



Tax authorities and administrative courts breached the presumption of innocence principle by refusing to take account of an acquittal in criminal proceedings

In today's **Chamber** judgment¹ in the case of [Melo Tadeu v. Portugal](#) (application no. 27785/10) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights, and

a violation of Article 1 of Protocol No. 1 (protection of property).

The case concerned a tax enforcement procedure initiated against Ms Melo Tadeu to collect a tax debt owed by a company of which she was regarded as *de facto* manager, the procedure having continued in spite of her acquittal in criminal proceedings for tax fraud and having resulted in the attachment of a shareholding interest that she held in another company.

The Court found in particular that the tax authorities and the administrative courts hearing the case had disregarded Ms Melo Tadeu's acquittal in criminal proceedings, thus casting doubt on the well-foundedness of her acquittal in a manner that was incompatible with her right to be presumed innocent.

The Court also held that, by refusing to release from attachment Ms Melo Tadeu's interest in another company, in spite of her acquittal in criminal proceedings, the Portuguese authorities had failed to strike a fair balance between the protection of Ms Melo Tadeu's right to the enjoyment of her possessions and the requirements of the general interest.

Principal facts

The applicant, Maria Fernanda De Melo Tadeu, is a Portuguese national who was born in 1955 and lives in Corroios (Portugal).

On 23 March 1999 the tax authorities served notice on Ms Melo Tadeu ordering her to pay tax debts owed by a company, V., of which she was considered to be a *de facto* manager.

On 9 April 1999, when questioned by the tax office, Ms Melo Tadeu stated that she had never been manager of the company V., just an ordinary employee, and that she could not therefore be regarded as jointly liable for the tax debt in question.

An investigation was opened by the Almada public prosecutor's office against V., its managing director and Ms Melo Tadeu for tax fraud. In a judgment of 14 July 2000 the Almada criminal court confirmed the existence of sums that were still owed by the company V. However, it acquitted Ms Melo Tadeu, finding in particular that she could not be regarded as manager of that company. That decision became final on 25 September 2000.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In parallel to those criminal proceedings, the Public Treasury of Almada ordered, on 10 January 2000, the opening of an enforcement procedure against the managing director of company V. and Ms Melo Tadeu, as *de facto* manager. A bailiff from the tax authorities went to serve the notice of execution at V.'s head office and Ms Melo Tadeu refused to sign the acknowledgment of receipt. On 8 March 2000 the tax authorities imposed an attachment measure on a shareholding held by Ms Melo Tadeu in another company, B.

Ms Melo Tadeu lodged two appeals against that enforcement procedure, relying on her acquittal in the criminal proceedings. Both appeals were declared inadmissible by the administrative courts, which considered that her appeal against enforcement was belated and that her claim against the Public Treasury's decision was not properly made out.

Ms Melo Tadeu challenged those inadmissibility decisions before the higher courts, arguing in particular that the first-instance judges had failed to respond to her argument concerning her prior acquittal in criminal proceedings. Her further appeals were nevertheless all dismissed.

The tax enforcement procedure is still pending.

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair hearing), 7 (no punishment without law) and 13 (right to an effective remedy), the applicant complained that she had been treated, in a tax enforcement procedure, as guilty of an offence for which she had been acquitted. She further alleged that the attachment of her interest in company B. constituted an unjustified interference with her right to the peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 (protection of property).

The application was lodged with the European Court of Human Rights on 3 May 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle Berro-Lefèvre (Monaco), *President*,
Elisabeth Steiner (Austria),
Khanlar Hajiyev (Azerbaijan),
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),
Julia Laffranque (Estonia),
Paulo Pinto de Albuquerque (Portugal),
Linos-Alexandre Sicilianos (Greece),

and also Søren Nielsen, *Section Registrar*.

Decision of the Court

[Article 6 § 2 \(presumption of innocence\)](#)

The Court found it appropriate to examine Ms Melo Tadeu's first complaint solely under Article 6 § 2 (the applicant also relied on Articles 7 and 13).

The Court first rejected the objection of inadmissibility raised by the Government, which had argued that Article 6 § 2 was not applicable given that the tax proceedings and the criminal proceedings were entirely independent of each other.

The Court observed that the two sets of proceedings in question both concerned the tax management of company V. and, more specifically, the applicant's tax liability and criminal responsibility. In addition, the two sets of proceedings both concerned sums owed by the company

V. The Court concluded that the tax enforcement procedure in question was related to the criminal proceedings in a manner that placed it within the scope of Article 6 § 2.

The Court pointed out that, as it was not its task to substitute its own assessment for that of the domestic courts, it was not called upon to examine the extent to which the administrative courts were bound by the judgment of the Almada criminal court.

However, the question arising in the present case was whether, by the way they acted, by the grounds for their decisions or by the language used in their reasoning, the administrative courts had cast doubt on Ms Melo Tadeu's innocence in breach of the presumption of innocence principle.

The Court observed that the tax procedure had continued in spite of Ms Melo Tadeu's acquittal and that her two appeals had been declared inadmissible. In the Court's view, an acquittal in criminal proceedings had to be taken into account in any subsequent proceedings, whether criminal or not. In the present case, the administrative courts had refused to examine the question on the merits, giving a formalistic interpretation of the admissibility of the appeal and wrongly assuming that the existence of a prior judgment of acquittal was not a question to be resolved.

The Court found that the tax authorities and the administrative courts hearing the case had disregarded Ms Melo Tadeu's acquittal on the charge of tax fraud by the Almada criminal court. They had thus regarded as established an element which had been found unsubstantiated by the criminal courts.

The Court concluded that the way the courts acted had cast doubt on the well-foundedness of Ms Melo Tadeu's acquittal and that this appeared incompatible with the principle of the presumption of innocence. The Court thus found that there had been a violation of Article 6 § 2.

Article 1 of Protocol No. 1 (protection of property)

The Court first took the view that the shareholding interest held by Ms Melo Tadeu in the company B and attached by the tax authorities constituted a "possession" within the meaning of Article 1 of Protocol No. 1, even though the interest in question no longer had any pecuniary value at the time of the attachment.

The Court reiterated that to be compatible with Article 1 of Protocol No. 1 any interference with the peaceful enjoyment of possessions should be lawful and not arbitrary. A "fair balance" must also be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

In the present case, the attachment of Ms Melo Tadeu's interest in company B. was provided for by the Tax Procedure Code and its aim was the collection of a tax debt owed by the company V., for which the applicant was regarded as jointly liable in her capacity as *de facto* manager.

Having been acquitted of tax fraud by a judgment of the Almada Criminal Court on the ground that she could not be regarded as *de facto* manager of the company V., the applicant could therefore have expected the lifting of the attachment measure from the time when that judgment was delivered.

Accordingly, the Court took the view that by refusing to release from attachment Ms Melo Tadeu's interest in the company B., in spite of her acquittal, the Portuguese authorities had failed to strike a fair balance between the protection of her right to the peaceful enjoyment of her possessions and the requirements of the general interest.

There had therefore been a violation of Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Portugal was to pay the applicant 4,300 euros (EUR) in respect of non-pecuniary damage and EUR 6,154 for costs and expenses.

Separate opinions

Judges Berro-Lefèvre, Steiner and Hajiyev expressed a joint dissenting opinion and Judge Pinto de Albuquerque expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.