Judicial practice comments[*)]

TAX EVASION IN RELATION TO THE JURISPRUDENCE OF THE EUROPEAN COURT[**)]

Tudoran Mihai Viorel[***)]

Abstract

This article underlines the importance of the jurisprudence of the European Court of Human Rights concerning the correct interpretation and applications of the texts of the national law, focusing on the problems of the fiscal litigation from a civil perspective as well as from a penal one, aiming at the fight against the phenomenon of tax dodging, most exactly at the procedures of criminal prosecution of such type of crimes.

Keywords: *fiscal litigation; ECHR jurisprudence; civil rights and obligations; criminal charge; concrete damage*

1. This paper aims to examine a judgment ruled by the European Court of Human Rights (2002) – in the case Janosevici vs. Sweeden, dealing with the issue of fiscal litigation, from a civil, and a penal perspective.

Although first we refer to the case Ferrazzini vs. Italy, which evokes a rather simple problem concerning the scope of Article 6(1) of the Convention, it has a merely accessory role for a better understanding of the main case, *i.e.* Janosevici vs. Sweden, the latter case actually being the central object of our scientific endeavor.

2. Consequently, the present analysis will begin with the case Ferrazzini vs. Italy, then we are going to examine the case Janosevici vs. Sweden which, as we shall see, may have certain specific implications upon the application of the provisions of Article 10(1) of Law No. 241/2005 for the prevention and the fight against tax evasion[1)], in particular in the light of certain problems occurring in the

---

[*)] The opinions expressed here belong to the authors, such opinions being presented in order to be considered by the readers, who will appreciate the value of the arguments brought to discussion. The sequence in which these opinions are presented, when they express contradictory views on the same matter, does not express the editorship's opinion regarding the theoretical or practical solution proposed.

[**)] Article translated from the Romanian language. It was published in RDP. nr. 2/2010, pp. 138-153.

[***)] Judge, Ploieşti Court of Appeal; e-mail: tudoran_mihai@yahoo.com.

[1)] Law No. 241/2005 has double purpose: on the one hand, to inform taxpayers – natural and legal persons – on their obligation to contribute, by taxes and duties, to public expenses and to

judicial practice in Romania.

3. The literature published in our country[2)] has argued that the tax evasion offence is, in its materiality, an offence having a material result, but also an offence materialized in a threat. In this context, the main difference that should have emerged between the two categories of offences provided by the law, tax evasion offences and offences related to tax evasion offences, should have necessarily referred to the prejudice; it means that tax evasion offences generate a certain prejudice, easy to estimate, while the offences related to tax evasion offences should only be offences materialized in a threat and rarely offences having a material result.

Before actually beginning the analysis, it should be noted that we are talking about the violation, under various aspects, of Article 6 of the European Convention on Human Rights, called „the right to a fair trial"[3)], the most widely

---

prevent the application of the sanctions they are subject to in case of fraudulent failure to perform their fiscal liabilities and, on the other hand, to be the legal instrument on the ground of which the criminal liability of those who violate the legal provisions in bad faith can be entailed. In this sense, see A. Boroi, I. Rusu, *Legea nr. 241/2005 pentru prevenirea şi combaterea evaziunii fiscale,* D. nr. 2/2006, p. 5.

Compared to Law No. 87/1994 for the fight against tax evasion, the new Law No. 241/2005 stipulates four main elements of novelty: it consecrates the fact that the new law also stipulates certain measures for the prevention of tax evasion; it establishes new offences, called offences related to tax evasion offences; it incriminates several deeds as offences materialized in threat; it defines more terms used by the law, for greater precision. In this sense, see V. Dabu, A. M. Guşanu, *Noua lege privind evaziunea fiscală,* RDP nr. 2/2006, p. 31.

[2)] C. Voicu, A. Boroi, I. Molnar, M. Gorunescu, S. Corlăţeanu, *Dreptul penal al afacerilor,* ed. a 4-a, Ed. C.H. Beck, Bucharest, 2008, p. 169.

[3)] According to this text, „any person is entitled to fair, public and reasonable judgment of his/her cause, by an independent and non-biased court, established by the law, which will decide either on the violation of his civil rights and obligations, or on the grounded nature of any penal charges against him/her. The judgment has to be ruled publicly, however access to the courtroom may be forbidden to the media and public throughout the entire term of the trial or part thereof, in the interest of morality, public order or national security in a democratic society, when the minors' interests or the protection of the private lives of the parties to the trial require it, or to the extent deemed absolutely necessary by the court when, under special circumstances, publicity might interfere with the interests of justice.

Any person charged with an offence is presumed innocent until his/her guilt is duly determined. Any defendant has, in particular, the right: a) to be informed, within the shortest possible time, in a language he/she is familiar with and in detail, on the nature and cause of the charge brought against him/her; b) to be granted the time and facilities necessary to prepare his/her defense; c) to defend himself/herself or to be assisted by a lawyer chosen by him/her and, in case he/she lacks the necessary resources to pay a lawyer, to be able to be assisted, free of charge, by an *ex officio* lawyer, when the interests of justice require this; d) to ask or request the hearing of the witnesses against him/her and to obtain the summoning and hearing of the witnesses on his/her behalf under the same conditions as witnesses against him/her; e) to be assisted, free of charge, by an interpreter, in case he/she does not understand or speak the language used in the hearing".

invoked text of the Convention being violated[4)].

The situation presented above is explained by the fact that the said text is particularly generous in terms of its ideative content[5)].

4. Mr. Giorgio Ferrazzini, an Italian national born in 1947, living in Oristano (Italy), transfers together with another person, a plot of land, several buildings and an amount of money to a limited liability company A., whose purpose is to receive tourists in an agricultural environment. Consequently, it requests the tax authority to grant him several installment discounts, applicable to certain taxes related to the abovementioned transfer of property, in accordance with a law – applicable, in his opinion – and pays the amount he deems to be payable by him.

On August 31, 1987, the tax authority notified to the petitioner, by letter, an increase in tax duties, reasoned by the fact that the value allocated to the assets transferred to the company is incorrect, and compelling to the payment of a duty, plus penalties, for a global amount of £43,624,700. Mr. Ferrazzini's second appeal filed with Oristano first instance tax commission, aiming to obtain the cancellation of the notice of increase, is admitted, the company being excluded from the dockets.

Moreover, the tax authority notifies two notices of tax duty increases, reasoned by the fact that the company may not be granted the installment discount applicable to registration rights, the mortgage fee and the domicile shifting rights. The tax authority's notice referred to a 20% penalty applied against the requested amounts, unless the payment is made within maximum sixty days.

In his petition of February 26, 1998 filed with the Commission, Mr. Ferrazzini complained about the fact that the term of the procedure violated the principle of *reasonable term*, as provided by Article 6(1) of the Convention[6)]. Also, the

---

[4)] For a detailed analysis of the structure of this text, see L. E. Pettiti, E. Decaux, P. H. Imbert, *La Convention europèenne des droits de l'homme. Commentaire article par article,* 2ème edition, Èconomia, Paris, 1999, p. 242 şi urm.

[5)] These are rights and guarantees regarding the fair deployment of a trial; the right to a tribunal; the presumption of innocence and guarantees granted to the defendant in a penal trial. Regarding the fair deployment of the trial, it is about *implicit* guarantees concerning the procedure deployed in a fair trial, such as the equality of arms, the principle of contradictoriality, the reasoning of the judgments, the defendant's right to remain silent and not to self-incriminate himself/herself; but also *explicit* guarantees concerning the procedure deployed in a fair trial, such as the trial publicity and the reasonable term.

As far as the right to a tribunal is concerned, this is expressly the right to a tribunal that would satisfy three conditions, *i.e.* to be established by the law, to be independent and non-biased.

Finally, regarding the defendant's guarantees in a penal trial, this is about the right to be informed on the nature of the charge; granting the necessary time and facilities to prepare the defense; the right to defense; the defendant's right to question witnesses in the trial; the right to be assisted by an interpreter.

[6)] V. Berger, *Jurisprudența Curții Europene a Drepturilor Omului,* ed. a 5-a, Institutul Român pentru Drepturile Omului, Bucharest, 2005, pp. 294-295.

petitioner declared himself „persecuted by Italian justice", also invoking the violation of Article 14 of the European Convention on Human Rights[7)], an accusation finally determined by the Court to be groundless and, consequently, declaring it inadmissible, since it was obviously erroneously grounded. However, this latter aspect exceeding the scope of our analysis.

5. As one may notice, the quoted case essentially refers to the *term of certain fiscal procedures* deployed between the State and an individual, raising the question of the scope of Article 6(1) of the Convention, the extent of the term of civil rights and obligations, the solution ruled by the Court in this case, together with other solutions ruled in cases raising similar questions[8)], also settling one of the issues to be presented in relation to the case Janosevici vs. Sweden, which is a rather preliminary aspect in relation to the merits of such case.

The existing literature has argued that, in a constant jurisprudence, the European court has reasoned that, in order for Article 6(1) to become applicable in „civil" matters, several conditions need to be satisfied, namely:

a) the existence of a „dispute" (in French „contestation") regarding a „right" which may be claimed, exercised by a legal action, within the internal law system;

b) the dispute has to be real and serious; it may be related both to the existence of the right, and to the its extent or manners in which it is exercised;

c) the procedure result has to be direct and decisive in relation to the existence of the right. The Court stated that Article 6(1) „may be invoked" when the object of a legal action consists in „assets" and the legal action is grounded on the prejudice caused also to certain non-patrimonial civil rights, in a wider sense, or when its solution is decisive for private rights and obligations, the spirit of the Convention requiring that the term „dispute" is not interpreted in its purely „technical" meaning, but to receive a rather material meaning than formal meaning. This text does not ensure, in itself, any decisive material content regarding „civil rights and obligations" in the legal system of the contracting States, their content is given, in principle, by the internal regulations which must also ensure its specific defenses[9)].

Going back to the specific nature of the case Ferrazzini vs. Italy, such nature

---

[7)] In compliance with the provisions of this article entitled *„No discrimination"*, „the enforcement of the rights and freedoms acknowledged by this Convention must be ensured without any discrimination based, in particular, on gender, race, color, language, religion, political opinions or any other opinions, national or social origin, belonging to a national minority, wealth, birth or any other situation".

[8)] See, for example, cases Wasa Liv Onisesidigt, Fòrsäkringslologet Valands Pensionsstiftelse and a group of approximately 15,000 people vs. Sweden; Kustannus Oy Vapaa Ajattelija AB and others vs. Funland; Vidacar SA et Opergrup SL vs. Spain; Gasus Dosier – und Fòrdertechnik Gmbh vs. The Netherlands, on www.echr.coe.int.

[9)] C. Bîrsan, *Convenția Europeană a Drepturilor Omului. Comentariu pe articole,* vol. I, *Drepturi şi libertăți*, Ed. C. H. Beck, Bucharest, 2005, p. 401.

is given by the *fiscal area* of a fiscal litigation; therefore the question naturally appeared whether such matter is included in the scope of Article 6(4) of the European Convention on Human Rights.

Even in this sense, the Court considered that fiscal matter still belongs to the exercise of certain absolute powers („noyau dur") of public authority, and the public nature of the legal relationship between the taxpayer and the collectivity is prevailing. The Convention interpretation principle should not be disregarded; according to this principle, the Convention together with its additional protocols, must be regarded as a whole, and Article 1 of Protocol the powers to adopt the legal regulations they may deem necessary to ensure the payment of the taxes payable by individuals[10)].

In the quoted case, the European Court on Human Rights declared admissible the charge based on Article 6(1) of the Convention under its civil aspect, following to rule only on the enforceability of the said provision. Presenting its reasons, the Court argued that a fiscal procedure obviously has a patrimonial interest, but the capacity to be able to demonstrate that a litigation has a „patrimonial" nature is not sufficient, in itself, to lead to the enforceability of Article 6(1), under its „civil" aspect. "Patrimonial" liabilities may exist in relation to the State or to its subordinated authorities which, for the purpose of Article 6(1), must be deemed to be exclusively related to the public law area and, consequently, are not covered by the term „civil rights and obligations". Besides the fines applied under the title of „criminal sanction", these will be, in particular, the cases when a patrimonial liability appears from a fiscal legislation or is otherwise part of the normal civic obligations within a democratic society[11)].

Recent literature has argued that, the notion of dispute concerning civil rights and obligations must be understood as the real and serious dispute within a procedure having a direct and decisive result in relation to the existence of the civil rights; in relation to their extent, to the manners of exercising the powers granted by them (including the *de jure* belonging) or to civil obligations[12)].

[10)] C. Bîrsan, *op. cit.,* pp. 435- 436.

[11)] V. Berger, *op. cit.,* p. 295.

[12)] In this respect, see O. Predescu, M. Udroiu, *Convenţia europeană a drepturilor omului şi dreptul procesual penal român,* Ed. C.H. Beck, Bucharest, 2008, p. 267, a paper referring to ECHO, Judgment of July 16, 1971, in the case Ringeisen vs. Austria, paragraph 94; ECHO, Judgment of June 28, 1978, in the case Konig vs. Germany, paragraphs 88-89; ECHO, Judgment of March 25, 1983, in the case Silever vs. Great Britain, paragraph 82; ECHO, Judgment of October 23, 1985, in the case Benthem vs. The Netherlands, paragraph 32; ECHO, Judgment of October 23, 1990, in the case Moreira de Azavedo vs. Portugal, paragraph 66; ECHO, Judgment of February 21, 1986, in the case James vs. Great Britain, paragraph 81; ECHO, Judgment of May 10, 2001, in the case Z s.a. vs. Great Britain, paragraphs 87-93; ECHO, Judgment of July 8, 1986, in the case Lithgow s.a. vs. Great Britain, paragraph 192; ECHO, Judgment of September 23, 1982, in the case Sporrong et Lonnroth vs. Sweden, paragraph 81; ECHO, Judgment of July 7, 1989, in the case TreTraktorer AB vs. Sweden, paragraph 40; ECHO, Judgment of October 29,

6. Going back to the case subject to settlement, it was reasoned[13)] that the judges of the Court are invited to verify, taking into consideration also the changes occurring in the society in terms of the legal protection granted to individuals in their relationship with the State, whether the scope of Article 6(1) should be extended or not to litigations between the citizens and the public authorities, concerning the lawfulness, under the national law, of the tax authority's decisions.

Of course, the relationships between the individuals and the State have evolved in numerous areas during the 50 years lapsed since the adoption of the Convention, taking into consideration the increasing intervention of public law regulations in private law relationships. This situation has determined the Court to consider that certain procedures, depending on the "public law" under the national law, were incorporated in the scope of Article 6, under its "civil" aspect, when the settlement was decisive for certain private rights and obligations. In fact, the increasing State intervention in the individuals' daily life, *e.g.* in the matter of social protection, forced the Court to evaluate public and private law aspects, before being able to draw the conclusion that the right invoked could be qualified as "civil".

As far as fiscal matter is concerned, the possible evolutions occurring in democratic societies are, nevertheless, unrelated to the essential nature of the individuals' or enterprises' obligation to pay some taxes. Compared to the time when the Convention was adopted, here there is no new State intervention in the „civil" area of the life of individuals. The Court considers that fiscal matter is still related to the „tough nucleus" of the public authority's powers, the public nature of the relationship between the taxpayer and the collectivity still prevailing. The Court considers fiscal litigation to be outside the scope of civil rights and obligations, despite the natural patrimonial effects of such litigation upon the taxpayers' situation.

The principle according to which the autonomous terms included in the Convention should be interpreted in the light of the current living conditions within democratic societies does not authorize the Court to interpret Article 6(1) as if the determinant „civil" – with the limitations necessarily imposed by this determinant upon the category of „rights and obligations" to which the said article is applied – were not present in the text[14)].

Consequently, it was reasoned that Article 6(1) of the Convention has not

---

1991, in the case Hellers vs. Sweden, paragraph 29. The same paper also states that ECHO appreciates the existence of the autonomous term of „civil rights and obligations" depending on the following conditions: rights acknowledged by national legislation, as well as the civil nature of the rights.

[13)] V. Berger, *op. cit.,* pp. 295-296.

[14)] *Ibidem,* p. 296.

application, under its civil aspect, in the case of fiscal procedures (it should be noted that the decision was adopted with 11 votes against 6 votes, which indicates to the existence of a powerful minority which disagreed to such standpoint).

The six-person minority included the Romanian judge Corneliu Bîrsan who, together with judges Rozakis, Bonello, Straznicka and Fischbach, joined judge Lorenzen's dissident opinion.

They argued that the European Convention on Human Rights contains no definition of „civil rights and obligations". Even if the Convention bodies, in time, has ruled on this issue on several occasions, and modified previous jurisprudence several times, no such definition may be found in its judgments and decisions, the Convention bodies pronouncing, in each case settled by it, on the enforceability of Article 6 in this area. Nevertheless, several important general elements were defined.

During the discussions, it was concluded that, for a better understanding of the analyzed issue, it is essential to review the historical context of the introduction in Article 6(1) of the Convention, of the term „civil nature", which is not found in the English text of the corresponding provision (Article 14 – of the International Covenant on civil and political rights). On the contrary, Article 8 of the American Convention on Human Rights[15)] expressly covers fiscal litigations concerning „civil rights and obligations, as well as the areas of labor, taxation or any other area".

The preliminary works related to Article 6 of the Convention (which article is closely related to Article 14 of the above mentioned Covenant) would allow drawing the conclusion that the authors intended to distinguish between litigations between individuals and governments, especially due to the difficulties encountered at that time when attempting to clearly differentiate among the powers between, on the one hand, the administrative bodies and their discretionary powers and, on the other hand, judicial bodies. On the other hand, the texts invoked contain no specific reference to the fiscal bodies which, as a rule, do not discretionary power, but they enforce more or less explicit legal provisions.

Consequently, the question was raised whether it is possible, based on the Court's current jurisprudence, to make a clear and unequivocal distinction between „civil" and „non-civil" rights and obligations and, if the answer is no, whether it was time to put an end to this uncertainty extending the protection of Article 6(1) to all litigations involving a public authority's decision which

---

[15)] The literature has shown that human rights are essential for the human being, arising directly from the existence of the human being, from human dignity, independent of their international legal formalization, and that international regulations merely consecrate and guarantee human rights, indissociably from it. In this sense, C. L. Popescu, *Protecția internațională a drepturilor omului - surse, instituții, proceduri. Note de curs,* Ed. All Beck, Bucharest, 2000, p. 7.

determines an individual's legal status.

Referring strictly to the fiscal area, minority judges also argued that the patrimonial aspect was emphasized and deemed to be decisive for the qualification of a right as a civil right within numerous judgments, even when the context of the litigation was explicitly fiscal. Thus, in the case National and Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society vs. the UK of October 23, 1997, the Court, invoking the patrimonial interest, estimated that an action for repayment of the amounts paid based on the fiscal law provisions declared null would have a „civil nature", adding that such conclusion does not alter the fact that the courts would find the origin of such amounts in fiscal legislation and that the claimants were subject to taxation under such legislation[16)].

7. In consideration of the pros and cons presented about the question brought to discussion in the case Ferrazzini vs. Italy, one may conclude that jurisprudence is rather heterogeneous, as it was argued by the magistrates who presented their standpoint contradictory to that of the majority and that there is a certain limitation to old patterns, more than half a century ago, of the initial authors of the Convention.

From our point of view, we would rather agree to the minority opinion presented here, the „civil nature" being difficult to distinguish from the „non-civil nature" of the cases, due to their complex implications. Therefore, to avoid being faced with a legislative void concerning the protection granted to individuals by Article 6(1) of the European Convention on Human Rights, it would be appropriate to extend such protection, by re-interpreting the above mentioned legal text, to all litigations in which, by a public authority's decision, a certain aspect of a person's legal status is determined, other than from a penal point of view.

As it will be shown, this solution given by the European Court of Human Rights in the case Ferrazzini vs. Italy, which set the jurisprudence in this matter, at least for the time being, was also used in the case Janosevici vs. Sweden, to be further analyzed, and within which its conclusions were somehow used through the method *a contrario*, in order to determine the penal nature of the charge brought against the petitioner Velmir Janosevici.

8. Velmir Janosevici, a Swedish national, the owner of a taxi company, during a large investigation conducted by the tax authority regarding taxi companies in the 1994 and 1995, was accused that the company's tax statements were incorrect. Consequently, in December 1995 he received an ordinance for the payment of a tax increase of 161,261 Swedish krona.

The petitioner contested the tax authority's evaluation, filing an appeal with the administrative jurisdictions. The amounts representing taxes and the claimed

[16)] In this sense, see www.coe.int, the searching portal of HUDOC.

increases being significant and immediately payable, Janosevici requested a payment postponement, waiting for the settlement of the appeal procedure. The tax authority and administrative jurisdictions dismissed this request, due to the fact that the petitioner was not able to offer bank securities as a safety measure. In the absence of any assets to pay the due amounts, Mr. Janosevici was declared bankrupt in June 1996.

In February 1999, although it reexamined its initial decisions regarding the taxes and increases payable by Janosevici, the tax authority refused to modify them and transmitted the case to the department administrative tribunal, which confirmed the decision in discussion. Currently, the case is pending with the Administrative Court of Appeal.

In its petition of November 28, 1996, submitted to the European Commission, Janosevici invoked the fact that the enforcement of the tax authority's decision, before a final judgment having set its liabilities, was contrary to Article 6 of the Convention. He also claimed that the fiscal procedure was not concluded within a reasonable term, and that he had been deprived of his right to be considered innocent until his guilt was duly established[17)].

The European court first analyzed whether the deed charged against the defendant is a criminal deed or not. According to this court, in order to establish the „criminal" nature of a"deed", for the purpose of the Convention, first it needs to be determined whether the text defining it is included or not in the penal law, then the nature of the perpetrated offence is examined, as well as the gravity of the sanction applicable to the interested person.

According to the jurisprudence of the European Court of Human Rights, fiscal litigation is not included, as a rule, in the area of „civil rights and obligations" forming the object of Article 6(1) of the Convention; consequently, it may only be a criminal deed. On the other hand, the very general nature of the legal provisions regarding tax increases, and the purpose of the sanctions, which is both preventive and repressive, indicate that, in relation to Article 6, the petitioner was charged with a criminal deed. The criminal nature of the deed also emerges from the gravity of the sanction ruled and actually applied. Therefore, Article 6 is applicable[18)].

The European court has ruled a similar judgment also in another case. This time, the claimant was the main shareholder and president – general manager of a French company; in such capacity, he was subject to certain „tax adjustments", *i.e.* the payment of certain outstanding taxes, together with significant delay penalties. Before the Court, the claimant invoked the fact that, in the procedure deployed before the administrative jurisdictions, when he disputed the sanction applied, he did not receive a fair trial.

[17)] V. Berger, *op. cit.,* pp. 313-314.

[18)] *Ibidem,* p. 314.

The French government argued that the sanction applied had a fiscal nature, therefore the litigation should not be initiated based on a penal charge. However, in the notice filed in this case, the Court established that this is „a serious pecuniary punishment, potentially causing a serious prejudice to the claimant", therefore, by its gravity, the fiscal fine applied belongs to the area of „penal matter", for the purpose of Article 6(1) of the Convention. The Court argued that, under certain circumstances, jurisdictional procedures regarding fiscal duties and fines may constitute penal charges, thus entering the scope – under a penal aspect – of the provisions of Article 6(1) of the Convention.

Also, the Court established the criteria based on which a fiscal sanction may be assimilated to a penal charge, for the purpose of Article 6(1), namely:

a) the incriminating deeds must be provided by a general law in the matter of taxation – fiscal code, organic law etc. – applicable to all natural and legal persons, in their capacity of taxpayers, and not to certain groups of persons having a special status. Such general law requires a certain conduct from the taxpayers which, in case of any deviation, leads to the enforcement of a sanction, usually in the form of tax increases or fiscal fines;

b) the tax increases applied must not be aimed at the recovery of a prejudice; they must be aimed at punishing the guilty person, in order to prevent the repeated perpetration of such deeds, therefore it has the nature of a sanction, not of a recovery;

c) the legal basis of the sanction must be the general regulation having a preventive and repressive purpose, specific to any criminal regulation;

d) the increases applied must be significantly high and, in case of failure to pay, they must be able to trigger, as the case may be, the criminal prosecution against that person, and to be transformed into punishment by imprisonment;

e) in the Court's opinion, such criteria must be satisfied cumulatively, none of them being decisive, but cumulated and combined they are able to confer a „criminal" nature to the „fiscal charge"; therefore, the procedures related thereto are included in the scope of the provisions of Article 6(1) of the Convention.

Concerning the „significant value" of the fiscal increases which may be assimilated to certain "criminal punishments" for the purpose of the Convention, the Court has recently decided that a 10% increase – the equivalent of 4,450 FF (approximately EUR 600) – applied against the amount payable by the claimant as outstanding tax has no such nature, therefore the procedure forming the object of his complaint was not initiated based on a „criminal charge"[19)].

As regards the charges brought by the petitioner Velmir Janosevici, establishing the adoption of execution measures against the petitioner and the

[19)] In this sense, see C. Bîrsan, *op. cit.,* pp. 452-454, referring to the Judgment of the European Court of Human Rights of May 12, 1987 in the case Sydon vs. Sweden; the Judgment ruled by the same Commission on December 10, 1992 in the case Bendenom vs. France, and the Judgment of the European Court of Human Rights of June 3, 2003 in the case Morel vs. France.

dismissal of the request for payment postponement, the Court concluded that the tax authority's decisions regarding taxes and tax increases had serious effects upon the petitioner, not only for his private financial standing, but also for his taxi activity. Some of these negative effects could be even excessively aggravated during the procedure deployment and they would be difficult to asses and remedy if the interested party's attempts to obtain the dismissal of the incriminating decisions issued against him materialized. Therefore, in order for the petitioner to have effective access to the tribunals, it was necessary for the procedures initiated by him to be deployed with diligence. The Court estimates that, requiring almost three years to rule on the petitioner's pleas, who requests the reexamination of his tax, the tax authority did not respond urgently, therefore excessively delaying a judicial decision concerning the main issues related to the taxes and tax increases charged against the interested party. Consequently, Article 6(1) regarding the right to access to a tribunal was breached[20)].

As regards the term „effective access to tribunals" used in the comment, it should be noted that Article 6(1) of the European Convention on Human Rights uses the wording „right to judgment …by an independent and non-biased court, established by the law".

We remind that, in the European Court's jurisprudence, the notion of tribunal is characterized, in the *material* meaning of this term, by its jurisdictional function, which implies the possibility to rule, based on certain rules of law and within an organized procedure, on any *de facto* and *de jure* situation which come under its competence, in relation to the case under settlement. Also, it must satisfy other requirements as well, such as: independence, especially from the executive, non-biased nature, term of the mandate of its members, existence of certain procedural guarantees.

The tribunal must be established by the law. This condition reflects the principle of the rule of law inherent to the system of the European Convention and its additional protocols. A body which is not established according to the lawmaker's will necessarily lacks the legitimacy required in a democratic society, in order to be able to settle any person's causes. The wording „provided by the law" refers not only to the legal basis of the existence of the tribunal, but also the structure of the panel judging each case.

The term of law taken into consideration by the provisions of Article 6(1) refers not only to the legislative, in terms of setting the judicial bodies' competence, but also to any other national law provision, whose violation results in the unlawful participation of a panel member in the judgment of the case. Thus, in particular the legal provisions regarding the magistrates' mandate, incompatibilities and recusation are taken into consideration.

Regarding the independence of the tribunal, the European Court stated that

[20)] V. Berger, *op. cit.,* pp. 314-315.

the following criteria must be taken consideration in this area: the method used to appoint the members of the tribunal and the term of mandate, the existence of certain protection measures against external pressures and its apparent independence.

Regarding the apparent independence (whose analysis may not separated from the apparent impartiality), the doctrine showed that it has to be determined with reference to objective, organic and functional criteria, since justice does not only need to be made, but it necessary to be regarded as made[21)].

Impartiality implies the lack of any prejudgment or preconception regarding the solution to be ruled in a trial. It concerns each member of the panel. Impartiality is examined in the European Court's jurisprudence both under a subjective, and objective aspect[22)].

Also, it must be noted that the term of independent and impartial „court (tribunal)": used by Article 6(1) of the Convention has the same meaning as the term „judge" used by Article 5(3) of the Convention, Article 5 referring to the right to freedom and safety[23)].

Concerning the term of the procedure, the Court considers that the term to be taken into consideration began on December 1, 1995, when the tax authority drafted the fiscal report which led to an additional tax and tax increases. The judicial procedure related to taxation and increases is still pending with the Administrative Court of Appeal. Presently, it has lasted almost six years and eight months. In the Court's opinion, it has exceeded the reasonable term, thus breaching Article 6(1)[24)].

It should be noted that the approximately three-year term required by the tax authority to rule on the petitioner's pleas, requesting the re-examination of its tax, was included in the term of six years and eight months (until the settlement of the case by the European Court of Human Rights), calculate by the Court as the entire duration of the judicial procedure; practically, in this case, the term of *effective* access to a tribunal is closely connected to that of reasonable term and vice-versa, therefore, the judicial decision delay which prevented the petitioner from having *effective* access to a tribunal also led to the exceeding of the reasonable term, thus Article 6(1) of the European Convention on Human Rights being violated twice.

Regarding the notion of *reasonable term,* contained in this latter text, we may notice that such requirement operates in relation to all the persons involved in a penal procedure, whether or not under arrest, and is aimed at protecting them against the excessive slowness of the procedure, in order to avoid the excessive

---

21) J. F. Renucci, *Traitè de droit europèen des droits de l'homme,* Librairie Gènèrale de Droit et de Jurisprudence, Paris, 2007, p. 260.

22) O. Predescu, M. Udroiu, *op. cit.*, pp. 281-282.

23) D. J. Harris, M. O'Boyle, C. Warbrick, *Law of the European Convention of Human Rights,* Butterworths, London – Dublin – Edinburgh, 1995, p. 132.

24) V. Berger, *op. cit.,* p. 315.

extension of the uncertainty about the fate of the accused. The aim of this guarantee is to ensure the administration of justice without delay, which may affect its creditability or effective nature.

The *reasonable term* provided by Article 6(1) in criminal trials starts running *(dies a quo)* from the moment when a „criminal charge" is officially filed against a person. This moment may coincide with the time of arrest, the time when a person was notified about the criminal prosecution initiated against it, the time of criminal action initiation, or the time of initiation of certain preliminary investigations, or the time of the first hearing at the police office or the time of an inquisition.

The period of time taken into consideration ends *(dies ad quem)* at the time when a final judgment is ruled, for conviction or acquittal, respectively the end of the criminal trial (a final solution is ruled in the case). This period also takes into consideration the length of the trial when ordinary remedies at law are used. If the judicial control court issues a final order for referral of the case to be re-judged, the duration of the re-judgment procedures is included when calculating the term.

The periods of time lapsing between the time of ruling a final judgment and the time when the extraordinary remedy at law, ordering the case to be returned to the prosecutor in order to perform again the criminal prosecution, is admitted, or the periods of time between the time of giving a solution for cancellation of the criminal prosecution and the time when such solution is dismissed and the criminal prosecution is re-commenced[25)].

The European Court of Human Rights considers that the reasonable term of the procedure must be appreciated in each case, depending on the circumstances, based on the following criteria: *de facto* and *de jure* complexity of the case, parties' conduct, authorities' conduct and importance of the object of the procedure for the parties. Without going into details related to each of these criteria, we shall only add that, in the opinion of the European Court of Human Rights, the authorities' conduct is decisive. Thus, it would not be important or very important whether a case is complex, due to the fact that the provisions of Article 6(1) of the European Convention on Human Rights are breached when,

---

[25)] O. Predescu, M. Udroiu, *op. cit.,* p. 341-342, presenting several cases for exemplification purposes, namely: the judgment of July 28, 1999 in the case Botazzi vs. Italy; the judgment of October 27, 1994 in the case Katte Hlitsche de la Grange vs. Italy; the judgment of June 19, 2003 in the case Pedersen and Baalsgaard vs. Denmark; the judgment of July 15, 1982 in the case Echle vs. RFG; the judgment of June 3, 2003 in the case Pantea vs. Romania; the judgment of June 22, 2003 in the case Coeme vs. Belgium; the judgment of October 23, 2003 in the case Diamantides vs. Greece; the judgment of October 3, 2000 in the case Loffler vs. Austria; the judgment of June 27, 1968 in the case Wemhoff vs. Germany; the judgment of June 27, 1968 in the case Newmeister vs. Austria; the judgment of September 23, 1998 in the case I.A. vs. France; the judgment of July 11, 2006 in the case Aliuță vs. Romania; the judgment of December 2, 2004 in the case Jaroslavtsev vs. Russia; the judgment of November 30, 2004 in the case Klyakhire vs. Russia and the judgment of August 4, 2005 in the case Stoianova and Nedelcu vs. Romania.

throughout the procedure, there were periods of inactivity of the authorities of the State which is held liable[26)].

In the case Janosevici vs. Sweden, the Court argued that the evidence requested from Janosevici, *i.e.* he need not pay any tax increases, was almost impossible to produce, due to the fact that the tax authority's decisions regarding such increases had been executed before a tribunal having ruled whether he had the obligation to pay them or not.

As far as the first statement is concerned, the Court admits that the petitioner is confronted with a presumption according to which the inaccuracies reflected in an income statement are due to certain inexcusable deeds of the taxpayer, and that it is not necessarily unreasonable to charge an increase as a sanction for such deed. However, even if this presumption is difficult to fight, the petitioner was not deprived of defenses, since he could produce some reasons to support a discount or exception of the fiscal interests involved. A taxation system based primarily on the information supplied by the taxpayer would not function properly in the absence of a form of sanctioning against the communication of inaccurate or incomplete information, and the large number of tax statements dealt with every year, together with the interest of a predictable and uniform application of sanctions, requires such sanctions to be applied in accordance with certain similar rules. The Court concluded that the presumption stipulated in the Swedish law in the matter of tax increases is a reasonable presumption; nevertheless, it is necessary for the tribunals to perform a nuanced and rather complex analysis, as the case may be, of the issue of knowing whether there are reasons for total or partial exemption of the person subject to a tax increase.

In the Court's opinion, neither Article 6, nor, in fact, any other article of the Convention, may be interpreted as banning, in principle, the execution of such sanctions before being granted mandatory power. However, due to the fact that an early execution of the tax increases may have serious consequences for the person at issue and, moreover, compromise its defense in a subsequent judicial procedure, the States have the obligation to maintain a fair balance among the interests involved in the case. The Court has also indicated that the State's financial interests did not justify by themselves the immediate recovery of the increases because, unlike taxes, they are not conceived as an income source for the State, but they are aimed to exercise pressure upon taxpayers, in order to force them to perform their fiscal obligations, and to sanction the non-performance of such obligations. The Court also established that, under the Swedish law, the success of a second appeal against the decision to recover increases leads to the repayment of any amount paid and the cancellation of the bankruptcy decision. It is true that, when the execution implies significant amounts, the repayment

[26)] O. Predescu, M. Udroiu, *op. cit.,* p. 345, with reference to S. Trechsel, *Human rights in criminal proceedings,* Oxford University Press, 2006, p. 145.

possibility may lead only to a partial recovery of the losses suffered by the taxpayer. Moreover, a system allowing for the recovery of such increases before any judicial decision regarding the obligation to pay them may be subject to criticism. However, in reality, the petitioner did not make the object of any recovery. Moreover, taking into consideration the lack of assets, he would have been declared bankrupt based on the simple existence of his fiscal debt. Consequently, the possibility to obtain the recovery of any amount paid constitutes a sufficient protection of the petitioner's interests. Therefore, from this perspective, there was no violation of Article 6(1) and (2)[27)].

9. In our opinion, the analysis of the case Janosevici vs. Sweden reveals two main ideas, namely that:

a) the administrative procedure initiated by a natural or legal person which is subject to the fiscal measures adopted by the fiscal control body, whereby such person disputes the correctness or lawfulness of these measures adopted against it or of the findings of the fiscal authorities' representatives, must be deployed with diligence, first of all from the point of view of its term, in order not to place the individual who is subject to this procedure in the situation of addressing a tribunal only after a very long period of time, when the effects if the measures adopted against him had produced their consequences long before;

b) the procedure for the settlement of the dispute or complaint filed by the fiscal entity with the courts of law, after performing the mandatory stage of investigation of the fairness of its action by the fiscal administrative bodies (of course, depending on the regulations and specific characteristics of these procedures in each country), must be deployed within a reasonable term, in order not to breach, from this perspective, the provisions of Article 6(1) of the European Convention on Human Rights.

Consequently, summarizing the afore-said, next we are going to present some of the possible consequences of the compliance or non-compliance with the lessons and conclusions resulting from the previously examined case, upon the application of the provisions of Article 10(1) of Law No. 241/2005 for the prevention and fight against tax evasion.

In our opinion, tax evasion offences and even the other offences related to tax evasion offences (the latter being listed under Articles 3-8 of Law No. 241/2005, unlike the former, which are listed under Article 9 of the law), are characterized by the fact that such deeds are, most of the times, discovered by the fiscal administration and control bodies subordinated to the Ministry of Public Finance, their activity of finding, discovering the violation of the regulations regarding the obligation to pay – under the various forms of this term - the taxes and duties payable to the State having a decisive influence, in most cases, upon the manner in which the possible criminal prosecution file is built by the judicial bodies,

[27)] V. Berger, *op. cit.,* pp. 315-316.

following the fiscal administrative bodies' notification when they consider that the discovered deeds might also constitute criminal unlawfulness. For this reason, it is necessary, or even highly necessary for the judicial bodies – judicial police, prosecutors, judges – to have solid knowledge of the financial and fiscal pieces of regulation concerning the calculation and collection of the contributions, and of the basic notions used by such pieces of regulation. Also, a thorough knowledge of the provisions of the Fiscal Procedure Code, as subsequently amended and completes, is also required[28)].

Thus, the inter-connection and complementariness of the provisions of financial and fiscal pieces of regulation and the provisions of the special laws regarding financial and fiscal or even banking offences is highlighted; among these laws, Law No. 241/2005 comes first, given its special importance due to the object of the regulation and its frequent incidence in daily life.

Another characteristic, this time only of tax evasion offences, is that these are offences having a material result, materialized in a prejudice, this aspect being emphasized by the use of the wording „for the purpose of evading the performance of fiscal obligations". Therefore, in the absence of a prejudice, we may not talk about tax evasion offences, the attempt to perpetrate such deeds not being stipulated by the criminal law[29)].

[28)] Republished on the ground of Article V of Government Ordinance No. 35/2006 amending and completing Government Ordinance No. 92/2003 on the Civil Procedure Code, published in the Official Gazette No. 675 of August 7, 2006, rectified in the Official Gazette No. 742 of August 31, 2006, approved as amended and completed by Law No. 505/2006, published in the Official Gazette No. 1.054 of September 30, 2006, re-numbering the texts.

[29)] In compliance with the provisions of Article 9(1) of Law 241/2005 "the following deeds perpetrated for the purpose of evading the performance of fiscal obligations shall constitute tax evasion offences and be punished by imprisonment between 2 years and 8 years and the banning of certain rights: a) concealing the asset or the source subject to taxes or duties; b) the failure, in whole or in part, to reflect in the accounting documents or other legal documents, the commercial operations performed or the income obtained; c) reflecting, in the accounting documents or other legal documents, expenses which are not based on real operations or reflecting other fictitious operations; d) altering, destroying or concealing accounting documents, memories of electronic cash registers or other data storage means; e) keeping double accounting records, using documents or other data storage means; f) evading financial, fiscal or customs controls, by the failure to declare, the fictitious declaration or inaccurate declaration of the main or secondary offices of the persons subject to control; g) replacing, damaging or alienating, by the debtor or by third parties, of the assets seized in compliance with the provisions of the Fiscal Procedure Code and Criminal Procedure Code".

According to paragraph 2 of the same article „if the deeds provided under paragraph 1 produced a prejudice exceeding EUR 100,000 euro, in the national currency equivalent, the minimum and maximum limit of the punishment provided by the law shall be increased by 2 years".

Finally, according to paragraph 3 of the cited legal text „if the deeds provided under paragraph 1 produced a prejudice exceeding EUR 500,000, in the national currency equivalent, the

This is the reason why both paragraphs 2 and 3 of Article 9, and Article 10(1) of the Law refers to the term *prejudice*[30]. More specifically, Article 10(1) refers to the „prejudice produced". In the judicial practice, this term has generated o whole set of opinions, not necessarily related to the specific meaning of this wording, but rather to the term itself, in relation to the moments mentioned by the same article, namely „during the criminal prosecution or judgment, until the first hearing term".

In this sense, it should be stated that the prejudice which usually consists of various duties, taxes or other unpaid contributions to the State budget, as well as the value added tax, the tax on profit, the income tax and many others, and also of any possible increases and delay penalties, has to be registered in the control document entitled *fiscal inspection report* based on which the criminal investigation bodies are notified when indications are found concerning the perpetration of certain offences. Such bodies may order a legal expert's report, according to Article 116 *et seq.* of the Criminal Procedure Code regarding the legal expert's report, at the request of the person subject to fiscal inspection and subject to investigation, or *ex officio*. A legal expert's report may also be ordered by the court of law should it consider, for various reasons, that it is not fully clarified about the various aspects of the case, including any previous documents establishing the prejudice created by the defendant by the alleged criminal deeds.

Since we are talking, as we have mentioned above, about the payment of the prejudice during the criminal prosecution or judgment, until the first hearing term[31], it is obviously necessary for the defendant to be aware of *what*, or, better

---

minimum and maximum limit of the punishment provided by he law shall be increased by 3 years".

[30] According to the provisions of Article 10(1) of Law No. 241/2005 „in case of perpetration of a tax evasion offence provided by the law, if, throughout the criminal prosecution or judgment, until the first hearing term, the defendant or the respondent fully covers the prejudice caused, the limits of the punishment provided by the law shall be reduced to half the term. If the prejudice produced and recovered under the same conditions is below EUR 100,000 euro, in the national currency equivalent, the punishment by fine may be applied. If the prejudice produced and recovered under the same conditions is below EUR 50,000, in the national currency equivalent, an administration sanction shall be applied, registered in the criminal record".

[31] The notion of „first hearing term", although sufficiently clearly expressed, generates another controversy among the practitioners of law, some of them considering that the notion should be interpreted *mot-á-mot*, and the others considering that, in reality, this notion refers to what is understood by the „first summoning term", *i.e.* the day when all parties are duly summoned, the procedure being performed, and the parties having the possibility to make submissions, in a penal sense, and the criminal procedural provisions regarding mandatory or *ex officio* legal assistance and representation being complied with.

From our point of view, we consider that the legal text refers to the first day when a hearing term was scheduled in the case, by the random case distribution software, irrespective of the other aspects, *i.e.* the deployment or not of the summoning procedure, assistance or no assistance granted to a party, including the defendant, due to the fact that, in that specific situation, the manner in which the defendant builds its defense or disputes the charged amount has no relevance

said, *how much* to pay in order to be able to benefit of the favorable provisions of Article 10(1) of Law No. 241/2005, taking into consideration that, from a purely theoretical point of view, two amounts may exist within the above mentioned interval, both them of being potentially payable (one amount established by the fiscal inspection document, the other one established by the legal expert's report drafted in the case).

The situation is even more difficult to asses, if we take into account the fact that the „prejudice produced" is not certain yet, being subject to contestation while the criminal trial is pending with the administrative litigation court.

But, precisely from this point of view, the term of the administrative settlement of the claimant's contestation with the fiscal bodies and subsequently, most of the times, also the judicial settlement with the court of law is very important. If all this procedure is completed before the first hearing term, which is possible taking into consideration the short terms, of 30 days, used in this matter of administrative litigation (both for submitting the contestation according to the provisions of Article 207(1) of the Fiscal Procedure Code, and for taking legal action in court, according to the Administrative Litigation Law No. 554/2004, as subsequently amended and completed), it is obvious that in this case we may no longer invoke a prejudice if the control document based on which the judicial bodies were notified was cancelled.

In such cases, Article 22(2) of the Criminal Procedure Code is not applicable[32)], due to the fact criminal law provisions have a strict interpretation and application and, on the other hand, with the final cancellation of the fiscal inspection report, it is considered that such report has never existed and, therefore, neither did the reason for seizing judicial bodies. It is true that these bodies may take notice *ex officio* about the perpetration of an offence, according to the provisions of Article 221(1) of the Criminal Procedure Code; only that, in the case analyzed by us, if the existence of a material prejudice is not justified, no criminal deed may exist, which leads to the decision not to commence the criminal prosecution or to cancel the criminal prosecution.

10. Considering the afore-said, a diligent and responsible settlement of the claimant's contestation, in compliance with the exigencies revealed by the European Court of Human Rights in the case Janosevici vs. Sweden, may impact not only the person's financial standing[33)], but also its criminal status, as already

---

whatsoever, the law merely aiming to set an explicit maximum term by which such person may benefit of the favor granted by the lawmaker.

[32)] According to this legal text, „the final judgment of the civil court settling the civil action has not authority of *res judicata* before the criminal prosecution body and criminal court, regarding the existence of the criminal deed, of the person perpetrating such deed and its guilt".

[33)] In compliance with the provisions of Article 214(1)(a) of the Fiscal Procedure Code, „the body performing the control referred to the competent bodies in relation to the existence of any

shown before.

On the contrary, a non-diligent and slow settlement of the contestation, within an unreasonable term, both with the administrative bodies (leading to the violation of the right to *effective* access to a tribunal) and with the judicial bodies, triggers or may trigger certain negative consequences upon the claimant or the defendant, depending on the result of the procedures involved. In this last case, it should be noted that Article 241(4) of the Fiscal Procedure Code provides that „the final judgment of the criminal court settling the civil action is opposable to the competent fiscal bodies for the settlement of the contestation, as regards the amounts in relation to which the State brought civil action in the criminal proceedings".

Practically, in this last case, the defendant is forced to pay in advance a prejudice which is not clearly estimated, as we have already stated before – and this is only to be able to benefit of favors granted by the law – even if it disagrees to its existence or amount[34)], being in the situation to request reversed execution should its innocence be established.

References

Bercheşan, Vasile. Grofu, Nicolae. (2004). *Evaziunea fiscală şi bancruta frauduloasă (Criminalistică – teorie şi practică)*, Ed. Little Star, Bucharest;

Berger, Vicent. (2005). *Jurisprudența Curții Europene a Drepturilor Omului,* ed. a 5-a, Institutul Român pentru Drepturile Omului, Bucharest;

Bîrsan, Corneliu. (2005). *Convenția Europeană a Drepturilor Omului. Comentariu pe articole,* vol. I, *Drepturi şi libertăți*, Ed. C. H. Beck, Bucharest;

Boroi, Alexandru. Rusu, Ion. *Legea nr. 241/2005 pentru prevenirea şi combaterea evaziunii fiscale,* D. nr. 2/2006;

Dabu, Valerică. Guşanu, A. M. *Noua lege privind evaziunea fiscală,* RDP nr. 2/2006;

Diaconescu, Gheorghe. (1994). *Infracțiunile în legi speciale şi legi*

---

indications of perpetration of an offence, whose confirmation would have a decisive influence upon the solution to be given in the administrative procedure".

According to Article 215 of the Fiscal Procedure Code, „the filing of the contestation by the administrative remedy at law doe snot suspend the execution of the fiscal administrative act. The provisions of this article do not prejudice the taxpayer's right to request the suspension of the fiscal administrative act's execution, on the ground of Administrative Litigation Law No. 554/2004, as subsequently amended. The competent court may suspend the execution, subject to the submission of a bail of up to 20% of the amount forming the object of the contestation, and, in the case of those requests whose object may not be evaluated in money, a bail of up to RON 2,000".

[34)] Decision No. 2342/2007 of the criminal section of the High Court of Cassation and Justice established that the defendant who failed to cover the prejudice, contesting its amount, may not benefit of the punishment reduction provided by Article 10(1) of Law No. 241/2005. See www.scj.ro

extrapenale, vol. I, Ed. Sirius, Bucharest;

Diaconescu, Gheorghe. (1996). *Infracțiuni în legi speciale şi legi extrapenale*, Ed. All, Bucharest, 1996;

Harris, D. J.; O'Boyle, M.; Warbrick, C. (1995). *Law of the European Convention of Human Rights,* Butterworths, London - Dublin - Edinburgh;

Pettiti, L. E.; Decaux, E.; Imbert, P. H. (1999). *La Convention europèenne des droits de l'homme. Commentaire article par article,* 2ème edition, Èconomia, Paris;

Popescu, Corneliu Liviu. (2000). *Protecția internațională a drepturilor omului - surse, instituții, proceduri. Note de curs,* Ed. All Beck, Bucharest;

Predescu, Ovidiu & Udroiu, Mihail. (2008). *Convenția europeană a drepturilor omului şi dreptul procesual penal român,* Ed. C. H. Beck, Bucharest;

Renucci, Jean Francois. (2007). *Traitè de droit europèen des droits de l'homme,* Librairie Gènèrale de Droit et de Jurisprudence, Paris;

Toader, Tudorel. (2011). *Infracțiunile prevăzute în legile speciale* (reglementare, doctrină, decizii ale Curții Constituționale, jurisprudență), ed. a 4-a rev. act., Ed. Hamangiu, Bucharest;

Voicu, Costică. Boroi, Alexandru. Molnar, Ioan. Gorunescu, Mirela. Corlățeanu, Sorin. (2008). *Dreptul penal al afacerilor,* ed. a 4-a, Ed. C. H. Beck, Bucharest;

ÎCCJ, s. pen., dec. nr. 2342/2007, disponibilă pe site-l www.scj.ro