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

FIFTH SECTION

CASE OF ANDRÉ AND ANOTHER v. FRANCE

(Application no. 18603/03)

JUDGMENT

STRASBOURG

24 July 2008

FINAL

24/10/2008

This judgment may be subject to editorial revision.

In the case of André and Another v. France,

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

Peer Lorenzen, *President*,
Rait Maruste,
Jean-Paul Costa,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 18603/03) against the French Republic, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Marc André, and a French civil-law professional partnership (*société civile professionnelle* – SCP), André, André et Associés ("the applicants"), on 11 June 2003.

2. The applicants were represented by Mr F.-H. Briard, of the *Conseil d'Etat* and Court of Cassation Bar. The French Government ("the Government") were represented by their Agent, Ms E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. On 28 February 2006 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and the merits of the application at the same time (Article 29 § 3 of the Convention).

THE FACTS

A. The circumstances of the case

4. In their capacity as a lawyer and a law firm, the applicants had been retained by Clinique Les Roches Claires, a public limited company (*société anonyme*), to assist and represent it during audit operations conducted into

its affairs for the period 1 January 1997 to 31 December 2000 as a result of an audit notice of 10 July 2000.

5. On 12 June 2001, pursuant to the provisions of Article L. 16 B of the Code of Tax Procedure, the tax authorities applied to the President of the Marseilles *tribunal de grande instance* to authorise a search and seizure operation to be carried out in the context of the audit of Clinique Les Roches Claires, with a view to obtaining accounting, legal and corporate documents supporting certain declarations, on account of suspected fraudulent activities (price mark-ups and uninvoiced or fictitious transactions).

6. By a warrant of the same date the President authorised the tax inspectors, assisted by senior police officers, to carry out the searches and seizures required in order to discover evidence of the alleged activities at certain sites where documents or data carriers connected with the suspected fraud might be found, in particular at the applicants' place of business, since they had been retained to assist and represent Clinique Les Roches Claires and were therefore assumed to be in possession of documents evidencing the suspected fraud on the part of their client.

7. The judge authorised only one search, setting 20 June 2001 as the time limit for the search and 30 June 2001 as the time-limit for the submission of a report on the operations.

8. On 13 June 2001, simultaneous searches were conducted at the locations indicated in the warrant issued by the President of the Marseilles *tribunal de grande instance*. The operations carried out at the applicants' place of business by four tax inspectors took place between 7.30 a.m. and 1.10 p.m., in the presence of the first applicant, the chairman of the Marseilles Bar Association and a senior police officer. On that occasion, the first applicant was given a copy of the warrant of 12 June 2001.

9. A record of the search and seizure operations and an inventory were drawn up and signed by those present. Sixty-six documents were seized. They included handwritten notes and a document with a comment in the first applicant's handwriting, in respect of which the chairman of the Bar Association expressly pointed out that these were the lawyer's personal documents and were accordingly protected by the rule of absolute professional secrecy and could not be seized. The first applicant protested at the way in which the search had been carried out and made a number of observations which were logged in the record. He was given a copy of the record and the documents seized.

10. The applicants appealed on points of law within the statutory time-limit of five days. In their pleadings in support of the appeal, they raised two grounds alleging that the searches and seizures had been unlawful. They stated in particular, relying on professional secrecy and the rights of the defence, that documents sent by a client to that client's lawyer and correspondence between them could not be seized where the search was not

aimed at establishing proof that the lawyer in question had been involved in the offence. They also complained that the search warrant issued by the President of the *tribunal de grande instance* had failed to mention specifically that the presence of the chairman of the Bar Association or his or her representative was compulsory during the operations.

11. In a judgment of 11 December 2002 the Court of Cassation dismissed the applicants' appeal. As to the failure to refer specifically to the presence of the chairman of the Bar Association, the court stated that the search warrant did not have to determine the measures required for professional secrecy to be observed, any breaches thereof being examined in the context of the review of the lawfulness of the operations and not the review of the lawfulness of the warrant. As regards the seizure of the documents at issue, the Court of Cassation considered that the professional secrecy of lawyers did not constitute an obstacle to searches of their premises and seizure of any documents in their possession being authorised, in so far as the judge had found that the information provided by the applicant authority contained sufficient evidence for the suspicion mentioned in the warrant.

B. Relevant domestic law and practice

1. The Code of Tax Procedure

12. The relevant provisions of the Code of Tax Procedure, as applicable at the material time, read as follows:

Article L16 B

"I. If the judicial authority, on an application by the tax authority, considers that presumptions exist that a taxpayer is avoiding the calculation or payment of taxes on revenue or profits or of value added tax by making purchases or sales without invoices, by using or issuing invoices or documents that do not correspond to genuine transactions or by knowingly omitting to make accounting entries or to cause accounting entries to be made or by knowingly making inaccurate or false entries or causing inaccurate or false entries to be made in the accounting records that are required to be kept by the General Tax Code, it may, in accordance with the conditions set out in II, authorise tax officials of at least inspector rank and holding authority from the Director-General of the Revenue to that end to seek proof of such acts by carrying out searches of all premises, including private premises, where evidence and documents relating thereto may be kept and to seize such evidence and documents.

II. All searches must be authorised by an order of the liberties and detention judge of the *tribunal de grande instance* for the jurisdiction in which the premises to be searched are located.

The judge shall verify whether there is concrete evidence that the application for authorisation which has been made to him or her is well-founded. The application must contain all the information in the possession of the authority that may serve to justify a search.

The order shall include:

(i) where appropriate, a statement that the president of the *tribunal de grande instance* has delegated the requisite power;

(ii) the address of the premises to be searched;

(iii) the name and capacity of the accredited civil servant who has sought and obtained authorisation to carry out the search.

The judge shall give reasons for his or her decision by indicating the elements of fact and law on which he or she relies and which raise a presumption in the case before him or her of the existence of the fraudulent acts for which evidence is sought.

If during the course of the search the accredited officials discover the existence of a safe-deposit box in a financial institution in the name of the person occupying the premises searched in which items of evidence and documents relating to the acts referred to in I are likely to be found, they may, with the permission – which may be given in any form – of the judge who made the order, immediately search the safe-deposit box. A reference to such permission shall be entered in the record referred to in IV.

The search and seizure of documents shall be carried out under the authority and supervision of the judge who authorised them. To that end, he or she shall give all instructions to the officials engaged in the operations.

He or she shall appoint a senior police officer to assist with the operations and to keep him or her informed of their progress.

The judge may, if he or she considers it appropriate, attend the premises while the operations are under way.

He or she may at any time decide to suspend or halt the search.

The occupier of the premises or his or her representative shall be orally informed of the order on site when the search is carried out and shall receive a full copy of it, for which he or she shall either sign a receipt or initial the record referred to in IV. In the absence of the occupier of the premises or his or her representative, the order shall be served by registered letter with recorded delivery after the search has been performed. Service shall be deemed to have been effected at the date of receipt entered on the delivery form.

If delivery of the order is not taken, it shall be served personally in accordance with the provisions of Articles 550 et seq. of the Code of Criminal Procedure.

The time-limit and procedure for appealing shall be set out in the documents accompanying postal or personal service.

The only remedy against the order referred to in the first sub-paragraph shall be an appeal on points of law in accordance with the rules set out in the Code of Criminal Procedure. Such appeals shall have no suspensive effect. For the purposes of an appeal on points of law, time shall start to run from the date of postal or personal service of the order.

III. Searches, which may not be started before 6 a.m. or after 9 p.m., shall be conducted in the presence of the occupier of the premises or of his or her representative. If that is not possible, the senior police officer shall appoint two witnesses who shall not be from his or her department or the tax authority.

The tax-authority officials referred to in I may be assisted by other tax-authority officials who have been accredited in the same conditions as the inspectors.

The accredited tax officials, the occupier of the premises or his or her representative and the senior police officer are the only persons authorised to see the evidence and documents before their seizure.

The senior police officer shall ensure that there is no breach of professional confidence and that the rights of the defence are complied with in accordance with the provisions of the third paragraph of Article 56 of the Code of Criminal Procedure. Article 58 of that Code shall be applicable.

IV. A record stating how the operation was organised and how it proceeded and logging any findings shall be compiled forthwith by the tax-authority officials. An inventory of the evidence and documents seized shall be appended to it, where necessary. The record and the inventory shall be signed by the tax-authority officials, a senior police officer and the persons mentioned in the first sub-paragraph of III. Any refusal to sign them shall be noted in the record.

Should it prove impractical to take an inventory on site, the evidence and documents seized shall be placed under seal. The occupier of the premises or his or her representative shall be informed that he or she may be present when the seals are broken in the presence of the senior police officer. The inventory shall be taken at that time.

V. The originals of the record and the inventory shall be sent to the judge who issued the search warrant as soon as they have been compiled. A copy of those documents shall be provided to the occupier of the premises or his or her representative.

The evidence and documents seized shall be returned to the occupier of the premises within six months of the search; however, when criminal proceedings are brought, their return must be authorised by the competent court.

VI. The tax authorities may not use any information obtained against the taxpayer until the seized items and documents have been returned or reproduced and until the review measures referred to in the first and second sub-paragraphs of Article L. 47 have been implemented."

2. The Code of Criminal Procedure

13. The relevant provisions of the Code of Criminal Procedure, as applicable at the material time, read as follows:

Article 56, paragraph 3

"However, [the senior police officer] must first take all measures necessary to ensure that professional confidentiality and the rights of the defence are respected."

Article 56-1

"A search of a lawyer's chambers or home may only be made by a judge and in the presence of the chairman of the Bar Association or a person delegated by him or her. Only the judge and the chairman of the Bar Association or the person delegated by him or her are entitled to inspect documents discovered during a search with a view to their possible seizure.

The chairman of the Bar Association or the person delegated by him or her may object to the seizure of a document which the judge intends to carry out if he or she considers that it would be unlawful. The document must then be placed under official seal. These steps shall be noted in an official record indicating the objections of the chairman of the Bar Association or the person delegated by him or her, which shall not be added to the case file. Where other documents have been seized during the search without any objection, the official record shall be separate from that required by Article 57. The official record and the document placed under official seal shall be transmitted to the liberties and detention judge, along with the original or a copy of the case file.

Within five days of receipt of the documents, the liberties and detention judge shall give a reasoned ruling on the objection, which shall not be open to appeal.

To this end, he or she shall interview the judge who carried out the search and, where necessary, the public prosecutor and also the lawyer whose chambers or home has been searched and the chairman of the Bar Association or the person delegated by him or her. He or she may open the seal in the presence of these persons.

Where he or she considers that it is not necessary to seize the document, the liberties and detention judge shall order its immediate return and the destruction of the official record of the operations and, where necessary, the deletion of any reference to that document or its contents in the official case file.

Otherwise, he or she shall order the inclusion of the document and the official record in the case file. His or her decision shall not prevent the parties from subsequently applying to, the trial court or the investigation division, as appropriate, for the seizure to be declared null and void."

3. Law no. 71-1130 of 31 December 1971 concerning the reform of certain judicial and legal professions

14. Section 66-5 of Law no. 71-1130 of 31 December 1971 (amended by Law no. 2004-130 of 11 February 2004) provides:

> "In all matters, whether with regard to advice or defence, written opinions sent by a lawyer to his or her client or intended for the latter, correspondence between a client and a lawyer, between a lawyer and other lawyers, with the exception, in the latter case, of correspondence marked 'official', meeting notes and, more generally, all documents in a case file shall be covered by professional secrecy."

4. Case-law of the Court of Cassation

15. The Court of Cassation has held that the seizure of correspondence between a person under investigation and that person's lawyer may only be ordered and pursued if the documents seized are capable of establishing proof of the lawyer's participation in an offence (see in particular Court of Cassation (Criminal Division), 12 March 1992, *Bulletin criminel* no. 112; 20 January 1993, *Bulletin criminel* no. 29; Court of Cassation (Commercial Division), 5 May 1998, *Bulletin* IV, no. 147; Court of Cassation (Criminal Division), 5 Oct. 1999, *Bulletin criminel* no. 206; 27 June 2001, *Bulletin criminel* no. 163). Observance of the principle of the confidentiality of exchanges between a lawyer and his or her client is not limited to seizures, but extends to other measures that might affect it (for example, a measure such as the tapping of a lawyer's private and/or personal telephone line must be preceded by a specific finding that credible evidence exists of the lawyer's participation in an offence: Court of Cassation (Criminal Division), 15 January 1997, *Bulletin criminel* no. 14; 8 November 2000, *Bulletin criminel* no. 335; Court of Cassation (Criminal Division), 18 January 2006, appeal no. 05-86.447).

5. Community law

(a) Case of *AM & S Europe Limited v. Commission of the European Communities* (155/79), judgment of 18 May 1982 of the Court of Justice of the European Communities (CJEC)

> "18. Community law, which derives from not only the economic but also the legal interpenetration of the Member States, must take into account the principles and concepts common to the laws of those States concerning the observance of confidentiality, in particular, as regards certain communications between lawyer and client. That confidentiality serves the requirements, the importance of which is recognised in all of the Member States, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it.
>
> 19. As far as the protection of written communications between lawyer and client is concerned, it is apparent from the legal systems of the Member States that, although

the principle of such protection is generally recognised, its scope and the criteria for applying it vary ...

21. Apart from these differences, however, there are to be found in the national laws of the Member States common criteria inasmuch as those laws protect, in similar circumstances, the confidentiality of written communications between lawyer and client provided that, on the one hand, such communications are made for the purpose and in the interests of the client's rights of defence and, on the other hand, they emanate from independent lawyers , that is to say, lawyers who are not bound to the client by a relationship of employment ...

23. As far as the first of those two conditions is concerned, in Regulation ... care is taken to ensure that the rights of the defence may be exercised to the full, and the protection of the confidentiality of written communications between lawyer and client is an essential corollary to those rights.

24. As regards the second condition, it should be stated that the requirement as to the position and status as an independent lawyer, which must be fulfilled by the legal adviser from whom the written communications which may be protected emanate, is based on a conception of the lawyer's role as collaborating in the administration of justice by the courts and as being required to provide, in full independence, and in the over-riding interests of that cause, such legal assistance as the client needs. The counterpart of that protection lies in the rules of professional ethics and discipline ... Such a conception reflects the legal traditions common to the Member States and is also to be found in legal order of the Community ..."

(b) Case of *Wouters* (C-309-99), judgment of 19 February 2002 of the CJEC

16. In this case the CJEC recognised the specific nature of the profession of lawyer. In his submissions presented on 10 July 2001, the Advocate-General Philippe Léger considered, in particular, as follows:

"182. Professional secrecy forms the basis of the relationship of trust between lawyer and client. It requires the lawyer not to divulge any information imparted by the client and extends *ratione temporis* to the period after the lawyer has ceased to act for the client and *ratione personae* to third parties. Professional secrecy also constitutes an 'essential guarantee of the freedom of the individual and of the proper working of justice', so that in most Member States it is a matter of public policy."

(c) Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering

17. Directive 91/308/EEC states that lawyers are obliged to inform the competent authorities of any fact which could be an indication of money laundering. The particular protection to be afforded to lawyers and the possible exceptions thereto are the subject of debate in the context of a dispute before the CJEC, in relation to Directive 91/308/EEC and the obligation on lawyers to inform and co-operate with the authorities responsible for the fight against money laundering.

18. In its judgment of 26 June 2007 (*Ordre des barreaux francophones et germanophones, Ordre français des avocats du barreau de Bruxelles,*

Ordre des barreaux flamands, Ordre néerlandais des avocats du barreau de Bruxelles against Conseil des ministres, Case C-305/05), the ECJ ruled that the obligations of information and cooperation with the authorities responsible for combating money laundering did not infringe Article 6 § 1 of the Convention for the following reasons:

– these obligations "apply to lawyers only insofar as they advise their client in the preparation or execution of certain transactions, essentially those of a financial nature or concerning real estate", that is, in a context with no link to judicial proceedings;

– furthermore, again in the context of these transactions, as soon as the lawyer is called upon for assistance in defending the client or in representing him before the courts, or for advice as to the manner of instituting or avoiding proceedings, that lawyer is exempt from the obligations of information and cooperation (regardless of when the information was received).

6. *Recommendation No. R (2000) 21 of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer (adopted on 25 October 2000)*

19. The relevant provisions of Recommendation No. R (2000) 21 read as follows:

> "... Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the Rule of Law, in which lawyers take part, in particular in the role of defending individual freedoms;
>
> Conscious of the need for a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, from any quarter of for any reason;
>
> ...
>
> Principle I – General principles on the freedom of exercise of the profession of lawyer
>
> 1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights. ...
>
> 6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the Rule of Law."

7. United Nations

20. The relevant provisions of the "Basic Principles on the Role of Lawyers" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990) state:

> "16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
>
> ...
>
> 22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c), ARTICLE 8 AND ARTICLE 13 OF THE CONVENTION

21. The applicants complained that the procedure for the search and seizure of documents at their place of business had breached professional confidentiality and infringed their defence rights. They also complained, regardless of the nature of the Court of Cassation's supervision in France, that an appeal on points of law was not an effective remedy by which to complain of interferences with the right to respect for one's home. They relied on Article 6 §§ 1 and 3 (c) and Articles 8 and 13 of the Convention, the relevant provisions of which read as follows:

Article 6 §§ 1 and 3 (c)

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ...
>
> 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; ..."

Article 8

"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, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

22. The Government submitted that the complaints under Article 6 of the Convention should be dismissed as being incompatible *ratione materiae* with the provisions of the Convention, since tax disputes did not fall within the scope of Article 6 under its civil head (they cited *Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII) and since the criminal head was unconnected to the facts of the case.

23. As to the merits, the Government pointed out that the procedure at issue had been authorised by a judge who, together with the Court of Cassation, had also supervised it. They further noted that the record of the search showed that the liberties and detention judge had been contacted at the time of the search of the premises. They also stated that the Court of Cassation's judgment did not constitute a "shift" in the case-law, but on the contrary confirmed a position that was already established and had subsequently been maintained. The Government submitted that there had been no infringement of the rights of the defence or any breach of professional secrecy; on the contrary, the Court of Cassation's judgment of 11 December 2002 had struck a fair balance between the principle of individual liberty and the requirements of combating tax fraud. They lastly stated that the judge had observed that the applicants had been retained to assist and represent Clinique Les Roches Claires and had acted in that capacity on various occasions during the tax proceedings involving their client.

24. With regard to Article 8 of the Convention, the Government submitted that the applicants had not exhausted domestic remedies since, in

addition to an appeal on points of law, which they had lodged, two other remedies had been available to them: the first under Article 9 of the Civil Code, which guaranteed the right to respect for one's private life, and the second by means of an action for damages against the State, through which they could have established, for example, that public officials had exceeded their authority and committed an error.

25. As to the merits, the Government did not dispute that there had been interference with the applicants' right to respect for their home, but contended that the interference had been in accordance with the law, namely Article L. 16 B of the Code of Tax Procedure, and had pursued legitimate aims by seeking to protect the economic well-being of the country and the prevention of crime. Lastly, they submitted that the interference had been necessary in a democratic society (citing *Keslassy v. France* (dec.), no. 51578/99, ECHR 2002-I). The warrant authorising the search had fully satisfied the requirements laid down by domestic legislation and European case-law, with special procedural guarantees.

26. Finally, as regards the complaint under Article 13 of the Convention, the Government referred to their arguments in relation to the complaint under Article 8 and their references to domestic law and concluded that this complaint was manifestly ill-founded, all the more so because the Convention did not require a right of appeal, the existence of an appeal on points of law in itself being in conformity with the provisions of Article 13. They also pointed out that the Court had held that an appeal on points of law was a remedy that had to be attempted (citing *Civet v. France* [GC], no. 29340/95, ECHR 1999-VI); the applicants had therefore used the remedy available to them which had enabled them to argue that there had been errors of law that could have affected the authorisation for the search of their premises and irregularities capable of rendering it void.

2. The applicants

27. The applicants submitted that the objections raised by the Government warranted no comment on their part, and reiterated the contents of their initial application.

28. As to the merits, they argued that the Court of Cassation had shifted from its earlier case-law, since it had referred to "sufficient evidence of a suspicion of tax fraud" without indicating who was suspected, whereas the earlier case-law of its Criminal Division had required the lawyer to have taken part in the fraud. They contended that such a position undermined the protection of the rights of the defence, and consequently the professional secrecy of lawyers, which should be applicable as regards any matter coming under the Convention.

29. The applicants complained that it was possible to carry out searches of a lawyer's premises where there was no suspicion that the lawyer had been involved in fraud. The first applicant stated in addition that he was

merely his client's lawyer – and, moreover, purely for matters of litigation and not legal advice – which meant that a number of documents covered by professional secrecy and required for the company's defence were to be found at his practice.

30. The applicants also complained of the lack of an effective remedy, contending that an appeal on points of law – the only remedy available against orders made on the basis of Article L. 16 B of the Code of Tax Procedure – did not constitute an effective remedy on account of the content and scope of the review conducted by the Court of Cassation.

B. The Court's assessment

1. Admissibility

31. As regards both the plea of inadmissibility *ratione materiae* raised by the Government and their argument that domestic remedies had not been exhausted, the Court observes that it has already found that Article 6 § 1 was applicable and dismissed pleas of inadmissibility in a similar case (see *Ravon v. France*, no. 18497/03, §§ 24-26 and 35, 21 February 2008). The pleas raised in this case must therefore also be dismissed.

32. Considering, further, that the application is not manifestly unfounded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds, the Court declares the application admissible.

2. Merits

(a) Complaint under Articles 6 and 13 of the Convention on account of the lack of effective judicial review

33. Where, as is the case here, Article 6 § 1 applies, it constitutes a *lex specialis* in relation to Article 13: the safeguards of Article 6 § 1 implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13 (see, for example, *Brualla Gómez de la Torre v. Spain,* 19 December 1997, § 41, *Reports of Judgments and Decisions* 1997-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI). It is therefore appropriate to examine this complaint under Article 6 § 1 alone, and hence to ascertain whether the applicants had access to a "tribunal" in order to receive a decision on their "dispute", following proceedings meeting the requirements of this provision.

34. On this point, the Court observes that it has already ruled that the procedure provided for and outlined in Article L. 16 B of the Code of Tax Procedure does not meet the requirements of Article 6 § 1 of the Convention

(see *Ravon*, cited above, §§ 28-35). It sees no reason to depart from that finding in the instant case.

35. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

(b) Complaint alleging a breach of professional secrecy

36. The Court reiterates, firstly, that the term "home" appearing in Article 8 may extend to the offices of a member of a profession, for instance a lawyer (see *Niemietz v. Germany*, 16 December 1992, § 30, Series A no. 251-B, and *Roemen and Schmit v. Luxembourg*, no. 51772/99, § 64, ECHR 2003-IV).

37. Consequently, it considers that the search of the applicants' practice and the seizures carried out amount to interference with the exercise of their rights under paragraph 1 of Article 8 of the Convention.

38. It considers that such interference was "in accordance with the law". Article L. 16 B of the Code of Tax Procedure sets out the conditions that must be met in the event of a search, and the provisions of Articles 56 and 56-1 of the Code of Criminal Procedure, taken together, make express provision for observance of professional secrecy and the professional premises or private home of a lawyer. Furthermore, the applicants did not complain that the measures taken had lacked a legal basis, but that they were disproportionate and unnecessary in the circumstances of the case.

39. The Court finds furthermore that the interference pursued a "legitimate aim", that is, the prevention of public disorder and crime.

40. As to whether the interference was "necessary", the Court reiterates that "the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly and the need for them in a given case must be convincingly established" (see *Crémieux v. France*, 25 February 1993, § 38, Series A no. 256-B, and *Roemen and Schmit*, cited above, § 68).

41. The Court considers that searches and seizures at the premises of a lawyer undoubtedly breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client. Furthermore, the safeguarding of professional secrecy is in particular the corollary of the right of a lawyer's client not to incriminate himself, which presupposes that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the "person charged" (see *J.B. v. Switzerland*, no. 31827/96, § 64, ECHR 2001-III; see also, among other authorities, *Funke v. France*, 25 February 1993, § 44, Series A no. 256-A).

42. Accordingly, although domestic law may make provision for searches of the practices of lawyers, it is essential that such searches are accompanied by particular safeguards. Likewise, the Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the case in particular where

credible evidence is found of the participation of a lawyer in an offence (paragraph 15 above), or in connection with efforts to combat certain practices (paragraphs 17-18 above). On that account, however, it is vital to provide a strict framework for such measures, since lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law.

43. In the instant case, the Court notes that the search was accompanied by special procedural safeguards, since it was carried out in the presence of the chairman of the Bar Association of which the applicants were members. Furthermore, the presence of the chairman of the Bar Association and the observations concerning the safeguarding of professional secrecy, which the latter felt obliged to make with regard to the documents to be seized, were mentioned in the report on the operations.

44. On the other hand, besides the fact that the judge who had authorised the search was not present, the presence of the chairman of the Bar Association and his specific objections were insufficient to prevent the actual inspection of all the documents at the practice, or their seizure. As regards in particular the seizure of the first applicant's handwritten notes, the Court notes that it is not disputed that these were the lawyer's personal documents and subject to professional secrecy, as maintained by the chairman of the Bar Association.

45. Furthermore, the Court notes that the search warrant was drawn up in broad terms, the decision being limited to ordering the searches and seizures required to disclose evidence of misconduct at certain places at which documents and data carriers relating to the suspected fraud might be found, in particular at the applicants' place of business. Accordingly, the inspectors and police officers were given extensive powers.

46. Lastly, and most importantly, the Court notes that the purpose of the search at issue was to discover at the premises of the applicants, purely in their capacity as the lawyers of the company suspected of fraud, documents which could establish the existence of such fraud on the company's part and to use such documents in evidence against it. At no time were the applicants accused or suspected of having committed an offence or being involved in any fraud committed by their client.

47. The Court therefore notes that in the present case, in the context of a tax inspection into the affairs of a company that was the applicants' client, the authorities targeted the applicants solely because of the difficulties encountered both in carrying out the necessary tax inspections and in finding "accounting, legal and corporate documents" confirming the suspicion that the client company was involved in fraud.

48. In the light of the foregoing, the Court finds that, in the circumstances of the case, the search and seizures carried out at the applicants' premises were disproportionate to the aim pursued.

49. There has therefore been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. Article 41 of the Convention provides:

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

A. Damage

51. The applicants sought payment of 30,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government submitted that a finding by the Court of a violation would in itself constitute sufficient redress for any non-pecuniary damage sustained by the applicants, any financial compensation being merely symbolic.

53. The Court shares the Government's view as regards the applicant company. However, it considers that the finding of a violation is not sufficient to afford redress for the non-pecuniary damage sustained by Mr André. Ruling on an equitable basis as required by Article 41, it awards him EUR 5,000 under this head.

B. Costs and expenses

54. The applicants sought reimbursement of the costs they had incurred in presenting their case. They produced a bill for EUR 14,352 (comprising EUR 12,000 in fees and EUR 2,352 in VAT) issued by their representative in respect of the proceedings before the Court of Cassation and the Court.

55. The Government submitted that any amount awarded should not exceed EUR 2 000.

56. According to the Court's case-law, an applicant can only seek reimbursement of costs and expenses in so far as they have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, where the Court finds that there has been a violation of the Convention, it awards the applicant only those costs and expenses that have been incurred before the national courts for the prevention or redress of the violation. Having regard to the information available to it and the aforementioned criteria, the Court, ruling on an equitable basis as required by Article 41, awards them jointly EUR 10,000 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the respondent State is to pay EUR 5,000 (five thousand euros) to Mr André in respect of non-pecuniary damage and EUR 10,000 (ten thousand euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 24 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President