SWITZERLAND

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I. INTRODUCTION

Switzerland signed the European Convention on Human Rights of 4 November 1950 (ECHR or "the Convention") on 21 December 1972. The Federal Assembly of Switzerland passed it on 3 October 1974. The ratification was deposited with the Secretary General of the Council of Europe on 28 November 1974 and the Convention came into force the day of the deposit of the instrument of ratification.

The following reservations and interpretative declarations were, inter alia,[1] contained in the instrument of ratification:

– the rule in Article 6(1) of the Convention that hearings must be public does not apply to proceedings relating to the determination of civil rights and obligations or of any criminal charge which, in accordance with cantonal legislation, are heard before an administrative authority. The rule that judgments must be pronounced publicly may not affect the operation of cantonal legislation on civil or criminal procedure providing that judgments may not be delivered in public but notified to the parties in writing;
– the Swiss Federal Council considers that the guarantee of fair trial in Article 6(1) of the Convention, in the determination of civil rights and obligations or any criminal charge against the person in question, is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to such rights or obligations or the determination of such a charge;[2] and
– the Swiss Federal Council declares that it interprets the guarantee of free legal assistance and the free assistance of an interpreter, in Articles 6(3)(c) and (e) of the Convention, as not permanently absolving the beneficiary from payment of the resulting costs.

  Note that according to the ECtHR the gratuitousness is definitive (*Luedicke, Belkacem and Koç*, judgment of 10 March 1980, Series A No. 36). The European Commission on Human Rights (ECnHR) considered that this statement constitutes in fact a reservation (*Temeltasch* case, decision of 5 May 1982, DR 31, 120).

The declaration on the interpretation of Article 6(1) contained in the deposited instrument of ratification has been considered invalid in the context of a case concerning the determination of a criminal charge; further to the judgment delivered by the ECtHR on 29 April 1988 in the *Belilos* case (20/1986/118/167) the scope of the declaration was limited solely to the determination of civil rights and obligations, under the said provision. As of 29 April 1988 the above-mentioned declaration read:

The Swiss Federal Council considers that the guarantee of fair trial in Article 6(1) of the Convention in the determination of civil rights and obligations is intended solely to ensure ultimate control by the judiciary over the acts or decisions of the public authorities relating to such rights or obligations. For the purpose of the present declaration, ultimate control by the judiciary means a review by the judiciary limited to the application of the law, such as cassation.

However, the Federal Department of Foreign Affairs of Switzerland has, in a letter dated 24 August 2000 and registered at the Secretariat General on 29 August 2000, withdrawn the reservations and declarations formulated on 28 November 1974 in respect of Article 6 of the Convention.

The following protocols were ratified by Switzerland:

Protocol No.	ETS No.	Date of Signature	Date of Ratification	Date of Entry into force
2	44	21 December 1972	28 November 1974	28 November 1974
3	45	21 December 1972	28 November 1974	28 November 1974
5	55	21 December 1972	28 November 1974	28 November 1974
6	114	28 April 1983	13 October 1987	1 November 1987
7	117	28 February 1986	24 February 1988	1 November 1988[3]
8	118	19 March 1985	21 May 1987	1 January 1990
9	140	6 November 1990	11 April 1995	1 August 1995
10	146	25 March 1992	11 April 1995	–
11	155	11 May 1994	13 July 1995	1 November 1998

Switzerland has not ratified the First Protocol of the Convention (see below).

Furthermore, Switzerland has ratified the following human right instruments:

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1. Reservations not relevant for the provisions discussed in the article are not mentioned.
2. Note that the European Court of Human Rights (ECtHR) held that this statement constitutes a reservation that does not satisfy the requirements of Art. 64 (Art. 57 since the entry into force of Protocol No. 11) of the Convention. It must therefore be held to be invalid (*Belilos* case, judgment of 29 April 1988, Series A No. 132).
3. Reservation contained in the instrument of ratification, deposited on 24 February 1988.
4. Accession 18 June 1992, entry into force 18 September 1992; no declarations or reservations were made upon accession.

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);[4]
- the International Covenant on Civil and Political Rights (ICCPR);[5]
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERED);[6]
- the Convention on the Elimination of All Forms of Discrimination against Women (ICEDAR);[7]
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);[8] and
- the Convention on the Rights of the Child (CRC).[9]

When implementing a treaty, Switzerland applies the monistic theory.[10] According to this theory, no domestic provision is needed to implement a treaty in national law. Indeed, the treaty is automatically part of Swiss domestic law from its entry into force.

The guarantees of the ECHR are considered by the Federal Supreme Court (*Schweizerisches Bundesgericht*) as having a constitutional character. Therefore, the meaning of a treaty guarantee has to be determined in close relation to the corresponding right of the codified and non-codified Swiss constitutional law. Notwithstanding their constitutional character, the treaty guarantees are considered to be the law of nations. Whenever their violation may be appealed depends on whether a specific guarantee is of self-executing character or not. According to Swiss case law, a provision of the law of nations is of self-executing character if it is not only addressed to authorities,[11] but if it contains a rule, specific enough to be the basis for a concrete judgment that is addressed to individual persons. The self-executing character of the substantive provisions of the Convention[12] is generally accepted and, as a consequence, the guarantees are applied directly as if they were constitutional rights.

The collision between the Convention and the guarantees of the Swiss Constitution is excluded by the safeguard clause for existing human rights.[13] Furthermore, the principle of priority of the law of nations over the Swiss constitutional law ensures the application of these treaty guarantees, which grant a more substantial protection than the corresponding constitutional guarantees.[14,15] In practice, the Federal Supreme Court tries to harmonize the constitutional guarantees with the guarantees of the Convention. Where the Convention contains a guarantee that is mentioned only implicitly under constitutional law, Swiss constitutional law is interpreted according to the ECHR. Where guarantees of the Convention and of the Constitution are parallel, the Court assumes that both sources of law parallel each other when used for interpreting the law. The constitutional guarantees are often interpreted in a way that the requirements of the Convention are met at the same time. Such an interpretation brings valuable principles of the law of nations into domestic law.

The Federal Supreme Court has stated on several occasions that the Convention has no independent character next to guarantees of the Swiss Constitution since the Convention does not provide a more substantial scope of protection than the Constitution.[16] Such an interpretation, under which the Convention has the character of a *minimum standard*, rises different questions. The characterization as a minimum standard means that the national legislator is free to implement in domestic law more protective guarantees than found in the Convention. It does not, however, preclude that in specific cases the guarantees under the law of nations offer more protection than the corresponding national guarantees. In the case of Switzerland such a result is often the consequence of guarantees in the ECHR, which originate from common law countries and which are, as such, not known in a civil law jurisdiction. Where the guarantees of the Convention go further than the constitutional rights, the treaty guarantees are considered to have independent character.

In Switzerland, a taxpayer's interest may, apart from the treaty guarantees, be protected either under *federal* constitutional law[17] or under *cantonal* constitutional law. Every canton as a sovereign entity[18] has adopted a cantonal constitution. A cantonal constitution must be approved by the Canton's citizens and must be guaranteed by the Confederation. Cantonal constitutions contain, in general, basic rights, the scope of which often goes further than the scope of the guarantees in the federal Constitution.

5. Accession l8 June 1992, entry into force l8 September 1992; no declarations reservations made upon accession by Switzerland.
6. Accession 29 November 1994, entry into force 29 December 1994; reservations made upon accession concerning the Arts. 2 and 4.
7. Ratified 27 March 1997, entry into force 26 April 1997; no declarations or reservations made upon ratification by Switzerland.
8. Ratified 7 October 1988, entry into force 1 February 1989; declaration to Art. 21 of the Convention.
9. Ratified 24 February 1997, entry into force 26 March 1997. Reservation were made concerning Arts. 5, 7, 10, 37 and 40.
10. Monistische Theorie; see *Verwaltungspraxis der Bundesbehörden* (VPB) 53 (1989) No. 54, at 403.
11. E.g. a mandate to implement a specific legislation.
12. Arts. 2- 14, except in respect of Art. 13.
13. Art. 53 of the Convention.
14. The priority of the Convention, however, is already the result of Arts. 26 (*Pacta sunt servanda*) and 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties, which entered into force in Switzerland on 6 June 1990.
15. Note that the Federal Supreme Court has, in general, only the power to judge over complaints regarding cantonal law based decisions that violate constitutional guarantees (Art. 189 of the Constitution). As federal laws and public international law, however, must be applied by the Supreme Court and other law-applying organs irrespective of whether or not such legislation violates the Constitution (Art. 191 of the Constitution), there are no constitutional guarantees against implemented federal legislation. As a consequence of the priority of the ECHR over federal law, however, federal laws and federal decrees are not applicable if such legislation breaches the guarantees of the Convention (but not the guarantees of the Swiss Constitution). Thus, where the guarantees in a human rights instrument have the same content as the constitutional guarantees, the Federal Supreme Court has the authority to hear complaints that federal law-based decisions violate human rights conventions.
16. See e.g. the Federal Supreme Court judgment of 14 February 1992, BGE 118 la 56.
17. In 1999 the Swiss Constitution of 1874 was completely modified. The modifications, however, did not change the structure of the Swiss Confederation, but restructured the accumulated amendments and the case law since 1874. The new Constitution was formally adopted by popular vote of 18 April 1999 (59% yes, 41% no) and is in force from 1 January 2000.
18. Art. 3 of the Swiss Constitution: "The Cantons are sovereign insofar as their sovereignty is not limited by the federal Constitution; they exercise all rights which are not transferred to the Confederation."

Constitutional guarantees[19] consist of:

Guarantee	Article		
	Constitution 1999	1874	Convention
– Equality before the law	8	4	7/14
– Equal rights of men and woman	8	4	14
– Protection against arbitrariness and preservation of good faith	9	4	6
– Protection of privacy	13	36	8
– Freedom of religion and conscience[20]	15	49	9
– Freedom of domicile	24	45	–
– Right to property	26	22ter	Prot. 1
– Economic freedom[21]	27	31	–
– General procedural guarantees	29	4	6
– Judicial proceedings	30	58	5/6
– Habeas corpus	31	–	7
– Criminal procedure	32	4	6
– Precedence of federal law	49	2[22]	–
– Establishment by statue of taxation principles	127	–	–
– Taxation based on economic capacity	127	4	–
– Prohibition of intercantonal double taxation	127	46	–
– Ne bis in idem	–	4	4[23]

II. JURISPRUDENCE (AND DOCTRINE) ON THE PRINCIPAL ARTICLES OF THE CONVENTION RELEVANT TO TAXATION

A. Article 1 of the First Protocol (protection of property)

Switzerland signed the Protocol No.1 of the Convention on 19 May 1976. The Protocol, however, has never been ratified. The Protocol codifies the protection of private property, the right to education and the right to free elections. Switzerland's refusal to ratify the Protocol was not because of the inclusion of the protection of property nor the right to election, but the right to free elections, since in certain Swiss cantons the government is still elected through public plebiscite and not through secret voting and elections. Thus, the requirement of free elections by secret ballot, under conditions which will ensure the free expression of the opinion of the people, was considered to be in conflict with the public plebiscite.

As the guarantees codified in the Protocol No.1 are also included in the ICCPR[24] and since the modification of the Swiss Constitution in 1999 meant that these guarantees were implemented in the Constitution, the question whether the Protocol No.1 should finally be ratified by Switzerland is being reconsidered. If the requirement of free elections by secret ballot, under conditions which will ensure the free expression of the opinion of the people, results in a conflict with the existing public plebiscite, a ratification by Switzerland would take place under the reservation that the right to free elections should be applied without prejudice to the cantonal and communal laws, which provide for or allow elections within assemblies to be held by a means other than secret ballot.[25]

As Protocol No.1 is not yet ratified by Switzerland, no case law exists in respect of Article 1 of the First Protocol. The right to property, however, is protected by Article 26 of Constitution, which reads as follows:

> Article 26: Right to property
> (1) The right to property is guaranteed.
> (2) Expropriation and restrictions of ownership equivalent to expropriation shall be fully compensated.

The right to property is not absolute. Under constitutional law, fundamental rights may be restricted. However, such restrictions
(1) require a legal basis;
(2) must be justified by public interest or must serve for the protection of fundamental rights of other persons;
(3) must be proportionate to the goals pursued; and
(4) may not violate the essence of the fundamental right concerned.[26]

There is case law by the Federal Supreme Court stating that confiscatory taxation is irreconcilable with the right to property. As this case law, however, is based on constitutional law, it will not be examined further.

B. Article 6 (right to a fair trial)

Nearly all of the cases examined under Article 6 of the ECHR, concern tax evasion proceedings. Most often, a violation of Article 6(1) of the Convention was argued, e.g. the right not to incriminate oneself, the right to an independent and impartial tribunal or the right to a decision within reasonable time. In the older case law, especially in cases of criminal proceedings against heirs of a deceased person who had committed tax evasion, the presumption of innocence according to Article 6(2) of the Convention was often appealed. In several cases, the minimum rights to personal defence (Article 6(3)), alone or in combination with other treaty rights, were subject to discussion.

The most recent case on Article 6 of the Convention is the case of *J.B.*, who was involved in tax evasion proceedings. J.B. alleged that the criminal proceedings against him were unfair and contrary to Article 6(1) of the ECHR in that he was obliged to submit documents which could have incriminated him. J.B., against whom tax evasion proceedings had been instituted, was requested, on various occasions, to submit all the documents concerning the compa-

19. Cantonal constitutional guarantees are disregarded since a survey on the cantonal guarantees goes beyond the scope of this report.
20. According to the Federal Supreme Court, freedom of religion and conscience in respect of tax matters is, in general, only applicable to individuals, but not to companies.
21. According to the Federal Supreme Court, economic freedom does not grant a protection against ordinary taxation, but protection against specific business taxes. Specific business taxes must be justified by a public interest and may not have the impact of prohibitive taxation.
22. Art. 2 of the temporary provisions to the Constitution of 1874.
23. Art. 4 of the Protocol No. 7 to the ECHR.
24. Ratified by Switzerland on 18 June 1992.
25. See also the reservation concerning Art. 25(b) of the International Covenants on Civil and Political Rights of 16 December 1966: "The present provision shall be applied without prejudice to the cantonal and communal laws, which provide for or permit elections within assemblies to be held by a means other than secret ballot."
26. Article 36 of the Constitution: Limitations of Fundamental Rights.

nies in which he had invested money. He failed to do so on each occasion and was fined four times. The Federal Supreme Court dismissed J.B.'s appeal, in which he argued, inter alia, that, as an accused person, under Article 6 of the Convention, he should not be obliged to incriminate himself. In its decision,[27] the Federal Supreme Court reiterated the principle of tax proceedings according to which the burden of proof falls on the tax authorities to demonstrate that a person had not declared certain taxable income. It cannot be said that the person concerned was obliged to incriminate himself. Rather, the person had merely to give information as to the sources of untaxed income which the tax authorities already knew existed. If, in such a situation, the person concerned had the right to remain silent, the entire tax system would be called into question. The regular tax assessment proceedings would then have to be concluded according to principles of criminal proceedings. The right to remain silent would complicate control, or even render it impossible. This cannot be the purpose of Article 6 of the Convention. The Court noted an essential difference with the *Funke v. France* case,[28] namely that in that case the tax authorities believed that certain documents existed although they were uncertain of the fact. In the present case, the tax authorities was aware of the income that J.B. had invested. The purpose of their intervention was to ensure that the income itself stemmed from income or wealth that had been duly taxed. All J.B. had to do was to explain the source of this income. Finally, the Court referred to the *Salabiaku v. France* case,[29] according to which presumptions of fact and law were compatible with Article 6(2) of the ECHR as long as they were confined within reasonable limits and the rights of defence were maintained. The Federal Court concluded that there was no breach of the applicant's right to the presumption of innocence or of his right not to incriminate himself. In its decision of 3 May 2001,[30] the ECHR held that J.B. was not obliged to submit all of the documents concerning the investments, since he could not exclude the possibility that any additional income which was revealed by these documents from untaxed sources could have constituted the offence of tax evasion. Therefore, by imposing a disciplinary fine for not submitting the documents, the ECtHR considered that there had been a violation of J.B.'s right under Article 6(1) of the Convention not to incriminate himself. The judgment of the ECtHR has consequences for the Swiss penal tax law in respect of the duty of an accused person to cooperate in tax evasion proceedings. The Federal Tax Administration, together with representatives of the cantons, is mandated to work out a modification of the law to be in conformity with the Convention.[31]

In the case of A., the Federal Supreme Court also had to decide on the right not to incriminate oneself.[32] Taxpayer A., investing in different companies of P., did not declare these investments in his tax return. The tax authorities, aware of these investments, requested A. to submit the necessary documentation concerning these investments. As A. did not reply to the requests, the tax authorities imposed two penalties of each CHF 10,000. A. appealed, with the argumentation that he had no obligation to submit the information as he was under no obligation to incriminate himself. The Court first stated that the Convention was applicable as the penalties imposed had the character of criminal charges within the meaning of the Convention. It considered, however, that it could not be the purpose of Article 6 of the Convention to eliminate a taxpayers' obligation to cooperate in proceedings. If a taxpayer were to stay silent, the entire legal system would be in danger. In fact, a taxpayer could refuse cooperation in order to escape his obligations. Therefore, neither the right not to incriminate onself nor the presumption of innocence is applicable in respect of a taxpayers' obligation to cooperate in an assessment procedure. Furthermore, the Court held that Article 6 of the Convention does not prevent a state from shifting the burden of proof to the accused person if the state takes into account in an adequate manner the importance of the punishable behaviour and if it grants to the accused the necessary rights to defend himself.

In the judgment BGE 119 Ib 311 of 11 October 1993, the Federal Supreme Court had to consider a case of tax evasion where rental costs for an apartment, occupied by one of the partners, were deducted from the profit and loss accounts of the partnership. The questions raised where procedural guarantees of Article 6 of the ECHR were applicable to tax evasion proceedings and whether the principles of public hearing and of personal defence has been violated. In the decision, the Court clearly held that a tax evasion proceeding results, in the case of conviction, in a criminal charge under Article 6 of the Convention. The guarantees in the Convention must, therefore, be granted. The Court further held that a judgment has to be taken within a reasonable time in order not to infringe Article 6 of the Convention. It did, however, not define the term "reasonable time". In the case at hand, there was no violation of Article 6 of the Convention because the long duration of the proceedings was caused by the behaviour of the accused (and not by the public bodies involved). Furthermore, the appellant complained about the violation of the principle of public hearing. The Court considered that in tax matters the exclusion of the public during the proceedings deviates from the protection of the private sphere of an individual under civil law and the resulting secrecy in tax matters. A hearing only between the involved parties is, in general, in the interest of a taxpayer, since in tax proceedings the economic capacity of a taxpayer and often business-related secrets as well, which are in the interest of the accused to have kept secret, are the subject of discussion. Unless the accused explicitly asks for a public hearing it is assumed that he has waived this right. The accused could have claimed a public hearing during all proceedings of the lower authorities. The ECHR is not infringed through hearings not open to the public. Finally, the accused argued a violation of the principle of personal defence since he was never questioned personally. The Court considered this fact as a violation of the Convention and overturned the judgment of the lower court. This Federal Supreme Court judgment was of importance insofar

27. Federal Supreme Court judgment of 7 July 1995; BGE 121 II 273.
28. ECtHR, judgment of 25 February 1993, Series A No. 256.
29. See ECtHR, judgment of 7 October 1988, Series A No. 141-A, p. 16, sec. 28.
30. ECtHR, judgment of 3 May 2001, No. 31827/96.
31. www.admin.ch/cp/d/3AFA8D30.9E457BFF@gs-efd.admin.ch.html.
32. Federal Supreme Court judgment of 7 July 1995, BGE 121 II 257.

as it clearly stated that tax evasion proceedings can be characterized as a criminal charge under Article 6 of the Convention. With respect to the definition of civil rights and obligations or criminal charges, the Federal Supreme Court considered deductible social allowances not to be civil rights and obligations (or criminal charges). Therefore, the Convention was not applicable to the appeals procedure against a decision of granting allowances; no independent and impartial tribunal is necessary in such a procedure.[33]

In 1984 H.W.K.'s taxes due for the tax period 1981/1982 were assessed at CHF 1,030,000. In 1987, following denunciation by a former accountant, investigations were instituted against H.W.K. on the suspicion that he had incorrectly declared taxes. On 10 May 1989 the tax authorities of the canton of Zurich imposed further taxes of CHF 12,259 and a fine of CHF 6,129.50 for negligent tax evasion. H.W.K.'s appeal against this decision was dismissed by the Appeals Commission for Federal Taxes. In its decision, it found, inter alia, that it (the Appeals Commission) was an independent judicial body within the meaning of Article 6(1) of the Convention. H.W.K.'s appeal to the Federal Supreme Court was dismissed on 7 June 1993. In its judgment, the Court held that the Appeals Commission for Federal Taxes constituted an independent tax court within the meaning of Article 6 of the Convention, as the supervisory body of the Court, the Finance Directorate and the Council of State of the Canton of Zurich, did not interfere with the Court's judicial activities.[34]

H.B. complained about the unfairness of criminal tax proceedings concerning cantonal taxes. Upon establishing his residence in Switzerland in 1980, H.B. reached an agreement with the cantonal Tax Administration according to which he would pay *cantonal* taxes to the amount of CHF 35,000 per year. In 1980, and again in 1981/82, his income was assessed as amounting to CHF 180,000. In 1982 the Federal Tax Administration audited the accounts of C. company. It transpired that C. company had paid H.B. CHF 735,845 for commission services in 1980. In December 1985 criminal proceedings were instituted against H.B. for evading *federal* taxes; he was fined. His administrative law appeal was upheld in the last resort by the Federal Supreme Court on 8 July 1988. The proceedings were resumed before the Cantonal Tax Appeals Commission, which reduced the fine to CHF 109,659. H.B.'s administrative law appeal was dismissed by the Federal Supreme Court on 12 June 1990. In May 1987 the Obwalden Cantonal Tax Administration informed H.B. of the institution of *cantonal* criminal tax proceedings and of supplementary tax proceedings relating to the years 1980-1982. H.B. was requested to file any observations before 10 June 1987. On 10 June 1987 H.B. requested the suspension of the cantonal tax proceedings in view of the federal tax proceedings then pending. After the Federal Supreme Court gave its decision on 12 June 1990, concerning the federal taxes, cantonal tax proceedings were resumed on 24 July 1990 whereupon H.B. was requested to submit his observations. Following various requests for prolongation of the time limit, the observations were filed on 24 October 1990. H.B. was invited to a hearing at the Cantonal Tax Administration on 12 December 1990. Following H.B.'s request, the hearing was postponed until 6 February 1991. By letter of 15 March 1991, H.B. stated that he would not file any further submissions. By order of 27 March 1992 the Cantonal Tax Administration imposed on H.B. a supplementary tax of CHF 189,371, a fine of CHF 109,438 and interest of CHF 96,232. The fine was imposed for evading cantonal and municipal taxes. The Tax Administration referred in its decision also to the establishment of the facts in, and the considerations of, the various decisions relating to the applicant's federal taxes. H.B. appealed this order. On 4 January 1995 the Federal Supreme Court dismissed the appeal of H.B. Insofar as H.B. complained of a breach of *ne bis in idem*, the Court stated that two different tax jurisdictions were concerned, each of which had to protect its different tax demands with a different tax penal law. The Court further dismissed the complaints that the lower court had not been independent as the latter had not limited its freedom of decision by considering the case file concerning the federal taxes and in particular by having regard to the decisions of the Federal Supreme Court of 8 July 1988 and 12 June 1990. Rather, Article 6(1) of the Convention required the judge to consider all relevant facts. This included previous proceedings if they stood in a factual relation with the present case. The Federal Supreme Court further found that H.B. had belatedly introduced his complaint that certain members of the Tax Appeals Commission were not independent and impartial within the meaning of Article 6(1) of the ECHR. Thus, H.B. had been aware of the composition of the Tax Appeals Commission already in April 1993, although he had only challenged the members in January 1994. The Court also found that H.B. had been sufficiently informed by letter of the Cantonal Tax Administration of 16 May 1987 as to the grounds for the criminal tax proceedings instituted against him. Moreover, at that time the proceedings concerning federal taxes were already pending before the Federal Court. The Court also noted that H.B. had had sufficient occasions to express himself orally on the facts and the evidence. He also had the possibility before all instances to file written submissions. The Court further dismissed H.B.'s complaint that the proceedings had not been conducted "within a reasonable time" as required by Article 6(1) of the Convention. Thus, upon H.B.'s request, proceedings had been suspended for over three years until 24 July 1990; in the eight months thereafter until 15 March 1991, only one set of submissions had been filed by H.B., and it had only been possible to question him once. To the extent that the Tax Administration had required one year after 15 March 1991 to prepare the order of 27 March 1992, this could be explained by the complexity of the matter.[35]

In the older case law of the Federal Supreme Court heirs were compelled by a legal presumption to assume criminal liability for tax evasion allegedly committed by the

33. Federal Supreme Court judgment of 19 August 1996, published in *Der Steuerentscheid*, 1997 A 26 No. 1.

34. The judgment was confirmed by the ECnHR, judgment of 31 August 1994, H.W.K. v. Switzerland, (No. 23399/94).

35. H.B.'s complaint concerning the violation of Art. 6(1), (2) and (3) and Art. 7 of the Convention and Art. 4 of Protocol No. 7 were dismissed by the European Commission of Human Rights in its judgment *H.B. v. Switzerland* of 14 January 1998 (No. 28332/95).

deceased.[36] In a judgment delivered on 5 July 1991, the Federal Supreme Court dismissed an appeal with the following reasoning:

Unlike supplementary tax, the fine for tax evasion is penal in character. Moreover, the definition of tax evasion requires that the taxpayer should be guilty, whether by commission or by omission, of a breach of duty resulting in his being underassessed for tax. However, according to the principle that heirs inherit tax liabilities, the latter are liable up to the amount of their share in the estate, and irrespective of any personal guilt, for the deceased person's evaded taxes and the fines. The provision in question expressly provides that the heirs enter into the position of the deceased even in respect of the penal tax without being personally guilty. It follows that as regards the liability of heirs, the applicants cannot derive any arguments from the presumption of innocence enshrined in Article 6 of the Convention, which only applies to persons charged with a criminal offence. Nor can the general principles of the criminal law argued by the applicants aid them in the circumstances.

In the judgment of 22 May 1992 the Federal Court rejected the suggestion that the imposition of a tax penalty on the heirs of the taxpayer for tax evasion committed by the latter was contrary to Article 6(2) of the Convention. After referring to its case law, it went on to hold: In earlier cases the Federal Supreme Court has held that although the tax penalty constituted a real penalty, it was directed at the deceased personally and not at the heirs: the heirs were required only to ensure that the fine was paid and only up to the value of their share of the estate. That the fine was not directed at the heirs also appeared from the fact that the fine was determined in principle according to the guilt of the deceased and the heirs could escape their liability by renouncing the inheritance. As the Federal Supreme Court has held, the effect of the arrangement laid down in law – according to which in pending proceedings the heirs take the place of the deceased, and (new) proceedings were to be initiated and pursued against the heirs if the evasion was discovered only after the death of the deceased – is only that all cases are dealt with in the same way, irrespective of the time factor.

Both the decisions of 5 July 1991 and 22 May 1992 were considered by the ECtHR as violating the guarantees of Article 6(2) of the Convention:[37]

> It must therefore be accepted that, whether or not the late Mr P. was actually guilty, the applicants were subjected to a penal sanction for tax evasion allegedly committed by him. It is a fundamental rule of criminal law that criminal liability does not survive the person who has committed the criminal act. In the Court's opinion, such a rule is also required by the presumption of innocence enshrined in Article 6(2) of the Convention. Inheritance of the quilt of the dead is not compatible with the standards of criminal justice in a society governed by the rule of law. There has accordantly been a violation of Article 6(2).

In its revised judgment concerning the heirs A.P., M.P. and T.P. of 24 August 1998,[38] the Federal Supreme Court changed its legal practice and ruled that where heirs are subjected to a penal sanction for tax evasion allegedly committed by the deceased, the presumption of innocence and, as a consequence, Article 6(2) of the Convention is violated. In a judgment in 1999, the Federal Supreme Court held that it is established that a penalty imposed on the heirs for tax evasion by a deceased violates Article 6(2) of the Convention. The article, however, is not applicable to the levy of a supplementary tax levied from the heirs for the income not declared by the deceased.[39]

P.X. was fined for tax evasion due to failures of his accountant. In the appeal decision, the Tax Appeal Commission considered that the unjust declaration of income was due to the failure of the accountant (and not of P.X.); P.X., however, would be responsible for failures caused by his representative and would therefore be subject to tax evasion proceedings. P.X. appealed this decision, arguing that such an interpretation would violate the principle of burden of proof, according to which the state has to prove a person's guilt (and not the accused his innocence). The Administrative Court of the canton of Bern, in its judgment of 30 June 1999,[40] considered that the reversal of the burden of proof is prohibited by Article 6 of the Convention. Therefore, in order not to violate the presumption of innocence, the Court has to prove whether an accused person has acted culpably or not. Failures caused by a representative are considered to be the represented taxpayer's responsibility where a taxpayer has the capacity to discover the failures. Such an interpretation does not infringe Article 6 of the Convention. Furthermore, the Court held that Article 6(2) of the Convention, in general, does not give an accused person the right to a refund of the costs caused by a proceeding if the accused is considered innocent.

The company K.S. AG kept an undeclared bank account for money transfers. Criminal proceedings, inter alia tax fraud, were instituted against the bookkeeper W. and the chairman and principal shareholder K.S. Some time later, the Tax Administration instituted new proceedings against K.S. and the K.S. AG for back payment of taxes. K.S. and K.S. AG were informed that criminal proceedings on account of tax evasion might be instituted; they were given the opportunity to comment thereupon. In 1989 the cantonal finance department imposed backpayments and fines on K.S. and on K.S. AG. These orders were appealed to the Administrative Court and then to the Federal Supreme Court, on the grounds, inter alia, of the unfairness of the proceedings. The appeals were dismissed by the Federal Supreme Court in its decisions of 6 February 1991. The Court first dealt with the complaints under Article 6 of the Convention that they had not had an oral hearing, that neither K.S. nor the organs of the K.S. AG had been heard, that they had not been able to participate in the evidentiary

36. See the Federal Supreme Court judgment BGE 117 Ib 367 of 15 November 1991 and the judgments of 5 July 1991 and 22 May 1992.
37. ECtHR, judgment of 29.08.1997, case of *A.P., M.P. and T.P. v. Switzerland* (71/1996/690/882); see also ECtHR, judgment of 29.08.1997, case of *E.L., R.L. and J.O.-L. v. Switzerland* (75/1996/694/886).
38. Federal Supreme Court judgment of 24 August 1998; BGE 124 II 480; revision of the judgment of 5 July 1991 after the ECtHR judgment of 29.08.1997, case of *A.P., M.P. and T.P. v. Switzerland* (71/1996/690/882).
39. Federal Supreme Court judgment of 19 August 1999, published in *Der Steuerentscheid*, 1999 B 97.41 Nr.12; see also ECtHR, judgment of 29 August 1997 concerning *S.A.P., M.P. and T.P.*
40. Administrative Court of the canton of Bern, judgment VGE 19987 of 30 June 1999.

proceedings, and that they had not been informed of the charges brought against them. With reference to the tax law of the canton of Zürich and to its own previously published case law, the Court confirmed that a request for reopening the proceedings according to this provision constituted an effective remedy to complain about their unfairness. As K.S. and the K.S. AG had failed to employ this remedy, the Court declared these complaints inadmissible for non-exhaustion of cantonal remedies. The Court then dealt with the complaints under Article 6(2) of a breach of the presumption of innocence. The Court held that it fell to the Tax Administration to prove that accused's turnover had not been declared to the tax office; however, it did not fall to the Tax Administration further to prove that there had been circumstances leading to a reduction of taxes for K.S.; such proof was not only extremely difficult, it also made a distinction between tax delinquents and honest taxpayers. In the present case, the Court found that K.S. had failed to show that he had transferred certain amounts to W.; thus, it did not infringe the presumption of innocence if it was assumed that the moneys had in fact stayed with him. In respect of the K.S. AG the Federal Supreme Court found that it did not breach the presumption of innocence if, in order to establish culpability of a company, at least one of its agents had acted culpably. In the present case, it sufficed that K.S., as agent of the K.S. AG, had committed tax evasion. On the other hand, the Federal Supreme Court declared inadmissible K.S.'s complaints that, contrary to Article 6(2) of the Convention, K.S. AG had as a company been charged with a criminal offence, and that punishing both applicants for the same offence breached the principle of *ne bis in idem*. The Court found, inter alia, that these complaints had not previously been raised before the Administrative Court.[41]

With respect to personal hearings, the Administrative Court of the canton of Thurgau considered the imposition of penalties without a personal hearing not to be a violation of the Convention if the accused person is granted the possibility to appeal in a procedure in which a personal hearing will be granted.[42] The Federal Supreme Court judgment of 22 January 1993 (BGE 119 Ib 12) deals with the right to be informed promptly in detail of the nature and cause of the accusation during the procedure of the finding of facts. A request of S.S., H. U. and E., all accused in a criminal tax procedure, to be allowed to study the files with the facts of finding while the procedure of finding the facts by the authorities was not yet finished, was denied. The Federal Supreme Court did not consider the Convention infringed since the accused persons had been informed about the opening of the proceedings and the accusations. According to the Court, in-depth information, including the alleged crime, could take place after the closing of the finding of facts.

C. Article 14 (non-discrimination)

The Federal Supreme Court has held that the non-discrimination clause in Article 14 of the Convention could only be used in relation with other rights granted by the Convention. As such Article 14 of the Convention has no independent character.[43]

D. Article 8 (right to privacy)

Only two cases were found on the right to privacy. In the first case, according to the tax law of the canton of Zurich, it was possible to request from the Tax Administration a certificate giving information concerning a third person's taxable income and net wealth. Ludwig A. Minelli requested to no longer be provided with these certificates with his fiscal data. His request was denied. Minelli appealed, with the argumentation that the handing out of such certificates would violate the right to respect for private and family life. The Federal Supreme Court, in its decision of 15 May 1998,[44] held that the rights under Article 8(2) of the Convention are not absolute. They may be restricted if a limitation (1) has a legal basis, (2) is justified by the public interest or serves for the protection of fundamental rights of other persons, (3) is proportionate to the goals pursued and (4) does not violate the essence of the fundamental right. Furthermore, the Court considered the data contained in the certificates not to be personal data that must be specifically protected. In the decision, however, it was left open whether the issue of such certificates would fall under Article 8 of the Convention or not. As the scope of Article 8 of the Convention can be restricted, the Court held that there was no violation of the Convention.

In the other case examined, taxpayer A complained that the joint tax assessment of married taxpayers would result in nearly the doubling of the tax burden than if the same spouses were taxed separately (the way couples living in concubinage were taxed). A. saw in the joint assessment of spouses a violation of the Articles 8, 12 and 14 of the Convention. The Federal Supreme Court, in its judgment of 10 March 1989,[45] held that there was no breach of Article 8 of the ECHR as this provision did not grant any protection concerning the taxation of families. Article 12, on the other hand, does not deal with the taxation of spouses, and Article 14 itself does not have an independent character and cannot, therefore, serve as a legal basis for a complaint. The appeal of A. was rejected.

E. Article 9 (freedom of religion)

A controversial doctrinal discussion is going on in Switzerland with respect to the levy of parish taxes on companies and the *constitutional* freedom of religion Some scholars deny the applicability of the rights of the freedom of religion in the case of companies; other scholars feel that companies should be allowed to rely on these rights and benefit from the protections under them. Under cantonal tax law, the cantons are free to collect a parish tax to benefit of the recognized parishes in a canton. Several

41. The ECnHR, in its decision of 12 January 1994, *K.S. and K.S. AG v. Switzerland*, (No. 19117/91), rejected the complaints of K.S. and the K.S. AG since the applicants did not comply with the condition as to the exhaustion of domestic remedies; furthermore, the Commission found that there was no breach of the presumption of innocence.
42. Judgment of the Administrative Court of the canton of Thurgau of 21 April 1999, TVR 1999 No. 19.
43. Federal Supreme Court judgment of 10 March 1989, published in *Archiv fur Schweizerisches Abgaberecht*, 59 485.
44. Federal Supreme Court judgment of 15 May 1998, BGE 124 I 176.
45. Federal Supreme Court judgment of 10 March 1989, published in *Archiv für Schweizerisches Abgaberecht*, 59 485.

cantons levy such a tax on individuals and/or companies. An individual who is not a member of a recognized parish is not subject to parish tax. Companies, on the other hand, are subject to parish tax, even if they cannot, in general, be a member of a parish since legal entities do not have a faith. The company Elgg AG, assessed to pay parish tax, appealed by complaining that such a tax would violate the freedom of religion under Article 9 of the Convention as the Elgg AG, being a company, could not be a member of a parish. Because of the lack of the affiliation with a parish, no tax should be due. The Federal Supreme Court held[46] that Article 9 of the Convention does not prohibit granting benefits to certain specific parishes, but would only prohibit interference in practising the religion. The right of certain parishes to collect taxes would not infringe Article 9 of the Convention. Furthermore, as the company in question was not an entity with religious purposes, the Court dismissed any rights under Article 9 of the Convention. The ECnHR dismissed the appeal as unfounded, with the argumentation that a company with an economic purpose cannot benefit from the rights under Article 9 of the Convention.[47] The Federal Supreme Court has recently confirmed its case law on the imposition of parish taxes on companies.[48]

T., originally from Sri Lanka, was working in Switzerland. Since T. was a foreigner, his salary earned in Switzerland was taxed at source. The wages tax included also parish tax. T., being Hindu, applied for a refund of the parish tax withheld at source; he received a refund for the last five years. The Tax Administration refused, however, a refund for parish taxes withheld more than five years ago. It argued that the right for the refund fell under the statute of limitations. T. appealed, arguing that the freedom of thought, conscience and religion had been violated. The Federal Supreme Court, in its judgment of 9 July 1998,[49] rejected the appeal. T. as Hindu was, in principle, not obliged to pay parish tax. Since the tax was withheld at source, it was up to T. to apply for a refund. The Court did not see any violation of the Convention where the possibility to apply for the refund was limited by a statute of limitations of five years.

III. JURISPRUDENCE (AND DOCTRINE) ON THE SUBSIDIARY ARTICLES OF THE CONVENTION

A. Articles 5, 7, 9 and 10 and on Article 4 of Protocol No. 7

In Switzerland men liable to military service had to take part yearly in military repetition course. For reasons of conscience, M.B. refused to join the courses. As a consequence, he was imprisoned for three months and excluded from the army. In addition, the Department of Defence levied a compensation duty on M.B. for being exempt from the repetition courses. As M.B. did not pay the compensation duty, he was again punished with imprisonment. M.B. considered the second imprisonment in violation of Article 7 (*nulla poena sine lege*) and Article 9 (freedom of thought, conscience and religion) of the Convention as well as Article 4 of Protocol No. 7 (*ne bis in idem*). In its judgment of 30 May 1990, the Federal Supreme Court rejected the appeal of M.B., holding that, inter alia, the principle of *ne bis in idem* was not violated as the two imprisonments were each based on different facts and reasons. Concerning the violation of Article 9 of the Convention, the Court argued that this freedom could not be applied for refusing a financial obligation in a democratic process. No violation of the principle *nulla poena sine lege* was considered as there existed a clear legal provision in the form of an approved law.[50]

In a similar case, R.B. was imprisoned for three months (and excluded from the army). For compensation duties not paid, he was again condemned. R.B. appealed this, arguing that there was a violation of the principle of *ne bis in idem*. Furthermore, he argued a violation of Article 5 (right to liberty), Article 9 (freedom of religion) and Article 10 (freedom of expression) of the Convention. He claimed, inter alia, that imprisonment for not paying a duty would not be an adequate measure in a democratic state. The penal severance was a result of a totalitarianism which was in conflict with the Convention. The Federal Supreme Court, in its judgment of 20 July 1989, rejected the appeal, holding that it was unsubstantiated.[51]

B. Article 4 of Protocol No. 7 to the ECHR and Article 14(7) of the ICCPR

X., owner of an enterprise, was condemned in February 1991 by the court of D. to five months of prison and a penalty of CHF 12,000 for tax fraud. In July 1992 the Tax Administration started - in respect of the same income - a proceeding concerning supplementary tax and tax evasion. As a consequence, a supplementary tax of CHF 40,171.50 and a penalty of CHF 35,000 for tax evasion was imposed on X by the Administrative Court of the canton of Zurich. X. appealed at the Federal Supreme Court against these decisions, arguing that the principle of *ne bis in idem* was violated since he was punished by two different administrative bodies, once for tax evasion (*Steuerhinterziehunq*) and once for tax fraud (*Steuerbetruq*). The Federal Supreme Court, in its judgment of 24 September 1996,[52] stated that the principle of *ne bis in idem* deviates in Switzerland from the case law, from Article 4 of the Protocol No.7 to the ECHR and from Article 14(7) of the ICCPR. It held that it is in violation of the principle if somebody is punished twice for the same crime. The principle must also be respected where two different authorities judge the same facts. The Court, however, changed its settled case law and ruled that tax fraud does not overrule tax evasion. The two regulations are of real concurrence; as such tax evasion is not assimilated where an accused

46. Federal Supreme Court judgment of 6 October 1976, BGE 102 IA 468.
47. See Federal Supreme Court judgment of 13 June 2000, No. 2P.130/1999; or "Decisions et rapports 16", at 85 et seq.; or Verwaltungspraxis der Bundesbehörden, 47/1983 No.190.
48. See Federal Supreme Court judgment of 13 June 2000, No. 2P.130/1999.
49. Federal Supreme Court judgment of 9 July 1998, BGE 124 I 247.
50. The Federal Supreme Court judgment was confirmed by the judgment of the ECnHR of 5 May 1993, *M.B. v. Switzerland* (No. 17889/91).
51. The European Commission of Human Rights, in its judgment of 8 January 1993, *R.B. v. Switzerland* (No. 16345/90), rejected R.B.'s complaint.
52. Federal Supreme Court judgment of 24 September 1996, BGE 122 I 257.

person is punished for tax fraud. Thus, the Court considered that punishment for tax fraud and tax evasion for the same delict was not in violation of Article 4 of the Protocol No.7 to the ECHR and from Article 14(7) of the ICCPR.

IV. CONCLUSION

Constitutional basic rights and tax law have common historical roots. The non-resolvable autonomy of constitutional law and taxation does not, however, fit into the modern approach to constitutional basic rights. Certainly, individual interests will always have to give way to public fiscal interests. The borderline separating these two fields of interests must be of a constitutional character.[53] This fundamental principle must apply especially where a state acts by using its penal powers in the field of taxation. The not always transparent practice of the legislator, of the courts and the administration as well as in the doctrinal writings show the ongoing tension of the historical conflict concerning the question of the applicability of constitutional rights in the field of taxation.

Swiss case law in the field of taxation is influenced by the friendly relations between the Swiss tax authorities and the Swiss populace. As a Swiss speciality there is Swiss bank secrecy, which is protects the citizens against the state. As a consequence of this right, however, a citizen has the obligation to contribute honestly and actively in his tax assessment. Thus, there was originally little understanding on the part of the tax authorities for the right not to incriminate oneself.

Furthermore, the right to an independent and impartial tribunal or the right to a public hearing has always been a difficult issue for Switzerland. Most public duties and obligations are delegated to the cantons and municipalities and these duties and obligations are often carried out by small, local committees based on volunteer work. A lack of professionalism is often the result. This is another area of tension between the Swiss case law on taxation and the procedural obligations of the Convention. Switzerland is, however, aware that it may have to adjust its standards to meet its ECHR obligations.

53. See Max Imboden, "Die verfassungsrechltiche Gewährleistung des Privateigenturns als Schranke der Besteuerung", in: Max Imboden, *Staat und Recht*, Basel 1971, at 539.

TABLE OF CASES

Court reference number	Parties and date	Law reports	Articles considered	Summary of complaint	Result
BGE 121 II 273 Federal Supreme Court	J.B. v. the cantonal Administration for Direct Federal Taxes of the canton of Valais and the Tax Appeals Commission of the canton of Valais 07.07.1995	GER	6	Is a fine for not fulfilling the obligation of cooperation in the assessment procedure in contravention with the Convention?	No breach of the right to the presumption of innocence or of the right not to incriminate oneself.
BGE 121 II 257 Federal Supreme Court	A. v. Tax Appeals Commission of the canton of Berne 07.07.1995	F	6(2)	Tax evasion proceedings: – Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law; and – No obligation to be compelled to testify against himself or to confess guilt.	No breach of the guarantees in Art. 6(2) as these guarantees do not exclude a taxpayers' obligation in an assessment procedure or in a tax evasion proceeding to collaborate with the tax administration for the finding of facts.
BGE 119 Ib 311 Federal Supreme Court	S.X. v. the Cantonal Tax Administration of Zurich and the Tax Appeals Commission of the canton of Zurich 11.10.1993	GER	6(1)	Breach of principles of: – a judgment within a reasonable time; and – a public hearing. No possibility to defend himself in person in a personal hearing.	– The convention is applicable to tax evasion proceedings. – No violation of the principle of judgment within a reasonable time as the delay was the appellants' fault. – Principle of a public hearing not violated as the appellant

Court reference number	Parties and date	Law reports	Articles considered	Summary of complaint	Result
					wished to have a confidential procedure. – Principle of personal defence violated as appellant was not heard personally.
Federal Supreme Court; published in STE 1997 A-26 1	X. v. the Ministry of Finance of the canton of Zurich 19.08.1996	GER	6(1)	Breach of the entitlement of an independent and impartial tribunal where the revision of a communal decision concerning the granting of social allowances is done by the cantonal Ministry of Finance.	No breach of the Convention as the granting of social allowances is not a question of the determination of civil rights and obligations or of any criminal charge.
Federal Supreme Court	H.W.K. v. the Appeals Commission for Federal Taxes 07.07.1993	GER	6(1)	The Appeals Commission for Federal Taxes is not an independent juridical body according to Art. 6(1) of the Convention.	No breach of the Convention as the cantonal supervisory body did not concern the Commission's activities.
Federal Supreme Court	H.B. v. administrative court of the canton of Obwalden 04.01.1995	GER	6	– breach of the principle ne bis in idem; – no independent court; – breach of the guarantee of proceedings in a reasonable time.	No breach of the principle ne bis in idem as two different tax jurisdictions were concerned, which had to protect their different tax revenue requirements with a different tax penal law. No breach of the guarantee of an independent court as Art. 6(1) of the Convention requires the judge to consider all relevant facts, including previous proceedings if they stand in a factual relation with the present case and as H.B. had not challenged.
BGE 117 Ib 367 Federal Supreme Court	Federal Tax Administration v. heirs of X. and cantonal Supreme court of the Canton of Lucerne 15.11.1991	GER	6(2)	Breach of Art.6(2) of the Convention by imposing a penalty on the heirs of a taxpayer for tax evasion committed by the latter.	No breach of Art. 6(2) as not the heirs, but the deceased is presumed guilty.
Federal Supreme Court	E.L., R.L. and J.O-L. v. Federal Tax Administration 22.05.1992	GER	6(2)	Breach of Art.6(2) of the Convention by imposing a penalty on the heirs of a taxpayer for tax evasion committed by the latter.	No breach of Art. 6(2) as not the heirs, but the deceased is presumed guilty.
BGE 124 II 480 Federal Supreme Court	Heirs of P. v. cantonal Tax Administration of the canton of Zurich and Federal Tax Appeals Commission of the canton of Zurich 24.08.1998	GER	6(2)	Breach of Art. 6 (2) of the Convention by imposing a penalty on the heirs of a taxpayer for tax evasion committed by the latter.	Breach of Art. 6(2).

Court reference number	Parties and date	Law reports	Articles considered	Summary of complaint	Result
BGE 19987 Administrative Court of the canton of Bern	P.X. v. the Tax Appeals Commission of the canton of Bern 30.06.1999	GER	6(2)	– Breach of the presumption of innocence. – Right for refund of costs for legal representation in a procedure where the Convention is breached.	Art. 6(2) of the Convention: – protection against the reversal of the burden of proof since nobody may be forced to prove his innocence; and – does not give the accused person a right for refund of the costs in the case of termination of the proceedings or in case of acquittal.
Federal Supreme Court; published in STE 20008-97 41	X. 19.08.1999		6(2)	Breach of Art 6(2) by levying a supplementary tax from the heirs for income not declared by a deceased.	No breach of the 1 Convention as a supplementary tax is not a criminal charge according to the convention.
Federal Supreme Court	K.S. and K.S. AG v. Administrative Court of the canton of Zurich 06.02.1991	GER	6 4/7	Breach of Art. 6 because – they had not had an oral hearing; – they had not been heard; – they had not been able to participate in the evidence proceedings; and – hat they had not been informed of the charges brought against them. Breach of the principle ne bis in idem as both K.S. and the K.S. AG were punished for the same offence.	Inadmissible as failure to exhaust domestic remedies; and no breach of the presumption of innocence.
VGE 99-04-21; TVR Nr. 19 Administrative Court of the canton of Thurgau	E. v. cantonal Tax Administration of the canton of Thurgau 21.04.1999	GER	6	No possibility for defense in a personal hearing where a fine is given without hearing the taxpayers arguments.	No breach of the principle of personal hearing as the fine could be appealed in a procedure granting the personal hearing.
BGE 119 IB 12 Federal Supreme Court	S.S., H., U., E. and L. v. the Director of the Federal Tax Administration 22.01.1993	GER	6(3)(a)	Breach of the right to be informed promptly in detail of the nature and cause of the accusation.	No breach as the accused person has to be informed about the opening of the trial and the accusations; the in-depth information, including the considered crime, however, may take place after the finding of facts. The principle is not breached if the accused person is allowed the inspection of files only during the trial.

Court reference number	Parties and date	Law reports	Articles considered	Summary of complaint	Result
GER 1995 Nr. 9 Government of the canton of Solothurn	X. v. cantonal Tax Administration of the canton of Solothurn 1995	GER	6	No hearing by an independent and impartial tribunal established by law where the body for the juridical review of an order to ensure the payment of tax is the executive government.	No breach of Art. 6 of the Convention as this article is not applicable in the field of taxation and as it is not applicable to ensure the payment of taxes.
BGE 124 I 176 Federal Supreme Court	Ludwig A. Minelli v. the municipal Tax Administration of Maur, the Ministry of Finance of the canton of Zurich and the government of the canton of Zurich 15.05.1998	GER	8	Breach of the right to respect for private and family life where the municipal tax administration issues certificates on a taxpayers. taxable income or net wealth/worth to interested third parties.	Left open whether the issue of such certificates to third parties falls within th scope of Art. 8 of the Convention. No breach of the right to respect for private and family life, however, as the scope of Art. 8 of the Convention may be limited if such limitation is implemented by a legal basis and if it is justified by public interest or if it serve for the protection of fundamental rights of other persons.
Federal Supreme Court; published in ASA 59 485	A.M. v. Tax Appeals Commission of the canton of Basel-Stadt 10.03.1989	GER	8, 12, 14	Breach of Arts. 12 and 14 (in connection with Arts. 8(1) and (2) of the Convention as a joint tax assessment of married taxpayers results in nearly double the tax burden than it would result if the spouses were taxed separately.	No breach of the Convention: – Art. 8 does not grant protection of a family against taxation; – Art. 12 does not deal with the taxation of spouses; and – Art. 14 relates only to the rights dealt with in the Convention.
BGE 102 Ia 468 Federal Supreme Court	Buchdruckerei Elgg AG v. evangelic parish Elgg and cantonal supreme court of the canton of Zurich 06.10.1976	GER	9	Breach of the freedom of thought, conscience and religion if a company is obliged to pay parish tax.	No breach as Art. 9 of the Convention, guarantees the free choice of religion or of thought; these rights may be exercised only by individuals. Art. 9 does not prohibit the levy of parish taxes on companies.
BGE 124 I 247 Federal Supreme Court	T. v. tax administration and cantonal supreme court of the canton of Lucerne 09.07.1998	GER	9	Breach of the freedom of thought, conscience and religion if parish tax withheld from salaries (by the use of a wages tax) is not repaid to an individual who is not subject to parish tax (because the individual is Hindu and thus not member of an officially accepted church in the canton of Lucerne).	Art. 9 of the Convention prohibits the levy of a parish tax from individuals which are not member of this parish. It does, however, not prohibit the implementation of a statute of limitations for the refund of the parish tax where the tax is collected automatically through a wages tax. Even if an individuals' salary is subject to wages tax, a taxpayer

Court reference number	Parties and date	Law reports	Articles considered	Summary of complaint	Result
					has still procedural rights and obligations. There is no breach of Art. 9 of the Convention where the repayment of the parish tax is connected to a statute of limitations.
Federal Supreme Court	M.B. v. Court of Cassation of the canton of Vaud 30.05.1990	French	7,10,4/7	Breach of the principle of nulla poena sine lege, of the freedom of thought, conscience and religion and of the principle ne bis in idem where, after being punished for not doing the military service, a person is punished again when he is not paying the compensation duty (levied for not doing military service).	No breach of the convention.
Federal Supreme Court	H.B. v. Court of Cassation of the canton of Geneva 20.07.1989	French	5,9,10,4/7	Breach of the right to liberty, the freedom of religion, the freedom of expression and the principle of ne bis in idem where, after being punished for not doing the military service, a person is punished again when he is not paying the compensation duty (levied for not doing military service).	No breach of the convention.
BGE 122 I 257 Federal Supreme Court	X. v. the ministry of finance of the canton of Zurich and the cantonal supreme court of the canton of Zurich 24.09.1996	GER	4/7	Breach of the principle “ne bis in idem” where a taxpayer is punished by two different administrative bodies for tax evasion (*Steuerhinterziehung*) and for tax fraud (*Steuerbetrug*).	No breach of the principle if the resulting penalties are not excessive and if th penalty for the tax evasion is not increased by the fact that the taxpayers was already punished for tax fraud.