[TRANSLATION]

...

THE FACTS

The applicant, Mr Jean Morel, is a French national and lives in Montmelas.

A. The circumstances of the case

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

A tax audit was conducted into the applicant's accounts for 1988 to 1990.

On 6 December 1991 the tax authorities served supplementary value-added tax (VAT) assessments on the applicant, in line with the procedure for automatic taxation. These assessments were confirmed on 25 February 1992.

On 27 April 1992 the applicant was served with two demands for the VAT, a 10% surcharge and interest for late payment, amounting to 55,956 French francs (FRF) for the principal sum due and FRF 4,450 on the surcharge.

On 12 May 1992 the applicant submitted an appeal to the tax authorities.

On 26 May 1992 the tax authorities required a deposit of FRF 70,325 as a guarantee for the taxes in question.

On 30 July 1992 the Director of Taxes dismissed the applicant's appeal.

On 17 September 1992 the applicant applied to the Lyons Administrative Court for exemption from the supplementary VAT assessments and the tax surcharge.

As the applicant had received no pleadings for the defence, his counsel sent a supplementary memorial to the President of the Lyons Administrative Court on 8 December 1993, in which he pointed out that the statutory time available to the tax authorities had expired.

On 25 April 1997 the applicant's counsel sent a second supplementary memorial noting that, in the period since proceedings had commenced, the tax authorities had failed to produce any pleadings for the defence and that it was appropriate to consider whether the file should be examined as it stood.

On 15 October 1997 the Director of Taxes filed his defence.

The hearing was held on 17 June 1999.

In a judgment of 8 July 1999 the Lyons Administrative Court granted the applicant's application and exempted him from payment of the VAT and the 10% surcharge.

B. Relevant domestic law

Article 298 *bis* of the General Tax Code provides:

> "I. In their farming activities, farmers shall be subject to the system of flat-rate payment provided for in Articles 298 *quater* and 298 *quinquies*. They shall be exempted from payment of value-added tax and the obligations attendant thereto. However, they may opt to be liable for VAT under the simplified tax system...
>
> II. The following shall be automatically subject to the simplified tax system provided for in I above: ...
>
> (5) Farmers, where the average level of income from all their farm holdings, calculated on the basis of two consecutive calendar years, exceeds FRF 300,000. Liability shall begin from 1 January of the following year and from 1 January 1983 at the earliest..."

Under Article 1728 § 1 of the same Code:

> "1. Where a natural or juristic person or an association under an obligation to make a return or to lodge a document supplying information needed for the calculation of the base of any of the taxes, duties, charges, dues or other sums assessed or collected by the Department of Revenue or their payment fails to make such return or lodge such document within the time-limit, interest for late payment calculated in accordance with Article 1727 and a 10% surcharge shall be added to the tax liability imposed on the person concerned or assessed on the basis of the return or document lodged out of time."

COMPLAINT

Relying on Article 6 § 1 of the Convention, the applicant complained that he had not had a hearing within a reasonable time.

THE LAW

The applicant complained of the length of the proceedings (almost seven years and two months for one level of jurisdiction).

He relied on Article 6 § 1 of the Convention, which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The parties agreed that this dispute came under the scope of Article 6 § 1 of the Convention.

However, the Court points out that Article 6 § 1 of the Convention is not, in principle, applicable under its head of "civil rights and obligations" to tax proceedings, even if the taxation measures in issue had repercussions on pecuniary rights (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 30, ECHR 2001-VII).

In the instant case, the applicant had been ordered to pay a 10% tax surcharge pursuant to Article 1728 of the General Tax Code.

The Court reiterates at the outset that the applicability of one of the substantive clauses of the Convention constitutes, by its very nature, an issue going to the merits of the case, to be examined independently of the previous attitude of the respondent State (see, *inter alia*, *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A, p. 14, § 45). The Court will therefore examine whether the proceedings in question determined a "criminal charge" against the applicant.

The Court points out that, in determining the existence of a "criminal charge", it is necessary to have regard to four factors (see *Bendenoun v. France*, judgment of 24 February 1994, Series A no. 284, p. 20, § 47): the law setting out the penalties must cover all citizens in their capacity as taxpayers, the tax surcharges must be intended not as pecuniary compensation for damage but essentially as a punishment to deter reoffending; they must be imposed under a general rule, whose purpose is both deterrent and punitive; and they must be substantial.

In the instant case, the Court notes that proceedings were instituted against the applicant under Articles 298 *bis* and 1728 § 1 of the General Tax Code for having failed to file a VAT return, although his income, as assessed by the tax authorities, exceeded the threshold beyond which it was compulsory to file such a return under the simplified system. The tax authorities consequently imposed a 10% surcharge. Thus, the legal rule applied is not targeted at a given group with a particular status, but at all citizens in their capacity as taxpayers; it lays down certain requirements and provides for a surcharge in the event of non-compliance.

The Court further notes that the tax surcharge is intended to deter reoffending.

Thirdly, this surcharge is imposed under a general rule, whose purpose is both deterrent and punitive.

The Court notes finally that the amount due from the applicant in respect of the 10% tax surcharge was FRF 4,450. It considers that, in terms of both the rate imposed and the amount in absolute terms, this surcharge is not particularly high and is a long way from the "very substantial" level of the sums on which the Court based its finding in the *Bendenoun* judgment (cited above, pp. 14-15, § 47) that the case concerned a "criminal charge".

It follows from these elements as a whole and from evaluation of the various aspects of the case that, in the Court's view, those which have a criminal connotation are not predominant. The courts dealing with the case were not been required to determine a “criminal charge” against the applicant. The Court can only conclude that the proceedings of which the applicant complains did not involve the determination of a “criminal charge” within the meaning of the aforementioned Article 6 § 1. In those circumstances, this Article is not applicable under its criminal head.

It follows that the application must be rejected as incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.