



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 Natalia Vorobyeva, Former Lawyer at the *European Court of Human Rights*, both Reporters of the OPTR Unit for the European Court of Human Rights.

This report contains a summary of court cases, 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"

2021 Relevant Case Law – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
MS 25: ne bis in idem	MILOŠEVIĆ v. CROATIA <i>Application no. 12022/16</i>	31 August 2021	Art. 4 P7	The case concerns the applicant's punishment in minor-offence proceedings for using prohibited heating oil as fuel in his truck and the subsequent imposition of excise duties for the use of that oil increased one hundred times.	Violation of Article 4 of Protocol No. 7 to the ECHR	The Court concluded that the present case did not address different aspects of the wrongdoing in a manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice. In addition, the Court observed that the fine imposed on the applicant in the minor-offence proceedings was not taken into account in subsequent administrative

						(tax) proceedings. Notwithstanding their foreseeability, the two sets of proceedings had not been sufficiently linked.
BP 72. Information should not be supplied in response to a request where the originating cause was the acquisition of stolen or illegally obtained information.	HALET v. LUXEMBOURG <i>Application no. 21884/18</i>	11 May 2021 Referral to the Grand Chamber: 06/09/2021	Art 10 ECHR	The case concerns the applicant's criminal conviction in the context of the so-called <i>Luxleaks</i> case, in which the domestic courts rejected his argument that he had acted as a whistleblower. He relies on Article 10 of the Convention.	No violation of Article 10 ECHR Referral to the Grand Chamber	
MS 21. Freedom of information legislation may allow a	L.B. v. HUNGARY <i>Application no. 36345/16</i>	12 January 2021	Art 8 ECHR	Publication of applicant's identifying data, including home address, on tax authority website portal	No violation of Article 8 of the ECHR Referral to the Grand Chamber	In the present case, the purpose and the principal effect of

<p>taxpayer to access information about himself. However, access to information by third parties should be subject to stringent safeguards: only if an independent tribunal concludes that the public interest in disclosure outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard</p>		<p>Referral to the Grand Chamber</p> <p>31/05/2021</p>		<p>for failing to fulfil his tax obligations.</p>		<p>publication were to inform the public, and the main reason for making such data available on the Internet was to make the information easily available and accessible to those concerned, irrespective of their place of residence. The Tax Authority's website did not provide the public with a means of shaming the applicant, for example, a way of posting comments underneath the lists in question. Given the specific context</p>
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						in which the information at issue was published, the fact that the publication was designed to secure the availability and accessibility of information in the public interest, and the limited effect of the publication on the applicant's daily life, the Court considers that the publication fell within the respondent State's margin of appreciation.
MS 78. Retrospective tax legislation should only be permitted in limited	VEGOTEX INTERNATIONAL S.A. v. BELGIUM <i>Application no. 49812/09</i>	10 November 2020 Referral to the Grand Chamber	Article 6 ECHR	The application concerns proceedings for the recovery of taxes and of a surcharge which the applicant company had been	No violation of Article 6 ECHR Referral to the Grand Chamber	

<p>circumstances which are spelt out in detail</p> <p>BP 78. Retrospective tax legislation should ideally be banned completely.</p> <p>BP 51. Reviews and appeals should not exceed two years</p>		<p>08/03/2021</p>		<p>ordered to pay. Relying on Article 6 § 1 of the Convention, the applicant company complained of the decisive intervention by the legislature during the proceedings, in breach of the principle of legal certainty. It alleged a breach of its right of access to a court and a breach of the adversarial principle on account of the fact that the Court of Cassation had substituted its own grounds for those of the contested judgment. It also complained of a failure to comply with the reasonable-time requirement.</p>		
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Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
<p>Please indicate here the minimum standard and/or best practice to which the commented decision refers, following the list enclosed with this email.</p> <p>Example:</p> <p>MS 28: In application of <i>audi alteram partem</i>, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisers), the right to provide factual information and to present their views before decisions of the tax authorities become final</p>						<p>In providing your comments, please make clear the relationship between the court declaration and the minimum standard/best practice affected by it.</p>

2021 Relevant Communicated Cases – European Court of Human Rights

Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
<p>MS 28: In application of <i>audi alteram partem</i>, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisers), the right to provide factual information and to present their views before decisions of the tax authorities become final</p>	<p><i>ELINOIL AE v Greece</i> Application number 2030/15</p>	<p>23 June 2021</p>	<p>Article 6§2 Article 7</p>	<p>The company buys petrol from refineries. It was imposed with a fine for contraband fuel, as part of tax free fuel was illegally consumed in Greece, as a result of a transaction between third parties, in which the taxpayer was not a party.</p> <p>The taxpayer complains that the law establishes a presumption of guilt for smuggling that was allegedly committed by third parties,</p>		

				unrelated to the taxpayer.		
<p>MS 53. 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>BP 53. An appeal should not require prior payment of tax in all cases</p>	<p><i>Ekklesia tis Ellados v Greece</i></p> <p><i>Application number 44547/15</i></p>	<p>23 June 2021</p>	<p>Article 6§1 ECHR</p>	<p>A domestic law provision provides that a law suit before the civil courts concerning rights on real property is inadmissible if the taxpayer filing the law suit does not submit before the civil court the tax declaration in which the real property that is the subject of the law suit is declared (and based on which real estate tax is due every year).</p> <p>The taxpayer has not included the real property that is the subject of the law suit in such</p>		

				<p>a tax return as this would require it to pay an annual real property tax of 95.700 euros; accordingly the law suit was dismissed as inadmissible. The taxpayer complains that this requirement is in breach of his right of access to a court.</p>		
<p>MS 53. 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>BP 53. An appeal should not require prior</p>	<p><i>OOO Ganesh v Russia</i> <i>Application number 12372/20</i></p>	<p>4 October 2021</p>	<p>Article 6§1 ECHR</p>	<p>The application concerns the right of access to a court. The applicant company has brought a legal action against an individual. In view of its difficult financial</p>		

payment of tax in all cases				situation, she requested a period of payment of a judicial tax which she had to pay, in accordance with the tax code. The court rejected this application on the grounds that the requesting company had real estate that it was leasing. The complainant objected, explaining that she did not derive any income from it. The decision		
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				<p>was upheld by the courts of three levels of jurisdiction. The requesting company considers that the refusal to enlist its application has infringed its right to access a court guaranteed by article 6 of Convention.</p>		
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