



Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Felix Desmyttere, Postdoctoral Researcher at the *Instituut voor Belastingrecht, University of Gent* and Reporter of the OPTR Unit for the *European Court of Human Rights*.

This report contains a summary of court cases, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 12 relevant areas, identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights"

2023 Relevant Case Law – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECHR Articles	Facts	Decision	Comments
58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application No. 21884/18 HALET against Luxembourg	Judgement of 14 February 2023 (GC)	Art. 10	<p>The applicant, employed by a private firm which provides auditing, tax advice and business management services (e.g., tax returns and tax rulings), offered an investigative journalist to hand over confidential documents (tax returns) obtained by multinational companies with the assistance of the private firm.</p> <p>Following a criminal complaint of the private firm, the applicant was sentenced to pay a criminal fine and a symbolic sum of compensation for non-pecuniary damages to the private firm.</p>	There has been a violation of Article 10 of the Convention.	Relying on Article 10 of the Convention, the applicant held that this criminal conviction had amounted to a disproportionate interference with his right to freedom of expression. Overturning the judgement of the ECtHR of 11 May 2021, the Grand Chamber of the ECtHR ruled that the interference with the right of freedom of expression of the applicant (in particular his freedom to impart information) had not been necessary in a democratic society.

Minimum Standard Best Practice	Case	Date	ECHR Articles	Facts	Decision	Comments
<p>19 (MS). If "naming and shaming" is employed, ensure adequate safeguards (e.g. judicial authorisation after proceedings involving the taxpayer).</p> <p>19 (BP). Require judicial authorisation before any disclosure of confidential information by revenue authorities.</p>	<p>Application No. 36345/16 L.B. against Hungary</p>	<p>Judgement of 9 March 2023 (GC)</p>	<p>Art. 8</p>	<p>In accordance with the 2003 Tax Administration Act, the National Tax and Customs Authority of Hungary published the applicant's personal data (including his name and home address) on a list of major tax debtors (pursuant to Section 55(5) of the aforementioned Act) on its website. The list aims to act as a tool to tackle non-compliance with tax regulations. According to the applicant, this publication constitutes an unlawful interference with his right to respect for his private life, as guaranteed by Article 8 of the Convention.</p>	<p>There has been a violation of Article 8 of the Convention.</p>	<p>In overruling the Decision of the ECtHR of 12 January 2021, the Grand Chamber of the ECtHR has stressed the importance of adequate safeguards within the context of the legislative proceedings with respect to 'naming and shaming'.</p> <p>According to the Grand Chamber of the ECtHR, the publication of the applicant's name and home address concerned information about his private life. Although the adverse effects of the publication of this information had not been proven to be substantial, the ECtHR considered</p>

						<p>the publication to constitute an interference with the applicant's right to respect for his private life.</p> <p>Despite the wide margin of appreciation for national authorities in establishing a scheme for the dissemination of personal data of non-compliant taxpayers, the ECtHR ruled that the Hungarian legislator had not respected the principle of data minimalization. The ECtHR ruled that the Hungarian parliament did not consider properly to what extent publication of <i>all</i> the data in question (in particular the debtor's home address) had been necessary to achieve</p>
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						the original purpose of the collection of relevant personal data in the interest of the economic well-being of Hungary. Therefore, the ECtHR's Grand Chamber concluded a violation of article 8 of the ECHR.
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58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application No. 15553/15 S.C. ZORINA INTERNATIONAL S.R.L. against Romania	Judgement of 27 June 2023	P1-1	<p>The case concerns the sanctions imposed on the applicant company following its sale of goods without issuing a receipt, discovered during a tax audit. The applicant had to forfeit the income, was fined and had its activities suspended for a period of three months. These sanctions were upheld by the Romanian courts.</p> <p>Relying on Article 1 of Protocol No. 1 to the Convention, the applicant company complains that</p>	No violation of Article 1 of Protocol No. 1 to the Convention.	The ECtHR concluded that the imposition of sanctions pursued the legitimate aim of combating tax evasion and improving financial responsibility among traders and did not impose an excessive burden on the applicant because of the large margin of appreciation for the authorities, the procedural safeguards available

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<p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>Application No. 78661/11 YASAROGLU against Türkiye</p>	<p>Judgement of 12 September 2023</p>	<p>P1-1</p>	<p>The case concerns the confiscation of imported precious metals by the applicant without declaring it to customs and paying applicable duties.</p> <p>Upon overturning of the judgement that had found the applicant guilty of smuggling, the precious metals remained confiscated by the authorities. Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complains that his property was confiscated in absence of a final court decision.</p>	<p>There has been a violation of Article 1 of Protocol No. 1 to the Convention.</p>	<p>to the applicant and the temporary nature of the sanctions.</p>

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<p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p> <p>51 (BP). Reviews and appeals should not exceed two years.</p> <p>63 (BP). Authorisation by the judiciary should be required before seizing assets or bank accounts.</p>	<p>Application No. 22716/12 ANDRZEJ RUCINSKI against Poland</p>	<p>Judgement of 5 October 2023</p>	<p>P1-1</p>	<p>Following a tax audit, the Szczecin Tax Office gave two decisions ordering the seizure of the applicant's assets (mainly bank accounts and business vehicles) to secure the payment of his business's excise-tax liabilities.</p> <p>The case concerns a lack of compensation for the applicant's loss of business profits due to decisions taken by the tax authorities that were disproportionate and were made in protracted proceedings covering three years.</p>	<p>There has been a violation of Article 1 of Protocol No. 1 to the Convention.</p>	

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58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application No. 26604/16 WALDNER against France	Judgement of 7 December 2023	P1-1	The case concerns the application of a 25% surcharge on the taxable income of certain self-employed professionals (under article 158 of the General Tax Code) because the applicant had not joined an approved association. According to the applicant, this raises an issue under Article 1 of Protocol No. 1 to the Convention.	There has been a violation of Article 1 of Protocol No. 1 to the Convention.	Relying on Article 1 of Protocol No. 1 to the Convention, the applicant complains that the increase in his taxable professional income on account of not being a member of an approved association disproportionately interfered with his right to peaceful enjoyment of his possessions.

2023 Relevant Inadmissibility Decisions – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECHR Articles	Facts	Decision	Comments
	Application No. 51736/20 PAULO OLIVEIRA, SGPS, S.A.	Decision of 7 February 2023	P1-1	The applicant company complained of the lack of foreseeability of the anti-abuse measure clause, embedded in article 38(2)	The application was declared inadmissible.	The ECtHR concluded to the inadmissibility of the case because of the non-exhaustion of

	against Portugal			of the General Tax Law) and of the obligation to pay taxes on the income of the sellers of shares in another company.		domestic remedies and did therefore not rule on the merits of the case.
Minimum Standard Best Practice	Case	Date	ECHR Articles	Facts	Decision	Comments
28 (MS). In application of <i>audi alteram partem</i>, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.	Application No. 65320/09 DEA 7.CO against Albania	Decision of 27 June 2023	Art. 6§1 P1-1	The case concerns the right of access to a court for the applicant's company to challenge a tax liability notice, imposing a duty to pay under-reported tax and additional surcharges and penalties. The applicant was denied an examination of the merits of its challenge of the tax notice by the Directorate of Tax Appeals on the grounds that the applicant had failed to comply with Sec. 43 of the Tax Procedures Act, according to which, before challenging a tax obligation, a taxpayer must pay the principle of the disputed amount. The	The application was declared inadmissible.	The ECtHR concluded that the right of access to a court is not absolute and may be subject to limitations. In this respect, the ECtHR stated that the requirement to pre-pay the principal amount of the reassessed tax debt before challenging the debt assessment did not constitute a disproportionate burden for the applicant's company. This conclusion was mainly derived from the fact that the applicant only challenged the very

<p>50 (MS). The right to appeal should not depend upon prior exhaustion of administrative reviews.</p> <p>52 (MS). <i>Audi alteram partem</i> should apply in administrative reviews and judicial appeals.</p> <p>53 (MS). Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment.</p>				<p>applicant's appeal before the Commission of Tax Appeals was refused based on the same grounds. The judicial appeals of the applicant were equally denied due to a failure to pay the principle of the disputed amount, which led to the non-exhaustion of the administrative limb of the process.</p> <p>Before the ECtHR, the applicant company complained under Article 6, §1 of the Convention about the denial of access to a court for the purpose of challenging its tax obligations. Under Article 1 of Protocol No. 1 to the Convention, it also complained that the tax liability imposed an excessive burden on the peaceful enjoyments of its possessions.</p>		<p>obligation to pay the tax and not its inability to comply with that obligation.</p> <p>Therefore, the ECtHR did not conclude a violation of Article 6, §1 of the Convention.</p>
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53 (BP). An appeal should not require prior payment of tax in all cases.						
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2023 Relevant Communicated Cases – European Court of Human Rights

Minimum Standard Best Practice	Case	Date Communicated	ECHR Articles	Facts	Decision	Comments
<p>41 (MS). Entering premises or interception of communications should be authorised by the judiciary.</p> <p>43 (BP). Where tax authorities intend to search the taxpayer's premises, the taxpayer should be informed and have an</p>	<p>Application No. 24779/22 Jurgis LIEPNIEKS against Latvia</p>	<p>Communicated on 11 January 2023</p>	<p>Art. 8 P1-1</p>	<p>The application concerns the search at the applicant's and his wife's home and the seizure of multiple electronic devices and documents in connection with criminal proceedings in relation to tax evasion and money laundering regarding the applicant's wife. The search was authorised on the basis of a search warrant issued by an investigating judge.</p> <p>Following the search, the State Revenue Service seized multiple documents and portable electronic</p>		<p>The main question relates to the presence of an interference with the applicant's right to respect for his private and family life, home or correspondence. In particular, the ECtHR will have to rule on the scope of search warrant and the proportionality</p>

<p>opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.</p> <p>46 (MS). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.</p> <p>47 (BP). If data are held on a</p>				<p>devices, most of which contained to the applicant and contained information on his and his family's private life, as well as information to his professional activities). Until the date of the lodging of the application (16 May 2022), the devices had still not been returned to the applicant.</p>		<p>of the seizure and retention of the seized items. In addition, the ECtHR will have to rule on the proportionality in the context of Article 1 of Protocol No. 1 to the Convention as regards the seizure and retention of the items for more than nine months.</p>
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<p>computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer.</p> <p>51 (BP). Reviews and appeals should not exceed two years.</p> <p>63 (BP). Authorisation by the judiciary should be required before seizing assets or bank accounts.</p>						
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<p>5 (BP). Publish guidance on taxpayers' rights to access information and correct inaccuracies.</p> <p>9 (BP). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms.</p>	<p>Application No. 46821/16 KIMBERLI-KLARK UKRAYINA against Ukraine</p>	<p>Communicated on 28 March 2023.</p>	<p>P1-1</p>	<p>The applicant company's request to have the VAT rate changed from 20% to 7% in view of the nature of the goods it imported (medical goods) was refused by the tax authorities. This decision was based on two grounds. First, the applicant had itself defined the rate in its tax declaration. Second, the goods the applicant imported could not be considered 'medical' according to the new legislation. This reasoning was accepted by the High Administrative Court of Ukraine by its final decision of 28 January 2015.</p> <p>The applicant company complains under Article 1 of Protocol No. 1 that the domestic law which led to the interference with its property rights lacked stability and clarity.</p>		<p>In its judgement, the ECtHR will have the opportunity to comment on the taxpayer's right to correct inaccuracies in information by the taxpayers themselves and on the standards of clarity and foreseeability in the context of Article 1 of Protocol No. 1 to the Convention.</p>

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<p>78 (MS). Retrospective tax legislation should only be permitted in limited circumstances which are spelt out in detail.</p> <p>78 (BP). Retrospective tax legislation should ideally be banned completely.</p>	<p>Application No. 22637/16 TORGOVYY DIM KAMPUS KOTTON KLAB, TOV against Ukraine</p>	<p>Communicated on 28 March 2023.</p>	<p>P1-1</p>	<p>The application concerns the obligation of the applicant company to pay anti-dumping duties which were imposed retroactively on it two years after it had imported certain goods in Ukraine and sold them. The alleged retroactive application occurred as a result of the restoring of the regulation of 29 September 2009 by the courts.</p>		
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<p>5 (MS). Provide a right to access to taxpayers to personal information held about them, and a</p>	<p>Application No. 13730/15 Tatiana CEACHIR against the Republic of Moldavia</p>	<p>Communicated on 28 March 2023.</p>	<p>Art. 6, §1</p>	<p>The application concerns the right to a fair hearing, in particular an alleged violation of the right to adversarial proceedings and equality of arms because of having been unable to access a document</p>		

<p>right to correct inaccuracies.</p> <p>25 (MS). Audits should respect the following principles: (i) Proportionality. (2) <i>Ne bis in idem</i> (prohibition of double jeopardy). (3) <i>Audi alteram partem</i> (right to be heard before any decision is taken). (4) <i>Nemo tenetur se detegere</i> (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.</p>				<p>regarding the calculation by the Cadaster Agency of the taxes due on immovable property.</p>		
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<p>28 (MS). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final.</p>						
<p>Minimum Standard Best Practice</p>	<p>Case</p>	<p>Date Communicated</p>	<p>ECHR Articles</p>	<p>Facts</p>	<p>Decision</p>	<p>Comments</p>
<p>51 (BP). Reviews and appeals should not exceed two years.</p>	<p>Application No. 36219/19 SIA TAVEX against Latvia</p>	<p>Communicated on 26 May 2023</p>	<p>Art. 6§1 and 13</p>	<p>The application concerns the length of administrative proceedings and the lack of domestic remedies in this regard. The State Revenue Service (SRS) carried out a</p>		

				tax audit and by a decision of 29 November 2012 ordered the applicant company to pay a VAT penalty, additional corporate income tax, late payment and corporate income tax penalty. The appeal lodged by the applicant company with the administrative authority and administrative courts are still ongoing and presently have lasted 10 years and 5 months.		
Minimum Standard Best Practice	Case	Date Communicated	ECHR Articles	Facts	Decision	Comments
<p>41 (MS). Entering premises or interception of communications should be authorised by the judiciary.</p> <p>43 (BP). Where tax authorities intend to search the taxpayer's</p>	<p>Application No. 81481/17 Konstyantyn Valentynovych TSYRKUN against Ukraine</p>	<p>Communicated on 19 June 2023</p>	<p>Art. 8</p>	<p>The application concerns the lawfulness of the search of the applicant's home without a court warrant in the context of proceedings related to a tax evasion scheme.</p> <p>According to Article 233(3) of the Code of Criminal Procedure, authorities may enter private property and carry out search operations without prior judicial</p>		<p>The main question relates to the presence of an ex post facto authorisation by the judiciary and the description of the notion "urgent circumstances" in a sufficient precise way to</p>

<p>premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.</p> <p>46 (MS). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should</p>				<p>authorisation in “<i>urgent circumstances connected to saving human lives, property or the immediate apprehension of individuals suspected of having committed a criminal offence</i>”. A post facto judicial authorisation for the search operations is required by law.</p> <p>The applicant proclaims a violation of Article 8 of the Convention.</p>		<p>meet the foreseeability requirement. In addition, the ECtHR will have to rule on the presence of sufficient procedural safeguards for the applicant.</p>
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be limited in time.						
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<p>51 (BP). Reviews and appeals should not exceed two years.</p> <p>28 (MS). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax</p>	<p>Application No. 5481/21 DOYEN SPORTS INVESTMENTS LIMITED against Portugal</p>	<p>Communicated on 6 September 2023.</p>	<p>Art. 6(1) Art. 6(2) P1-1</p>	<p>The application concerns the suspension of various debit operations on the applicant company's bank account based on a suspicion of tax fraud and money laundering activities. The measures were taken based on a suspicion of these activities and have been renewed for almost two years without the opportunity for the applicant to take part in adversarial proceedings or to access the case file.</p>		

<p>authorities become final.</p> <p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p>						
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<p>54 (BP). The state should bear some or all of the costs of an appeal, whatever the outcome.</p>	<p>Application No. 18510/22 ELCOMAT D.O.O. against Croatia</p>	<p>Communicated on 12 September 2023</p>	<p>Art. 6§1</p>	<p>The application concerns the domestic authorities' refusal to reimburse the applicant company's costs of administrative proceedings based on the grounds that the relevant legislation did not provide for reimbursement of fees for legal representation by an advocate in administrative proceedings.</p>		
Minimum Standard Best Practice	Case	Date Communicated	ECHR Articles	Facts	Decision	Comments
<p>58 (MS). Proportionality and ne bis in idem should</p>	<p>Application No. 20191/16 Antonio FARAGLIA</p>	<p>Communicated on 18 September</p>	<p>P4-7</p>	<p>The applications concern situations whereby taxpayers was imposed different sanctions as a</p>		

<p>apply to tax penalties.</p> <p>59 (BP). Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied.</p>	<p>against Italy and five other applications (Nos. 43145/18, 26454/19, 40598/19, 56100/19, 29241/22).</p>	<p>2023</p>		<p>result of tax proceedings and administrative or criminal proceedings. The applications therefore concern the right not to be tried or punished twice under the jurisdiction of the same state for an offence of which an individual has already been finally acquitted or convicted in accordance with the law and criminal proceedings in that state.</p>		
<p>Minimum Standard Best Practice</p>	<p>Case</p>	<p>Date Communicated</p>	<p>ECHR Articles</p>	<p>Facts</p>	<p>Decision</p>	<p>Comments</p>
<p>41 (MS). Entering premises or interception of communications should be authorised by the judiciary.</p> <p>43 (BP). Where tax authorities intend to search the taxpayer's</p>	<p>Application No. 29895/16 EPIDAVR S.R.L. against the Republic of Moldova</p>	<p>Communicated on 2 November 2023</p>	<p>Art. 6 Art. 8 P1-1</p>	<p>The application concerns searches carried out on the applicant company's professional premises, authorised by the judiciary within the context of procedures relating to tax evasion.</p> <p>The various search warrants authorised searches of the applicant company's headquarters, sale points and warehouses, ordering</p>		<p>The main question relates to the presence of an interference with the applicant company's right to respect for home and correspondence within the meaning of Article 8, §1 of</p>

<p>premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.</p> <p>46 (MS). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should</p>				<p>the seizure of account documents, invoices, contracts, the list of employees and documents related to their salaries, servers, hard disks and other information carriers, seals of companies form offshore zones, money and other objects having served for tax evasion.</p> <p>The applicant holds that, as the search warrants did not include any relevant reasons and were formulated in extremely broad terms which gave unfettered discretion to the investigator and as a result of the seizure the company was unable to operate, its fundamental rights were infringed.</p>		<p>the Convention, as a result of the search warrants. Following, the ECtHR will have to rule on whether this interference was in accordance with the law and necessary. In particular, did the search warrants contain sufficient and adequate reasoning justifying an interference with the applicant company's commercial premises?</p>
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<p>be limited in time.</p> <p>47 (BP). If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisors and the original left with the taxpayer.</p>						
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<p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>Application No. 26338/19 Francesca TARTAMELL A and Barbara TARTAMELL A against Italy</p>	<p>Communicated on 6 November 2023</p>	<p>Art. 6 Art. 7 P1-1</p>	<p>The application concerns the confiscation of the applicant's assets, which were considered to be equivalent to the proceeds of crime (amongst others, tax crimes).</p> <p>The applicants are family members of persons convicted of crimes which give rise to the confiscation of assets "by equivalent</p>		<p>The applicants complain under article 6 of the Convention that they could not take part in the criminal proceedings which led to the confiscation, under Article 7 of the</p>

				<p>means". The national courts established that certain assets formally owned by the applicants in reality belonged to the individuals convicted of tax crimes, leading to the confiscation of these assets.</p>		<p>Convention of the imposition of a penalty for a crime committed by others and under Article 1 of Protocol No. 1 to the Convention that the confiscation lacked a foreseeable legal basis with regard to the determination of the ownership of the confiscated assets and was, in any event, disproportionate to the aim pursued.</p> <p>Same issues in Application No. 1823/21 Szilvia KOKA against Italy and Application No.</p>
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<p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>Application No. 4637/23 LTD ILIYARD against Georgia</p>	<p>Communicated on 7 November 2023</p>	<p>Art. 13 P1-1</p>	<p>The application concerns the freezing of all the applicant company's asset in relation to ongoing tax evasion proceedings. The applicant holds that the freezing order did not have a clear and sufficiently delimited legal basis. In addition, the application holds that the order was disproportionate since all the assets, rather than the property equivalent to the amount allegedly owned to the state was frozen and given the absence of an effective domestic remedy against the measures.</p>		<p>12868/22 Silvia SANTORELLI against Italy.</p>

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<p>58 (MS). Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>Application No. 25466/20 BURG OIL AD against Bulgaria</p>	<p>Communicated on 1 December 2023</p>	<p>P1-1</p>	<p>The application concerns the (continuous) refusal of the tax authorities and the Supreme Administrative Court to refund overpaid taxes to the applicant company despite several judgments in its favour.</p> <p>The applicant claims this refusal constitutes an interference with the applicant company's peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1 to the Convention and that this interference constitutes an excessive burden on the applicant company.</p>		