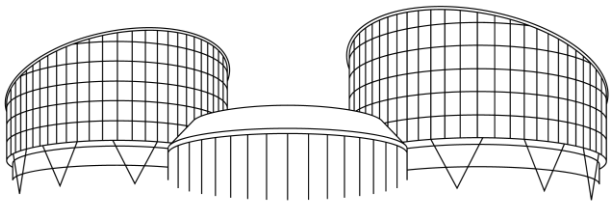

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF N.K.M. v. HUNGARY

(Application no. 66529/11)

JUDGMENT

STRASBOURG

14 May 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of N.K.M. v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 2 April 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 66529/11) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms N.K.M. ("the applicant"), on 19 October 2011. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr D. Karsai, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant complained under Article 1 of Protocol No. 1 – read alone and in conjunction with Article 13 – that the imposition of a 98% tax on the upper bracket of her severance constituted an unjustified deprivation of property, or else taxation at an excessively disproportionate rate, with no remedy available.

Moreover, she argued under Article 8 that the legal presumption of the impugned revenues contravening good morals amounted to an interference with her right to a good reputation.

She finally asserted that Article 14 of the Convention read in conjunction Article 1 of Protocol No. 1 had been violated because only those dismissed from the public sector were subjected to the tax and because a preferential threshold was applicable to only a group of those concerned.

4. On 14 February 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 19... and lives in Budapest.

6. The applicant, civil servant for thirty years, had been in the service of a government ministry. On 27 May 2011 she was dismissed, with effect from 28 July 2011. Her dismissal was part of a wave of similar measures throughout the entire civil service.

7. On dismissal, the applicant was statutorily entitled to two months' salary for June and July 2011 during which time she was exempted from working. In addition, she was to receive severance pay amounting to eight months' salary in application of section 19(2) g) of Act no. XXIII of 1992 on the Status of Civil Servants, as well as to an unspecified sum corresponding to unused leave of absence.

These benefits – in so far as they did not represent compensation for unused 2011 leave of absence – were subsequently taxed at 98% in their part exceeding 3.5 million Hungarian forints (HUF)[1]. The exceeding part was HUF 2.4 million[2]. This represented an overall tax burden of approximately 52% on the entirety of the severance, as opposed to the general personal income tax rate of 16% in the relevant period.

The tax amount in question was never disbursed to the applicant, but was withheld by the employer and directly transferred to the tax authority.

II. RELEVANT DOMESTIC LAW

8. Section 19 of Act no. XXIII of 1992 on the Status of Civil Servants provides as follows:

> "(1) A civil servant ... shall be entitled to severance if his service relationship is terminated by ordinary dismissal ... .
>
> (2) The amount of severance shall be, if the civil servant's service has been at least:
>
> ...
>
> g) 20 years: eight months' salary ..."

9. On 22 July 2010 Parliament adopted Act no. XC of 2010 on the Adoption and Modification of Certain Economic and Financial Laws ("the Act"). The Act, which was published in the Official Gazette on 13 August 2010, introduced *inter alia* a new tax on certain payments for employees of the public sector whose employment was terminated. Consequently, severance pay and other payments related to the termination of employment (such as compensation for unused leave of absence) exceeding

[1] Approximately EUR 12,000
[2] Approximately EUR 8,300

HUF 2 million became subject to a 98% tax. However, income tax and social security contributions already paid could be deducted from the tax. Notwithstanding the limit of HUF 2 million, the statutory provisions on the sum of severance pay – in some cases amounting to twelve months' remuneration – were not modified. The bill preceding the Act justified the tax with reference to public morals and the unfavourable budgetary situation of the country.

10. The Act entered into force on 1 October 2010; however, the tax was to be applied to the relevant revenues as from 1 January 2010. Simultaneously, the Constitution was also amended establishing retroactive tax liability in respect of the given tax year concerning "any remuneration against good morals" paid in the public sector.

11. The Act was challenged before the Constitutional Court within the framework of an abstract *ex post facto* control. This court found the relevant provisions unconstitutional in decision no. 184/2010. (X.28.) AB on 26 October 2010.

According to the Constitutional Court, revenues earned solely on the basis of relevant statutory provisions (that is, the overwhelming majority of the revenues concerned by the disputed legislation) could not be regarded as being against good morals, and therefore not even the constitutional amendment justified a retroactive 98% tax. The Constitutional Court pointed out that it reviewed the rate or amount of taxes only exceptionally; however, it held that a pecuniary burden was unconstitutional if it was of a confiscatory nature or its extent was clearly exaggerated, i.e. was disproportionate and unjustified. Considering also the "fifty per cent rule" (*Halbteilungsgrundsatz*) set out by the German Federal Constitutional Court – according to which the overall tax load on assets must be limited to 50-60% of the yield on those assets – the court found that the 98% tax was excessive and punitive, yet it equally applied to severance pay earned in a fully untainted manner. The tax was levied on or deducted from the revenues concerned even if their morally doubtful origin could not be established. The Constitutional Court annulled the relevant provisions retroactively, that is, from the day of the Act's entry into force. It relied on the above arguments, rather than on considerations about the protection of property, to which its scrutiny did not extend in the case.

12. The Constitutional Court's decision contained in particular the following considerations:

> "5.2. ... [The Act] applies to ... payments originating in unconditional statutory entitlements and defined by objective criteria, that is, to those ... received from any source specified in the Act and exceeding the [relevant] amount .... The Act does not apply only to budgetary institutions but to other, State-owned employers as well. The use of private resources depends on the citizens' relatively free choices and autonomous decisions. However, decisions concerning public funds are different. [The impugned legislation] relates to public funds, and determines – at least indirectly – the use of public resources.

> 5.3. ... Depending on the circumstances, [the] 98% tax may apply to payments which derive from the obligatory application of cogent legal provisions. ... In these cases, the special tax does not function as a regulatory instrument, given its inescapable factual basis. Nor does it aim to prevent abusive payments; its purpose is rather to levy almost the entire income [in question] for the central budget. ...
>
> The volume of public duties is considered unconstitutional if they have a confiscatory nature or amount to an evidently excessive rate of the kind which can be regarded as disproportionate and unjustified. ...
>
> The material case concerns a substantial punitive tax which also applies to payments which are received, by virtue of law and within the limits of the proper exercise of rights, upon the termination of employment in the public sector. The Act would be applied also in cases where no infringement of law can be established in connection with the payments concerning the termination of a legal relation. It would deprive the taxable persons of incomes originating in unconditional statutory entitlements. ...
>
> To increase budgetary revenues and secure a general and proportionate distribution of public burden is only the secondary and eventual purpose of the legislator when introducing such a tax. The direct purpose of the legislator in this case is to set a certain barrier on incomes by using the means of tax law. However, imposing a tax or other similar duty is no constitutional means to achieve such purpose. Several constitutional instruments are at the disposal of the legislator to accomplish its objective. It may reduce or even abolish some State allowances falling under the scope of the Act for the future, or transform the allocation system so that in the future it should not be possible to acquire further entitlements to allowances above a certain limit. Nonetheless, the discretion of the legislator only prevails in the framework of international and European community law."

13. Upon a new bill introduced on the same day as the date of the Constitutional Court's decision, on 16 November 2010 Parliament re-enacted the 98 % tax with certain modifications, according to which this tax applied from 1 January 2005; however, for the majority of those affected (excluding some senior officials) it only applied to revenues above HUF 3.5 million. The new legislation was published in the Official Gazette of 16 November and entered into force on 30 December 2010.

14. At the same time, Parliament again amended the Constitution, allowing retroactive taxation going back five years. Furthermore, the Constitutional Court's powers were limited: the amended articles of the Constitution contained a restriction on the Constitutional Court's right to review legislation on budgetary and tax issues. This restriction – which has also been maintained in the new Basic Law in force from 1 January 2012 – allows for constitutional review only in respect of violations of the right to life and human dignity, the protection of personal data, freedom of thought, conscience and religion, and the rights related to Hungarian citizenship.

15. Upon a petition for an abstract *ex post facto* control, on 6 May 2011 the Constitutional Court annulled – notwithstanding its limited powers – the five-year retroactive application of the 98% tax in decision no. 37/2011 (V.10.) AB, relying on the right to human dignity. However, the reasoning of the decision underlined that only the taxation of revenues

gathered before the 2010 tax year constituted a violation of the right to human dignity. The Constitutional Court did not find unconstitutional as such the Act's presumption that the relevant revenues infringed good morals; however, it ruled that this presumption should be susceptible to a legal challenge. In view of its limited jurisdiction, it did not consider the substantive aspects of the tax.

16. The Constitutional Court's decision contained in particular the following considerations:

> "1. ... The Constitutional Court has held that the retroactive effect of the Act does not only apply to incomes earned *contra bonos mores*, but also to incomes originating in unconditional statutory entitlements. Payments of statutory amounts [which have not been abolished] cannot be regarded as being *contra bonos mores*.
>
> As regards the prospective provisions of the Act, the Constitutional Court has pointed out that the tax in issue is also applicable to payments received legally and within the limits of proper exercise of rights upon termination of employment in the public sector, and that it deprives the persons concerned of incomes originating in unconditional statutory entitlements. However, in this case the legislator interpreted the "special rate" as an entire withdrawal of the income, by which it overstepped its constitutional mandate and breached the amended constitutional rule of distributing public burden.
>
> 2. In pursuit of decision [no. 184/2010 (X.28.) AB], Parliament amended the rules on the Constitutional Court's competence as well as the provision of the Basic Law determining the distribution of public burden, and re-enacted the special tax. ...
>
> 2.2. ... [The new legislation] contains no reference to the notion "*contra bonos mores*", and allows for retroactive law-making with regard to the fifth tax year in arrears as well as for [any] imposition falling short of [the total] deprivation of income. ...
>
> 3. ... The legal relations falling under the scope of the special tax are typically regulated by the so-called "legal status" Acts [i.e. the Acts concerning the legal status of civil servants]. [In this context, the] salary is specified by the so-called "pay scale", which is independent from the parties and obligatory for them.
>
> [Moreover,] the personal scope of the special tax also includes employers and employees, mainly those who belong under the Labour Code, who can significantly influence the amount of the allowance received upon the termination of employment. ...
>
> In this respect, the special tax is a tax whose purpose is not to generate [State] revenue. It is, in this connection, a regulatory instrument. ... Certain taxes may serve not only the purpose of increasing State revenue, but also function as regulatory instruments. Secondarily, but not insignificantly, [this] taxation can be also seen as part of the State's economic policy. In this regard the legislature is afforded an exceptionally broad constitutional margin of discretion. ...
>
> 4.1.4. ... The special tax is not a general income tax applicable to all types of income, but rather a particular tax levied on non-repetitive, non-regular payments which relate to certain factual circumstances (i.e. the termination of a legal relation) and which exceed a certain limit. ...
>
> Such a tax with *ex nunc* effect cannot be considered to violate the right to protection of human dignity or to constitute an improper interference by the State with individual

autonomy. Taking into account its base, the incomes not belonging in that base and their amounts, the special tax cannot be considered as completely dispossessing the tax subjects. ...

The individual's acquisition of the income subject to the special tax is restricted by a public-law limitation originating in that tax ...

4.2.4. ... In case of misuse of public resources, the limitation on payments might even have retroactive effect, [under] section 70/I (2) of the Constitution. The Constitutional Court has already emphasised in its decision [no. 184/2010 (X.28.) AB] that a retroactive special tax may be imposed on unfairly high payments, on certain types of severance pay or on compensation for significant periods of unused vacation time accumulated over years; the Act aiming at preventing abuses and endorsing the society's sense of justice is not unconstitutional in itself, but must remain within the framework of the amended Constitution.

4.2.5. However, to impose tax on incomes [lawfully] acquired during the tax year ... cannot be considered as the implementation of the new paragraph (2) of section 70/I of the Constitution, but rather interference by a public authority with individual autonomy going to such lengths that cannot have constitutional justification, and therefore violates the taxpayers' human dignity. ...

The special tax does not provide for a fair and just assessment of individual circumstances; its retroactive rules apply to everyone [with two exceptions mentioned above] without differentiation. Nor does it take into account objective circumstances concerning a wide range of taxpayers, such as the economic crisis or emergency situations, which may disadvantageously influence the individuals' circumstances. ..."

17. On 9 May 2011 Parliament again re-enacted the retroactive application of the 98% tax. The amendment to Act no. XC of 2010 was published in the Official Gazette on 13 May and entered into force on 14 May 2011. It provided that only relevant revenues earned after 1 January 2010 should be subject to the tax. The amended legislation did not contain any remedy available to those affected.

18. The Act, as in force as of 14 May 2011, provides (in sections 8-12/B) that the special tax rules are applicable to incomes received on 1 January 2010 or after. Incomes shall be subject to a 98% special tax where the private individual has worked at an economic operator or an organisation operating from public money, the payment is effected on account of the termination of the private individual's work relationship, and the amount of the income exceeds HUF 3,5 million (in certain cases HUF 2 million). Incomes received between 1 January 2010 and 29 December 2010 were declared by private individuals by means of self-assessment, in tax returns submitted until 25 February or 10 May 2011 (depending on the taxpayer group). The tax was payable by the same dates.

19. Members of Parliament, vice mayors and Members of the European Parliament declared their income earned in 2010 and subject to the special tax in a different manner, in a separate tax return submitted until 31 July 2011. They paid the special tax until the same date. Persons subjected to the payment of special tax declared their taxable incomes earned between 1 January 2011 and 13 May 2011 by way of tax returns submitted until

25 February or 20 May 2012 (depending on the taxpayer group), and paid the tax by the same dates. In all other cases, the special tax is deducted by the payment issuer as withholding tax, and the deduction is indicated in the private individual's tax return for the given revenue year.

Any charges paid by or deducted from the private individual including, in particular, personal income tax or individual contributions shall be regarded as tax advances paid on the special tax.

III. RELEVANT LAW OF THE EUROPEAN UNION

20. The Charter of Fundamental Rights of the European Union provides as follows:

Article 34 - Social security and social assistance

"1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices."

21. The European Court of Justice held in Case C-499/08 *Andersen v. Region Syddanmark*, [2010] ECR I-09343 as follows:

"29. The aim pursued by the severance allowance of protecting workers with many years of service in an undertaking and helping them to find new employment falls within the category of legitimate employment policy and labour market objectives provided for in Article 6(1) of Directive 2000/78."

22. European Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector (2009/384/EC) provides as follows:

"1. Excessive risk-taking in the financial services industry and in particular in banks and investment firms has contributed to the failure of financial undertakings and to systemic problems in the Member States and globally....

5. Creating appropriate incentives within the remuneration system itself should reduce the burden on risk management and increase the likelihood that these systems become effective. Therefore, there is a need to establish principles on sound remuneration policies."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

23. The applicant complained that the levying of tax at a rate of 98% on part of her severance pay had amounted to a deprivation of property which was unjustified. She relied on Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

24. The Government contested that argument.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The Government

26. The Government did not dispute that the contested deprivation of revenue had amounted to an interference with the applicant's right to property. However, in their view, this interference was prescribed by law and pursued the legitimate aims of satisfying society's sense of justice and of protecting the public purse. These aims of general interest were also recognised by the European Union which had initiated legislative steps (see paragraph 22 above) against excessive severance payments, as their amount often *per se* violated society's sense of justice and the remuneration policy applied in the financial sector to executive officers had contributed to the international financial crisis of the past years.

27. The Government were further of the opinion that, in order to achieve the above aims of general interest, taxation can, in a democratic society, be

regarded as the most suitable regulatory means. In so far as the impugned tax could be seen as modifying the contents of the applicant's existing employment contract, they submitted that respect for contracts already concluded required that their modification or cancellation take place according to the laws, even if they contained seemingly lawful commitments at the expense of the State budget violating society's sense of justice.

28. The Government pointed out that by introducing the special tax the lawmaker had intended to strike a fair balance between the aim pursued and the limitation on the individual's rights – by paying, at the same time, due attention to the circumstance that, in the midst of a deep world-wide economic crisis, additional burdens should be borne not only by the State but also by other market participants. In the Government's view, a wide margin of appreciation should be left to the national authorities in this respect. Significantly high tax rates were not unknown under the various tax regimes.

The Government also emphasised that severance not exceeding HUF 3.5 million did not fall under the impugned Act (in this part, it was subject to the general personal income tax rate of 16%); therefore the sharing of burdens should be regarded as fair and just. In this connection the Government submitted that this sum was approximately equivalent to sixteen months' average salary in Hungary in 2010.

29. The deprivation of revenue had not imposed an excessive individual burden on the applicant, either. She had not been deprived of an existing possession or income, therefore the payment of the tax, deducted by her employer from her severance pay, had not entailed intolerable hardships for her. The rate of the tax had not been excessive and – having regard to average Hungarian revenues, the social and economic situation and the amount of benefits received by the applicant – had not imposed a disproportionate burden on the applicant or endangered her subsistence.

b. The applicant

30. The applicant argued that the interference with her property rights had originated in legislation whose purported aim – that is, "to protect society's sense of justice" – was characteristic of totalitarian regimes, violated the Convention and, in any event, was too vague to meet the requirement of foreseeability. Consequently, the restriction could not be considered either as "prescribed by the law" or "pursuing a general interest".

31. Moreover, the severance pay in question would have been vital for the applicant, because she was unemployed after her termination of employment and for more than a year, without any income and, as a result of her sudden dismissal, she did not have the opportunity to take any

measure aimed at alleviating its consequences. Therefore, the measure in question constituted a disproportionate and excessive burden for her.

2. The Court's assessment

a. **Whether there were "possessions" within the meaning of Article 1 of Protocol No. 1**

32. In the present circumstances, the nature of the "possession" calls for a closer scrutiny in view of the fact that the applicant never actually possessed the entirety of the severance pay in question, the special tax having been directly withheld by the authorities.

33. The concept of "possessions" in the first paragraph of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999–II; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004–V).

34. The Court points out that "possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002–VII).

35. Thus, a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence. However, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX; *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], no. 38433/09, § 173, ECHR–2012; *Eparhija Budimljansko-Nikšićka and Others v. Montenegro* (dec.), no. 26501/05, §§ 66 to 69, 9 October 2012).

36. In the present case, the Court finds that – irrespective of whether the applicant received part of the severance pay with the obligation to report it

and to pay in due course the applicable tax or whether the tax is automatically deducted from the severance – the severance constitutes a substantive interest protected by Article 1 of Protocol No. 1. For the Court, it is undeniable that it "has already been earned or is definitely payable," which turns it into a possession for the purposes of that provision, especially since the Constitutional Court qualified this sum as one originating in an unconditional statutory entitlement (see paragraphs 12 and 16 above), not subject to any dispute or ulterior judicial finding, once the service relation is terminated.

Furthermore, the Court would add that the very fact that tax was imposed on this income demonstrates that it was regarded as existing revenue by the State, it being inconceivable to impose tax on a non-acquired property or revenue.

37. The Court would further point out that a statutory undertaking concerning severance can be amended in the event of a change of social policy and that in respect of such choices the State has a wide margin of appreciation – especially if assuming that the severance constitutes a "legitimate expectation" rather than an "existing possession". The Court will therefore respect the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98). However, the Court emphasises that, in carrying out that scrutiny, consideration shall be given to the nature of the expectation in question. In the case of a civil servant, who comes under a specific legal regime and who willingly accepted limitations on some of his fundamental rights and a remuneration unilaterally dictated by law, as noted by the Constitutional Court (see paragraph 16 above), the statutorily stipulated severance represents a long-term expectation on the side of the civil servant and a commitment on the side of the State as employer. For the Court, such long-term expectations, reinforced by many years of unchanged statutory guarantees, cannot be lightly disregarded. The justification for the protection of legitimate expectations originating in a statutory undertaking is that the law should protect the trust that has been reposed in the undertaking made by legislation. For the Court, good government depends upon trust between the governed and the governor (see, *mutatis mutandis*, in the context of statutorily due subsidies, *Plalam S.P.A. v. Italy*, no. 16021/02, §§ 35 to 42, 18 May 2010). Unless that trust is sustained and protected, governments will not be believed and civil servants will not order their affairs on that assumption as required by their heightened loyalty.

38. In the particular case, the Court observes that the applicant civil servant rendered her services to the State trusting the latter that the services (including guarantees of severance) provided by the employer in consideration of the loyalty and work, would create a situation where the legitimate expectation would be further corroborated by the State's

continued performance of those services – which in the Court's view cannot be set aside without appropriate reasons.

39. Furthermore, severance cannot be simply regarded as a pecuniary asset; given its social function, the entitlement to severance allowance must be rather seen as a socially important measure intended for workers who have been made redundant and who wish to remain in the labour market. The European Court of Justice considered this – although in a different context – to be an important policy goal in the European Union (see paragraph 21 above).

40. The Court further finds that a statutory scheme that provides for severance (both to civil servants and other employees) encompasses a statutory entitlement. Moreover, this is not a mere *ex gratia* entitlement but an acquired right that is statutorily guaranteed in exchange for the service rendered.

41. The Court would add *per analogiam* that where a Contracting State has in force legislation providing for the payment as of right of a pension – whether or not conditional on the prior payment of contributions – that legislation has to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010). For the Court, similar considerations apply to measures affecting severance. Just as much as with pension, it is of particular importance if the legislature afforded the affected employees a transitional period within which they would be able to adjust themselves to the new scheme (see, *mutatis mutandis*, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, § 72, 13 December 2011).

The Court notes at this juncture that the Constitutional Court found that the taxation of severance paid before the tax year and already used had violated human dignity, in view of the difficulty of adjustment to the new burden by the person concerned (see paragraph 15 above) – although it must be noted that in the particular case this was not the applicant's precise situation.

b. Whether there was an interference

42. In its judgment of 23 September 1982 in the case of *Sporrong and Lönnroth v. Sweden*, the Court analysed Article 1 as comprising "three distinct rules": the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest (Series A no. 52,

§ 61). The Court further observed that, before inquiring whether the first general rule has been complied with, it must determine whether the last two are applicable (ibid.). The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *James and Others*, cited above, § 37).

Moreover, an interference, including one resulting from a measure to secure payment of taxes, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must be a reasonable relationship of proportionality between the means employed and the aims pursued. The question to be answered is whether, in the applicant's specific circumstances, the application of the tax law imposed an unreasonable burden on her or fundamentally undermined her financial situation – and thereby failed to strike a fair balance between the various interests involved (see *M.A. and 34 Others v. Finland* (dec.), no. 27793/95, 10 June 2003; *Imbert de Trémiolles v. France* (dec.), nos. 25834/05 and 27815/05 (joined), 4 January 2008; *Spampinato v. Italy* (dec.), no. 69872/01, 29 March 2007; and *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse v. Sweden*, no. 13013/87, Commission decision of 14 December 1988, Decisions and Reports 58, p. 186).

43. The Court recalls that in certain circumstances loss of ownership of property resulting from a legislative measure or from an order of a court will not be equated with a "deprivation" of possessions: in the cases of *AGOSI v. the United Kingdom* (24 October 1986, Series A no. 108) and *Air Canada v. the United Kingdom* (5 May 1995, Series A no. 316-A), the forfeiture or other loss of ownership was treated as a "control of use" of property within the meaning of the second paragraph of Article 1 Protocol No. 1. In *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* (23 February 1995, Series A no. 306-B), impoundment was considered as a measure securing the payment of taxes within the meaning of the second paragraph of Article 1 *in fine*, while in *Beyeler* (cited above), the interference with the applicant's property rights was examined under the first sentence of that Article.

The Court does not consider it necessary to rule on whether the second sentence of the first paragraph of Article 1 applies in this case. The complexity of the factual and legal position prevents the impugned measure from being classified in a precise category. The Court recalls that the situation envisaged in the second sentence of the first paragraph of Article 1 is only a particular instance of interference with the right to peaceful

enjoyment of property as guaranteed by the general rule set forth in the first sentence (see, for example, *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 106, Series A no. 102). The Court therefore considers that it should examine the situation complained of in the light of that general rule (cf. *Beyeler*, cited above, § 106).

44. In the Court's view, the classification of a general measure taken in furtherance of a social policy of redistribution as a "control of use" of property rather than a "deprivation" of possessions is not decisive in so far as the principles governing the question of justification are substantially the same, requiring both a legitimate aim and the preservation of a fair balance between the aim served and the individual property rights in question.

Furthermore, a legislative amendment which removes a legitimate expectation may amount in its own right to an interference with "possessions" (see, *mutatis mutandis*, *Maurice v. France* [GC], no. 11810/03, §§ 67-71 and 79, ECHR 2005–IX; *Draon v. France* [GC], no. 1513/03, §§ 70-72, 6 October 2005; and *Hasani v. Croatia* (dec.), no. 20844/09, 30 September 2010).

45. In the present case, the Court notes that the parties agree that the impugned taxation represents an interference with the applicant's right to peaceful enjoyment of possessions.

The Court will examine the issue under the first paragraph of Article 1 of Protocol No. 1, subject to the specific rule concerning the payment of taxes contained in Article 1 *in fine*.

c. Lawfulness of the interference

i. General principles

46. The Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: indeed, the second sentence of the first paragraph of that Article authorises the deprivation of possessions "subject to the conditions provided for by law". Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000–XII, and *Broniowski*, cited above, § 147).

47. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness.

48. It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay*

v. Italy, no. 58858/00, §§ 82-83, 8 December 2005). The Court would add that similar considerations apply to interferences with the peaceful enjoyment of possessions.

As to the notion of "foreseeability", its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.1. and Di Stefano*, cited above, § 143). Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see, *mutatis mutandis*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 88, 14 September 2010; *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 96-98, 25 October 2012).

49. The Court would, moreover, reiterate the finding in its settled case-law that the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the domestic policy-maker should be afforded a particularly broad margin of appreciation (see, for example, *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 52, ECHR 2006–VI).

50. In so far as the tax sphere is concerned, the Court's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, §§ 75 to 83, *Reports of Judgments and Decisions* 1997–VII; *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 559, 20 September 2011).

51. Moreover, since in the present case the interference with the applicant's peaceful enjoyment of possessions was incarnated by a tax measure, it is convenient to point out that retroactive taxation can be applicable essentially to remedy technical deficiencies of the law, in particular where the measure is ultimately justified by public-interest considerations. There is in fact an obvious and compelling public interest to ensure that private entities do not enjoy the benefit of a windfall in a changeover to a new tax-payment regime (see *National etc.*, cited above, §§ 80 to 83).

However, no such deficiency of the law has been demonstrated in the circumstances of the present case. Therefore, the Court considers that particular caution is called for when assessing whether or not the impugned measure was "lawful" for the purposes of Article 1 of Protocol No. 1.

ii. Application of the above-mentioned principles to the present case

52. The Court notes that, while it is true that the disbursement and the taxation of the severance in question occurred after the enactment of the final version of the impugned legislation, the taxation complained of can be argued to have certain retroactive features, since – although the severance itself was generated on the applicant's dismissal – the work in respect of which it was due had been done prior to the introduction of the legislation at issue and the tax concerned remuneration for services provided before the entry into force of the applicable tax law.

53. The Court cannot overlook the legislative process leading to the enactment of the law affecting the applicant. It observes that the Constitutional Court found, in its first decision (see paragraph 11 above), the measure unconstitutional for being confiscatory, especially in regard to statutorily provided severance to civil servants who could not be considered to have received it in violation of good morals or otherwise illegally.

In its second decision (see paragraph 15 above) the Constitutional Court held that for the current tax year (that is, for 2010), the tax was not unconstitutional in regard to severance payments which were made before the entry into force of the Act, since it did not violate human dignity – which was the only basis for constitutional evaluation of a tax law after the reduction of the competences of the Constitutional Court. This did not, however, change the finding of substantive unconstitutionality of essentially identical provisions of the original Tax Act – only that the Constitutional Court could not review the slightly amended provisions of the Amendment.

The modified Tax Act was adopted on 13 May 2011 and entered into force the next day, 14 May 2011, being applicable to severance and related payments earned after 1 January 2010 (see paragraph 17 above). The applicant was notified of her dismissal on 27 May 2011 – effective as of 28 July 2011 (see paragraph 6 above), that is, about ten weeks after the entry into force of the amended Act.

54. Against this background, the Court considers that, although the decisions of the Constitutional Court raise certain issues as to the constitutionality – and therefore the legality – of the impugned Act, it can nevertheless be accepted as providing a proper legal basis for the measure in question, taking into account the degree of additional deference and latitude afforded in this field (see paragraph 50 above).

d. Public interest

55. The applicant challenged the legitimacy of the aim pursued by the impugned measure. In this connection, the Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial

assessment as to the existence of a problem of public concern warranting measures of deprivation of property or interfering with the peaceful enjoyment of possessions. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive (see *Vistiņš and Perepjolkins*, cited above, § 106).

56. The Court further reiterates that the levying of taxes constitutes in principle an interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1 and that such interference may be justified under the second paragraph of that Article, which expressly provides for an exception in respect of the payment of taxes or other contributions. However, this issue is nonetheless within the Court's control (see paragraphs 42 and 45 above).

57. Moreover, it is naturally in the first place for the national authorities to decide what kind of taxes or contributions are to be collected. The decisions in this area will commonly involve the appreciation of political, economic and social questions which the Convention leaves within the competence of the States parties, the domestic authorities being better placed than the Court in this connection. The power of appreciation of the States parties in such matters is therefore a wide one (see *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 60, and *National etc.*, cited above, §§ 80-82).

58. However, as regards the Government's implied reference to European Commission Recommendation 2009/384/EC (see paragraphs 22 and 26 above), the Court finds that this consideration is immaterial in regard to the applicant. The measures envisioned in the Recommendation, which will be applicable in the future to restrict excessive payments in the financial sector, were conceived because "excessive risk-taking in the financial services industry and in particular in banks and investment firms has contributed to the failure of financial undertakings and to systemic problems in the Member States and globally." The Recommendation suggests national regulation that provides for performance-based components of remuneration based on longer-term performance and contains no reference to social justice expectations. For the Court, excessive risk-taking in the financial sector is irrelevant for civil servants who operate in a regulated environment of subordination.

59. Nevertheless, given the above margin of appreciation regarding the determination of what is "in the public interest", granted to general measures interfering with the peaceful enjoyment of possessions, the Court accepts that the "sense of social justice of the population", in combination with the interest to protect the public purse and to distribute the public burden satisfies the Convention requirement of a legitimate aim, notwithstanding its broadness. The Court has no convincing evidence on which to conclude that the reasons referred to by the Government were

manifestly devoid of any reasonable basis (compare and contrast *Tkachevy v. Russia*, no. 35430/05, § 50, 14 February 2012).

However, serious doubts remain as to the relevance of these considerations in regard to the applicant who only received a statutorily due compensation and could not have been made responsible for the fiscal problems which the State intended to remedy. While the Court recognises that the impugned measure was intended to protect the public purse against excessive severance payments, it is not convinced that this goal was primarily served by taxation. As the Constitutional Court noticed, there was a possibility to change severance rules and reduce the amounts which were contrary to public interest, but the authorities did not opt for this course of action. However, it is not necessary for the Court to decide at this juncture on the adequacy of a measure that formally serves a social goal, since this measure is in any event subject to the proportionality test.

e. Proportionality

i. General principles

60. Even if it has taken place subject to the conditions provided for by law – implying the absence of arbitrariness – and in the public interest, an interference with the right to the peaceful enjoyment of possessions must always strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by the impugned measure (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 93, ECHR 2006-V); and also paragraph 42 above).

61. In determining whether this requirement is met, the Court reiterates that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999 III, and *Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012). Nevertheless, the Court cannot abdicate its power of review and must therefore determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI). In the determination of the proportionality of the measure, the Court did in the past also consider the personal situation of the applicants, including their good faith (see *Vistiņš and Perepjolkins*, cited above, § 120).

62. In order to assess the conformity of the State's conduct with the requirements of Article 1 of Protocol No. 1, the Court must conduct an overall examination of the various interests at issue, having regard to the fact that the Convention is intended to guarantee rights that are "practical and effective", not theoretical or illusory. It must go beneath appearances and look into the reality of the situation at issue, taking account of all the relevant circumstances, including the conduct of the parties to the proceedings, the means employed by the State and the implementation of those means. Where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see *Fener Rum Erkek Lisesi Vakfı v. Turkey*, no. 34478/97, § 46, 9 January 2007, and *Bistrović v. Croatia*, no. 25774/05, § 35, 31 May 2007).

63. In the context of tax collection, the Court considers that the suitability of methods is a consideration in the establishment of proportionality of a measure of interference (see, in the context of exercise of the State's right of pre-emption, *Hentrich v. France*, 22 September 1994, § 48, Series A no. 296 A).

64. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, in order to assess the proportionality of the interference the Court looks at the degree of protection from arbitrariness that is afforded by the proceedings in the case (see *Hentrich*, cited above, § 46). In particular, the Court examines whether the proceedings concerning the interference with the applicants' right to the peaceful enjoyment of their possessions were attended by basic procedural safeguards. It has already held that an interference cannot be legitimate in the absence of adversarial proceedings that comply with the principle of equality of arms, enabling argument to be presented on the issues relevant for the outcome of a case (see *Hentrich*, cited above, § 42; and *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002–IV). A comprehensive view must be taken of the applicable procedures (see *AGOSI*, cited above, § 55; *Hentrich*, cited above, § 49; and *Jokela*, cited above, § 45).

ii. Application of the above-mentioned principles in the present case

65. As it transpires from its case-law, in the area of social and economic legislation including in the area of taxation as a means of such policies States enjoy a wide margin of appreciation, which in the interests of social justice and economic well-being may legitimately lead them, in the Court's view, to adjust, cap or even reduce the amount of severance normally payable to the qualifying population. However, any such measures must be implemented in a non-discriminatory manner and comply with the requirements of proportionality.

In particular, as regards the existence of a "reasonable relationship of proportionality between the means employed and the aim sought to be

realised", the Court notes at the outset that the Constitutional Court's first decision can be understood to characterise the tax in question as amounting to a confiscatory measure. Moreover, tax rates exceeding 50% have recently been found unconstitutional in some Member States of the Council of Europe, such as Germany and France. However, in several other European countries personal income rates may reach 75% – although those rates are usually applicable only to the highest income brackets, related to revenues clearly exceeding the amount that is contemplated in the context of the Hungarian statutory severance.

66. The applicable threshold in the present case was above HUF 3.5 million, the amounts of severance falling below this limit being subject to the general personal income tax rate of 16%. In the applicant's case, this represented an overall tax burden of approximately 52% on the entirety of the severance (see paragraph 7 above).

67. In the instant case, the Court takes into consideration in the proportionality analysis that the tax rate applied exceeds considerably the rate applicable to all other revenues, including severance paid in the private sector, without determining *in abstracto* whether or not the tax burden was, quantitatively speaking, confiscatory in nature. For the Court, given the margin of appreciation granted to States in matters of taxation, the applicable tax rate cannot be decisive in itself, especially in circumstances like those of the present case.

68. The Court finds that the applicant, who was entitled to statutory severance on the basis of the law in force and whose acting in good faith has never been called into question, was subjected to a tax whose rate exceeded about three times the general personal income tax rate of 16% (see paragraph 7 above) – and this notwithstanding the fact that the severance served the specific and recognised social goal of labour reintegration. It does not appear that any other revenue originating from the public purse was subjected to similarly high tax.

69. Moreover, to the extent that the Government may be understood to argue that senior civil servants were in a position to influence their own employment benefits, which phenomenon could only be countered by targeted taxation (see paragraphs 26 and 27 above), the Court is satisfied that there is nothing in the case file to corroborate such assumption of abuse in the case of the applicant.

70. As regards the personal burden which the applicant sustained on account of the impugned measure, the Court notes that she had to suffer a substantial deprivation of income in a period of considerable personal difficulty, namely that of unemployment. The Court would observe in this context that Article 34 of the Charter of Fundamental Rights of the European Union (see paragraph 20 above) endorses benefits providing protection in the case of loss of employment, and that according to the European Court of Justice, the aim pursued by severance – that is, helping

dismissed employees find new employment – belongs within legitimate employment policy goals (see paragraph 21 above). For the Court, it is quite plausible that the element that she was subjected to the impugned measure while unemployed, together with the unexpected and swift nature of the change of the tax regime which made any preparation virtually impossible for those concerned, exposed the applicant to substantial personal hardships.

71. In the Court's view, the applicant, together with a group of dismissed civil servants (see paragraph 6 above), was made to bear an excessive and disproportionate burden, while other civil servants with comparable statutory and other benefits were apparently not required to contribute to a comparable extent to the public burden, even if they were in the position of leadership that enabled them to define certain contractual benefits potentially disapproved by the public. Moreover, the Court observes that the legislature did not afford the applicant a transitional period within which to adjust herself to the new scheme.

72. Against this background, the Court finds that the measure complained of entailed an excessive and individual burden on the applicant's side. This is all the more evident when considering the fact that the measure targeted only a certain group of individuals, who were apparently singled out by the public administration in its capacity as employer. Assuming that the impugned measure served the interest of the State budget at a time of economic hardship, the Court notes that the majority of citizens were not obliged to contribute, to a comparable extent, to the public burden.

73. The Court further notes that the tax was directly deducted by the employer from the severance without any individualised assessment of the applicant's situation being allowed.

74. The Court moreover observes that the tax was imposed on income related to activities prior to the material tax year and realised in the tax year, on the applicant's dismissal. In this connection the Court recalls that taxation at a considerably higher tax rate than that in force when the revenue in question was generated could arguably be regarded as an unreasonable interference with expectations protected by Article 1 of Protocol No. 1 (see *M.A. and 34 Others*, cited above). The tax was determined in a statute that was enacted and entered into force some ten weeks before the termination of the applicant's civil service relationship, and the tax was not intended to remedy technical deficiencies of the pre-existing law, nor had the applicant enjoyed the benefit of a windfall in a changeover to a new tax-payment regime (compare and contrast, *National etc.*, cited above, §§ 75 to 83).

75. The Court concludes that the specific measure in question, as applied to the applicant, even if meant to serve social justice, cannot be justified by the legitimate public interest relied on by the Government. It affected the applicant (and other dismissed civil servants in a similar situation) being in

good-faith standing and deprived her of the larger part of a statutorily guaranteed, acquired right serving the special social interest of reintegration. In the Court's opinion, those who act in good faith on the basis of law should not be frustrated in their statute-based expectations without specific and compelling reasons. Therefore the measure cannot be held reasonably proportionate to the aim sought to be realised.

76. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

77. The applicant also complained that she did not have any effective remedy at her disposal in respect of the alleged violation of her rights under Article 1 of Protocol No. 1. She relied on Article 13 of the Convention.

78. The Government contested that argument in general terms.

79. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

80. Having regard to the finding relating to Article 1 Protocol 1 (see paragraph 76 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been a violation of Article 13.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

81. The applicant further complained of the facts that only those dismissed from the public sector were subjected to the tax and that the threshold of HUF 3.5 million was applicable to only a group of those concerned. In her view, this was discriminatory, in breach of Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... property ... or other status."

82. The Government contested that argument. Referring to the reasons set forth in decision no. 37/2011. (V.10.) AB of the Constitutional Court, they argued that the group of payment issuers in question were determined under the Act according to objective criteria. The employees of these payment issuers were to be regarded as being in a different position compared with other employees. Therefore the fact that the special tax did, under certain conditions specified in the Act, treat benefits originating in public funds differently from other type of benefits did not violate the right to human dignity. The rules were not arbitrary or discriminatory.

83. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the

Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see, for example, *Chassagnou and Others*, cited above, § 89).

84. In the circumstances of the present case, the Court is of the view that the inequality of treatment of which the applicant claimed to be a victim has been sufficiently taken into account in the above assessment that has led to the finding of a violation of Article 1 of Protocol No. 1 taken separately (see paragraph 76 above). Accordingly, it finds that – while this complaint is also admissible – there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see, *mutatis mutandis*, *Church of Scientology Moscow v. Russia*, no. 18147/02, § 101, 5 April 2007).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. Lastly, the applicant complained that the legal presumption of the impugned revenues contravening good morals amounted to an interference with her right to good reputation, in breach of Article 8 read alone or in conjunction with Article 14 of the Convention.

The Court finds that this complaint is unsubstantiated and therefore manifestly ill-founded, within the meaning of Article 35 § 3 (a), and must consequently be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

87. The applicant claimed 2,365,229 Hungarian forints[1] (HUF), that is, the amount that was deducted from her severance in tax, plus accrued interest until the delivery of the Court's judgment (that is, twice the

[1] Approximately EUR 8,000

applicable interest of the Hungarian Central Bank), in respect of pecuniary damage, as well as 20,000 euros (EUR) in respect of non-pecuniary damage.

88. The Government found these claims excessive.

89. Having regard to the fact that, in the absence of the 98% tax rate, the entirety of the applicant's severance would have been in all likelihood subject to the general personal income taxation, the Court awards the applicant EUR 11,000 in respect of pecuniary and non-pecuniary damage combined.

B. Costs and expenses

90. The applicant also claimed EUR 17,272 for the costs and expenses incurred before the Court. This sum corresponds to 68 hours of legal work billable by her lawyer at an hourly rate of EUR 200 plus VAT (27%).

91. The Government did not express a view on the matter.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 for the proceedings before the Court.

C. Default interest

93. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 1 of Protocol No. 1, read alone and in conjunction with Articles 13 and 14 of the Convention, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 read in conjunction with Article 13 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 read in conjunction with Article 14 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Lorenzen joined by Judges Raimondi and Jočienė is annexed to this judgment.

G.R.A.
S.H.N.

CONCURRING OPINION OF JUDGE LORENZEN JOINED BY JUDGES RAIMONDI AND JOČIENE

I voted only with some hesitation for finding a violation in this case, which in my opinion should have been relinquished to the Grand Chamber. However, even if I have accepted the conclusion of the judgment and also largely agree with its reasoning, I find it necessary to explain my vote by adding the following comments:

It has been the Court´s constant case-law that the imposition of taxes as a general rule is for the States to decide and that only if the system or the way it has been applied in a particular case is arbitrary or devoid of reasonable foundation can the imposition of taxes be challenged under Article 1 of Protocol No 1. The judgment should in my opinion be understood as not interfering with the principles applied in this field so far.

The judgment to some extent addresses the issue whether the tax law was applied retroactively (see paragraphs 51, 52 and 74). Whether this was so in the applicant's case is in my opinion open to doubt, but I do not consider it necessary to examine the question any further. I find it important, however, to underline that the Convention – save in criminal cases and, to a certain extent, in the framework of Article 6 of the Convention – does not contain a general prohibition on legislation with retroactive effect, and that the Court in its case-law so far has not developed clear principles as to when and under what circumstances retroactive tax legislation is incompatible with Article 1 of Protocol No 1. In *M.A. and 34 Others* the Court in fact stated directly that "retrospective tax legislation is not as such prohibited by that provision". The judgment should in my opinion be understood as not having introduced new principles concerning this issue.

The finding of a violation in the present case was for me to a considerable extent justified by the very peculiar way this tax legislation was introduced and applied in a case like the applicant's.