



Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Guzmán Ramírez Arrieta, Senior Associate at *Bergstein Abogados* and reporter of the OPTR Unit for the Inter-American Court.

This report contains a summary of court cases before the Inter-American Court of Human Rights, in which issues regarding the practical protection of taxpayers' rights were discussed and decided 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".

2020 Relevant Case Law – Inter-American Court of Human Rights

Minimum Standard Best Practice	Case	Date	ACHR Articles	Facts	Decision	Comments
<p>MS53: Where tax must be paid in whole or in part before an appeal, there must be an effective mechanism for providing interim suspension of payment</p> <p>BP53: An appeal should not require prior payment of tax in all cases</p>	Oswaldo Senen Paredes v. Ecuador	August 9, 2020	<p>✓ 8 (“<i>Right to a Fair Trial</i>”)</p> <p>✓ 25 (“<i>Right to Judicial Protection</i>”)</p>	<p>Mr. Oswaldo Senen Paredes claimed that the Ecuadorian State was internationally responsible for the violation of his rights to fair trial and judicial protection on account of the material impediment that he allegedly faced to access justice with the aim to judicially question two (2) settlements of income tax for the 2004 and 2005 fiscal years, since he was required to post bonds to access a due process, and he could not pay such bonds due to his financial capacity.</p> <p>In 2007, two (2) tax proceedings were started against Mr. Paredes by the Ecuadorian Tax Office, which led this authority to determine that the alleged victim owed the amounts of USD 90,860.38 and USD 23,322.74 for the 2004 and 2005</p>	<p><u>Admissibility Report No. 207/20, Inter-American Commission on Human Rights</u></p> <p>The Inter-American Commission on Human Rights decided to find Mr. Paredes’ claim admissible in relation to Articles 8 and 25 of the American Convention on Human Rights.</p> <p>The Commission noted that the allegations of the taxpayer referred concretely to his impossibility of bringing a complaint before competent domestic courts about his tax status, due to the requirement to deposit certain bonds that he was unable to post.</p> <p>In this sense, the Commission considered that, if true, the facts described above</p>	<p>The instant case reminds us a judgment issued (in 2002) by the Inter-American Court of Human Rights, in the case José María Cantos v. Argentina.</p> <p>Mr. Cantos had filed a legal action against the Provincial Tax Office of Santiago del Estero (in Argentina), in an effort to collect damages because of certain irregularities committed at the time of auditing his companies. More specifically, he claimed the payment of approximately USD 2,780,000,000. The Argentine Supreme Court of Justice required from the claimant the payment of a judicial tax (in Spanish, “<i>tasa judicial</i>”) for an amount of USD 83,400,000 (i.e., 3% of the claimed damages). The Inter-American Court found that --by imposing</p>

				<p>fiscal years respectively.</p> <p>Both amounts were established in orders to pay adopted by the aforementioned Tax Office.</p> <p>On June 9, 2008, the Ecuadorian Tax Office notified Mr. Paredes of an order to pay USD 90,860.38 for an alleged difference in the 2004 income tax statement. The taxpayer stated that this sum was erroneous, because it exceeded in a disproportionate way what could be materially generated by his economic activity, which involved growing palm hearts and engaging in retail sale of beef.</p> <p>The alleged victim pointed out that the Tax Office assumed that he had a 97% profit margin over his sales.</p> <p>On January 19, 2009, Mr. Paredes filed a suit before the Ecuadorian Tax Court, questioning the</p>	<p>could involve violations to the rights enshrined in Articles 8 (<i>“Right to a Fair Trial”</i>) and 25 (<i>“Right to Judicial Protection”</i>) of the American Convention, to the detriment of Mr. Oswaldo Senen Paredes.</p>	<p>such requirement-- the Argentine State had violated Articles 8 and 25 of the American Convention, which respectively recognize the taxpayer’s right to a fair trial and judicial protection. Therefore, the Court ordered the Argentine State to refrain from collecting such judicial tax.</p> <p>Despite the apparent similarities, it should be noted that, in such case, the Inter-American Court of Human Rights also recognized that the right of access to a domestic court is not an absolute and therefore may be subject to certain limitations. At the end of the day, the Inter-American Court based its judgment only on the grounds that the intention to collect the above sum of money was excessive and out of proportion, all of which must be analyzed and determined on a case-by-case basis.</p> <p>That said, and in</p>
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				<p>Tax Office resolution. Nevertheless, the Tax Court established that before starting the proceeding, the taxpayer had to post a bond equivalent to 10% of the amount of taxes (i.e., USD 9,086). The alleged victim stated that he did not have the money to post such bond.</p> <p>In 2007, the Tax Office had begun another proceeding against the same taxpayer also for the assessment of income tax, on this occasion concerning the 2005 fiscal year. As a result of this proceeding, on November 14, 2008, the Tax Office notified Mr. Paredes the order to pay allegedly owed taxes for a total amount of USD 23,322.74.</p> <p>In view of this, the alleged victim filed once again a suit to challenge the new order to pay before the Tax Court, which by order of July 1, 2009, established that --prior to this</p>		<p>accordance with the Commission's recent report, the protection of the right to a fair trial appears to have been affected insofar as no effective mechanism would have been implemented to suspend the payment of the bonds and to provide the taxpayer access to justice. If it is true that the taxpayer had no financial capacity to post such bonds, Tax Court should have acknowledged this special situation.</p>
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				<p>proceeding-- the taxpayer had to post the bond equivalent to 10% of the amount of taxes (i.e., USD 2,332).</p> <p>Mr. Paredes refused to post the bond, based on the grounds that this bond was unconstitutional. The Tax Court submitted this case to the Constitutional Court for it to decide on whether Article 7 of the Reform Law for Tax Equality in Ecuador, which established the obligation to post the bond, was in compliance with the standards of the Ecuadorian National Constitution or not. On August 5, 2010, the Constitutional Court decided that such article was constitutional.</p> <p>In October 2010, the file was returned to the Tax Court to order that the bond be posted. As Mr. Paredes was not economically capable to deposit the required sum, the judicial proceeding</p>		
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				<p>initiated by him was closed.</p> <p>In sum, the alleged victim judicially challenged the settlement and collection of the aforementioned amounts of taxes (i.e., USD 90,860.38 and USD 23,322.74). In both judicial proceedings, he was requested to post a bond in accordance with the value of each order to pay, which amounted to the equivalent to 10% of such amounts (i.e., USD 9,086 and USD 2,332). The taxpayer was not in a financial situation that allowed him to post the judicial bonds as a precondition for the courts to hear his complaints. Both proceedings were closed precisely for the failure to post the bonds.</p> <p>The claim submitted by Mr. Paredes with the Inter-American Commission on Human Rights, was based on the fact that the alleged victim argued that he was</p>		
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				not afforded equal access to the judicial review of administrative decisions about tax matters which, in his view, were arbitrary and infringed upon his rights.		
BP51: Reviews and appeals should not exceed two years	Luis Esteban Gallardo Martínez v. Peru	June 17, 2020	<p>✓ 8 ("<i>Right to a Fair Trial</i>")</p> <p>46 -- Requirement of exhaustion of domestic remedies</p>	<p>Mr. Luis Esteban Gallardo Martínez alleged to have suffered the violation of his right to a fair trial for having been prosecuted for the crime of tax fraud for more than ten (10) years in an arbitrary manner.</p> <p>In 2000, the Peruvian Prosecutor's Office initiated two (2) criminal proceedings against Mr. Luis Esteban Gallardo Martínez for the crime of tax fraud.</p> <p>Regarding the first proceeding, the alleged victim stated that on various occasions, he sought the early conclusion of the process and greater speed on the part of the justice bodies, but the requests were not met.</p>	<p><u>Inadmissibility Report No. 158/20, Inter-American Commission on Human Rights</u></p> <p>The Inter-American Commission on Human Rights declared the claim inadmissible, for formal reasons.</p> <p>Based on the information provided to the Commission, such body concluded that there was an undue exhaustion of domestic remedies, so it could not consider as proven the admissibility requirement set forth in Article 46.1.A of the American Convention on Human Rights.</p>	<p>Everyone knows that any alleged victim must exhaust domestic remedies in accordance with Article 46.1.A of the American Convention. That said, the Commission's report in this case recalled and highlighted one (1) significant issue regarding the above rule, which is that the above requirement cannot be considered duly fulfilled if the domestic claim filed by the alleged victim, was declared inadmissible by the competent jurisdiction based on reasonable and non-arbitrary procedural grounds.</p> <p>Everyone also knows that excessive delays must be prevented in the framework of tax appeals, and also in the field of criminal proceedings. Having</p>

				<p>In view of the alleged delay in resolving this first proceeding, on December 12, 2011, Mr. Gallardo filed a writ of habeas corpus, alleging the violation of his right to reasonable period and his right of defense. Courts rejected the claim <i>in limine</i>.</p> <p>In response, Mr. Gallardo filed a constitutional complaint, and on June 11, 2013, the Constitutional Court reversed the decision of inadmissibility and ordered the habeas corpus petition to be processed. The alleged victim argued that after that, he had not been aware of said habeas corpus action.</p> <p>With regard to the second proceeding, the alleged victim maintained that the authorities delayed the process also arbitrarily. Along these lines, Mr. Gallardo denounced that on January 9, 2017, he requested</p>		<p>been prosecuted for tax fraud for more than ten (10) years --if true--, may certainly be considered excessive.</p>
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				<p>the National Criminal Chamber of the Supreme Court to issue a statute of limitation, but that such body did not comply with issuing such a document.</p> <p>Based on these events, Mr. Gallardo stated that the two (2) proceedings for tax fraud instituted against him violated his right of defense and reasonable time, since both cases were deliberately delayed by the judicial authorities.</p>		
<p>MS58: Proportionality and <i>ne bis in idem</i> should apply to tax penalties</p> <p>BP59: Where administrative and criminal sanctions may both apply, only one procedure and one sanction should be applied</p> <p>MS11: Provide a specific legal guarantee for confidentiality, with sanctions for officials who make unauthorized disclosures (and</p>	<p>María Meyber Bichakdjian Altounian and Others v. Uruguay</p>	<p>October 24, 2019 (Published in 2020)</p>	<p>✓ 8 (“<i>Right to a Fair Trial</i>”)</p> <p>✓ 11 (“<i>Right to Protection of Honor and Dignity</i>”)</p> <p>✓ 46 -- Requirement of exhaustion of domestic remedies</p>	<p>Ms. María Meyber Bichakdjian Altounian and her two (2) sons (Berch and Aram Rupenian Bichakdjian) directly or indirectly held the rights to four (4) radio stations, namely: (1) Concierto; (2) Concierto Punta; (3) Radio Uno; and (4) Radio Independencia.</p> <p>On August 11, 2004, the Uruguayan Tax Office issued a resolution, ruling that Parasel S.A. --a local corporation which was owned by Ms.</p>	<p><u>Inadmissibility Report No. 222/19, Inter-American Commission on Human Rights</u></p> <p>The Inter-American Commission on Human Rights decided to declare the claim inadmissible.</p> <p>The Commission considered that, despite of the alleged victims’ arguments, there were not sufficient elements for it to conclude, prima facie, that the American Convention</p>	<p>The Commission’s report might be considered questionable to the extent that substantive implications of proportionality and <i>ne bis in idem</i> principles, would have been infringed. Tax sanctions should penalize, but not result in other kind of repercussions (e.g., the interdiction for taxpayers to continue conducting their business activities). Furthermore, any tax system should avoid</p>

<p>ensure sanctions are enforced)</p>				<p>Bichakdjian and was, in turn, the sole proprietor of one (1) of the above radio stations (i.e., Concierto)-- had committed tax fraud for not paying corporate income tax and value added tax, as a result of which it was fined.</p> <p>The alleged victims claimed that, since 2005, the Uruguayan Tax Office launched, in breach of tax confidentiality, a media campaign, publicly stating that the Rupenian brothers would be criminally charged, leading to great harm to their image.</p> <p>Afterwards, the Tax Office filed criminal proceedings against the alleged victims for the possible crime of tax fraud. The complaint submitted by the Tax Office contended that the taxpayers unlawfully transferred more than half of the invoices from the customers of Concierto (of Montevideo) to Concierto Punta (of</p>	<p>on Human Rights may have been violated.</p> <p>In connection with the right to a fair trial and possible violation of presumption of innocence, the Commission observed that the alleged victims did not contribute sufficient elements indicating that the pending criminal proceedings against them were a determinant factor in the decision to revoke the permits for the operation of the radio stations.</p> <p>Furthermore, in the opinion of the Inter-American Commission, the alleged victims had not filed any complaints --under domestic laws-- regarding the supposed media campaign that they alleged was carried out by the Uruguayan Tax Office. Therefore, the Commission could not conclude that remedies available under domestic laws had been properly exhausted --regarding</p>	<p>exposing taxpayers to the obligation to defend themselves more than once in respect of the same alleged violation (this seems to have been the case here).</p> <p>Beyond this, the Inter-American Commission highlighted an ancillary (though relevant) matter.</p> <p>As a matter of fact, the alleged victims had not argued a violation of Articles 8 and 11 of the American Convention on Human Rights. Actually, their claim was based on Articles 5 ("<i>Right to Protection of Honor, Personal Reputation, and Private and Family Life</i>") and 26 ("<i>Right to Due Process of Law</i>") of the American Declaration of the Rights and Duties of Man.</p> <p>In the opinion of the Commission, this would have been a mistake. Once the American Convention enters into force with respect to any given</p>
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				<p>Maldonado), for the purpose of defrauding the treasury and benefiting from tax exemptions applicable only to radio broadcasting stations in the country's inland regions.</p> <p>On March 28, 2007, the Executive Branch issued a resolution to withdraw the authorizations granted to the alleged victims and their companies for the operation of the four (4) radio stations. They stated that such resolution specifically referred to the sanctions imposed by the Tax Office on the alleged victims and the initiation of criminal proceedings against them, and pointed out, among other considerations, that <i>"the maneuvers that constituted tax infringements leading as a result to criminal proceedings, and the loss of certain personal requirements demanded from radio broadcasters, severely undermine</i></p>	<p>these allegations-- pursuant to the requirement provided in Article 46.1.A of the American Convention.</p>	<p>State (in this case, Uruguay), the latter and not the Declaration becomes the primary source of applicable law for the Commission, as long as the claim refers to rights that are identical in both instruments.</p> <p>In the instant case, the Commission considered that the rights invoked by the alleged victims, were not outside the reach of the protection provided by Articles 8 and 11 of the American Convention. Therefore, they had had to invoke the provisions included in such Convention.</p> <p>Finally, if it is true that the Uruguayan Tax Office conducted a media campaign against the alleged victims, their right to privacy would have been infringed as a result of an intentional breach of taxpayers' confidentiality. Unauthorized disclosure of taxpayers' information should never happen.</p>
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				<p><i>the public interest”.</i></p> <p>The resolution of the Executive Branch was implemented on July 9, 2007, the day on which the four (4) radio stations were forced to stop broadcasting.</p> <p>The alleged victims claimed that their human rights were violated, among other reasons, because: (i) the permits were withdrawn without any criminal conviction and when ruling on the legal action calling for nullification of the Tax Office resolution was still pending; the presumption of innocence was therefore violated; (ii) the Tax Office sanctions were aimed solely at Parasel S.A. and its broadcasting station (i.e., Concierto), but without any grounds the permits of all the four (4) radio stations were withdrawn; and (iii) the radio broadcasting permits were withdrawn on the basis of a tax liability issue that could be remedied;</p>		
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				<p>other measures such as granting the permit-holders time to pay the debt, were feasible; the measure was therefore disproportionate.</p> <p>In response to such allegations, the Uruguayan State argued that the tax and criminal proceedings filed against the alleged victims, members of a well-known family, were carried out in observance of the principle of equality and in a historical context in which the State gave priority to investigating tax crimes to combat poverty, promote fiscal equity, and mitigate the impacts of the economic crisis sustained by the country in 2001.</p>		
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