CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41265/98
by Mishel MANASSON
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 8 April 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 17 February 1998,

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 deliberated, decides as follows:

THE FACTS

The applicant, Mr Mishel Manasson, is a Swedish national, who was born in 1947 and lives in Älvsjö. He is represented before the Court by Mr J. Thörnhammar, a lawyer practising in Stockholm. The respondent Government are represented by Ms I. Kalmerborn, Ministry for Foreign Affairs.

A. The circumstances of the case

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

1. The Tax Authority's decisions on taxes and tax surcharges

In the autumn of 1994, as part of a large-scale investigation into taxicab operators, the Tax Authority (*skattemyndigheten*) of the County of Stockholm carried out a tax audit of the applicant's taxi firm. Having discovered in the course of the audit certain irregularities in the tax returns for the assessment year 1994, i.e. the income year 1993, the Tax Authority invited the applicant to submit comments. He availed himself of this opportunity.

Having had regard to the findings of the audit and the observations submitted by the applicant, the Tax Authority – by decisions of 14 December 1995 and 8 February 1996 – increased the applicant's liability to income tax by 235,623 Swedish kronor (SEK), to value-added tax (*mervärdesskatt*) by SEK 101,749 and to employer's contributions by SEK 81,443. Moreover, as the information supplied by the applicant in his tax returns was found to be incorrect and the turnover of the applicant's business had been revised upwards under a discretionary assessment procedure, the Tax Authority ordered him to pay tax surcharges (*skattetillägg, avgiftstillägg*) amounting to 20% or 40% of the increased tax liability, depending on the type of tax involved. The additional taxes levied on the applicant, including interest and surcharges, totalled SEK 566,967, of which SEK 99,507 were surcharges. The amounts relating to value-added tax and employer's contributions were payable on 22 February 1996 and that relating to income tax on 10 May 1996.

2. Request for a stay of execution

Claiming that he had not been given access to all the information relied on by the Tax Authority to calculate the turnover of his business, that there existed inconsistencies in certain documents to which access had been given and that the Authority should have undertaken further investigative measures, the applicant, on 4 March 1996, lodged appeals against the Tax

Authority's decisions. He also requested a stay of execution in respect of the amounts assessed. In this respect, he stated that, due to the amounts involved, there was a risk that he be declared bankrupt without having had his tax liability determined by a court. The request for a stay of execution was prompted by the fact that neither an appeal nor a request for reconsideration by the Tax Authority had in itself any suspensive effect on the obligation to pay the taxes and surcharges due as a result of the impugned decisions.

In a letter of 22 April 1996 the Tax Authority stated the following with regard to the applicant's request for a stay of execution:

> "The Tax Authority considers that a stay of execution may be granted on the ground that the payment would result in considerable damage or otherwise appear unjust, see section 49, subsection 1(3) of the Tax Collection Act.
>
> According to section 49, subsection 2 of the Tax Collection Act, the Tax Authority may, in certain cases, require that security be provided for an amount in respect of which a stay of execution is sought.
>
> Having regard to the considerable amounts involved compared to your assets declared in the tax return for 1995, the Tax Authority finds that your ability to pay is open to serious doubt. No other circumstances have emerged which could lead to a dispensation of the requirement to provide security.
>
> The Tax Authority is of the opinion that you have to provide security for the amount in respect of which a stay of execution has been requested, SEK 566,967 (concerning income tax, value-added tax and employment tax). Only a banker's guarantee will be accepted as security.
>
> You are hereby invited to provide security before 6 May 1996. Should you fail to provide security by the above-mentioned date, the Authority may decide to reject your [request] for a stay of execution."

The applicant replied on 26 April 1996 that he was not able to provide security for the amounts in question. Referring to section 49 of the Tax Collection Act and Article 6 of the Convention, he maintained that a stay of execution should nevertheless be granted.

By decisions of 16 June 1996 the Tax Authority, noting that security had not been furnished by the applicant, rejected the request for a stay of execution. The Authority considered that the collection of taxes and tax surcharges prior to a court determination would not violate the applicant's rights under the Convention.

On 7 November 1996, following the applicant's appeal, the Tax Authority reconsidered the matter and upheld its decisions not to grant a stay of execution. The Authority addressed objections raised by the applicant in his appeal and also answered several factual questions posed by the applicant. The appeal was thereafter forwarded to the County Administrative Court (*länsrätten*) of the County of Stockholm.

By judgments of 5 December 1996, subscribing to the reasons given by the Tax Authority, the County Administrative Court upheld the impugned decisions.

The applicant, who did not furnish security, appealed against the County Administrative Court's judgments. By decisions of 27 February and 17 September 1997, respectively, the Administrative Court of Appeal (*kammarrätten*) in Stockholm and the Supreme Administrative Court (*Regeringsrätten*) refused the applicant leave to appeal.

3. Enforcement proceedings

Meanwhile, the debts relating to the taxes and tax surcharges imposed by the Tax Authority – except for a minor part of the amounts relating to employment tax – remained outstanding. Thus, no stay of execution having been granted, the applicant had been registered as being in arrears with the taxes and tax surcharges imposed.

On 15 April 1997 the Enforcement Office (*kronofogdemyndigheten*) of the County of Stockholm, representing the State, filed a petition with the District Court (*tingsrätten*) of Stockholm, requesting that the applicant be declared bankrupt. According to a statement submitted by the Office, the applicant's tax liability as of that day amounted to SEK 639,107, including penalties for late payment (*dröjsmålsränta*) that had accrued since the final date on which payment could have been made. That amount included SEK 96,514 in tax surcharges. The Office noted that an investigation had revealed that the value of the applicant's property was insufficient to cover the debt.

The District Court held a hearing in the case on 9 June 1997. Although duly summoned, however, the applicant did not appear before the Court. Instead, written observations previously submitted on his behalf were read out. In these observations the applicant, referring to Article 6 of the Convention, maintained that the tax surcharges imposed on him should be seen as a sanction of a criminal nature, that he had a right to a fair hearing for the determination of the underlying tax dispute and that enforcement of the alleged tax debt could not take place prior to such a determination.

By a decision of 12 June 1997 the District Court declared the applicant bankrupt. In so doing, the Court noted that it had been shown that the State had a claim against the applicant and that he must be considered insolvent as he did not have sufficient assets to cover the full debt.

The applicant appealed to the Svea Court of Appeal (*Svea hovrätt*), essentially maintaining the position he had presented in his observations to the District Court.

The appeal was rejected by the Court of Appeal on 2 July 1997. Leave to appeal against the appellate court's decision was refused by the Supreme Court (*Högsta domstolen*) on 26 September 1997.

The bankruptcy proceedings were terminated on 11 June 1998 owing to a lack of assets. According to a report by the bankruptcy administrator, the applicant's debts amounted to approximately SEK 900,000 while his assets amounted to SEK 1,289.

4. Revocation of traffic licence

As the applicant was registered as being in arrears with the taxes and tax surcharges imposed on him, the County Administrative Board (*länsstyrelsen*) of the County of Stockholm, by a letter of 22 July 1996, informed him that it intended to review his eligibility for a traffic licence (*trafiktillstånd*) and invited him to submit comments on the matter.

The applicant responded on 12 August 1996, stating that the underlying tax liability had not yet been determined by the administrative courts and maintaining his position as to the alleged deficiencies of the Tax Authority's investigation.

On 31 January 1997 the County Administrative Board revoked the applicant's licence and decided that he was unsuitable to run a commercial taxi business for a period of three years on the ground that he had failed to fulfil his obligations with respect to the payment of taxes and other charges.

Following the applicant's appeal, the decision was upheld by the County Administrative Court on 15 May 1997. On 26 August and 17 December 1997, respectively, the Administrative Court of Appeal and the Supreme Administrative Court refused the applicant leave to appeal.

5. Criminal proceedings

On 5 September 1997 the Public Prosecution Office (*åklagar-myndigheten*) in Stockholm indicted the applicant for a suspected bookkeeping offence related to the amounts which were subject to determination in the taxation proceedings. By a judgment of 13 January 1998 the District Court, following a hearing, found the applicant guilty of having intentionally failed to enter certain income and salary payments in the books for 1993. As the offence involved large amounts and as the failure to declare them had involved a great risk that taxes and other charges would be withheld from the State, he was sentenced to two months' imprisonment.

The applicant appealed to the Court of Appeal but subsequently withdrew his appeal. Accordingly, on 14 December 1998 the case was struck out of the appellate court's list. Thus, the applicant's conviction gained legal force on that day.

6. Further proceedings on taxes and tax surcharges

As mentioned above, on 4 March 1996 the applicant appealed against the Tax Authority's decisions on taxes and tax surcharges. He also posed

several questions regarding the investigation in the case to the Tax Authority. The Authority replied to those questions in a letter of 29 August 1996. On 21 November 1997 it reconsidered its decisions. Except for some minor adjustments to the calculation of the turnover of the applicant's business, which led to the amounts imposed on the applicant being slightly reduced, the Authority maintained its position and upheld the original decisions. Consequently, the matters were automatically referred to the County Administrative Court for determination.

By a judgment of 2 December 1998 the County Administrative Court upheld the Tax Authority's decisions of 14 December 1995 and 8 February 1996. It considered that the documentation on which the impugned decisions were based was reliable and that the applicant had been given sufficient information to be able to compare that documentation with his own bookkeeping. It also concluded that the applicant had not made likely, either through the entries in the books or by other means, that the information supplied in his tax returns was correct. Consequently, the Tax Authority had had reasons to base its assessments on the material obtained during the tax audit.

The applicant appealed to the Administrative Court of Appeal, claiming that his tax liability should be fixed in accordance with his tax returns. He also maintained that he had been given insufficient access to the material relied on by the Tax Authority and that, as a consequence, he had not been able to fully challenge the Authority's conclusions. He claimed that this had violated the principle of "equality of arms" and that, therefore, he had not had a fair hearing under Article 6 of the Convention.

On 15 February 2001 the Administrative Court of Appeal upheld the County Administrative Court's judgment, subscribing to the reasons given by the latter court. Furthermore, it found that the legal requirements for imposing tax surcharges had been met and that neither the relevant domestic legal provisions nor Article 6 of the Convention implied that these should be set aside or remitted.

On 7 May 2002 the Supreme Administrative Court refused the applicant leave to appeal.

B. Relevant domestic law and practice

1. Taxes and tax surcharges

The rules on taxes and tax surcharges relevant to the present case were primarily laid down in the Taxation Act (*Taxeringslagen*, 1990:324), the two Value-Added Tax Acts (*Lagen om mervärdeskatt*, 1968:430, replaced by *Mervärdesskattelagen*, 1994:200) and the Collection of Social Security Charges from Employers Act (*Lagen om uppbörd av socialavgifter från arbetsgivare*, 1984:688). Issues concerning taxation and the imposition of

tax surcharges were regulated in a very similar manner in the various acts. In the following section, therefore, reference is made only to the provisions of the Taxation Act. The Collection of Social Security Charges from Employers Act and parts of the Value-Added Tax Act 1994 were replaced by the Tax Payment Act (*Skattebetalningslagen*, 1997:483) as from 1 November 1997. As no essential changes have been made by either the enactment of the Tax Payment Act or amendments to the Taxation Act, the following account describes both the present system and the one applicable at the material time.

Income tax, value-added tax and employer's contributions are all determined by county tax authorities, to which taxpayers are obliged to submit information relevant to the assessment of taxes. For the purpose of securing timely, sufficient and correct information, there are provisions stipulating that, under certain circumstances, the tax authorities may impose penalties on the taxpayer in the form of tax surcharges.

These surcharges 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. According to the preparatory documents (Government Bill 1971:10), the main purpose of the reform was to create a more effective and fairer system of penalties than the old one, which was based entirely on criminal penalties determined by the ordinary courts following police investigation and prosecution. Unlike penalties for tax offences, the new surcharges were to be 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 large number of tax returns contained incorrect information whereas relatively few people were charged with tax offences. Now that the new system has been introduced only serious tax offences are prosecuted.

A tax surcharge is imposed on a taxpayer in two situations: if he or she, in a tax return or in any other written statement, has submitted information of relevance to the tax assessment which is found to be incorrect (chapter 5, section 1 of the Taxation Act) or if, following a discretionary assessment, the tax authority decides not to rely on the tax return (chapter 5, section 2). It is not only express statements that may lead to the imposition of a surcharge; concealment, in whole or in part, of relevant facts may also be regarded as incorrect information. However, incorrect claims are not penalised; if the taxpayer has given a clear account of the factual circumstances but has made an incorrect evaluation of the legal consequences thereof, no surcharge is imposed. The burden of proving that the information is incorrect lies with the tax authority. A discretionary tax assessment is made if the taxpayer has submitted information which is so inadequate that the tax authority cannot base its tax assessment on it or if he or she has not filed a tax return despite having been reminded of the

obligation to do so (chapter 4, section 3). In the latter case the decision to impose a tax surcharge will be revoked if the taxpayer files a tax return within a certain time-limit. The surcharge amounts to 40% of either the income tax which the Tax Authority would have failed to levy if it had accepted the incorrect information or the income tax levied under the discretionary assessment. The corresponding provisions on value-added tax and employer's contributions stipulate that the surcharge comes to 20% of the supplementary tax levied on the taxpayer. In certain circumstances, the rates applied are 20% or 10%, respectively, for the various types of tax.

Notwithstanding the fact that the taxpayer has furnished incorrect information, no tax surcharge will be imposed in certain situations, for example when the tax authority has corrected obvious miscalculations or written errors by the taxpayer, when the information has been corrected or could have been corrected with the aid of certain documents that should have been available to the tax authorities, such as a certificate of income from the employer, or when the taxpayer has corrected the information voluntarily (chapter 5, section 4).

Moreover, in certain circumstances, a tax surcharge will be remitted. Thus, taxpayers will not have to pay a surcharge if their failure to submit correct information or to file a tax return is considered excusable owing to their age, illness, lack of experience or comparable circumstances. The surcharge should also be remitted when the failure appears excusable by reason of the nature of the information in question or other special circumstances, or when it would be manifestly unreasonable to impose a surcharge (chapter 5, section 6). The phrase "the nature of the information" primarily covers situations where a taxpayer has had to assess an objectively complicated tax question. According to the preparatory documents (Government Bill 1991/92:43, p. 88), the expression "manifestly unreasonable" refers to situations in which the imposition of a tax surcharge would be disproportionate to the fault attributable to the taxpayer or would be unacceptable for other reasons. If the facts of the case so require, the tax authorities must have regard to the provisions on remission, even in the absence of a specific claim to that effect by the taxpayer (chapter 5, section 7). In principle, however, it is up to the taxpayer to show due cause for the remission of a surcharge.

If dissatisfied with a decision concerning taxes and tax surcharges, the taxpayer may, before the end of the fifth year after the assessment year, request the tax authority to reconsider its decision (chapter 4, sections 7 and 9). A decision concerning surcharges may also be reviewed at the taxpayer's request after the expiry of this time-limit, if the decision on the underlying tax issue has not yet become final (chapter 4, section 11). The tax authority may also, on its own motion, decide to review its own earlier decision. A review to the taxpayer's disadvantage must be made before the end of the year following the assessment year unless the taxpayer, *inter alia*, has

submitted incorrect information during the course of the tax proceedings or has failed to file a tax return or to furnish required information, in which case the time-limit normally expires at the end of the fifth year after the assessment year (chapter 4, sections 7 and 14-19).

The tax authority's decision may also be appealed against to a county administrative court. As with requests for reconsideration, an appeal has to be lodged before the end of the fifth year after the assessment year (chapter 6, sections 1 and 3), unless it concerns a tax surcharge based on a tax decision that has not yet become final (chapter 6, section 4). Following the appeal, the tax authority must reconsider its decision as soon as possible and, if it decides to vary the decision in accordance with the taxpayer's request, the appeal will become void (chapter 6, section 6). If the decision is not thus amended, the appeal is referred to the county administrative court. If special reasons exist, an appeal may be forwarded by the tax authority to the county administrative court without reconsidering the assessment (chapter 6, section 7). Further appeals lie to an administrative court of appeal and, subject to compliance with the conditions for obtaining leave to appeal, the Supreme Administrative Court.

A tax surcharge is connected to the tax in respect of which it has been imposed in that a successful objection to the underlying tax has an automatic effect on the tax surcharge, which is reduced correspondingly (chapter 5, section 11). The tax surcharge may, however, be challenged separately, if grounds for reduction or remission exist (see above).

If the proceedings before a county administrative court or an administrative court of appeal concern a tax surcharge, the appellant has the right to an oral hearing (chapter 6, section 24).

2. Tax collection

At the material time, the collection of taxes and tax surcharges was regulated by the Tax Collection Act, the Value-Added Tax Act 1994 and the Collection of Social Security Charges from Employers Act. The provisions of these Acts relevant to the present case were very similar and, for this reason, only the provisions of the Tax Collection Act are set out below. Since 1 November 1997 tax collection has been regulated by the Tax Payment Act which contains essentially the same rules as the Tax Collection Act.

A request for reconsideration or an appeal against a decision concerning taxes and tax surcharges has no suspensive effect on the taxpayer's obligation to pay the amounts in question (section 103 of the Tax Collection Act and chapter 5, section 13 of the Taxation Act).

However, the tax authority may grant a stay of execution in respect of taxes and surcharges provided that one of the following three conditions is met: (1) if it may be assumed that the amount imposed on the taxpayer will be reduced or remitted, (2) if the outcome of the case is uncertain, or (3) if

payment of the amount in question would result in considerable damage for the taxpayer or would otherwise appear unjust (section 49, subsection 1 of the Tax Collection Act). According to the preparatory documents, the second condition will be satisfied not only when an outcome favourable to the taxpayer is just as likely as an unfavourable one, but also in cases when it is more probable than not that the proceedings will result in the taxpayer's claims being rejected. However, a stay will not to be granted if the request for reconsideration or the appeal has little prospect of success (Government Bill 1989/90:74, p. 340). An example of a situation where "considerable damage" might result is the forced sale of the taxpayer's real estate or business or other property of great importance to his financial situation and livelihood (ibid., pp. 342-43).

If, in cases where the second or third condition just referred to is applicable, it may be assumed – due to the taxpayer's situation or other circumstances – that the amount for which a stay of execution is requested will not be duly paid, the request cannot be granted unless the taxpayer provides a bank guarantee or other security for the amount due. Even in these cases, however, a stay may be granted without security if the relevant amount is relatively insignificant or if there are other special reasons (section 49, subsection 2).

The application of section 49 of the Tax Collection Act was examined by the Supreme Administrative Court in a judgment of 17 November 1993 (case no. 2309-1993, published in *Regeringsrättens Årsbok* (RÅ) 1993 ref. 89). In that case, the National Tax Board (*Riksskatteverket*) and the Administrative Court of Appeal had found that the applicant company – which had appealed against the National Tax Board's decision to impose on it certain energy taxes and interest in the total amount of approximately SEK 6,400,000 – could not be granted a stay of execution. The Supreme Administrative Court noted, however, that there was some uncertainty as regards the main issue in the case – whether the income in question was at all taxable – and that the tax levied constituted a considerable sum. For these reasons, it found that it would be unreasonable to demand payment of the amount before a court had determined the applicant company's tax liability. Noting that security in principle had to be provided by the company, the Supreme Administrative Court nevertheless took account of the fact that the Administrative Court of Appeal was expected to determine the tax-liability issue within a short time and that special reasons therefore existed for not requiring security. Accordingly, the applicant company was granted a stay of execution without security until one month after the Administrative Court of Appeal's judgment.

A taxpayer may request the tax authority to reconsider its decision concerning the stay-of-execution issue and may appeal against its decision to a county administrative court. The procedure is essentially identical to that followed in regard to requests for reconsideration and appeals

concerning the main tax issues (sections 84, 96 and 99 of the Tax Collection Act). Further appeals to an administrative court of appeal and the Supreme Administrative Court are subject to leave to appeal being granted (section 102).

3. Enforcement and bankruptcy

The enforcement offices are under an obligation to levy execution on a debtor upon request, even if the tax authority's decision concerning tax and tax surcharges is not final (chapter 3, section 1 and chapter 4, section 1 of the Enforcement Code (*Utsökningsbalken*) in conjunction with sections 59 and 103 of the Tax Collection Act; the latter provisions have been replaced by similar provisions in the Tax Payment Act). If the debtor does not have enough distrainable property, the enforcement office may request a district court to declare him or her bankrupt. The debtor will normally be considered insolvent if it is discovered during attempts to levy distress in the six months preceding the presentation of the bankruptcy petition that his or her assets are insufficient to pay the debt in full (chapter 2, section 8 of the Bankruptcy Act (*Konkurslagen*, 1987:672)). If the bankrupt's estate is not sufficient to defray all the existing and expected bankruptcy expenses and other liabilities that the bankrupt has incurred, the bankruptcy proceedings will be terminated (chapter 10, section 1 of the Bankruptcy Act).

If a bankruptcy petition is based on a tax debt determined by a decision that is not yet final, the court examining the petition is required to make an independent assessment of the alleged debt, having regard to the evidence adduced in the bankruptcy proceedings. The court accordingly has to make a prediction about the outcome of the pending tax assessment proceedings (judgment of the Supreme Court of 9 June 1981, case no. Ö 734/80).

As taxes and tax surcharges are payable even if the tax authority's decision is not final, the decision may be varied or quashed after the relevant amounts have been paid. If so, the amount overpaid is refunded with interest (chapter 18, section 2 and chapter 19, sections 1 and 12 of the Tax Payment Act). If distress has been levied on the taxpayer's property or he or she has been declared bankrupt on account of the tax debt, the distress warrant or bankruptcy decision will be set aside on appeal. Should the warrant or decision have become final, the taxpayer may, upon request, have the case reopened and the warrant or decision quashed (chapter 58 of the Code of Judicial Procedure (*Rättegångsbalken*)). Any property that has been distrained upon will, if possible, then be restored to the taxpayer (chapter 3, section 22 of the Enforcement Code). The same applies to property forming part of a bankrupt's estate to the extent that it is not required for the payment of the bankruptcy expenses and other liabilities (chapter 2, section 25 of the Bankruptcy Act). If the taxpayer's property has been sold and the amount obtained from the sale has been used to pay off

the alleged tax debt, the taxpayer will receive financial compensation. In addition, it is open to the taxpayer to bring an action for damages against the State for the financial loss caused by the distress or the bankruptcy (chapter 3, section 2 of the Tort Liability Act (*Skadeståndslagen*, 1972:207)), on the ground that the authorities or the courts have acted wrongfully or negligently.

4. Revocation of traffic licences

The relevant provisions governing the eligibility for a traffic licence and, thus, the right to run a taxi business were found in the Commercial Traffic Act (*Yrkestrafiklagen*, 1988:263) and the Commercial Traffic Ordinance (*Yrkestrafikförordningen*, 1988:1503). These were replaced as of 1 October 1998 by new legislation with essentially the same rules. The following account refers to the law as is stood at the material time.

A traffic licence could only be issued to a person judged suitable taking into account, among other things, his or her professional competence, financial circumstances and compliance with the law (section 6 of the Act).

A traffic licence was to be revoked if the requirements for obtaining a licence were no longer met (section 15 of the Act), for instance if the licence holder had been convicted of serious criminal offences, including economic offences, or had significantly failed to fulfil his or her obligations towards the community with regard to the payment of taxes or other charges. The licence could be revoked when the licence holder had been registered as being in arrears with taxes imposed on him, also when an appeal had been made against the taxation decision. The revocation was followed by a period of three to five years when the person in question was regarded as unsuitable for a licence. (section 11 a of the Ordinance). It should be noted that a traffic licence, conferring the right to run a taxi business, was distinct from a taxi driver's licence, conferring the right to drive a taxicab. A revocation of the first did not affect the latter.

A decision to revoke a traffic licence did not apply until it had gained legal force, unless there were particular reasons to decide otherwise (section 18 of the Ordinance).

5. Criminal law provisions

A person who intentionally or by negligence disregards bookkeeping obligations under the Accountancy Act (*Bokföringslagen*, 1976:125; later replaced by a new Accountancy Act, 1999:1078) by, *inter alia*, failing to enter business events in the books or save relevant documentation or by giving incorrect information in the books is convicted for a bookkeeping offence if, as a consequence thereof, the running of the business or its financial result or status cannot be assessed mainly on the basis of the books. A bookkeeping offence carries a prison sentence of no more than

two years or, if the offence is of a minor character, a fine. If the offence is deemed aggravated, the offender is sentenced to imprisonment between six months and four years (chapter 11, section 5 of the Penal Code (*Brottsbalken*)).

6. Tax surcharges and the Convention in Swedish case-law

In a judgment delivered on 29 November 2000 the Supreme Court considered whether a person could be convicted of a tax offence in criminal proceedings following the imposition of a tax surcharge in tax proceedings (case no. B 868-99, published in *Nytt juridiskt arkiv* (NJA) 2000, p. 622). Having noted that, under Swedish law, a surcharge is not considered a criminal penalty and thus does not prevent trial and conviction for a tax offence relating to the same act, the Supreme Court went on to examine the matter under the Convention. It first considered, in the light of the European Court's case-law, that there were weighty arguments for regarding Article 6 as being applicable under its criminal head to proceedings involving a tax surcharge. Even assuming this to be the case, it held, however, that the principle of *ne bis in idem*, as set forth in Article 4 of Protocol No. 7 to the Convention, did not prevent criminal proceedings from being brought against someone for an act in respect of which a surcharge had already been levied.

On 15 December 2000 the Supreme Administrative Court delivered two judgments in which it examined the applicability of Article 6 of the Convention to the tax surcharges imposed under the Swedish tax system. In one of the judgments (case no. 1990-1998, RÅ 2000 ref. 66), noting the criteria established by the European Court for determining whether an offence qualified as "criminal", the Supreme Administrative Court gave an extensive opinion on the application of these criteria to the surcharges in question. It stated, *inter alia*, the following:

> "The Swedish legislature has described the tax surcharge as an administrative sanction akin to a penalty... . The rules on oral hearings in chapter 6, section 24 of the Taxation Act should be seen as a manifestation of the desire to bring taxation procedure into line with the legal safeguards laid down in Article 6 of the Convention. Also, according to case-law (RÅ 1987 ref. 42), the rules on voting in chapter 29 of the Code of Judicial Procedure [in the criminal-procedure part of the Code] are applicable in cases concerning surcharges under the former Taxation Act (1956:623). The tax surcharge appears to have been considered a predominantly criminal sanction in other contexts as well. For example, it was stated in the preparatory documents to the legislation establishing the rule prohibiting *ex post facto* laws in chapter 2, section 10, subsection 1 of the Instrument of Government [*Regeringsformen*] – which covers penalties, other criminal sanctions and other special legal effects of a criminal offence – that the proposed rule also applied to administrative sanctions akin to penalties such as tax surcharges, charges for the late payment of taxes and late-payment fees under various tax laws. ... However, under Swedish law, there is no requirement of intent or negligence on the part of the taxpayer for the imposition of a tax surcharge. Also, the surcharge, to a certain extent, has the character of a conditional fine [*vitesfunktion*]

and can be remitted on purely objective grounds. Moreover, it cannot be converted into a prison sentence. Therefore, it has been considered that the surcharge is not to be classified as a penalty under the Swedish legal system but rather as an administrative tax sanction. Accordingly, its classification as such under the Swedish legal system does not constitute sufficient reason for regarding it as a criminal sanction within the meaning of the Convention.

With respect to the other two criteria applied by the European Court in this connection – that is, the nature of the offence and the nature and degree of severity of the sanction – the following should be taken into account. The Swedish rules on tax surcharges are general and concern all taxpayers. The purpose of the system of administrative sanctions is to exert pressure on taxpayers, by means of a considerable financial sanction, to observe the obligations prescribed by the laws on taxes and charges. It should also be noted that the Swedish tax surcharge, in its present form, replaced earlier procedures of a purely criminal nature. As regards the characteristics that have been established by the European Court as referring to the nature and degree of severity of the sanction, it should be borne in mind that a surcharge is levied in proportion to the tax avoided by the provision of incorrect information. This means that surcharges may in principle come to very large amounts without any upper limit.

In the Supreme Administrative Court's opinion, the last-mentioned aspect strongly indicates that Article 6 is to be regarded as applicable to the Swedish tax surcharge. In a recently delivered judgment, the Supreme Court also stated, in the light of the European Court's case-law, that "there are weighty arguments for regarding Article 6 as being applicable also to Swedish proceedings concerning tax surcharges" [the Supreme Court's judgment of 29 November 2000]. One consideration that might still cause some doubt is that the Swedish surcharge differs from the French one with regard to one of the four factors to which the European Court attached importance in its final assessment in the Bendenoun case [Bendenoun v. France judgment of 24 February 1994, Series A no. 284]: it cannot be converted into a prison sentence. Furthermore, contrary to the French rules, the Swedish rules on surcharges lack a subjective element in the real sense ... .

However, the fact that the Swedish tax surcharge cannot be converted into a prison sentence is not, in the Supreme Administrative Court's opinion, a strong argument against finding Article 6 to be applicable. There is no doubt that a fine imposed under criminal law falls under Article 6, irrespective of whether or not it can be converted into a prison sentence. Moreover, the judgment in the Bendenoun case must be taken to indicate that financial sanctions other than a fine may also fall under Article 6, at least if they are of some significance. Furthermore, following the European Court's judgments in the cases of Lauko ... and Kadubec [Lauko and Kadubec v. Slovakia judgments of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, pp. 2492 and 2518, respectively], both of which concerned fines imposed in respect of minor offences, it must now be regarded as established that the imposition of a prison sentence is not a prerequisite for an act to be viewed as a criminal offence within the meaning of the Convention. Nor, in the circumstances, can an independent or even significant meaning be attached to the lack of subjective elements (instead, there is reason to make a separate assessment as to the compatibility of strict liability with the presumption of innocence ...).

In view of the foregoing the Supreme Administrative Court finds, having regard to all the circumstances, that the Swedish tax surcharge is to be regarded as falling under Article 6 of the Convention. ..."

The Supreme Administrative Court went on to examine the compatibility of the tax surcharges with the presumption of innocence under Article 6 § 2 of the Convention. It gave the following opinion:

> "It is probable that, in determining whether strict criminal liability is compatible with the Convention, the European Court will apply essentially the same test as it did in the Salabiaku case [Salabiaku v. France judgment of 7 October 1988, Series A no. 141] with respect to liability established on the basis of presumptions. This means that liability must not arise entirely automatically on proof of the objective elements. Instead, in order for there to be no conflict with the presumption of innocence, the individual must have the possibility of some form of defence based on subjective circumstances.
>
> As has been mentioned above, a tax surcharge is imposed by means of an administrative procedure without any requirement of intent or negligence. An appeal against a decision concerning a surcharge lies to an administrative court. If intent or gross negligence is established, liability under criminal law may be imputed following trial and conviction by a court of general jurisdiction.
>
> Taxation in Sweden is largely based on information given by the individual and certification by him or her of information received from other sources. The purpose of the tax surcharge is to emphasise, *inter alia*, that the individual is required to be meticulous in fulfilling the duty of filing a tax return and the related obligation to submit information. In principle, carelessness is not acceptable. Furthermore, the taxpayer must normally have an understanding of what information is of relevance to the examination of a claim in order to avoid the risk of incorrect information being considered to have been given and a surcharge imposed. In other words, the taxpayer is required to have a certain knowledge of the tax rules.
>
> Inaccuracies and failures of the kind that may cause the imposition of a tax surcharge occur in a very large number of cases. The requirements of foreseeability and uniformity in the imposition of surcharges have therefore been regarded as calling for surcharges to be levied in accordance with relatively simple and standardised rules. However, the rules and regulations must also meet demands for a reasonably nuanced assessment ... and provide guarantees of legal certainty. Therefore, a surcharge is not imposed automatically when incorrect information is submitted. Firstly, certain types of inaccuracies are excluded and, secondly, authorities and courts must consider whether there are grounds for remitting the surcharge, even if no specific claim to that effect has been made.
>
> The following may be stated with particular reference to the grounds for remitting surcharges. The requirements of understanding and meticulousness must be proportionate to the taxpayer's ability and capacity to comprehend the tax rules and apply them to the existing situation. The rules on remission are aimed at preventing the imposition of a tax surcharge as a result of, for example, excusable ignorance or a misunderstanding as to the content of a tax rule. They are also supposed to prevent a surcharge from being imposed when other excusable mistakes are made in discharging the duty to file a tax return. The rules on remission are, moreover, drafted in such a way as to allow the authorities and courts a certain latitude in assessing questions of remission, having regard to the subjective position of the taxpayer. Indeed, the grounds for remission – in conjunction with the rules providing, on objective grounds, for surcharges not to be imposed or to be set aside in particular circumstances – may in certain cases allow of considerations that lead to greater exemption from surcharges

> than would be the case if the imposition of surcharges were conditional on the taxpayer having acted intentionally or negligently. Although the grounds for remission are not entirely comparable to the conditions for accountability which the subjective elements represent in criminal law, they must, when taken together with the cases in which surcharges are excluded on purely objective grounds, be considered as affording the taxpayer, where appropriate, sufficient scope for avoiding the imposition of surcharges to prevent a conflict with the presumption of innocence as set out in Article 6 of the Convention arising. In general, however, this requires that the courts, in applying the rules on surcharges, should indeed make a nuanced and not too restrictive assessment in each individual case as to whether there are grounds for setting aside or remitting the tax surcharge."

The Supreme Administrative Court also considered that the Swedish tax surcharge complied with the general requirement under the Convention for measures to be proportionate. It held that a system of sanctions against breaches of the obligation to submit tax returns and information to the tax authorities served an important public interest. Moreover, it noted, *inter alia*, that the requirement of proportionality was reflected in the rules on surcharges as, under chapter 5, section 6 of the Taxation Act, surcharges were to be remitted in cases where they would be "manifestly unreasonable".

In the other judgment delivered on 15 December 2000 (case no. 2922-1999) the Supreme Administrative Court was called upon to examine whether the enforcement of a tax surcharge prior to a court examination of a taxpayer's liability to pay the surcharge in question conflicted with the presumption of innocence under Article 6 § 2 of the Convention. It made the following assessment:

> "The Article stipulates that the presumption of innocence shall be observed until guilt has been proved according to law. It does not follow from the wording of the Article that a criminal sanction that has been imposed cannot be enforced before the decision has become final. There are, furthermore, examples both in Sweden and in other European countries of regular criminal sanctions being enforceable notwithstanding the fact that the decision has not become final ... .
>
> Moreover, there is nothing in the case-law of the European Court to support the view that Article 6 § 2 prevents the enforcement of decisions concerning criminal sanctions that have not become final. In this connection, it should be pointed out that the European Commission of Human Rights expressly accepted the immediate enforcement of tax surcharges in the case of Källander v. Sweden [application no. 12693/87, decision of 6 March 1989, unpublished].
>
> The conclusion of the Supreme Administrative Court is that Article 6 § 2 does not prevent enforcement on the ground that a decision concerning tax surcharges has not become final.
>
> It remains to be determined whether the enforcement of an administrative authority's decision on surcharges requires the matter to have been examined by a court.

> It follows from Article 6 § 1 that everyone charged with a criminal offence has a right to have his or her case determined by a court. However, the rules in Article 6 are not considered to preclude the examination by an administrative authority of issues falling under the Article, provided that the individual may subsequently bring the matter before a court that fully affords the legal safeguards laid down in the Article ... .
>
> In the Supreme Administrative Court's opinion, it is unclear to what extent the presumption of innocence should be taken to require that a decision by an administrative authority concerning a criminal sanction against which an appeal has been made should not be enforced before a court has examined the appeal. It appears that the question has not been determined by the European Court. However, it seems reasonable to assume that enforcement may not take place if it would make it impossible for the original legal position to be restored in the event that the subsequent judicial examination resulted in the authority's decision being varied.
>
> As far as tax surcharges are concerned, a taxpayer may appeal to a court against an administrative authority's decision to impose such a surcharge. If the taxpayer's appeal is successful, any amount that has been paid will be refunded with interest. It is also possible for the taxpayer to request a stay of execution in connection with the appeal. It is unlikely that any enforcement measures will be taken pending the court's examination of the application for a stay (cf. Government Bill 1996/97:100, p. 352). Under the rules applicable in the instant case, a stay may be granted if it can be assumed that the amount imposed on the taxpayer will be reduced or that he will be relieved of the obligation to pay the amount, if the outcome of the case is uncertain or if payment of the amount imposed would result in considerable damage for the taxpayer or otherwise appears unjust. In certain cases, a stay can be granted only on condition that security is provided (section 49, subsections 1 and 2 of the Tax Collection Act; there are now largely corresponding rules in ... the Tax Payment Act).

The rules on stays of execution provide the taxpayer with the opportunity to have a preliminary examination by a court of the final outcome of the case concerning tax surcharges. If the taxpayer refrains from using this option or if the court, following an examination, finds that it cannot be assumed that the taxpayer's appeal on the merits will be successful, or even that the outcome is uncertain and that, moreover, there is no reason to expect considerable damage to result from payment of the surcharge, it cannot, in the view of the Supreme Administrative Court, be contradictory to Article 6 § 2 to require immediate enforcement."

COMPLAINTS

1. The applicant complains of the fact that the Tax Authority's decisions concerning the imposition of additional taxes and tax surcharges were enforced prior to a court determination of the disputes. He considers that he was thereby deprived of his rights under Article 6 of the Convention. In particular, he maintains that the tax assessment proceedings were not determined within a reasonable time and that he did not have a fair hearing in these proceedings since payment of the alleged tax debts and the

surcharges had already been enforced and he had been declared bankrupt and his traffic licence had been revoked. Alleging that the imposition of tax surcharges is a sanction of a penal character causing him irreversible damage, the applicant further states that the enforcement of the Tax Authority's claims prior to their final determination deprived him of his right to be presumed innocent until proved guilty according to law.

2. The applicant also complains that, during the proceedings before the Tax Authority, he was refused access to certain documents relied on by the Authority and the Authority refused to carry out further investigative measures requested by him. Moreover, certain of his objections to the imposition of additional tax and tax surcharges were not answered by the Tax Authority. Thus, he was deprived of every opportunity to challenge the findings of the tax audit. He claims that, also in these respects, there was a violation of his right to a fair hearing under Article 6 of the Convention.

3. Moreover, the applicant claims that the condition imposed on him for granting a stay of execution of the alleged tax debt – that is, that security be provided – amounted to a discrimination of him on account of lack of means. In this respect, he relies on Article 14 of the Convention in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. Furthermore, in his observations to the Court of 30 August 2001, the applicant claims that his right to a fair hearing under Article 6 of the Convention, in particular his right be presumed innocent, was violated in the various proceedings concerning the request for a stay of execution, the declaration of bankruptcy, the revocation of his traffic licence and the conviction for a bookkeeping offence and that these violations were separate from the alleged violations occurring in the tax assessment proceedings. His main contention in this connection is that the underlying tax decisions of the Tax Authority were not properly reexamined in these various proceedings.

5. Also in his observations of 30 August 2001, the applicant contends that his rights under Article 4 of Protocol No. 7 to the Convention were violated. He asserts that he was punished three times for the same offence, first by the levying of tax surcharges and subsequently by the revocation of his traffic licence and the conviction for a bookkeeping offence.

THE LAW

1. The applicant complains that he was deprived of the rights secured to him under Article 6 of the Convention on account of the fact that the Tax Authority's decisions concerning the imposition of additional taxes and tax surcharges were enforced prior to a court determination of the disputes. Article 6 of the Convention provides, in so far as relevant, the following:

"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 respondent Government submit that the tax assessment proceedings did not involve a determination of the applicant's "civil rights and obligations" and leave it to the Court to decide whether, in so far as the tax surcharges were concerned, they determined a "criminal charge" within the meaning of Article 6. As to the merits of the present complaint, the Government maintain that it is manifestly ill-founded. In particular, they contend that the enforcement of the Tax Authority's claims prior to their final determination did not breach the applicant's right to be presumed innocent, that the overall length of the proceedings was not unreasonable in the particular circumstances of the case and that the applicant had access to a fair hearing notwithstanding the enforcement of the decisions on taxes and surcharges, the applicant's bankruptcy and the revocation of his traffic licence.

The applicant maintains his complaint.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant also complains that, during the proceedings before the Tax Authority, he was refused access to certain documents relied on by the Authority and the Authority refused to carry out further investigative measures requested by him. Moreover, certain of his objections to the imposition of additional tax and tax surcharges were not answered by the Tax Authority. Thus, he was deprived of every opportunity to challenge the findings of the tax audit. He claims that, also in these respects, there has been a violation of his right to a fair hearing under Article 6 of the Convention.

Recalling that the right to a fair hearing under Article 6 does not require that the decision-making bodies address every objection raised by the individual, the Court notes that the Tax Authority and the courts gave extensive reasons for their decisions. Moreover, during the tax audit the applicant was invited to submit comments, an opportunity of which he availed himself. On several occasions, he also posed specific questions to the Tax Authority and demanded access to certain material. The Authority replied to his questions on at least two occasions, in a letter of

29 August 1996 and in its reconsideration decision of 7 November 1996 concerning the stay-of-execution matter. The Court further notes that the County Administrative Court, in its judgment of 2 December 1998, considered that the documentation on which the Tax Authority's decisions were based was reliable and that the applicant had been given sufficient information to be able to compare that documentation with his own bookkeeping.

Having regard to the foregoing, the Court cannot but find that the applicant's objections and questions were adequately addressed in the relevant proceedings and that the information available to him enabled him to challenge the findings of the Tax Authority. There is thus no indication of a violation of Article 6 of the Convention in these respects.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant claims that he was discriminated against as his request for a stay of execution was rejected on account of his failure to provide security. He relies on Article 14 of the Convention in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court notes that section 49, subsection 2 of the Tax Collection Act provided for the possibility to request security in cases where it could be assumed that the amount for which a stay of execution was sought would not be duly paid. In requiring the applicant to provide a banker's guarantee as security, the Tax Authority and the County Administrative Court applied that provision and concluded that, having regard to the considerable amounts involved, the applicant's ability to pay was open to serious doubt. Considering that the financial situation of the individual concerned is a justified criteria in examining a request for a stay of execution, the Court finds nothing to indicate that, in the application of the relevant rules, the applicant was treated differently from others in the same or a similar situation.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicant further maintains that violations of his right to a fair hearing under Article 6 of the Convention, separate from those alleged to have occurred in the tax assessment proceedings, took place in the proceedings concerning the request for a stay of execution, the declaration of bankruptcy, the revocation of his traffic licence and the conviction for a bookkeeping offence.

The Court reiterates that, under Article 35 § 1 of the Convention, it may only deal with a matter if it has been presented within a period of six months from the date on which the final decision was taken.

The Court notes that the present complaint was raised on 30 August 2001 when the applicant submitted his observations in the case to the Court. However, the proceedings complained of were concluded on 17 September 1997 (stay of payment), 26 September 1997 (declaration of bankruptcy), 17 December 1997 (revocation of traffic licence) and 14 December 1998 (criminal conviction). Thus, in respect of all those proceedings, the complaint was raised more than six months after the proceedings had been concluded.

It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

5. The applicant finally contends that he has been tried and punished three times for the same offence. In this respect, he relies on Article 4 of Protocol No. 7 to the Convention, paragraph 1 of which reads as follows:

> "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

The Court notes that the complaint under Article 4 of Protocol No. 7 was made only on 30 August 2001, after the Court's decision to obtain the observations of the parties in the case. It may therefore be questioned whether it has been made too late to be examined in the present case. Furthermore, the fact that the applicant withdrew his appeal against the District Court's judgment by which he was convicted for a bookkeeping offence raises the issue whether the applicant has exhausted domestic remedies with respect to this complaint in accordance with Article 35 § 1 of the Convention. However, the Court does not need to resolve these issues as, in any event, the complaint is inadmissible for the following reasons.

The Court notes that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings which have been concluded by a final decision (see *Gradinger v. Austria*, judgment of 23 October 1995, Series A no. 328-C, p. 65, § 53). In order to determine whether there has been such repetition, the character of the offences at issue in the various proceedings has to be established; more precisely, the Court has to examine whether or not the offences have the same essential elements (see *Franz Fischer v. Austria*, no. 37950/97, 29 May 2001, § 25).

In the present case, the applicant claims that the revocation of his traffic licence, his conviction for a bookkeeping offence and the imposition of tax surcharges on him all concern the same offence.

As regards the traffic licence, the Court reiterates that it was revoked as the applicant had failed to pay the taxes and tax surcharges due as a result of the Tax Authority's decisions. The Court considers that the revocation of the licence did not constitute a determination of a criminal charge against

the applicant. Although it may be regarded as a severe measure, what was decisive for the revocation was the applicant's suitability to run a commercial taxi business and, more specifically, whether he fulfilled the conditions therefor under administrative law provisions. Thus, the revocation cannot be characterised as a penal sanction and the nature of the relevant proceedings accordingly cannot be regarded as criminal (see *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 19, § 46). These proceedings therefore fall outside the scope of Article 4 of Protocol No. 7.

It remains to be determined whether the proceedings concerning the bookkeeping offence and those involving the tax surcharges were criminal proceedings conducted in regard to offences with the same essential elements.

The Court first finds that both proceedings were criminal in nature (see, as regards the tax surcharges, *Janosevic v. Sweden*, no. 34619/97, 23 July 2002, §§ 68-71, to be reported in ECHR 2002, and *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, 23 July 2002, §§ 79-82, unreported).

With respect to the conduct attributed to the applicant in the two proceedings, the Court notes that he was convicted by the District Court for having intentionally failed to enter certain income and salary payments in the books for 1993 and that the tax surcharges were imposed on him by the Tax Authority and the administrative courts as the information supplied by him in his tax returns was found to be incorrect and the turnover of his business had been revised upwards under a discretionary assessment procedure. The Court notes that the amounts at issue in the two proceedings and the evidence on which the findings were based were, to a great extent, identical. Furthermore, in fixing the applicant's sentence for the bookkeeping offence, the District Court took into account that the failure to declare the amounts in question had involved a great risk that taxes and other charges would be withheld from the State.

However, whereas the bookkeeping offence was established on the basis of the applicant's disregard of a general obligation to correctly enter relevant business events in the books, the imposition of tax surcharges was a result of his supplying incorrect information to the Tax Authority for the guidance of his tax assessments. The conduct ascribed to the applicant was therefore not the same in the two proceedings. Moreover, he could have avoided the imposition of the surcharges by, for instance, correcting the information contained in the books or by supplying such additional information to the Tax Authority which would have enabled the latter to make a correct tax assessment. Thus, the applicant's reliance on the incorrect information contained in the books when submitting his tax returns constitutes an essential element which distinguishes the taxation law

contravention from the criminal law offence. Consequently, the applicant was not tried twice for essentially the same offence.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that he was deprived of his rights under Article 6 of the Convention to a fair hearing within a reasonable time and to the presumption of innocence as the Tax Authority's decisions concerning the imposition of additional taxes and tax surcharges were enforced prior to a court determination of the disputes;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President