 1997 Tax Payment Act (*skattebetalningslagen*), in force as of 1 November 1997.

Income tax, value-added tax and employment tax were all determined by the county tax authorities, to which tax payers were under an obligation to submit information in order to provide guidance for the assessment of taxes. For the purpose of securing that the tax authorities received timely, sufficient and correct information from taxpayers, there were provisions stipulating that under certain circumstances the tax authorities should impose sanctions on the taxpayer in the form of special charges. Such charges could be imposed if the taxpayer failed to file his tax return or filed it later than provided for or if he gave incorrect information, which could have caused the tax authorities to levy too little tax on him, or if the information which he submitted was so inadequate that the tax assessment had to be made on a discretionary basis.

The special charges were introduced into Swedish legislation in 1971. The new provisions entered into force on 1 January 1972 at the same time as a new act on tax offences. Up till then a taxpayer's submission of incorrect information could only be sanctioned within

the penal system. According to the *travaux préparatoires* (Government Bill 1971:10), the main purpose of the reform was to create a system of sanctions which was more effective and fair than the old system, which was based entirely on criminal sanctions determined by the general courts following police investigation and prosecution. Unlike sanctions for tax offences, the new charges were determined solely on objective grounds, and, accordingly, without regard to any form of criminal intent or negligence on the part of the taxpayer. It was thought that the old system did not function satisfactorily, since a great many tax returns contained incorrect information at the same time as relatively few people were charged with tax offences. After the introduction of the new system the prosecutors and the courts were only meant to deal with serious tax offences. The imposition of a special charge on a taxpayer would not, however, exclude a criminal charge based on the same incorrect information (cf. below).

The provisions regarding special charges applied by the Tax Authority in the present case were found in the 1990 Act, the 1968 Act and the 1984 Act, relating to income tax, value-added tax and employment tax, respectively.

If a taxpayer had submitted information in his tax return which was found to be incorrect and which was of relevance to the assessment of his income tax, a special charge should be imposed on him. The supplement amounted to 40 percent of the income tax which, should the incorrect information have been accepted, would not have been levied on the taxpayer (chapter 5, section 1 of the 1990 Act). A special charge of 40 percent of the additional income tax should also be imposed if, following a discretionary assessment, the tax authority decided to deviate from the information submitted in the tax return (chapter 5, section 2 of the 1990 Act). Such a discretionary assessment should be made if the taxpayer had submitted information which was so inadequate that the tax authorities could not base their tax assessment on it (chapter 4, section 3 of the 1990 Act). A discretionary assessment should also be made if the taxpayer did not file a tax return notwithstanding the fact that he had been reminded of his obligation to do so. In that case the decision to impose a special charge should be revoked if the taxpayer filed a tax return within a certain time-limit. As regards value-added tax and employment tax there were corresponding provisions on special charges and discretionary assessment in the 1968 Act (sections 30 and 64 a) and the 1984 Act (sections 10 and 38–40). As for both types of taxes, however, the special charge amounted to only 20 percent of the additional tax levied on the taxpayer.

In certain cases the special charge amounted to 20 percent in connection with income tax and to 10 percent in connection with value-added tax and employment tax (chapter 5, section 1 of the 1990 Act, section 64 a of the 1968 Act and section 38 of the 1984 Act). This was the case, *inter alia*, if the incorrect information that the taxpayer had submitted had been corrected or could have been corrected with the aid of control material that should normally be available to the tax authorities and which had also become available to them within a stipulated time-limit.

Under certain circumstances no special charge should be imposed at all, even though the taxpayer had submitted incorrect information. Thus, under chapter 5, section 4 of the 1990 Act, this was so, *inter alia*, if the taxpayer had voluntarily corrected the information, if the information had been corrected or could have been corrected with the aid of certain information that should be available to the tax authorities, such as an employer's information regarding an employee's income, or if the information consisted of a miscalculation or an error in writing

that appeared quite clearly from the tax return or some other written information submitted by the taxpayer. Similar rules applied in connection with value-added tax and employment tax (section 64 d of the 1968 Act and section 42 of the 1984 Act).

Furthermore, regarding all three kinds of taxes, there were special provisions according to which the taxpayer could be relieved of the special charge. Thus, under chapter 5, section 6 of the 1990 Act, the taxpayer should not have to pay it, *inter alia*, if the submission of the incorrect information could be considered excusable due to the taxpayer's age, illness or lack of experience or some comparable circumstance. The provisions on relief had to be observed by the tax authorities of their own accord (chapter 5, section 7 of the 1990 Act). It was, however, up to the taxpayer to prove that a ground for relief existed. Corresponding provisions were found in the 1968 Act (sections 64 f and 64 h) and the 1984 Act (sections 43 and 47).

A special charge should not be imposed after the taxpayer's death (chapter 5, section 12 of the 1990 Act, section 64 f of the 1968 Act and section 46 of the 1984 Act). On the other hand, in case the taxpayer died after a special charge had been imposed on him but before it had been paid, the estate of the deceased was liable for the payment thereof (sections 1 and 61 of the 1953 Act, sections 3 and 64 k of the 1968 Act, and sections 19 and 49 of the 1984 Act).

Relevant provisions on reconsideration of decisions concerning tax and special charges and on appeals against such decisions were found in the 1990 Act, the 1968 Act and the 1984 Act (cf., in particular, chapter 4, sections 7, 9 and 14 and chapter 6, sections 1, 3, 6 and 7 of the 1990 Act; sections 33, 34, 36, 51, 52, 54 and 55 of the 1968 Act; and sections 50, 52, 58, 68, 70 and 72 of the 1984 Act). The taxpayer could request the tax authority to reconsider its decision on tax and special charges. Such a decision could also be appealed to a county administrative court. As regards income tax, the request for reconsideration or the appeal normally had to be lodged before the end of the fifth year after the assessment year. Similar rules on time-limits applied in connection with value-added tax and employment tax. Even if the taxpayer lodged an appeal, the tax authority usually had to reconsider its decision and if it decided to amend the decision in accordance with the taxpayer's request, the appeal became void. Otherwise the appeal was transferred to the county administrative court. The judgment of that court could be appealed to an administrative court of appeal, whose judgment could in its turn be brought before the Supreme Administrative Court, subject to the conditions for leave to appeal. Decisions on tax assessment and special charges were connected in the sense that a successful objection to the tax itself had an automatic effect on the special charges. Decisions on special charges could, however, be appealed separately, invoking grounds for reduction or relief (cf. above).

If the proceedings before a county administrative court or an administrative court of appeal concerned a special charge, the appellant had the right to have an oral hearing (chapter 6, section 24 of the 1990 Act, to which section 57 of the 1968 Act and section 77 of the 1984 Act referred).

If the tax authority when reconsidering a tax decision decided to reduce the tax, it also automatically had to make a corresponding reduction of the special charge (chapter 5, section 11 of the 1990 Act, section 64 h of the 1968 Act and section 47 of the 1984 Act). If the

court examining an appeal found that the taxpayer's taxable income should be lowered, the tax authority had to reduce the tax and as a consequence make a corresponding reduction of a special charge imposed as a result of the tax assessment.

b. Tax collection

Provisions concerning the collection of taxes and special charges were found in the 1953 Act, the 1994 Act and the 1984 Act, relating to income tax, value-added tax and employment tax, respectively. Section 103 of the 1953 Act provided that a request for reconsideration or an appeal against a decision concerning the tax assessment should have no suspensive effect on the taxpayer's obligation to pay the income taxes. Such an obligation also applied to a special charge (chapter 5, section 13 of the 1990 Act). There were corresponding provisions regarding value-added tax and employment tax (chapter 16, section 16 of the 1994 Act and section 78 of the 1984 Act).

However, on certain conditions, the tax authorities could grant a stay in the payment of taxes and special charges. A stay of payment could be granted, *inter alia*, in the following three situations (section 49, subsection 1 of the 1953 Act, to which chapter 16, section 6 of the 1994 Act and section 13 of the 1984 Act referred). Firstly, it could be granted if it could be assumed that the amount imposed on the taxpayer would be reduced or that he would be relieved of the obligation to pay the amount. Secondly, a stay could be granted if the taxpayer had lodged a request for reconsideration of the decision or an appeal against the decision and the outcome of the proceedings was uncertain. According to the *travaux préparatoires* (Government Bill 1989/90:74, p. 340) it was possible to grant a stay when it was just as likely that the proceedings would result in a rejection as in an approval. The granting of a stay of payment was also possible in doubtful cases, in which it was somewhat more likely that the proceedings would result in a rejection. On the other hand, a stay should not be granted if the taxpayer's request for reconsideration or appeal was likely to be rejected. Thirdly, a stay could be granted if the taxpayer had lodged a request for reconsideration or an appeal and the payment of the amount imposed would result in considerable damage being inflicted on him or otherwise appear unjust. For example, the forced sale of the taxpayer's real estate or his business or other property of great importance to his economy and his possibility to earn a living could be considered to cause "considerable damage" (ibid., p. 342).

If it could be assumed, as far as the second and third of the situations just referred to were concerned, that the amount for which a stay of payment had been requested would not be duly paid, a stay could only be granted on condition that the taxpayer provided security for the amount in the form of a banker's guarantee or some other form of guarantee. A stay could, however, be granted without security being provided, it the amount was relatively insignificant or if there were other particular reasons (section 49, subsection 2 of the 1953 Act).

According to provisions laid down in the 1953 Act, the 1994 Act and the 1984 Act, a decision by the tax authority not to grant a stay of payment could be reconsidered by the authority. It could also be appealed to a county administrative court, whose judgment could be appealed to an administrative court of appeal, subject to the conditions for leave to appeal (sections 96 and 102 of the 1953 Act; chapter 20, sections 1 and 9 of the 1994 Act; and sections 68 and 76 of the 1984 Act). The latter court's judgment or its decision to refuse leave to appeal could be brought before the Supreme Administrative Court, subject to the conditions

for leave to appeal. A request for reconsideration or an appeal concerning the issue of a stay of payment had in themselves no suspensive effect on the taxpayer's obligation to pay the taxes or the special charge.

c. Enforcement and bankruptcy

The enforcement authorities had to levy execution on a debtor upon request, notwithstanding the fact that the decision of a tax authority concerning tax and special charges had not gained legal force (chapter 3, section 1 and chapter 4, section 1 of the Enforcement Code in conjunction with sections 59 and 103 of the 1953 Act, chapter 16, section 16 of the 1994 Act and sections 28 a and 78 of the 1984 Act). In case the debtor did not have enough property to cover his debt, the enforcement authority could request a district court to declare him bankrupt. Unless otherwise shown, the debtor should be considered insolvent when, in the event of enforcement under chapter 4 of the Enforcement Code, within six months before the bankruptcy petition, it had appeared that he did not have assets for full payment of the debt (chapter 2, section 8 of the Bankruptcy Act). If the court considered that the assets of the bankrupt estate were not sufficient for payment of expenses incurred and expected and other debts that the estate had incurred, the court should decide to write off the bankruptcy after an estate inventory had been confirmed under oath and the administrator had fulfilled certain obligations (chapter 10, sections 1 and 2 of the Bankruptcy Act).

As taxes and special charges are payable, even if the decision of the tax authority has not gained legal force, it may happen that the tax decision is quashed after payment has taken place. In that case the money that has been paid is refunded together with interest (chapter 18, section 2 and chapter 19, sections 1, 3, 12 and 14 of the Tax Payment Act). If the taxpayer has had his property seized or been declared bankrupt on account of the tax debt, the decision on seizure or bankruptcy will be invalidated on appeal. Should the decision have gained legal force, the taxpayer may, upon request, have the case re-opened and the decision on seizure or bankruptcy may be quashed (chapter 58, sections 1, 7 and 10 of the Code of Judicial Procedure). Property that has been seized will then, if possible, be restored to the taxpayer (chapter 3, section 22 of the Enforcement Code). So will property forming part of the bankrupt estate to the extent that it is not required to pay the expenses and other debts that the estate has incurred (chapter 2, section 25 of the Bankruptcy Act). If the taxpayer's property has been sold and the sum obtained from the sale has been used to pay off the alleged tax debt or part of it, the taxpayer will be compensated with money. In addition, the taxpayer may claim compensation from the State for financial loss caused by the seizure or the bankruptcy (chapter 3, section 2 of the Tort Liability Act), invoking that the authorities and/or the courts have acted wrongfully.

d. Tax offences

A taxpayer who does not fulfil his obligation to submit correct and relevant information to the tax authority may be subjected to a criminal charge according to the provisions laid down in the 1971 Act on Tax Offences (*skattebrottslagen*; hereinafter "the 1971 Act"). For the taxpayer to be convicted on such a charge it has to be established that the failure to submit correct information is the result of criminal intent or gross negligence on his part. A charge under the provisions of the 1971 Act is brought in accordance with the rules governing criminal charges in general. This means, *inter alia*, that the taxpayer can only be convicted upon prosecution and trial by a general court. According to sections 2–4 of the 1971 Act a taxpayer

who makes an incorrect statement intentionally, thereby causing the risk of an erroneous taxation to his own advantage, may be sentenced to a penalty ranging from a fine for petty offences to imprisonment for not more than six years for serious cases of tax fraud. The fine is maximised to SEK 150,000.

For the determination of the question whether to bring a criminal charge against a taxpayer it is of no relevance that a special charge (*skattetillägg*) has already been imposed on him on the same grounds as those forming the basis of the possible criminal charge. Moreover, a decision to impose a special charge has no binding force, or any other prejudicial implication, in the determination of the criminal charge. When considering the criminal charge, however, the court is supposed to pay attention to the fact that a special charge has been imposed (Government Bill 1971:10, pp. 351 and 364).

## COMPLAINTS

The applicant complains of the fact that the tax authorities' decisions concerning the additional tax and the special charge were enforced prior to a court determination of the dispute. He considers that he has thereby been deprived of the rights secured to him under Article 6 of the Convention.

In particular he maintains

a) that the tax assessment proceedings have not been determined within a reasonable time;

b) that he cannot obtain a fair hearing in the pending tax assessment proceedings since payment of the alleged tax debts and the special charge have already been enforced, and he himself has been declared bankrupt;

c) that the enforcement of the tax authorities' claims before their final determination deprives him of his right to be presumed innocent until proved guilty according to law.

## THE LAW

The applicant complains that he has been deprived of the rights secured to him under Article 6 of the Convention in connection with the tax authorities' decisions concerning the imposition of additional taxes and special charges.

Article 6 of the Convention reads, in so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
> ..."

The Government contend that the above provision does not apply to the proceedings in question in that they do not involve either a "civil right and obligation" or a "criminal charge" within the meaning of Article 6. The applicant disputes this.

The Court finds that the question of whether Article 6 of the Convention applies in the present case raises issues which are so closely related to the other complaints made and are of such complex nature that a determination thereof should be reserved for the post-admissibility stage. Accordingly, the Court considers that the final determination of the issue concerning the applicability of Article 6 of the Convention should be joined to the merits and reserved for later consideration.

The Government further contend that the applicant has not exhausted domestic remedies. They point out that the applicant's appeal against the tax authorities' decisions regarding the tax assessments has not yet been reviewed by any of the administrative courts. In addition the Government submit that the applicant did not appeal against the imposition of the special charge as such but only requested the tax authorities to reconsider their decision to impose additional tax on him.

The applicant disputes that he did not exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

The Court recalls from above that the question whether Article 6 of the Convention is at all applicable in the present case should be joined to the merits. However, even assuming that it was, the Court would not reject the application for failure to exhaust domestic remedies for the following reasons. The Court agrees with the respondent Government that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against a State before an international judicial organ to use first the remedies provided by the national legal system. However, there is no obligation to have recourse to remedies which are inadequate or ineffective. Only remedies which are likely to provide redress for an applicant's complaints need to be taken into account. In particular the existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Furthermore, it falls to the respondent State to establish that these conditions are satisfied (cf. e.g. application no. 12742/87, decision of 3 May 1989, DR 61, p. 206).

In the present case the Government have referred to the fact that the tax proceedings are still pending and that the applicant did not appeal, as such, against the imposition of the special charge. The Court notes, however, that the applicant in fact complains about the length of the proceedings. Furthermore, he calls into question the fairness of the pending proceedings since, allegedly, the disputed obligation to pay additional tax and the special charge has already been determined because of their enforcement. Finally, the Court notes that the pending proceedings will in this case automatically affect also the question of the special charge. In these circumstances the Court is not convinced that the remedies suggested by the Government will be likely to provide redress for the applicant's complaints. Consequently, the Court finds that the applicant has not failed to comply with the requirements of Article 35 § 1 of the Convention.

In view of the above, and in the light of the parties' submissions, the Court considers that the complaints made raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application.

The Court concludes, therefore, that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Subject to a final determination of the question of the applicability of Article 6 of the Convention no other grounds for declaring the application inadmissible have been established.

For these reasons, the Court, unanimously,

**JOINS TO THE MERITS**, the question of the applicability of Article 6 of the Convention

and

**DECLARES THE APPLICATION ADMISSIBLE**, without prejudging the merits of the case.

Michael O'Boyle
Registrar

Wilhelmina Thomassen
President