



PETER FORTUIN
JUDGE COURT OF APPEAL
'S-HERTOGENBOSCH (NETHERLANDS)
IATJ 7th Assembly
September 30th
October 1st, 2016
Madrid, Spain

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE HUMAN RIGHTS AND TAXATION

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

ART. 6 ECHR (RIGHT TO A FAIR TRIAL):

‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.’

ART. 6 ECHR NOT APPLICABLE ON TAX ASSESSMENTS (ECHR 12 JULY 2001, 44759/98, FERRAZZINI), BUT:
APPLICABLE ON ADMINISTRATIVE FINES.

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

A PAYROLL TAX RATE OF 60% FOR WAGES FOR EMPLOYEES WHO ARE UNIDENTIFIED BY THEIR EMPLOYER: NOT A DETERRENT AND PUNITIVE SANCTION, NO CRIMINAL CHARGE ACCORDING TO ART. 6 ECHR.

(HR 28 JANUARY 1998, 32732)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

NOT PAYING THE COURT FEE (DUTCH LAW):
INADMISSIBILITY OF THE APPLICATION.

SUPREME COURT: APPLICATION ADMISSIBLE IF
TAXPAYER/APPLICANT DOESN'T HAVE ENOUGH
INCOME AND ASSETS (HR 28 MARCH 2014, 12/03888).

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

SUPREME COURT: EXCEEDANCE OF REASONABLE TIME LEADS TO:

- A) REDUCTION OF ADMINISTRATIVE FINES;
- B) COMPENSATION OF DAMAGE (€ 500 FOR 6 MONTHS DELAY)

REASONABLE TIME:

- COURT: 2 YEARS (AFTER CRIMINAL CHARGE)
- APPEAL: 2 YEARS
- CASSATION: 2 YEARS

(HR 22 APRIL 2005, 37984; HR 10 JUNE 2011, 09/02639;
ECHR 29 MARCH 2006, PIZZATI, 62361/00)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

ART. 8 ECHR (Right to respect for private and family life)

‘1. Everyone has the right to respect for his private and family life, his home and his correspondence.’

THE USE OF DATA ABOUT CARS ON THE PUBLIC ROAD FOR TAX PURPOSES. VIOLATION OF ART. 8 ECHR?

PENDING AT THE SUPREME COURT

ADVOCATE-GENERAL NIESSEN:

- DATA COLLECTED BY POLICE: NO VIOLATION
- DATA COLLECTED BY TAX ADMINISTRATION: VIOLATION (NOT LAWFUL)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

SUPREME COURT:

THE POWERS OF THE TAX ADMINISTRATION TO REQUEST INFORMATION ON THE BASIS OF TAX LAW ARE NOT A VIOLATION OF ART. 8 ECHR, BECAUSE:

‘THE INTERFERENCE BY THE PUBLIC AUTHORITY IS NECESSARY IN A DEMOCRATIC SOCIETY IN THE INTEREST OF THE ECONOMIC WELLBEING OF THE COUNTRY’ (ART. 8, PAR. 2 ECHR)

(HR 10 DECEMBER 1974, 67574; HR 28 MAY 1986, 23784; HR 28 JANUARY 1998, 32732)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

ART. 1 FIRST PROTOCOL ECHR (PROTECTION OF PROPERTY)

‘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.’

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE
IMPOSSIBILITY BY LAW TO CONTEST THE RECEIPT
OF A NOTICE (FROM THE TAX ADMINISTRATION) TO
PAY. CONSEQUENCE: NOT PAYING IN TIME LEADS TO
HIGH COSTS.

SUPREME COURT: 'BECAUSE THERE IS NO
PROCEDURAL GUARANTEE TO OFFER THE PERSON
A REASONABLE OPPORTUNITY TO EFFECTIVELY
CHALLENGE THE LAWFULLNESS OF THE FICTION TO
HAVE RECEIVED THE NOTICE: VIOLATION OF ART. 1
FIRST PROTOCOL (ECHR 24 NOVEMBER 2005,
49429/99, CAPITAL BANK)'

(HR 10 JULY 2009, 08/01578)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

VALUE OF A HOUSE BY THE TAX ADMINISTRATION
FIXED AT € 99.000
REAL VALUE: € 95.000

BY LAW IT WAS PRESCRIBED THAT FOR A SUCH
SMALL DIFFERENCE THE VALUE OF THE HOUSE WAS
NOT ADAPTED TO € 95.000

SUPREME COURT: VIOLATION OF ART. 1 FIRST
PROTOCOL

(HR 22 OCTOBER 2010, 08/02324)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

AFTER THESE JUDGMENTS OF THE SUPREME COURT THERE WERE MANY DECISIONS OF THE SUPREME COURT IN WHICH WAS DECIDED THAT THE LEGISLATOR HAS A WIDE MARGIN OF APPRECIATION AND ART. 1 FIRST PROTOCOL WAS NOT VIOLATED.

(HR 11 JULY 2014, 13/02731; 11 APRIL 2014, 13/06240; 21 FEBRUARY 2014, 13/00455; 22 NOVEMBER 2013, 13/02453)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE
INCOME TAX: ASSETS ARE SUPPOSED TO GIVE A
RETURN ON INVESTMENT OF 4%. RATE: 30%
EFFECTIVELY TAX RATE: 1,2%

SUPREME COURT: A FORFAIT SHOULD APPROACH
REALITY. BECAUSE OF THE WIDE MARGIN OF
APPRECIATION OF THE LEGISLATOR NO VIOLATION
OF ART. 1 FIRST PROTOCOL. ONLY WHEN ON LONG
TERM THE YIELD OF 4% WOULD BE UNREALISTIC
THERE WOULD BE AN EXCESSIVE BURDEN AND A
VIOLATION OF ART. 1 FIRST PROTOCOL.

(HR 10 JUNE 2016, 14/05020 AND HR 3 APRIL 2015,
13/04247)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE
SALARIES RECEIVED IN 2012 AND HIGHER THAN
€°150.000 WERE TAXED AT HIGH(ER) RATE IN 2013.
THIS AMENDMENT OF LAW WAS NOT FORESEEABLE

ADVOCATE-GENERAL WATTEL: NO FAIR BALANCE
BETWEEN THE PUBLIC INTEREST AND PRIVATE
INTEREST.

SUPREME COURT: SPECIFIC AND COMPELLING
REASONS TO RETROACTIVELY CHANGE THE LAW. IN
SHORT: ECONOMIC CRISIS, BUDGETARY PROBLEMS,
THE NEED FOR A SIMPLE MEASURE AND SHORT-
TERM LIQUIDITY.

(HR 29 JANUARY 2016, 15/00340 AND 15/03090)

PRACTICAL EXAMPLES FROM DUTCH PERSPECTIVE

IN GENERAL THE COMMENTS ON THE CASE LAW OF THE SUPREME COURT IN RESPECT OF ART. 1 FIRST PROTOCOL IS THAT IT'S GIVING A TOO WIDE MARGIN OF APPRECIATION TO THE LEGISLATOR.

ON THE OTHER HAND IT'S UNDERSTANDABLE THAT THE SUPREME COURT DOESN'T WANT TO INTERFERE IN A COMPLICATED POLITICAL LANDSCAPE WITH A LOT OF POLITICAL PARTIES IN FINANCIALLY DIFFICULT TIMES.