

Press release issued by the Registrar

**CHAMBER JUDGMENT
JOUBERT v. FRANCE**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Joubert v. France* (application no. 30345/05). The Court held that there had been a **violation of Article 1 of Protocol No. 1 (protection of property)** of the European Convention on Human Rights on account of the introduction of a law with retrospective effect during the course of proceedings challenging a supplementary tax assessment.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 10,000 euros (EUR) for costs and expenses. ([The judgment is available only in French.](#))

1. Principal facts

The applicants, François Joubert and his wife, Monique Joubert, are French nationals who were born in 1944 and 1949 respectively and live in Saint-Romain-la-Virvée.

In 1990 they sold all their shares in the M. company to the B. company. In the course of an audit of the B. company, the National and International Tax Audit Department (DVNI) of the Department of Revenue served Mr and Mrs Joubert with a supplementary tax demand in respect of the capital gains resulting from the transaction, finding that the gains had exceeded the sum declared by more than 4 million francs. Penalties for bad faith were also imposed on the applicants, at a rate of 40 %.

In January 1995 the applicants applied to the tax authorities for an order cancelling the tax surcharges and the penalties, but were unsuccessful. In September 1995 they applied to the Administrative Court, arguing that the DVNI had not been authorised to make the assessment.

On 31 December 1996 the Budget Act for 1997 was published in the Official Gazette. Section 122 provided that inspections by the tax authorities that were challenged on the ground that the body carrying them out had not been authorised to do so were deemed to be

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

lawful. The tax authorities submitted that this provision should apply in Mr and Mrs Joubert's case.

On 8 June 1999 the Administrative Court held that section 122 of the Budget Act for 1997 did not satisfy the public-interest requirement, the sole ground on which legislative measures with retrospective effect could be justified. It made an order cancelling the tax surcharges and related penalties, on the ground that the DVNI had not been empowered to investigate the applicants' tax affairs since they had not had any interest in the B. company, which was the subject of the DVNI's audit.

Both parties appealed and on 10 February 2004 the Administrative Court of Appeal reversed the Administrative Court's judgment. It applied section 122 of the Budget Act for 1997 to Mr and Mrs Joubert's case and held that the DVNI had been empowered to inspect their tax affairs, but granted them full relief from the penalties, finding them to be unjustified.

On 9 July 2004 Mr and Mrs Joubert paid the sum of EUR 121,140 in respect of their supplementary tax assessment. The Conseil d'État dismissed an appeal on points of law by them in February 2005.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 August 2005. It was decided that the admissibility and merits would be examined at the same time.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment²

Complaint

Relying in particular on Article 1 of Protocol No. 1, the applicants complained that a legislative provision with retrospective effect had been introduced during the course of the proceedings, as a result of which the dispute had been decided in favour of the authorities.

Decision of the Court

Having regard to the decision of the Administrative Court of Appeal and the case-law of the administrative courts, the Court considered, contrary to the Government, that prior to the

² This summary by the Registry does not bind the Court.

introduction of the Budget Act for 1997 the applicants had had a pecuniary interest amounting to a “possession” within the meaning of Article 1 of Protocol No. 1. They had had at least a “legitimate expectation” of being able to obtain the reimbursement of the sum at issue by raising their complaints with the administrative courts.

In determining the substance of the dispute once and for all, the Budget Act for 1997 had interfered with Mr and Mrs Joubert’s exercise of their right to the peaceful enjoyment of their possessions, resulting in a deprivation of property. It was not disputed between the parties that the interference had been “provided for by law”.

However, the Court considered that the enactment of section 122 of the Budget Act for 1997 had not been justified on public-interest grounds. The increase in the number of potential actions brought by taxpayers, which – according to the Government – the provision had sought to avoid, had been purely hypothetical at the time it was passed.

The introduction of the provision complained of had irrevocably prevented Mr and Mrs Joubert from raising their complaint that the DVNI had acted outside its powers, and had thus deprived them of a possession which they might have expected to have reimbursed. The Court therefore considered that the enactment of section 122 of the Budget Act for 1997 had interfered with their possession and that the balance between the general interest and the protection of their rights had been upset, in breach of Article 1 of Protocol No. 1.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Céline Menu-Lange (telephone: 00 33 (0)3 90 21 58 77)

Stefano Piedimonte (telephone: 00 33 (0)3 90 21 42 04)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Kristina Pencheva-Malinowski (telephone: 00 33 (0)3 88 41 35 70)

Frédéric Dolt (telephone: 00 33 (0)3 90 21 53 39)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.