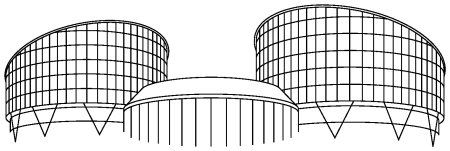

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 18485/14
Anna Maria Francisca BERKVENS and Johannes Cornelius BERKVENS
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 27 May 2014 as a Chamber composed of:

Alvina Gyulumyan, *President,*
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 20 March 2014,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Anna Maria Francisca Berkvens and Mr Johannes Cornelius Berkvens, are Netherlands nationals, who were born in 1932 and 1963 respectively and live in Asten.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The second applicant is the administrator (*bewindvoerder*) of the first applicant's property.

1. Inheritance tax

4. On 2 July 2009 Mr A.L. Berkvens died. He left an estate worth EUR 451,168. His heirs included the applicants. It would appear that the first applicant is his widow.

5. The first applicant enjoyed an exemption from inheritance tax up to a maximum of EUR 532,570. Since her part of the estate was worth only EUR 66,584 she owed no inheritance tax.

6. The second applicant's inheritance was subject to inheritance tax. His portion of the estate was worth EUR 64,453; the inheritance tax due on it was EUR 5,187. The facility for enterprise succession (see paragraph 12 and the judgment of the Supreme Court (*Hoge Raad*), paragraph 13, below) did not apply.

2. Gift tax

7. On 22 December 2009 the first applicant made a gift worth EUR 50,000 to the second applicant.

8. The gift tax on this owed by the second applicant came to EUR 2,952. The facility for enterprise succession did not apply.

3. Proceedings

9. On 18 November 2012 the second applicant lodged an objection with the Tax Inspector on his own behalf and on that of the first applicant. He complained of discrimination in that the exemption applicable to estates and gifts worth up to one million euros which was enjoyed by those entitled to the facility for enterprise succession did not apply to them.

10. The applicants have not submitted any individual decision on their objection.

B. Relevant domestic law

1. The Succession Act 1956

11. As relevant to the case before the Court, the Succession Act 1956 (*Successiewet 1956*) provides that inheritance tax (formerly *successierecht*; since the fiscal year 2010, *erfbelasting*) shall be levied on the value of everything obtained under inheritance law consequent on the death of a person who at the time of the death was resident in the Netherlands, and gift tax (formerly *schenkingsrecht*; since the fiscal year 2010, *schenkbelasting*) on the value of everything obtained by gift from a person who at the time the gift was made was resident in the Netherlands (section 1 of that Act). The tax shall be levied from the recipient (*verkrijger*) (section 36).

12. Exemptions from these taxes applied, conditionally, to assets belonging to an enterprise owned by the *de cuius* or the giver, referred to

hereafter as "enterprise assets" (*ondernemingsvermogen*), as distinct from assets that did not belong to an enterprise. In 2005 and 2006 the exemption was 60% of the value of the estate or the gift; from 2007 until 2009 it was 75% (sections 35b and 35c(2) of the Succession Act, as in force at the relevant time). In 2010 the exemption was raised to 100% of the value of the estate or the gift up to 1,000,000 euros (EUR) and 83% of the value beyond that sum (section 35b(1)).

2. The judgments of the Supreme Court

13. On 22 November 2013 the Supreme Court gave decisions in five separate cases (European Case Law Identifier (ECLI):NL:HR2013:1206; ECLI:NL:HR2013:1209 ECLI:NL:HR2013:1210; ECLI:NL:HR2013:1211; and ECLI:NL:HR2013:1212). As relevant to the case before the Court, these decisions were in the following terms, identical in their reasoning for all five. The following is quoted from ECLI:NL:HR2013:1206:

> "3.1.1. On 1 July 2011 [A.] (hereafter: the *de cuius*) died. His heirs are his two children, one of them the interested party (*belanghebbende*), and his spouse.
>
> 3.1.2. The estate does not include enterprise assets (*ondernemingsvermogen*) within the meaning of the facility for enterprise succession (hereafter: the facility) within the meaning of chapter IIIA of the Succession Act.
>
> 3.2.1. Before the Regional Court (*rechtbank*) the issue was whether the interested party could nonetheless invoke the facility on the ground of a violation of the prohibition of discrimination contained in Article 26 of the International Covenant on Civil and Political Rights ('the Covenant') and Article 14 of the Convention, or the right to the peaceful enjoyment of possessions as laid down in Article 1 of Protocol No. 1 to the Convention.
>
> 3.2.2. The Regional Court held that it was plainly apparent from the drafting history of the facility that its intention was to forestall liquidity problems in enterprises as a result of the imposition of inheritance or gift tax (*recht van successie of schenking*) and that, in view of this intention, enterprise assets and non-enterprise assets were not to be seen as similar cases. In addition, the Regional Court held that, if similar cases or disproportionate unequal treatment of unequal cases there be, the interested party could not rely on the principle of equality (*gelijkheidsbeginsel*) because there existed an objective and reasonable justification for the distinction made by the legislature, namely the encouragement of entrepreneurship, so that according to the Regional Court the legislature has not overstepped its wide margin of appreciation.
>
> 3.3.1. In considering the points of appeal directed against the Regional Court's ruling the points of departure must be the following. Article 26 of the Covenant and Article 14 of the Convention, taken together with Article 1 of Protocol No. 1 to the Convention, do not forbid each and every unequal treatment of equal cases, but only those which must be considered discrimination because a reasonable and objective justification is absent. This means that there is discrimination only if the distinction made lacks a legitimate aim or if there is no reasonable relationship of proportionality between the measure making the distinction and the aim sought to be realised thereby (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008). In this connection it is worth noting that, for the purpose of applying the said treaty provisions, in the field of taxation the Contracting States enjoy a wide margin of

appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, and in the affirmative, whether an objective and reasonable justificiation exists nonetheless to make different provision for those cases (see, *inter alia*, *Giuliana Galeotti Ottieri Della Ciaja and six others v. Italy* (dec.), no. 46757/99, 22 June 1999, and *Burden*, cited above, § 60). If it does not concern a distinction based on a person's inborn characteristics such as sex, race and ethnic origin then the legislature's decision should be respected, unless it is without reasonable foundation (compare, *inter alia*, *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI, and *Carson and Others v. the United Kingdom*, no. 42184/05, §§ 73 and 80, 4 November 2008). The latter eventuality cannot readily be assumed to exist. The distinction must be of such a nature that the legislature's choice is manifestly without reasonable foundation (see *Stummer v. Austria* [GC], no. 37452/02, § 89, ECHR 2011, with further references).

The same applies with regard to the prohibition of discrimination enshrined in Article 1 of Protocol No. 12 to the Convention. It appears from the Explanatory Report to this Protocol (paragraph 18) that its drafters intended the meaning of the term discrimination used therein to be the same as that of the identical expression used in Article 14 (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 55, ECHR 2009).

The case-law of the European Court of Human Rights referred to above will guide the Supreme Court. Article 53 of the Convention leaves to the domestic legislature the freedom to offer a more far-reaching protection of human rights than that given by the provisions of the Convention and its Protocols. In contrast, it follows from the provisions of the Netherlands Constitution, in particular Article 94, that the Netherlands legislature may decline to apply statutory provisions on the ground of discrimination only if such application is irreconcilable with provisions of treaties prohibiting discrimination that are binding on all persons. As regards the prohibition of discrimination enshrined in Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention the Netherlands courts cannot assume such irreconcilability to exist based on an interpretation of the term discrimination as used therein that would lead to more far-reaching protection than may be assumed based on the case-law of the European Corut of Human Rights on those provisions (see the Supreme Court's judgment of 10 August 2001, no. R00/132R, ECLI:NL:HR:2001:ZC3598, Netherlands Law Reports (*Nederlandse Jurisprudentie*, 'NJ' 2002, no. 278).

3.3.2. Pursuant to the Succession Act a tax is levied on everything obtained by inheritance or gift, the goods in issue being assessed according to the value attributable to them in economic interaction (*economisch verkeer*). These characteristics of obtention and value in economic interaction, which are relevant to the imposition of gift and inheritance tax, are found in the case of obtention of assets (*vermogensbestanddelen*) belonging to the *de cuius*'s or giver's [enterprise assets, defined in terms of domestic tax law] as they are in the case of obtention of other assets. In the context of the levying of gift and inheritance tax, the obtention of assets having a value in economic interaction must therefore be considered, for the purpose of the application of the above-mentioned treaty provisions, as similar situations, regardless of whether these assets are to be considered enterprise assets or not. A difference in treatment between the obtention of enterprise assets and assets of a different nature therefore requires justification.

3.3.3. In view of the above, the question arises whether there is an objective and reasonable justification for the difference in treatment found.

3.3.4. Initially a measure had been taken within the framework of enterprise succession issues consisting only of a settlement in cases where the continued existence of an enterprise was jeopardised by payment of gift or inheritance tax consequent on the obtention of assets of that enterprise. Starting in 1998 an arrangement has additionally been made in the Tax Collection Act 1990 (*Invorderingswet 1990*) providing for a conditional exoneration in an amount of 25 per cent of the tax relating to any enterprise assets obtained. This was done within the framework of the tax reduction operation (*lastenverlichting*) of 1998 aimed at strengthening the structure of the economy. In justification of this facility, which amounted in effect to a partial exemption, the Government pointed out that 'the inheritance tax due [could] lead to financial problems capable of affecting the continuity of the enterprise. ... From the standpoint of the general socioeconomic interest (*een algemeen social-economisch belang*) ... it is undesirable that an enterprise transferred by inheritance should be forced to close down or forcibly sold even though the operating results do not so necessitate, resulting in a loss of employment opportunity and economic diversity.' It is remarked in addition that the arrangement proposed was intended to 'contribute to the continuity of family-owned businesses' (Parliamentary Documents, Lower House of Parliament (*Kamerstukken II*) 1997-98, 25 688, no. 3, p. 7).

3.3.5. Starting from 2002 this arrangement was made part of the Succession Act 1956 in slightly changed form, based also on a report by the Moltmaker working party [a working party set up to make proposals for the modernisation of inheritance tax law] (...). In addition, starting in that year it was provided in section 21(4) of the Succession Act 1956 that the value of enterprise assets should henceforth be determined including transferable goodwill. ... At the same time the facility was raised to 30 per cent of the tax relating to the enterprise assets obtained. In connection with this raise, it was also pointed at the time that 'the financial means that can be liberated ... in accordance with the priorities of Cabinet policy [are] used to stimulate entrepreneurship' (Parliamentary Documents, Lower House of Parliament 2001-02, 28 015, no. A, p. 20). The Government observed in addition: 'The existence of a facility for enterprise succession, with the attendant inherent unequal treatment of assets, finds its justification in the general interest involved in the continuity of enterprises (Parliamentary Documents, Lower House of Parliament 2001-02, 28 015, no. 6, p. 22).

3.3.6. In 2004 the Minister of Finance commissioned a report entitled 'The transfer of enterprises, continuity through the tax system' (*Bedrijfsoverdracht, continuiteit door fiscaliteit*), in which it was reported, among other things, that the existing exemption in the enterprise succession facility of 30 per cent of the enterprise assets was felt to be insufficient to prevent liquidity problems. This led to a bill to raise the facility to 50 per cent. In the course of the parliamentary discussions of that bill the Government remarked: 'The existence of a facility for enterprise succession, with the attendant inherent unequal treatment of assets, finds its justification in the general interest involved in the continuity of enterprises. There is no violation of the principle of equality provided that the form in which the facility is cast is appropriate to the intended aim and the facility is no greater than necessary to achieve the aim chosen. It cannot be determined precisely how generous the facility may be in this connection, already because it is a generic facility and the enterprises to which it will apply are diverse in nature' (Parliamentary Documents, Lower House of Parliament 2004-05, 29 767, no. 14, p. 38). Legislative amendments raised the exemption percentage to 60 per cent starting in 2005 and 75 per cent starting in 2007.

3.3.7. Starting in 2010 the enterprise succession facility was altered on a number of points. Not only was the percentage of the exemption raised, but a number of provisions were adopted to limit the facility to 'genuine cases of enterprise succession' (*reële bedrijfsoverdrachten*). In order to justify the change in the percentage of the exemption, the Government pointed out 'the importance of unimpeded continuation of economic activity' (*het belang van de onbelemmerde voortzetting van de economische bedrijvigheid*) (Parliamentary Documents, Lower House of Parliament 2008-09, 31 930, no. 3, p. 5). ... As to the proposed increase [of the facility] to 90 per cent, the Deputy Minister of Finance remarked, among other things: 'We have received signals indicating that there are bottlenecks (*knelpunten*). These are caused by the fact that the value of commercial goodwill is taken into account in calculating the value of enterprise assets. Succession tax is to be paid on future profits. ... Enterprises have indicated several times in my direction, but also in the media that this really caused problems. ... The fact remains, however, that enterprises can encounter liquidity problems, as a result of which certain parts of a family enterprise that have been in the hands of the enterprise for decades might have to be sold off. The Cabinet considers that undesirable, because family-owned businesses contribute to stability and increased employment opportunity. ... It is true that the criterion 90 per cent is an arbitrary choice to meet a need of family-owned businesses that is generally felt in society (*maatschappelijk gevoeld belang van familiebedrijven*).' (Parliamentary Documents, Lower House of Parliament 2008-09, 31 930, no. 40, p. 46).

A legislative amendment raised the percentage of the exemption to 100 per cent for an obtention valued at up to one million euros per objective enterprise and 83 per cent for enterprise assets over and above that amount. The intention was to allow small and medium-sized businesses to profit from the exemption more than big business.

3.3.8. It follows from the legislative history set out in paragraphs 3.3.4 through 3.3.7 above that the legislator called the facility into existence because, among other reasons, the levying of inheritance and gift tax consequent on the obtention of enterprise assets can cause liquidity problems, in particular also as a result of the taxation of (non-liquid) goodwill, which may endanger the continuity of enterprises. The legislature has, in so doing, had particular regard to the interest of unimpeded continuation of the activities of family-owned businesses within entrepreneurial circles (*binnen de kring van de ondernemer*). Such continuation would be capable of contributing to the maintenance and increase of employment opportunity, the conservation of economic diversity, and stability.

In creating and developing the facility the legislature has also intended to stimulate entrepreneurship.

These are legitimate aims as referred to above in paragraph 3.3.1.

3.3.9. The next question is whether the measures taken go no further than is necessary to achieve these in themselves justified aims, that is, to the point that there is no longer a reasonable relationship of proportionality between these measures (the facility) and the aim sought to be realised thereby. In this connection it is argued in particular that the repeated increase of the percentage of the exemption is not supported by any proper investigation of the need therefor.

3.3.10. In the legislative drafting history set out in paragraphs 3.3.4 through 3.3.7 reference is made several times to reports submitted in which it is urged to raise the percentages of the exemption because the existing facility was felt not to be sufficient. In so far as the argument is that the distinction is not based on proper investigations it therefore fails.

3.3.11 The reports referred to admittedly contain signals and desires expressed in practice, but they do not demonstrate any thorough empirical investigation into the extent of the problems posited. Neither do those reports and the legislature's other arguments give any clear indications as to why precisely an increase of the percentage of the exemption would solve those problems. It does not follow, however, that the facility as applicable in the year here in issue lacks reasonable foundation. The prohibition of discrimination does not go so far as to permit a measure that differentiates between equal or relevantly similar situations in view of a problem experienced in practice only if the existence and the extent of that problem and the effectiveness of the solution chosen have been empirically established. In view of its margin of appreciation, the tax legislature (*fiscale wetgever*) may also base such a distinction on assumptions regarding the problem and the effectiveness of the solution chosen for it, unless these assumptions are so far-fetched that it is manifestly unreasonable to base the distinction on them (see the Supreme Court's judgment of 7 June 2000, no. 34793, ECLI:NL:HR:2000:AA6124, *Beslissingen in Belastingzaken* (Reports of Decisions in Taxation Cases, "BNB") 2000, no. 374).

3.3.12 By providing the facility here in issue the legislature has wished to offer a solution for the bottlenecks in enterprise succession cases noted in practice. In as much as the legislature has based itself on assumptions regarding the need and effectiveness of the measures to be taken it cannot be said that these assumptions are so far-fetched that they are manifestly unreasonable. There are indications that in a considerable proportion of cases in which the facility applies there are no liquidity problems. That is not to say, however, that the legislature could not base itself on the assumption that in cases of inheritance and gift of enterprise assets without the facility here in issue an impediment to the unchanged continuation of economic activity within the circle of the *de cuius* or the giver might arise. Also in other respects there is no reason to hold that that assumption is manifestly unreasonable. The legislature has chosen, also for reasons of practicability, to adopt a generic measure in the form of the facility here in issue. It cannot be denied that the facility contributes to a solution of the liquidity problems referred to in the cases in which they arise, and therefore contributes to the intended continuation of business activity. Moreover, the facility is not intended solely for that, but is also intended to stimulate entrepreneurship more generally.

3.3.13 The considerations set out in paragraph 3.3.12 above lead the Supreme Court to conclude that the facility as applicable in the year here in issue and also in other years is based on a choice of the tax legislature that cannot be said to be manifestly without reasonable foundation. Accordingly, [by creating the facility] the legislature has not overstepped the limits, referred to in paragraph 3.3.1 above, of its margin of appreciation. Consequently, the obtention of enterprise assets is not favoured above the obtention of other assets in such a way as to constitute discrimination as described in paragraph 3.3.1 above."

3. The collective decision of the Tax Inspector

14. On 4 December 2013 the Tax Inspector gave the following decision:

"In his decision of 23 October 2012, no. BLKB2012/1665M, the Deputy Minister of Finance (*Staatssecretaris van Financiën*) has decided to designate as a mass objection (*massaal bezwaar*) the objections (*bezwaarschriften*) against inheritance and gift tax assessments (*aanslagen erf- en schenkbelasting*) in which no enterprise succession facility is granted in respect of non-enterprise assets.

The following objections are designated as mass objections:

Objections not yet decided on as of 23 October 2013;

Objections submitted up to and including the day preceding the date of this collective decision.

The above objections relate to the question whether the application of the principle of equality enshrined in Article 26 of the International Covenant on Civil and Political Rights or Article 14 of the Convention requires the (conditional) untaxed conserved value (*onbelaste geconserveerde waarde*) of the arrangement for succession in enterprises (*bedrijfsopvolgingsregeling*) in the Succession Act 1956 (of 75%) (redaction for the years 2007 through 2009) or the (conditional) exemption of the arrangement for succession in enterprises in the Succession Act 1956 (of 83%) (redaction for the years 2010 and following) should apply to assets (*vermogen*) other than enterprise assets (*ondernemingsvermogen*).

A number of objections have been selected in order for the above question to be answered by the administrative court in tax matters.

Within this framework, the Supreme Court gave decision on Friday 22 November 2013 in five selected test cases:

13/01154 = ECLI:NL:HR2013:1206

13/01160 = ECLI:NL:HR2013:1209

13/01161 = ECLI:NL:HR2013:1210

13/01622 = ECLI:NL:HR2013:1211

13/02453 = ECLI:NL:HR2013:1212

These decisions have been published on www.rechtspraak.nl [the internet web site of the Netherlands judiciary].

The Supreme Court has ruled, in connection with the question of law, in all cases that the exemption of enterprise assets for inheritance and gift tax does not violate the principle of equality. In the view of the Supreme Court, the legislature has not made an unjustified distinction between the taxing of enterprise assets and the taxing of other assets. With [these decisions] the Supreme Court has therefore found in the Tax Inspector's favour.

In view of this ruling I will give a collective decision on all objections designated as mass objections.

I dismiss the objections and maintain the assessments imposed.

(signed)

The Tax Inspector

(etc.)

No appeal lies against this decision. If you wish to lodge an appeal nevertheless, you can, within a reasonable time, submit a request to your Tax Inspector to replace this decision by an individual decision. The individual decision will, however, be in the same terms as this collective decision. You may lodge an appeal against the individual decision with the Regional Court within six weeks of its date. Such an appeal can concern only the question set out above."

15. This decision was published in the Official Gazette (*Staatscourant*) of 4 December 2013 (no. 34331).

COMPLAINT

16. The applicants complained under Article 14 of the Convention and Article 1 of the Netherlands Constitution that the exemption applicable to estates and gifts worth up to one million euros which was enjoyed by those entitled to the facility for enterprise succession did not apply to them.

THE LAW

Complaint under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 and under Article 1 of Protocol No. 12

1. Whether the first applicant is a "victim"

17. As the Court has held many times, in order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall within one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (see, among many other authorities, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013, with further references).

18. The first applicant was not liable to pay the inheritance tax in issue (see paragraph 5 above). Since it was she who made to the second applicant the gift on which the latter paid the gift tax in issue (see paragraph 7 above), she did not owe the latter tax either (see paragraph 11 above). Accordingly she cannot claim to be a "victim" within the meaning of Article 34 of the Convention.

19. It follows that in respect of the first applicant the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Whether domestic remedies have been exhausted

20. The Court notes that the second applicant has submitted no final decision of a domestic authority specific to his complaint.

21. The purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The obligation to exhaust domestic remedies is, however, limited to making use of those remedies which are likely to be effective and available in that their existence is sufficiently certain and they are capable of redressing directly the alleged violation of the Convention. An applicant cannot be regarded as having failed to exhaust domestic remedies if he or she can show, by providing relevant domestic case‑law or any other suitable evidence, that an available remedy which he or she has not used was bound to fail (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-67, *Reports of Judgments and Decisions* 1996-IV; *Selmouni v. France* [GC], no. 25803/94, §§ 74-77, ECHR 1999-V; *Kleyn and Others v. the Netherlands* [GC], nos. 39343/98, 39651/98, 43147/98 and 46664/99, § 156, ECHR 2003-VI; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 121, 11 January 2007; and as a recent example, *S.S. v. the United Kingdom* (dec.), no. 9909/10, § 18, 18 February 2014).

22. In the present case the Court is satisfied that the collective decision given by the Tax Inspector on 4 December 2013 (see paragraph 14 above), which was published in the Official Gazette, dismisses the remaining applicant's objection and that, in view of the five decisions given by the Supreme Court on 22 November 2013 (see paragraph 13 above), it would have availed him nothing to pursue matters any further. It therefore accepts that the applicant has exhausted all domestic remedies available to him.

3. Whether the application is manifestly ill-founded

23. The second applicant alleged discrimination in that he did not enjoy the exemption from inheritance tax and gift tax granted by law in cases of enterprise succession. He relied on Article 14 only.

24. The Court, of its own motion, will consider this complaint under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 and under Article 1 of Protocol No. 12. These provisions read as follows:

Article 14

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

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

25. Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see, among many other authorities, *Marckx v. Belgium*, 13 June 1979, § 32, Series A no. 31; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III; *Burden*, cited above, § 58; and *Fabris v. France* [GC], no. 16574/08, § 47, ECHR 2013 (extracts)).

26. Article 1 of Protocol No. 1 applies to taxation. Since therefore the case clearly falls "within the ambit" of Article 1 of Protocol No. 1, it follows that Article 14 is applicable in conjunction with that Article (see *Darby v. Sweden*, 23 October 1990, § 30, Series A no. 187; and *Burden*, cited above, § 59).

27. However, regardless of the applicability of Article 1 of Protocol No. 1, the Court considers that the complaint is also worth considering under the general prohibition of discrimination set out in Article 1 of Protocol No. 12, the test being identical (see *Sejdić and Finci*, cited above, § 55, and *Ramaer and Van Willigen v. the Netherlands* (dec.), no. 34880/12, §§ 89-90, 23 October 2012).

28. Discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. It must therefore first be determined whether the applicant was in a relevantly similar situation as a person receiving a gift or an inheritance to which the exemption provided for cases of enterprise succession applied.

29. On this point, the Netherlands Supreme Court found that in either case, there was "obtention of assets having a value in economic interaction" (see paragraph 3.3.2 of its decision), so that to that extent the two situations were relevantly similar. The Court is of the same view. It must therefore be decided whether the difference found amounts to forbidden discrimination.

30. "No objective and reasonable justification" means that the distinction in issue does not pursue a "legitimate aim" or that there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, among many other authorities, *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, § 10, Series A no. 6; *Marckx*, cited above, § 33; *James and Others v. the United Kingdom*, 21 February 1986, § 75, Series A no. 98; *Karlheinz Schmidt v. Germany*, 18 July 1994, § 24, Series A no. 291-B; *Stec and Others*, cited above, § 51; *Sejdić and Finci*, cited above, § 42; *Stummer v. Austria* [GC], no. 37452/02, § 87, ECHR 2011; *Ramaer and Van Willigen*, cited above, § 91; and *Fabris*, cited above, § 56).

31. The Court has often stated that the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the domestic policy-maker should be afforded a particularly broad margin of appreciation (see *Burden*, cited above, § 60; see also, *inter alia* and *mutatis mutandis*, *James and Others*, cited above, 46; and *Stec*, cited above, § 52).

32. With particular regard to taxation, the Court has held, under Article 1 of Protocol No. 1 taken alone, that when framing and implementing policies in the area of taxation a Contracting State enjoys a wide margin of appreciation and the Court will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports* 1997-VII).

33. The Court will therefore address the question whether the difference in treatment complained of had a "legitimate aim".

34. The Supreme Court referred extensively to the drafting history of the legislation which created the exemption in issue (see paragraphs 3.3.4-3.3.8 of its decision). It transpires that prior to the creation of the exemption, the transfer of family-owned businesses from one generation to another by inheritance or gift could be attended by liquidity problems caused by the legal duty to pay the inheritance or gift tax on business assets; these liquidity problems could, in some cases, make it inevitable to sell off all or part of the business. The exemption was created to ensure the continuity of family-owned businesses, which were considered to make an important contribution to the economy including the job market, and to stimulate

private business activity (referred to as "entrepreneurship") generally. The Court does not doubt that this was a "legitimate aim" for the purposes of Article 14 of the Convention and Article 1 of Protocol No. 12. It notes in this connection that "the economic well-being of the country" appears as a "legitimate aim" in Article 8 § 2 of the Convention, Article 8 being relevant to matters of inheritance and of gifts *inter vivos* between close relatives inasmuch as it protects "family life" (see *Marckx*, cited above, § 52).

35. It remains to be considered whether there was a "reasonable relationship of proportionality" between the means employed – the distinction between "enterprise assets" and other assets – and the legitimate aim identified.

36. The exemption, as it is applied in practice, would appear to be an effective counter to the problems which it was intended to solve. At all events, since by their very nature similar problems cannot arise in respect of assets to which the exemption does not apply, the distinction made between the two situations does not constitute a disproportionate measure.

37. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Alvina Gyulumyan
President