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**BUREAU OF THE  
EUROPEAN COMMITTEE ON LEGAL CO-OPERATION  
(CDCJ-BU)**

**THE SCOPE OF  
ARTICLE 6 § 1 OF THE CONVENTION  
UNDER ITS CIVIL HEAD,  
ACCORDING TO THE CASE-LAW OF THE  
EUROPEAN COURT OF HUMAN RIGHTS**

Document prepared by the  
European Court of Human Rights<sup>1</sup>

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## Introduction

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At its 88th meeting (19-20 January 2011), the Bureau of the European Committee on Legal Co-operation (CDCJ) instructed the Secretariat to prepare a note on the scope of Article 6 § 1 of the ECHR in respect of administrative proceedings, as interpreted by the Court in its case-law.

The Secretariat referred this request to the European Court of Human Rights, which has prepared the present study of the scope of Article 6 § 1 of the European Convention on Human Rights under its civil head, according to the case-law of the European Court on Human Rights as at 10 May 2011.<sup>2</sup>

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<sup>2</sup> The decisions concerned are those adopted by the Court at that date and the judgments which had become final by that same date. Judgments marked [GC] are available in both English and French.

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## I. **Extent of the applicability of Article 6 to public-law proceedings: criteria defined by the case-law of the Court**

### A. **General principles**

In order for Article 6 § 1 under its "civil head" to be applicable, there must be a "dispute" over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is also protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right, but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play. The character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, and so on) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, and so on) are therefore of little consequence.

#### 1) *Autonomous interpretation*

The concept of "civil rights and obligations" is not interpreted simply by reference to the domestic law of the respondent State. Article 6.1 applies irrespective of the status of the parties and of the character of the legislation governing the dispute and of the authority with jurisdiction; it is sufficient for the result of the proceedings to be decisive for private rights and obligations.

Of little consequence are the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, and so on) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, and so on) (*Micallef v. Malta* [GC], no. 17056/06, § 74, ECHR 2009-...).

Thus, where a State confers rights which can be enforced by means of a judicial remedy, these can, in principle, be regarded as civil rights within the meaning of Article 6 § 1 (*Oršuš and Others v. Croatia* [GC], no.15766/03, § 105, ECHR 2010-...). When ruling on the applicability of Article 6 § 1 to public servants, the Court takes account of the applicant's right of access to a court under national law.

As a general rule, Article 6 § 1 covers national proceedings decisive for pecuniary rights. Thus the classification of proceedings, in domestic law, as coming under public law and the challenging of administrative decisions or provisions are not obstacles to this applicability.

#### 2) *Examples of spheres of public law covered by Article 6*

##### **Issues with a pecuniary and private dimension**

The Court considers that proceedings, which, in domestic law, come under "public law", and the result of which is decisive for private rights and obligations, lie within the scope of Article 6 § 1. Such proceedings may, for example, relate to permission to sell land, to the running of a private clinic, to a building permit, to the ownership and use of a religious building, to administrative permission in connection with requirements for carrying on an occupation, to a licence for serving alcoholic beverages, or to a dispute relating to the payment of compensation in the event of a work-related illness or accident.

Article 6 is applicable, on the same basis, to disciplinary proceedings before professional bodies where the right to practise the profession is at stake, to an action against the State for negligence, to an action for cancellation of an administrative decision harming the applicant's rights, and to administrative proceedings concerning a ban on fishing in the applicants' waters.

### **Social rights at stake**

The Court has deemed Article 6 § 1 to be applicable to disputes concerning social matters, including proceedings relating to an employee's dismissal by a private firm, but also proceedings to do with the award of social insurance benefits or of welfare assistance, even on a non-contributory basis, and also proceedings concerning compulsory social security contributions. In these cases the Court took the view that the private-law aspects predominated over the public-law ones.

### **Individual rights of a personal nature at stake**

The field of Article 6 has been broadened to other matters which are not strictly speaking, pecuniary, such as environmental issues, in respect of which disputes may arise concerning the right to life, to health, or to a healthy environment; the fostering of children; schooling arrangements; the right to have paternity established; the denial to an applicant suffering from a motor disability of the right to a personal assistant to help him in his everyday life; restrictions on prisoners' rights (for instance, disputes concerning the restrictions to which prisoners are subjected as a result of their being placed in a high-security unit or cell, or disciplinary proceedings resulting in restrictions on family visits to prison); the right to good reputation; the right of access to administrative documents; proceedings to challenge inclusion in a police file having an effect on reputation; the right to protection of one's property; the possibility of finding employment; proceedings for awarding a tender in which a civil right – such as the right not to be discriminated against on grounds of religious belief or political opinion when bidding for public works contracts – is at stake; the right to be a member of an association, or to a procedure relating to the registration of an association, although, under domestic legislation, the question of freedom of association is a matter of public law; and the right to continue higher education studies, a right even more valid for primary education.

Thus, in general, Article 6 under its civil head extends to the human rights recognised by the European Convention on Human Rights (ECHR) in its Articles 2, 5, 8, 9, 10, 11 and 14, and in Articles 1 and 2 of Protocol No. 1.

#### *3) Recent developments*

In its Grand Chamber judgments in the cases of *Vilho Eskelinen and Others v. Finland* (no. 63235/00, ECHR 2007-IV) and *Micallef v. Malta* [GC] (already cited, § 86), the Court has updated the criteria for the application of Article 6 § 1 in respect of certain matters.

### **B. Principles and criteria established since 2007 for civil servants**

#### *1) A new approach with the Vilho Eskelinen v. Finland judgment*

According to the Court, there will be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil servant applicant does not have a right of access to a court under national law and, second, that the exclusion of rights under Article 6 for the civil servant is justified.

Thus, in principle, there can be no exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or other benefits, on the basis of the particular nature of the bond between the civil servant in question and the State concerned.

The Court's current approach is summed up in the following terms (also see §§ 50 to 61):

To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the Pellegrin judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified.

In the present case it is common ground that the applicants all had access to a court under national law. Accordingly, Article 6 § 1 is applicable.

## 2) *Recent examples of applicability*

If the applicant had access to a court under national law, Article 6 applies, even to active military officers and their claims before military courts.

With regard to the second criterion, the exclusion must be justified on "objective grounds in the State's interest", which obliges the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond between the civil servant and the State. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question.

Recently, in the light of the criteria laid down in the judgment in the case of *Vilho Eskelinen v. Finland*, the Court declared Article 6 § 1 to be applicable to proceedings for unfair dismissal by an Embassy employee (a secretary and switchboard operator in the Polish embassy, see *Cudak v. Lithuania* [GC] (no. 15869/02, §§ 44-47, ECHR 2010-...), by a chief constable (*Šikić v. Croatia*, no. 9143/08, §§ 18-20, 15 July 2010) or by an army officer in the military courts (*Vasilchenko v. Russia*, no. 34784/02, §§ 34-36, 23 September 2010), to disciplinary proceedings against a judge (*Olujić v. Croatia*, no. 22330/05, 5 February 2009), to a prosecutor's appeal against a presidential decision to transfer him (*Zalli v. Albania* (dec.), no. 52531/07, of 8 February 2011), to

proceedings relating to the exercise of the professional career of a customs administrator (*Fiume v. Italy*, no. 20774/05, §§ 33-36, 30 June 2009), and to proceedings regarding the right to obtain the post of parliamentary assistant (*Savino and Others v. Italy*, Nos. 17214/05, 20329/05 and 42113/04, 28 April 2009).

As the Court reminded us in its very recent decision of 8 February 2011 (*Zalli v. Albania* (dec.), already cited):

Since the adoption of the Vilho Eskelinen judgment, the Court has found Article 6 to apply to disciplinary proceedings against judges (see *G. v. Finland*, no. 33173/05, §§ 31-35, 27 January 2009; and *Olujic v. Croatia*, no. 22330/05, §§ 34 and 44, 5 February 2009), police officers (see *Vanjak v. Croatia*, no. 29889/04, §§ 30-33, 14 January 2010) and bailiff officers (see *Bayer v. Germany*, no. 8453/04, §§ 37-39, 16 July 2009); as well as expulsion proceedings of military students from military training schools (*Çatak v. Turkey*, no. 26718/05, § 13, 6 October 2009) and proceedings concerning compensation for military servicemen (see *Lelas v. Croatia*, no. 55555/08, §§ 42-44, 20 May 2010; *Kuzmina v. Russia*, no. 15242/04, §§ 14-18, 2 April 2009; and *Kondrashov and Others v. Russia*, nos. 2068/03, 2076/03, 5224/03, 5385/03, 5414/03 and 5656/03, §§ 14-17, 8 January 2009); non-enforcement proceedings on behalf of a public prosecutor (see *Privalikhin v. Russia*, no. 38029/05, § 24, 12 May 2010) and non-enforcement proceedings on behalf of a former military serviceman (see *Bormotov v. Russia*, no. 24435/04, §§ 11-15, 31 July 2008).

### 3) *Sovereign discretion of Governments and role of the Court*

In its judgment in the case of *Vilho Eskelinen v. Finland*, the Court specifies the following:

(...) The Court recognises the State's interest in controlling access to a court when it comes to certain categories of staff. However, it is primarily for the Contracting States, in particular the competent national legislature, not the Court, to identify expressly those areas of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way. The Court exerts its supervisory role subject to the principle of subsidiarity (see *Z and Others v. the United Kingdom [GC]*, no. 29392/95, § 103, ECHR 2001-V). If a domestic system bars access to a court, the Court will verify that the dispute is indeed such as to justify the application of the exception to the guarantees of Article 6. If it does not, then there is no issue and Article 6 § 1 will apply.

### 4) *Procedural guarantees recognised to civil servants, and the limits thereof*

The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive as to the applicability of Article 6 under its civil head.

While there is, for public-sector staff, a limit to the applicability of the procedural guarantees offered by Article 6, this presupposes that two preconditions are met in order for a State to rely on civil servant status as a ground for exclusion from the protection offered by Article 6. The *Vilho Eskelinen* case-law reads:

Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. (...) In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the Pellegrin judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond.

### 5) *The protection of civil servants*

For all that, this does not leave the civil servant for whom domestic law affords no judicial remedy against the impugned decision without defence.

While civil servant status may, if the *Vilho Eskelinen* criteria are met, constitute an obstacle to the application of Article 6 and of its subsequent procedural guarantees, the Court, which is master of the characterisation to be given in law to the facts, was able in a recent case to give the complaint a new characterisation so as to examine it in the light of Article 13 of the Convention, which prescribes the right to an effective remedy. In the case of *Özpınar v. Turkey* (no. 20999/04, §§ 29-30, 19 October 2010), a judge dismissed for conduct deemed inappropriate, challenged the decision of the National Legal Service Council, against which no appeal lay, and relied before the European Court of Human Rights on Articles 6, 8, 13 and 14 of the Convention. While the Court deemed Article 6 to be inapplicable, it stated that,

(...) subject to the existence of an arguable complaint under Article 8 of the Convention, the Court, which is master of the characterisation to be given in law to the facts, considered that the complaints should be examined under Article 13 of the Convention.

Furthermore, when it rules on an objection by a respondent Government disputing the applicability of Article 6, the Court takes care to avoid too formal an approach, which would decline into procedural argument and considerably weaken the protection of applicants' rights (*Anagnostou-Dedouli v. Greece*, no. 24779/08, §§ 29-39, 16 September 2010).

### **C. Another example of the reconciliation of States' sovereign discretion with the right of the public to procedural safeguards in relation to prisons**

The Court has declared Article 6 § 1 applicable in relation to appeals against prison authorities' decisions on assignment to more secure units. A Grand Chamber of the Court confirmed this case-law in its judgment in the case of *Enea v. Italy* [GC] (no. 74912/01, §§ 103-107, ECHR 2009-...) in the following terms:

(...) The Court is well aware that it is essential for States to retain a wide discretion with regard to the means of ensuring security and order in the difficult context of prison. However, it reiterates that "justice cannot stop at the prison gate and there is ... no warrant for depriving inmates of the safeguards of Article 6" (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 83, ECHR 2003-X). (...) Any restriction affecting these individual civil rights must be open to challenge in judicial proceedings, on account of the nature of the restrictions (for instance, a prohibition on receiving more than a certain number of visits from family members each month or the ongoing monitoring of correspondence and telephone calls) and of their possible repercussions (for instance, difficulty in maintaining family ties or relationships with non-family members, exclusion from outdoor exercise). By this means it is possible to achieve the fair balance which must be struck between the constraints facing the State in the prison context on the one hand and the protection of prisoners' rights on the other.

Hence prison authorities' decisions relating to the maintenance of security and order – and thus concerning the exercise of power – nevertheless do not exclude application of Article 6 § 1 under its civil head. It is necessary to examine in every case the practical implications of these decisions for the pecuniary and private rights of the prisoner.

### **D. Principles derived from preliminary proceedings**

#### **1) Conditions of application of Article 6 § 1 since the 2009 *Micallef v. Malta* judgment [GC]**

If the right concerned in both the main proceedings and the injunction proceedings is a "civil" one within the meaning of Article 6, and if the interim measure determines the "civil right" in question, Article 6 is applicable. In practice, the Court has emphasised that there is now widespread consensus in

the Council of Europe member states on the applicability of Article 6 safeguards to interim measures, including injunction proceedings.

The Court has found that it is very frequently the case that decisions taken by courts in injunction proceedings take the place of decisions on merits for a fairly long period of time, or even definitively in exceptional situations. Consequently, in many cases, the preliminary and the main proceedings related to the same "civil rights and obligations", within the meaning of Article 6, and produced the same effects. In these conditions, the Court has considered that it was no longer justified automatically to take the view that injunction proceedings did not determine civil rights or obligations. It has also stated its uncertainty as to whether the deficiencies of preliminary proceedings can be rectified during the main proceedings, given that any damage suffered in the meantime may have become irreversible.

For example, the Court dismissed the preliminary objection of a Government that Article 6 § 1 was not applicable in respect of proceedings for the annulment of an administrative decision to evacuate a travellers' encampment, and for damages.

*2) Procedural guarantees which are inalienable according to the Micallef v. Malta judgment [GC]*

The Court has drawn it to the attention of national authorities that, while it may not be possible immediately to comply with all of the requirements of Article 6 § 1 of the Convention, it falls to the respondent Government to explain to it why one or more specific procedural safeguards could not be applied at the interim stage. The fact remains that the independence and impartiality of the tribunal or the judge concerned is an inalienable safeguard.

## **II. Cases in which an applicant encounters substantive limitations**

### **A. Principles derived from the Roche v. the United Kingdom judgment<sup>3</sup>**

The Court has reiterated the fundamental principle that Article 6 does not in itself guarantee any particular content of substantive law of the Contracting Parties.

Article 6 cannot apply to substantive limitations of a right enshrined in domestic legislation, or it would give rise, through interpretation of Article 6 § 1, to a substantive right lacking any legal basis in the State concerned.

Indeed, the applicant must be able to claim, at least arguably, that domestic law recognises the existence of a "right".

Thus a distinction is drawn between a restriction which delimits the substantive content properly speaking of the relevant civil right, to which the guarantees of Article 6 § 1 do not apply, and a restriction which amounts to a procedural bar preventing the bringing of potential claims to court, to which Article 6 could have some application. This distinction between the procedural and the substantive, however subtle it may be in a given case, determines the applicability and, if need be, the scope of the guarantees of Article 6 of the Convention.

Applying the distinction between substantive limitations and procedural bars in the light of these criteria, the Court has, for example, recognised as falling under Article 6 § 1 civil actions for negligence against the police or against local

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<sup>3</sup> *Roche v. the United Kingdom* [GC], no. 32555/96, ECHR 2005-X.

authorities and has considered whether a particular limitation (exemption from prosecution or non-liability) was proportionate from the standpoint of Article 6 § 1. On the other hand it has held that the Crown's exemption from civil liability to members of the armed forces derived from a substantive restriction and that domestic law consequently did not recognise a "right" within the meaning of Article 6 § 1. The Court set out its criteria in the following terms (§§ 120-121):

In assessing therefore whether there is a civil "right" and in determining the substantive or procedural characterisation to be given to the impugned restriction, the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 19, § 49). Where, moreover, the superior national courts have analysed in a comprehensive and convincing manner the precise nature of the impugned restriction, on the basis of the relevant Convention case-law and principles drawn therefrom, this Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for those of the national courts on a question of interpretation of domestic law (see *Z and Others*, cited above, § 101) and by finding, contrary to their view, that there was arguably a right recognised by domestic law. (...)

Finally, in carrying out this assessment, it is necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, judgment of 24 June 1982, Series A no. 50, pp. 20-21, § 38). The Court must not be unduly influenced by, for example, the legislative techniques used (see *Fayed*, pp. 50-51, § 67) or by the labels put on the relevant restriction in domestic law. (...)

### **B. Discretion of the State**

The Court cannot, through its interpretation of the scope of Article 6 § 1, create a right lacking any legal basis in the State concerned. For this reason, the Court recently concluded, in the case of *Andronikashvili v. Georgia* (dec.) (no. 9297/08, of 22 June 2010), that Article 6 was not applicable to a claim for restitution of property expropriated under the Soviet regime, for want of an arguable substantive right to restitution under domestic legislation. The Court specified the following:

(...) The Court notes that, in the recent case of *Klaus and Yuri Kiladze v. Georgia* (no. 7975/06, §§ 55-61, 2 February 2010), it has already established, after having examined the relevant Georgian law, including the Act of 11 December 1997, that there does not exist a right to claim the restitution of property expropriated from Georgian nationals or their ancestors by the Soviet State. As regards the applicant's reference to the domestic cases of *Cholokashvili*, *Chachua-Daghundarizde* and *Abkhazi*, the Court considers that this argument would be relevant to the second stage of the applicability test – the assessment of the seriousness and genuineness of the dispute. Otherwise, these cases, being inconsistent with mainstream judicial practice (...), could not have generated a right which has clearly no basis in the domestic legislation.

Thus, irrespective of whether the proceedings in the present case could be said to have been "serious and genuine", and whether they have been pending before the domestic courts for an unacceptably long time, the reality, which is the starting point for the applicability test under Article 6 § 1 of the Convention, is that the applicant has no legal right to claim the property expropriated from his grandfather during the 1920s and 1930s. It is to be recalled that the Court may not, by its own interpretation of Article 6 § 1 of the Convention, create a right that has no basis in the domestic legal system (...).

### **C. Protection of the public**

This does not, however, mean *ipso facto* that members of the public are afforded no legal safeguards by their national legal system.

For example, if domestic law does not allow participation as a party in proceedings for the annulment of a building permit granted to a third party who is not a neighbour, a different forum for this kind of claims may exist, such as a civil action for damages before the ordinary courts (*Hotter v. Austria* (dec.), no. 18206/06, 7 October 2010).

At all events, the Court considers whether the impossibility for legal persons to bring claims in a national court is to be regarded as an arbitrary removal of the courts' jurisdiction; this was deemed not to be the case when an alternative remedy existed whereby a claim could be made (*First Sofia Commodities EOOD and Paragh v. Bulgaria* (dec.), no. 14397/04, 25 January 2011).

### **III. Public matters excluded by case-law from the scope of Article 6**

Other cases, by reason of the claims made, are deemed to fall outside Article 6 § 1 of the Convention under its civil head. Most of these concern subjects closely related to State sovereignty, namely disputes involving civil servants and fulfilling both the criteria laid down in the *Vilho Eskelinen v. Finland* judgment; the calculation of taxes due (*Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII); asylum, nationality and residence of an alien (*Maaouia v. France* [GC], no. 39652/98, ECHR 2000-X); and political rights, such as the settlement of electoral disputes concerning members of parliament (*Pierre-Bloch v. France*, 21 October 1997, *Reports of Judgments and Decisions* 1997-VI).

#### **A. Certain disputes involving civil servants**

Disputes concerning civil servants fall within the scope of Article 6 only if both criteria are cumulatively fulfilled: firstly, the civil servant applicant must have been expressly excluded from the right of access to a court by domestic law, and secondly, exclusion from the rights guaranteed by Article 6 must be justified on objective grounds in the State's interests. In order for this second condition to be met, the subject of the dispute must be shown to be related to the exercise of State power or to call into question the special bond of trust and loyalty between the civil servant and the State.

In application of the criteria set out in the *Vilho Eskelinen* judgment, the Court rejected the application of Article 6 § 1 in the case of a soldier discharged from the armed forces for breaches of discipline who was unable to challenge in the courts the decision to dismiss him, given that the special bond between himself and the State was called into question (*Suküt v. Turkey* (dec.), no. 59773/00, ECHR 2007-X (extracts)). The same was true of a dispute relating to the reinstatement of a judge following his resignation (*Apay v. Turkey* (dec.), no. 3964/05, 11 December 2007). Another case was that of a judge, dismissed for inappropriate attitudes and undermining the dignity of the profession, who had no possibility to appeal against the decision of the National Legal Services Council (*Özpinar v. Turkey*, no. 20999/04, § 30, 19 October 2010).

#### **B. Fiscal matters**

Tax matters still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant. Similarly excluded are summary injunction proceedings concerning customs duties or charges. Thus the Court took the following position in its Grand Chamber judgment in the *Ferrazzini* case:

(...) In the tax field, developments which might have occurred in democratic societies do not, however, affect the fundamental nature of the obligation on individuals or companies to pay tax. In comparison with the position when the Convention was adopted, those developments have not entailed a further intervention by the State into the "civil" sphere of the individual's life. (...) Bearing in mind that the Convention and its Protocols must be interpreted as a whole, the Court also observes that Article 1 of Protocol No. 1, which concerns the protection of property, reserves the right of States to enact such laws as they deem necessary for the purpose of securing the payment of taxes. (...) Although the Court does not attach decisive importance to that factor, it does take it into account. It considers that tax disputes fall outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produce for the taxpayer. (...)

The principle according to which the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions in democratic societies does not give the Court power to interpret Article 6 § 1 as though the adjective "civil" (with the restriction that that adjective necessarily places on the category of "rights and obligations" to which that Article applies) were not present in the text. (...)

### **C. The control of immigration flows**

According to the case-law of the Court, decisions regarding the entry, residence and expulsion of aliens do not entail a dispute about civil rights or obligations within the meaning of Article 6 § 1 of the Convention. The Court recently stated that this inapplicability extended to the inclusion of an alien in the Schengen Information System (*Dalea v. France* (dec.), no. 964/07, of 2 February 2010).

Similarly, disputes relating to passports or nationality do not relate to "civil rights" for the purposes of Article 6.

However, a foreigner's right to apply for a work permit may come under Article 6, both for the employer and the employee, even if, under domestic law, the employee has no *locus standi* to apply for it, provided that what is involved is simply a procedural bar that does not affect the substance of the right.

### **D. Political and electoral rights**

Lastly, political rights such as the right to stand for election and retain one's seat, the right to a pension as a former member of parliament, or a political party's right to carry on its political activities (appeal against the dissolution of a political party) cannot be regarded as civil rights within the meaning of Article 6 § 1 of the Convention.

Similarly, proceedings in which an NGO conducting parliamentary election observations was refused access to documents not containing information related to the applicant itself fell outside the scope of Article 6 § 1.

## **IV. Details and developments**

Please refer to the "Practical Guide on Admissibility Criteria" which is available for downloading at: [www.echr.coe.int](http://www.echr.coe.int) (Case-law - Case-Law Information - Admissibility Guide). This Guide is currently under revision. Such revised version will be available in the course of Summer 2011.