



Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Katerina Perrou, Doctor at the *University of Athens Law School* and reporter of the OPTR Unit for the Court of Justice of the European Union.

This report contains a summary of court cases, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 2019, in 12 relevant areas identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*":

European Court of Justice: this report abridges cases decided and pending in the Court in tax matters during 2019, relevant for the European Charter of Human Rights and the Treaty on the Functioning of the European Union.

Cases before the Court of Justice of the European Union – 2019
Report prepared by Dr. Katerina Perrou.

EU Charter of Fundamental Rights: Cases decided or AG Opinions delivered in 2019					
EU Charter	Case	Date	Facts	Decision	Comments
Article 7 – Respect for private and family life	C-310/16, <i>Dzivev</i>	17 January 2019	The taxpayer was charged with having committed tax offences via a trading company; he had sought to profit from not paying the tax due under VAT legislation. Authorisation to initiate the interception of the telecommunications was granted by the Sofia District Court. After the criminal proceedings commenced, the prosecutor, in March 2012, sought and obtained a number of authorisations from the Specialised Criminal Court to intercept more of the defendants' telecommunications. These authorizations were granted by a court lacking jurisdiction.	A national court is not precluded from applying a national provision excluding, from a prosecution, evidence such as the interception of telecommunications requiring prior judicial authorisation, where that authorisation was given by a court that lacked jurisdiction.	§40 (...) The requirement that any limitation on the exercise of the right conferred by Article 7 of the Charter must be in accordance with the law means that the legal basis authorising that limitation should be sufficiently clear and precise (see <i>WebMindLicenses</i> , C-419/14, para. 81). It is also of no relevance that, in the case of one of the four defendants in the main proceedings, only the interception of telecommunications initiated on the basis of authorisations granted by a court lacking jurisdiction could prove his guilt and justify a conviction.
Article 20 – Equality before the law	Joined cases C-80/18 to C-83/18, <i>UNESA</i>	7 November 2019			See under Article 51

Article 21 – Non-discrimination	Joined cases C-80/18 to C-83/18, <i>UNESA</i>	7 November 2019			See under Article 51
Article 41 – Right to good administration	C-482/18, <i>Google Ireland Ltd</i>	Opinion of AG Kokott 12 September 2019			See under Article 47
Article 47 – Right to an effective remedy and to a fair trial	C-310/16, <i>Dzivev</i>	17 January 2019			See under Article 7
	Joined Cases C-469/18 and C-470/18, <i>IN and JM</i>	24 October 2019	The Belgian tax authorities had started criminal investigations against two companies for carousel fraud. In the course of that investigation they were granted access to bank documents. Based on those documents they assessed with additional income tax two individuals, who were the managing directors of the two companies charged with the carousel fraud. The taxpayers complained that the evidence used to assess them with additional income tax was obtained contrary to Article 7 of the Charter and questioned whether that was compatible with the right to a fair trial protected under Article 47 of	Inadmissible	The situation at issue in the main proceedings, the subject matter of which is an adjustment of personal income tax returns, does not fall within the scope of EU law.

			the Charter.		
	C-676/17, Oana Mădălina Călin	11 September 2019	The taxpayer had paid a tax that was subsequently declared as incompatible with EU law. The tax payer asked for a revision of the court decision that had denied her the refund of the tax. Her request was accepted but then it was subsequently appealed. Under appeal, the court rejected her request on the additional ground that, based on a decision by the Supreme Court that had in between been published, her request for revision was filed after the deadline provided for in the law (30 days). The taxpayer complained that the Supreme Court decision that affected the validity of her request for revision should not apply to her case, as it was not published at the time she filed her request for revision.	The requirement of equivalence must be interpreted as not precluding national legislation according to which the deadline to submit a request for revision of a final judgment that infringes EU law is one month and runs from the date of notification of the final judgment subject to revision. By contrast, the requirement of effectiveness in conjunction with the principle of legal certainty may preclude an exclusive deadline of 30 days for filing the request of revision of a final judgment, if at the time of filing of the request for revision the judgment which gives that right is not yet published.	AG Bobek in his Opinion (5 February 2019) proposed that the answer is based on Article 47 of the Charter; the Court agreed with the Opinion of the AG, but did not include any reference to Article 47 of the Charter.
	C-189/18,	16 October 2019	The tax authorities denied the	The principle of respect for the rights of defence and	National legislation or a

	<i>Glencore</i>		<p>deduction of input VAT, claiming that the taxpayer was involved in VAT fraud. The decision was based on findings of the tax authorities after investigations with suppliers of Glencore, which had resulted in the reclassification of transactions that these suppliers had with third parties. The taxpayer complained that the reclassification involved his supplier and not him</p>	<p>Article 47 of the Charter do not preclude, in principle, legislation or a practice of a Member State whereby, during an assessment of the right to deduct value added tax (VAT) exercised by a taxable person, the tax authority is bound by the findings of fact and legal qualifications already made by it in the context of related administrative procedures brought against that taxable person's suppliers, on which are based decisions which have become final finding the existence of VAT fraud committed by those suppliers, on condition, (i) that it does not absolve the tax authority of the need to make evidence known to the taxable person, including evidence resulting from those related administrative procedures, on the basis of which it intends to take a decision, and that that taxable person is not thereby deprived of the right to effectively call into question those findings of fact and legal qualifications during the proceedings concerning him, (ii) that that taxable person have access during</p>	<p>national practice whereby, during an assessment of the right to deduct VAT exercised by a taxable person, the tax authority is bound by the findings of fact and legal qualifications which were made by it in the context of related administrative procedures to which that taxable person was not party.</p> <p>Right to be heard; right of access to the file; effective judicial review; principle of equality of arms; adversarial principle.</p>
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	<p>C-482/18, <i>Google Ireland Ltd</i></p>	<p>Opinion of AG Kokott 12 September 2019</p>	<p>Hungary enacted a turnover-based tax on advertisement and a registration obligation that affected mainly non-resident companies. Google was subject to extremely high penalties for failure to comply with the registration requirements. In addition, there are certain procedural obstacles in connection with this penalisation which make it difficult for the taxpayer to evade the fine, by contesting it in</p>	<p>AG Kokott submits that the limitations of the possibilities for legal redress with regard to the very high coercive penalty payments in connection with the Hungarian tax on advertisements constitute an unjustified restriction of the freedom to provide services.</p>	<p>The case is discussed under the freedom to provide services and not under the light of the Charter</p>

			<p>court proceedings for example. Both aspects affect in particular taxpayers who are resident abroad and have not yet generated any revenue taxable in Hungary.</p> <p>The referring Court asks whether Articles 41 and 47 of the Charter have an impact on the imposition of the penalties as described above.</p>		
Article 51 – Field of application	Joined cases C-80/18 to C-83/18, <i>UNESA</i>	7 November 2019	<p>The Spanish Government introduced a tax that applied only to undertakings which use nuclear energy to produce electricity. Certain affected undertakings complained that the imposition of this tax infringed the “polluter pays” principle affirmed in TFEU, taken together with Articles 20 and 21 of the Charter.</p>	Not accepted	<p>The Court held that Spain, by adopting the legislation that imposed this tax did not implement EU law in the meaning of Article 51(1) of the Charter. Therefore the Court has no jurisdiction to answer the questions regarding the compatibility of the tax with Articles 20 and 21 of the Charter.</p>