



Italy must bring its legislation and practice into line with the Court's findings on tax-related inspections and audits of business premises

In today's Chamber judgment¹ in the case of [Italgomme Pneumatici S.r.l. v. Italy](#) (application no. 36617/18 and 12 other applications) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for home and correspondence) of the European Convention on Human Rights.

The case concerned access to and the inspection of business premises, registered offices or premises used for professional activities. The inspections involved the examination, copying and seizure (in some cases) of accounting records, company books, invoices and other mandatory accounting-related documents, as well as several different types of documents relevant for tax assessment purposes. This was carried out by officers or agents from the Revenue Police (*Guardia di Finanza*) – a militarised police force under the Ministry of Economy and Finance – or from the Tax Authority (*Agenzia delle Entrate*) in order to assess the applicants' compliance with their tax obligations.

The Court found in particular that, even though there was a general legal basis in Italian law for the measures in question, that law did not meet the "quality of law" requirement of Article 8 of the Convention. Even taking into account the wide discretion that States held in this respect, the Court considered that the national legal framework gave the domestic authorities unlimited leeway as regards the scope of the measures and the way in which they could be implemented. Moreover, it did not provide sufficient procedural safeguards, as the legality, necessity and proportionality of the measures were not subject to sufficient review. All in all, it had not provided the applicants with the minimum degree of protection to which they were entitled under the Convention.

Under Article 46 (binding force and enforcement of judgments) the Court found that general measures at national level were required. It called upon Italy to bring its legislation and practice into line with the Court's findings in this case.

Principal facts

The 13 applicants are all legal entities, except for Mr Terrenzio, an Italian national who lodged his application on behalf of a company of which he is the sole proprietor (*ditta individuale*).

On various dates between 2018 and 2022, the applicants' business premises, registered offices or premises used for professional activities were accessed by officers or agents of the Revenue Police or the Tax Authority in order to assess their compliance with their tax obligations. The authorisations to carry out the inspections were issued by the local head of either the Tax Authority or the Revenue Police in line with presidential decrees.

The applicants and their representatives were asked to produce accounting records, company books, invoices and other mandatory accounting documents, as well as several different types of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

documents relevant for tax assessment purposes relating to the years under audit. The requests did not concern only records and books which the applicants were legally obliged to keep, but also other off-the-book records (*scritture extracontabili*) in their possession, such as ones relating to transactions, assets or liabilities. They were informed that the officers or agents carrying out the audits were bound by professional secrecy as regards the information acquired, and that the audits were subject to the guarantees and safeguards provided for by Law no. 212 of 27 July 2000. They were further informed that if they refused to produce the documents requested, they would be prevented from relying on them as evidence in their favour in any subsequent administrative and judicial proceedings and the Tax Authority would be allowed to assess how many transactions had taken place and how much income had been received by resorting to presumptions (*presunzioni semplici*) based on other data and items available to the authorities.

The applicants complied with the domestic authorities' requests, by letting the officers and agents carry out the audits and producing the documents requested. Those documents were copied if they were in electronic format and in some cases they were seized; in other cases, they were left with the applicants, but sealed and stored and kept at the tax and police authorities' disposal in order to be examined further.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for home and correspondence) taken alone and in conjunction with Article 13 (right to an effective remedy), and on Article 6 § 1 (access to court), the applicants complained of the excessively wide discretion that national legislation gave to the authorities for such measures and of the lack of sufficient procedural safeguards capable of protecting them against abuse or arbitrariness. They complained in particular that there had been no judicial or independent review of the measures either before they came into force or afterwards.

The applications were lodged with the European Court of Human Rights between 18 July 2018 and 15 April 2022.

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

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Raffaele Sabato (Italy),
Alain Chablais (Liechtenstein),
Artūrs Kučs (Latvia),

and also Ilse Freiwirth, *Section Registrar*.

Decision of the Court

Due to the similar subject matter of the applications, the Court examined them jointly in a single judgment.

Article 8

The Court noted that, although the inspection visits did not equate to search and seizure operations, taxpayers were nonetheless made to comply with them to prevent their tax assessments being based on presumptions. Therefore, it considered that that constituted an interference with the applicants' right to respect for their "home" and "correspondence" within the meaning of Article 8 of the Convention.

After weighing up whether that interference was justified, the Court concluded that even if it could be said that there was a general legal basis in Italian law for the measures in question, that law did not meet the “quality of law” requirement of Article 8 of the Convention. Even taking into account the wide discretion that States held in this respect, as well as the relatively mild nature of the interference, and the taxation context, the Court considered that the national legal framework gave the authorities unlimited leeway as regards the scope of the measures and the way in which they could be implemented. For instance, in relation to business premises, no specific justification for authorising the measures was required, and when the measures were implemented by officers of the Revenue Police, no written authorisation was required at all. In addition, the Tax Authority’s and the Revenue Police’s power to decide on the need for, number, length and scale of the inspections and the information that was requested and then copied or seized was not regulated in the slightest.

The Court also found that the legal framework did not provide sufficient procedural safeguards, as the legality, necessity and proportionality of the measures were not subject to sufficient review. The remedies put forward by the Government – a complaint to the tax courts, a complaint to the civil courts, and a complaint to the Taxpayer’s Guarantor – were not considered to be effective remedies. Therefore, the Government’s preliminary objection that the applicants had not used all the [legal avenues available at national level](#) was dismissed.

All in all, the legal framework did not provide the applicants with the minimum degree of protection to which they were entitled under the Convention. The Court found that, in these circumstances, it could not be said that the interference in question was “in accordance with the law” as required by Article 8 § 2 of the Convention. There had, therefore, been a violation of that Article.

Article 6

As the Court had already dealt with the main legal questions raised by the case, it did not see a need to examine the complaints raised in eight of the applications under this Article.

Article 46 (binding force and enforcement of judgments)

In the light of the violation found, the Court found it crucial that Italy adopt appropriate general measures with a view to bringing its legislation and practice into line with the Court’s findings.

First, the domestic legal framework, if necessary by means of relevant administrative practice directions, should clearly indicate the circumstances in which, and the conditions on which, the authorities are allowed to access premises and carry out on-site audits and tax checks on business premises and premises used for professional activities. Safeguards should be established to avoid indiscriminate access, or at least to prevent the retention and use of irrelevant documents and items. The taxpayer must have the right to be informed of the scope of the audit beforehand, or at the very latest as it was starting, the reasons for it, his or her right to be assisted by a professional, and the consequences of refusing to allow it to go ahead.

Secondly, the legal framework should clearly provide for an effective judicial review of a contested measure, and in particular a review of the authorities’ compliance with the criteria, scope and conditions justifying that measure. If a taxpayer believes that the persons carrying out an audit are not acting in accordance with the law – a possibility already alluded to in section 13 of Law no. 212 of 27 July 2000 – some form of simplified interim and binding review should be available before the audit is finalised.

Just satisfaction (Article 41)

The Court held that Italy was to pay each of the applicants 3,200 euros (EUR) in respect of non-pecuniary damage. As no claims for costs and expense had been submitted, no award was made in that respect.

The judgment is available only in English.

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