

TAXATION AND THE HUMAN RIGHTS ACT 1998

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Introduction

The main provisions of the Human Rights Act 1998 (HRA 98) are due to come into force on 2 October 2000. Opinions differ as to whether this Act will make little difference to UK tax practice, or whether we are about to see a fundamental change with a new approach to statutory interpretation and the first real introduction of judicial review of, inter alia, tax legislation.

This chapter explains the changes to be brought about by the HRA 98, and also examines the principal Articles of the European Convention on Human Rights ('the Convention') relevant to taxation. The discussion includes reference to some of the existing jurisprudence of the European Court of Human Rights (ECtHR) and the European Commission of Human Rights (ECnHR) in tax matters. All paragraph references are to the HRA 1998 unless otherwise stated.

The Human Rights Act 1998 (HRA 1998)

According to its long title, the HRA 1998 is 'an Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights'. The United Kingdom was the first State to ratify the Convention, on 8 March 1951. The Convention came into force on 23 September 1953. However, at that time the Convention was not incorporated into the domestic law of any part of the United Kingdom. Convention issues could only be raised indirectly, or by exhausting domestic remedies and then taking the case to Strasbourg, which is the seat of the former ECnHR and the ECtHR.

The HRA 1998 provides for the incorporation into domestic law of certain of the rights contained in the Convention and certain of its protocols. The HRA 1998 gives effect to 'the Convention rights' as defined in section 1 of the Act (and set out in Schedule 1). Further Convention rights can be added by order if the United Kingdom ratifies or signs any protocol.

Section 2, HRA 1998 provides that 'a court or tribunal determining a question which has arisen in connection with a Convention right must take into account' any decision of the ECtHR or the ECnHR 'whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen'. Provision is thus made for courts and tribunals in the United Kingdom to take account of the jurisprudence of the ECtHR and the ECnHR.

Decisions of the ECtHR and the ECnHR are clearly not binding precedents: it is only necessary that they should be taken into account, so far as they are relevant to the proceedings.

The HRA 1998 incorporates the Convention rights into United Kingdom domestic law in a number of ways.

First, there is a new, 'strong' principle of statutory interpretation contained in section 3(1): 'So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.'

If it is not possible to interpret the legislation in a way which is compatible with Convention rights, then certain courts may issue a 'declaration of incompatibility' (section 4). Tribunals have no power to issue a declaration of incompatibility. There is provision in the Act for a Minister to take remedial action where a declaration of incompatibility has been issued (section 10).

Second, all public authorities are required to act in a way which is compatible with Convention rights. Section 6 (1) states that: 'It is unlawful for a public authority to act in a way which is incompatible with a Convention right.'

The term 'public authority' clearly includes the Inland Revenue and Customs & Excise, and includes tribunals (section 6(3)(a)). Provision is made for bringing proceedings in which it is alleged that a public authority has acted unlawfully (section 7), and for remedies in such cases (section 8).

Third, Parliament is also to be involved in the incorporation of the Convention rights. A 'statement of compatibility' is to be made in respect of a Bill in either House of Parliament (or a statement that the Minister concerned is unable to make a statement of compatibility) (section 19, which came into force on 24 November 1998). A statement of compatibility was made with respect to the Finance Bill 1999 and the Finance Bill 2000.

Between them these provisions incorporate the Convention rights into United Kingdom domestic law in a number of ways which are quite different from those in which international treaties are normally incorporated.

The remainder of this chapter discusses the Articles of the Convention which are most relevant to taxation.

Article 1 of the 1st Protocol (*Protection of Property*) (Article 1/1)

Pride of place is given to Article 1/1 because it is the only Article which makes express reference to taxation. Article 1/1 provides as follows:

'Article 1: *protection of property*

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.'

All taxation is a prima facie interference with the right of enjoyment of possessions; put simply, if there were no tax, one would have more possessions to enjoy. However, the draftsmen of Article 1/1 did not intend to deprive States of their taxing powers. The second paragraph preserves an exception for taxation.

As an exception to a fundamental right, however, all taxation must satisfy the principles underlying the Convention: it must be imposed according to law, it must serve a valid purpose in the public or general interest, and the provisions adopted must be a reasonable and proportionate means to achieve that end.

In a small number of cases the argument has been made that the tax concerned imposed such an excessive burden as to be an interference with the right to enjoy one's possessions. In *Svenska Managementgruppen AB v Sweden* (Application No 11036/84) it was alleged that a Swedish profit-sharing tax amounted to expropriation. The ECnHR found, however, that the particular tax in issue did not affect the guarantee of ownership or interfere with the taxpayer's financial position to such an extent that it could be considered disproportionate or an abuse of the right of the State to levy taxes.

A number of cases have involved challenges to measures which provide for the enforcement of taxes. Only two of these challenges have been successful. In *Lemoine v. France* (Application No. 26242/95) the ECnHR held that the imposition of a charge on nine properties belonging to the taxpayers, and having a value in excess of Fr.1m., in order to guarantee a payment of taxes slightly in excess of Fr.80,000 was a breach of Article 1/1. Unfortunately, the ECnHR report on the case is not published, but it appears that the reason for the decision was the lack of proportionality between the aim to be achieved and the measure adopted and the lack of adequate judicial supervision over the power.

The second case in which a taxpayer was successful under Article 1/1 is *Hentrich v. France* (Application No 13616/88). This concerned the French Revenue's former right to exercise an option of pre-emption over property if the sale price stipulated by the parties was regarded as too low. The ECtHR held that this was an interference with the right of enjoyment of possessions because the exercise of the right of pre-emption was discretionary and the procedural aspects of the right were not fair: the pre-emption operated arbitrarily and selectively and was scarcely foreseeable, and was not attended by basic procedural safeguards.

Both *Hentrich* and *Lemoine* involve to an extent a broad discretionary power given to a revenue authority, with inadequate judicial supervision. In both cases it appears that this absence of supervision was a significant factor in the decision that the measure could not be justified as an interference with the freedom of enjoyment of possessions.

Article 6 (*Right to a Fair Trial*)

Article 6 – in its essentials – provides as follows:

‘Article 6: *right to a fair trial*

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...’

Section I: Applicability

There is a constant jurisprudence of the ECnHR and, to a lesser extent, of the ECtHR to the effect that Article 6 has no application to ordinary tax proceedings. There are, however, exceptions where proceedings which arise out of taxation matters can be regarded as involving ‘the determination of ...civil rights and obligations’ or of ‘any criminal charge’.

(a) Exceptions to the applicability of Article 6: social security contributions

Before looking at disputes arising out of general taxation matters, reference should be made to the decision of the ECtHR in *Schouten and Meldrum v the Netherlands* (Application No 19005/91). The complaint in that case involved unreasonable delay in the determination of the applicants’ liability to pay social security contributions. The ECtHR had already concluded in an earlier case that Article 6 applied to proceedings to determine an entitlement to welfare benefits. The ECtHR approached the issue of contributions by asking whether the liability to pay them had more features relating to private law than to public law. It concluded that the private law features were of greater significance and that, on balance, the dispute was to be regarded as involving ‘the determination of civil rights and obligations’. Having

decided that Article 6 applied to the determination of liability to pay social security contributions, the ECtHR went on to hold that there had been a breach of that Article.

This decision is particularly relevant to the United Kingdom now that appeals with respect to National Insurance Contributions are heard by the same tribunals as hear appeals with regard to direct taxes. It seems hard to justify on any grounds of principle the applicability of Article 6 to National Insurance appeals but not, for example, to income tax appeals.

(b) Exceptions to the applicability of Article 6: civil cases

A clear example of Article 6 applying to a dispute which arose out of a taxation matter is the case of *Editions Periscope v France* (Application No 12547/86). In that case the applicant company was refused a tax concession; this refusal led ultimately to the company's insolvency. The company sued the French Government for compensation, the litigation taking approximately eight and a half years. The company complained of the unreasonable length of the proceedings. The ECtHR concluded that the proceedings concerned compensation for injury caused by the State to which Article 6 applied.

Similarly, in the *Building Societies' case* (Application No 21319/93) the ECtHR concluded that actions for repayment of tax were restitutionary, that they were private law actions and were decisive of the determination of private law rights to quantifiable sums of money. Article 6(1) therefore applied, though the complaint was ultimately unsuccessful (see 25 EHRR 127 at 176 to 177, paragraphs 97 to 98).

One can see, in theory, the dividing line between cases like this and ordinary tax proceedings for the determination of the amount of the tax liability. However, it seems extremely hard to justify in principle the inapplicability of Article 6 to ordinary tax proceedings while an action to recover tax overpaid, to obtain the return of property seized by the revenue authorities or to annul a tax assessment might all be regarded as the determination of civil rights and obligations.

(c) Exceptions to the applicability of Article 6: the determination of a criminal charge

Article 6 is applicable to taxation proceedings if they involve the determination of a criminal charge. The leading decision of the ECtHR on this point is the case of *Bendenoun v. France* (Application No 12547/86). Following a Customs' investigation, the applicant was subject to supplementary income tax assessments including penalties of approximately 50% of the tax outstanding. The applicant challenged these assessments through the French administrative courts. He complained of a breach of Article 6(1) in that the full customs' investigation file was not made available to him. The ECtHR considered the nature of the fiscal penalties and decided that the dispute over the penalties involved the determination of a criminal charge. Article 6 was, therefore, applicable, though there was no breach of the Article in that case.

The term ‘criminal charge’ has an autonomous, Convention meaning. The ECtHR has developed a series of tests for determining whether or not proceedings involve the determination of a criminal charge, sometimes referred to as the ‘*Engel* criteria’ from the 1976 case (1 EHRR 647). These three criteria are:

- (a) the classification of the proceedings in domestic law;
- (b) the nature of the offence; and
- (c) the severity of the penalty which may be imposed.

If the offence is regarded as falling within the scope of criminal law by the domestic law of the country concerned, then it will constitute a criminal charge for Convention purposes. If the domestic legal system does not regard it as criminal, it may nevertheless be regarded as a criminal charge for Convention purposes by looking at the nature of the offence – in particular, whether it is an offence applicable to the public in general and whether it involves, for example, dishonesty – or the severity of the punishment, or the nature of the offence and the severity of the punishment combined. Where the penalty involves imprisonment or the imposition of a fine with imprisonment in default of payment (as was the case in *Bendenoun*) that would generally indicate that the offence involved a criminal charge.

Subsequent to *Bendenoun* there have been a number of cases where disputes which include the question of liability to pay substantial, tax-geared penalties involve the determination of criminal charges. Thus, for example, the two cases of *AP, MP and TP v Switzerland* (Application No 19958/92) and *EL, RL and JOL v Switzerland* (Application No 20919/92) both involved fines for tax evasion which could be as high as 400% of the tax evaded, though in both cases the fine was substantially mitigated (in the *EL* etc. case, for example, the fine eventually imposed was just over Sw.Fr.5,500). The ECtHR concluded that both cases concerned criminal charges.

It now seems clearly established, therefore, that a tax-geared penalty can entail a criminal charge, and that the issue of liability to penalties of 25% or higher has been regarded as involving the determination of a criminal charge.

Section II: the consequences where Article 6 applies to proceedings relating to taxation matters

Where the proceedings involve the determination of civil rights and obligations, only Article 6(1) applies. Where, however a criminal charge is involved, the additional guarantees in Article 6(2) and (3) also apply. This section considers some of the consequences where Article 6 applies to proceedings relating to taxation matters.

(a) Unreasonable length of proceedings

Perhaps one of the most important consequences is that, where Article 6 applies – whether to a civil matter or a criminal matter – the proceedings must be determined

within a reasonable time. As one might expect, there is no fixed period of time beyond which proceedings are regarded as having suffered an unreasonable delay. Each case depends upon its circumstances and, in particular, on a review of three factors: the complexity of the case, the conduct of the applicant, and the conduct of the authorities. In general, periods of unexplained inactivity on the part of the government are likely to establish unreasonable delay.

(b) *The right to a court*

One of the fundamental rights guaranteed by Article 6 is the right to a court for the determination of civil rights and obligations or a criminal charge. This right was at issue in the case of *JJ v the Netherlands* (Application No. 21351/93) where the applicant was assessed to additional tax plus a 100% fiscal penalty but was unable to appear in court because of his failure to pay the court fee (the bank instructed to make the payment did not do so within the time limit). The ECtHR concluded that Article 6 applied since the penalty involved the determination of a criminal charge, and that the applicant had been denied a court. This raises important issues where Article 6 applies to tax proceedings but the taxpayer is, for example, required to pay the tax before he can appeal.

(c) *The right to silence*

Article 6 does not expressly contain a right to silence in criminal proceedings. However, the Strasbourg organs have concluded that a right to silence and a right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure guaranteed by Article 6 (see *Saunders v United Kingdom* (1996) 23 EHRR 313). Since proceedings arising out of taxation matters may involve the determination of a criminal charge, the right to silence may arise in connection with those proceedings. The right to silence has been raised in a few recent tax cases, including *Funke v. France* (Application No 10828/84) and *Abas v the Netherlands* (Application No. 27943/95).

The right to silence raises potentially difficult issues for the administration of taxes. All tax administration requires the submission of a great deal of information by taxpayers. Where, however, a criminal charge is involved, the right to silence implicit in Article 6(1) may apply.

Clearly, a taxpayer could not invoke the right to silence and simply refuse to submit his tax return on the grounds that, if any entry in the return proved to be inaccurate, he might be liable to a fiscal penalty. The Strasbourg organs have on several occasions noted that the administration of tax involves the disclosure of information by the taxpayer. On the other hand, a point may come where it becomes clear that a criminal charge is contemplated and the right to silence is engaged. This is clearly so where it has become apparent that the authorities are contemplating a criminal prosecution under the provisions of the general criminal law and before the criminal courts. In principle, it must also be the case when it becomes clear that the revenue authorities may be seeking substantial fiscal penalties which would be regarded as involving a criminal charge for Convention purposes.

(d) *Legal aid*

One of the additional guarantees for persons charged with a criminal offence is the right ‘to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require’ (see Article 6(3)(c)). If proceedings arising out of taxation matters involve the determination of a criminal charge, then, in principle, legal aid should be available (subject, always, to the applicant showing that he has not sufficient means and that the interests of justice so require).

(e) *The non-heritability of criminal charges*

Reference has already been made to the cases of *AP, MP and TP v. Switzerland* and *EL, RL and JOL v. Switzerland* both of which concerned fiscal penalties imposed on the heirs of a deceased (with a maximum of 400% of the tax evaded) for tax evasion committed by the deceased. In both cases the ECtHR decided that the fiscal penalty involved a criminal charge, and that the principle that criminal liability was personal to an individual meant that the penalties could not be imposed on the heirs.

Article 14: *Prohibition of Discrimination*

Article 14 provides as follows:

‘Article 14: *prohibition of discrimination*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’

Article 14 is a non-free-standing non-discrimination rule: that is, the Article does not prohibit discrimination as such, but only discrimination in the enjoyment of the rights and freedoms contained in the Convention. A complaint must, therefore, point to the right or freedom in respect of which discrimination is alleged. Article 14 alone cannot be the basis of a complaint where none of the other rights or freedoms contained in the Convention are engaged.

Discrimination consists of the application of different treatment to persons who are in an objectively similar situation. Even then, the State may justify the difference in treatment if it pursues a legitimate aim and is not disproportionate. In the sphere of taxation States enjoy a wide margin of appreciation.

In the tax context, Article 14 is most often raised in conjunction with Article 1/1 on the basis that the right to enjoyment of possessions has been infringed by tax rules which operate in an unjustified and discriminatory way.

(a) *Cases where discrimination was not established:*

Before considering cases where the applicant has succeeded in an argument based upon Article 14, it may be interesting to consider a number of cases where no discrimination was found.

In *X v. Ireland* (Application No. 5913/72) the ECnHR rejected a claim on the basis that differences in conditions for adoption and adoption procedures vary from one country to another which meant that it was reasonable for Ireland to apply a different rate of tax to domestic adoptees.

In at least four cases applicants have complained (unsuccessfully) of differences in tax treatment between employed persons, self-employed persons and employers. For example, in *National Federation of the Self-Employed v United Kingdom* (Application 7995/77) the Federation complained about Class IV National Insurance Contributions that self-employed persons received no benefits as a result of their contributions. The ECnHR held the complaint inadmissible on the grounds that the differences in treatment were justified. A subsequent case (see Application No 9793/82) complained about National Insurance Contributions on the grounds that self-employed persons could not deduct their contributions. The ECnHR held the application inadmissible on the grounds that a self-employed person was not in a comparable position with an employer.

One can, with a certain amount of confidence, conclude that differences in tax rules between employers, employees and the self-employed are unlikely to be regarded as unjustified and discriminatory.

(b) *Cases where discrimination was established:*

Turning to the cases in which the applicant has been successful in a complaint under Article 14, five of these involved discrimination on grounds of sex: four involved discrimination against men, and one involved discrimination against women.

Under the former Dutch rule, an unmarried and childless woman over 45 was not required to pay child benefit contributions, but a man in similar circumstances was required to pay. In *Van Raalte v the Netherlands* (Application No. 20060/92) the ECtHR concluded that this involved unjustified discrimination against men.

In two parallel cases – *Crossland v United Kingdom* (Application No. 36120/97) and *Fielding v United Kingdom* (Application No. 36940/97) - complaint was made that the widow's bereavement allowance was only given to a woman and not to a man whose deceased wife was the principal breadwinner. The ECnHR held both cases to be admissible and a friendly settlement was agreed in the *Crossland* case (the outcome of *Fielding* is still unknown). The legislation in section 259, ICTA 1988 has been subsequently amended.

MacGregor v United Kingdom (Application No. 30548/96) involved discrimination against women. An incapacitated spouse allowance was given only to a man with an incapacitated wife and not to a woman with an incapacitated husband. Again the

ECnHR held the application admissible, a friendly settlement was agreed, and the legislation, which is section 259, ICTA 1988, has subsequently been amended.

(c) *Taxation of husbands and wives:*

The discussion of discrimination on grounds of sex is, perhaps, an appropriate point to consider a small number of cases where a challenge has been brought to provisions of the tax system applicable to married couples on the grounds that married couples were taxed on a different basis from unmarried couples in similar circumstances. In *Lindsay v United Kingdom* (Application No. 11089/84) complaint was made of the former UK tax system of aggregating certain of the income of husbands and wives. The ECnHR held that the provisions were well within the margin of appreciation enjoyed by a State in tax matters.

(d) *Discrimination on grounds of residence:*

Leaving aside discrimination on grounds of sex, the only other case that has been successful under Article 14 in a tax context was the well-known case of *Darby v Sweden* (Application No. 11581/85). Peter Darby was resident in Finland but worked in Sweden and was therefore subject to Swedish church tax. As a non-resident, however, he was unable to contract out of the tax although a resident in the same circumstances would have been entitled to contract out. He complained of a breach of Article 14 in conjunction with Article 1/1. The ECtHR held that the prohibition on discrimination was applicable to taxation by virtue of the right to the enjoyment of possessions guaranteed in Article 1/1. The Court went on to hold that there was no justification for this distinction between residents and non-residents and that there had been a violation.

The *Darby* case is somewhat unusual. Non-residents would not normally be in an objectively comparable position to residents. Outside of discrimination on grounds of sex, arguments based on Article 14 are unlikely to succeed in taxation matters. Even assuming that the applicant can persuade the Court that he is in an objectively similar position to another person who is taxed differently, the Court may still find that the difference in treatment is within the wide margin of appreciation.

Article 8: *Right to Respect for Private and Family Life*

Article 8 provides as follows:

‘Article 8: *right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime,

for the protection of health or morals, or for the protection of the rights and freedoms of others.’

Complaints of infringement of Article 8 have been made both with respect to the substantive tax rules of the country concerned, and also with respect to taxation procedures, particularly the seeking of information by revenue authorities. More cases have raised procedural aspects as opposed to substantive issues.

The leading case in this area is that of *Funke, Mialhe and Crémieux v France* (Application Nos.10828/84, 12661/87 and 11471/85). All three matters involved searches of premises by French Customs officers and seizure of documents found on the premises. The ECtHR upheld the complaint in all three matters on the grounds that the powers of the Customs authorities to search premises were subject to insufficient judicial safeguards against abuse.

One of the earlier but unsuccessful cases to raise Article 8 in the context of seeking information from a taxpayer was the case of *X v Belgium* (Application No. 9804/82). The applicant was requested by the tax authorities to supply a detailed explanation of his private expenditure. The applicant contended that an obligation to give such details would compel him to reveal intimate aspects of his private life. The ECnHR held that the interference was in accordance with law, that its purpose was the collection of tax which was necessary for the economic well-being of the country, and that it was necessary in a democratic society for a taxpayer to disclose to the tax administration the private use he had made of his assets. In the context of proportionality, the ECnHR noted in particular that the amount involved was a considerable one and that the approach of the tax authorities was therefore proportionate to the objective they were pursuing.

Overall, challenges under Article 8 to information-seeking powers of revenue authorities have been unsuccessful, except where those powers were subject to inadequate supervision.

Article 9: Freedom of Thought, Conscience and Religion

With Article 9, one has reached those Articles of the Convention which appear to have nothing to do with taxation. However, one should not underestimate the ingenuity of taxpayers (or their advisers) in bringing forward arguments under the Convention. The Strasbourg organs have on several occasions repeated that the freedom of religion in Article 9 cannot be construed as giving any particular taxpayer a freedom from taxation.

In a number of cases Quakers have sought to argue that they should be exempted from paying that part of their taxes which would be utilised for military purposes: their religious convictions were opposed to any military activities, and they objected to paying taxes that would be used to fund those activities.

In the case of *C v United Kingdom* (Application No.10358/83) the applicant was a member of the Quakers. He was not prepared to pay that proportion of his taxes which was used to finance armaments, weapons research and allied industries (which was

estimated to be equivalent to 40% of the revenue raised by income tax in 1980/81). He was willing to pay an equivalent amount into a fund for non-military purposes. The ECnHR, in holding his application inadmissible, held that Article 9 primarily protected the sphere of personal beliefs and religious creeds but did not always guarantee the right to behave in public in a way which was dictated by those beliefs. Article 9 did not, therefore, provide a basis for refusing to pay that part of the tax.

Miscellaneous Articles of the Convention

This section considers a small number of cases which have raised, in a taxation context, Articles of the Convention which have not yet been considered. With the exception of 6 cases in which Article 5 (*right to liberty and security*) was raised, the applicants were unsuccessful in their arguments on all of these other Articles.

(a) Article 4 (Prohibition of Slavery and Forced Labour)

However ingenious one might consider taxpayers and their advisers to be, the prohibition of slavery and forced labour does not at first sight appear to offer particularly fertile ground for arguments in a taxation context. Nevertheless, Article 4 has been raised in at least 3 cases.

In a case generally known as *Four Companies v Austria* (Application No.7427/76), the four companies complained of the obligation imposed on them to calculate and withhold from the wages of their employees taxes, social security contributions, sums in execution of court judgment, and to pay to their employees family allowances and salaries in cases of sickness. They argued that these obligations constituted forced labour contrary to Article 4. The ECnHR rejected the application, stating that, even assuming that forced labour was applicable in these circumstances, Article 4(3)(d) expressly excluded from the definition of ‘forced or compulsory labour’ ... ‘any work or service which forms part of normal civic obligations’. The duties imposed upon the employer companies in this case did not go beyond normal civic obligations.

(b) Article 5 (Right to Liberty and Security)

This Article contains detailed rules dealing with the lawful detention of a person. It has been raised, as one might have expected, in connection with criminal tax investigations.

In four cases concerning the Community Charge (*Benham v. United Kingdom* (Application No.19380/92), *SD v. United Kingdom* (Application No.25286/94), *Poole v. United Kingdom* (Application No.21890/95) and *Johnson v. United Kingdom* (Application No.28455/95) the applicant was detained for alleged wilful non-payment of Community Charge: in each of the cases Article 5 and Article 6 were both held to have been breached.

(c) Article 12: Right to Marry

Article 12 is quite brief and provides as follows:

‘Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.’

The right to marry has been raised in 2 cases concerning the taxation of husbands and wives, along with arguments based upon the non-discrimination provision in Article 14. In both cases it was argued that the current system of taxing husbands and wives in the countries concerned resulted in a higher tax burden on married couples than on co-habitees in a comparable position. The cases are *Hubaux v. Belgium* (Application No.11088/84) and *Lindsay v. United Kingdom* (Application No.11089/84). In both cases the ECnHR held that the tax rules in question failed to disclose an interference with the right to marry.

Conclusions

It is inherently unlikely that 2 October will of itself bring in a fundamental change for the UK taxation system. However, it will signal the start of a new era when issues under the Convention will be directly applied to the UK tax system. Over time, one can anticipate a number of changes to that system.

Biography

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