



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 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".

2021 Relevant Case Law – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter 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>C-437/19, État du Grand-duché de Luxembourg v L</p>	<p>25-11-2021</p>	<p>Art. 47 Art. 52(1)</p>	<p>The case concerns the legality of a financial penalty which was imposed on company for refusing to provide certain information following a request for exchange of information between Member States in tax matters.</p>	<p>In order to ensure the effectiveness of the essence of the right to an effective remedy protected under Art. 47 of the Charter, the addressee of the information order must, if the legality of that order is upheld by the court, be given the opportunity to comply with that order within the time limit initially prescribed for that purpose by national law, without that entailing the continued application of the penalty which that person had to incur in order to exercise his or her right to an effective remedy. It is only if the addressee does not comply with that order within that time limit that the penalty imposed would legitimately become payable.</p>	<p>Opinion of AG Kokott delivered on 3 June 2021: Article 47 of the Charter of Fundamental Rights of the European Union requires that the addressee of the information order should either be given access to the information stipulated in Article 20(2) of Directive 2011/16 already together with that order or, at the very least, be given an appropriate period of time under procedural law following receipt of that information in which to review and comply with the order without incurring any costs or penalty. In that case, there is no need for an additional period of grace for payment.</p>

2021 Relevant Requests for a preliminary ruling –European Court of Justice

Minimum Standard Best Practice	Case	Date lodged	EU Charter 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>C-512/21, Aquila Part Prod Com SA</p>	<p>17-8-2021</p>	<p>Art. 47</p>	<p>The Hungarian tax authority found that the taxpayer had participated in a classic ‘carousel’ type fraud and imposed fines. The tax authority found that the taxpayer had infringed the provisions governing food safety, showing thus lack of due diligence and leading it to conclude that the taxpayer had participated knowingly in the fraud.</p> <p>The taxpayer argues that it is not subject to the Hungarian provisions on food safety and that the tax authority did not indicate the provision under which the applicant should have obtained and kept the certificates of quality which it was alleged not to have.</p>	<p>Request for a preliminary ruling</p>	<p>Relevant questions referred:</p> <p>Q5: Is a practice of a tax authority pursuant to which that authority bases its ruling on an alleged infringement of provisions governing the safety of the food supply chain which have no bearing on compliance by the taxable person with his tax obligations or on the circulation of his invoices, which the tax legislation does not provide for in any way in relation to the taxable person and which have no effect on the actual facts of the transactions inspected by the tax authority and on the taxable person’s awareness examined in the tax proceedings, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a</p>

					<p>general principle in Article 47 of the Charter of Fundamental Rights of the European Union, and with the principle of legal certainty?</p> <p>In the event the previous question is answered in the affirmative:</p> <p>Q6: Is a practice of a tax authority whereby that authority, without the involvement of the official body responsible for the safety of the food supply chain, which has material and territorial competence, sets out in its ruling findings concerning the taxable person which come within that official body's sphere of competence, such that, based on infringements identified in relation to the safety of the food supply chain — a matter outside its sphere of competence — it draws tax consequences for the taxable person, without that person being able to dispute the finding that he infringed the provisions on food supply chain safety in proceedings which are separate from the tax proceedings and which</p>
--	--	--	--	--	---

						respect the fundamental guarantees and the parties' rights, compatible with Articles 167, 168(a) and 178(a) of the VAT Directive, with the right to a fair trial recognised as a general principle in Article 47 of the Charter, and with the principle of legal certainty?
--	--	--	--	--	--	---

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>MS 58: Proportionality and ne bis in idem should apply to tax penalties.</p> <p>MS</p>	<p>C-97/21, MV-98</p>	<p>16-2-2021</p>	<p>Art. 50 Art. 52(1) Art. 49(3) Art. 47</p>	<p>Under Bulgarian law, for an act consisting in not having registered the sale of goods and not having recorded it by issuing a document evidencing the sale, administrative proceedings for the ordering of a coercive administrative measure and administrative penalty proceedings for the imposition of an assets penalty may be brought against the same person in a cumulative manner. that legislation does not at the same time impose on the authorities competent for conducting the two sets of proceedings and on the courts the obligation to ensure the effective application of the principle of proportionality with regard to the overall severity of all the cumulated measures in relation to the seriousness of the specific offence.</p>	<p>Request for a preliminary ruling</p>	<p>The issue here is whether the imposition on a taxable person who failed to issue invoices the sealing of business premises together with administrative penalty is proportionate. Although not included in the questions referred by the national court, the issue could also be examined under Article 16 of the Charter protecting the freedom to conduct a business, in light of Article 52(1) on the proportionality and legality of any limitations imposed.</p>

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>MS 58: Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>C-412/21, <i>Dual Prod SRL</i></p>	<p>6-7-2021</p>	<p>Art. 48(1) Art. 50</p>		<p>Request for a preliminary ruling</p>	<p>Questions referred: 1. Is Article 48(1) of the Charter of Fundamental Rights of the European Union, which concerns the principle of the presumption of innocence, read in conjunction with Article 16(1) of Directive 2008/118/EC, (i) to be interpreted as precluding a legal situation, such as that at issue in the present case, in which an administrative measure suspending an authorisation to operate as a producer of alcohol may be adopted on the basis of mere presumptions which are the subject of an ongoing criminal investigation, without any final conviction in criminal proceedings having been handed down?</p>

						<p>2. Is Article 50 of the Charter of Fundamental Rights of the European Union, which concerns the principle <i>non bis in idem</i>, read in conjunction with Article 16(1) of Directive 2008/118/EC, to be interpreted as precluding a legal situation, such as that at issue in the present case, in which two penalties of the same nature (suspension of authorisation to operate as a producer of alcohol), differing only in the duration of their effect, are imposed on the same person in respect of the same facts?</p>
--	--	--	--	--	--	---

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>MS 23: Legal professional privilege should apply to tax advice.</p>	<p>C-398/21, <i>Conseil National des Barreaux and Others</i></p>	<p>28-6-2021</p>	<p>Art. 47 Art. 7 Art. 8</p>	<p>Reportable cross-border arrangements (DAC 6) imposed on lawyers</p>	<p>Request for a preliminary ruling</p>	<p>Whether Article 8ab(5) of Directive 2011/16 infringes</p> <p>- Art. 47 of the Charter by not excluding, in principle, lawyers participating in judicial proceedings from the scope of intermediaries who must supply information or who must notify another intermediary of that obligation,</p> <p>- articles 7 and 8 of the Charter, by not excluding lawyers assessing their clients' legal situation from the scope of intermediaries who must supply information or who must notify another intermediary of that obligation.</p>

2021 Relevant AG Opinions – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	AG Opinion	Comments
<p>MS 58: Proportionality and ne bis in idem should apply to tax penalties.</p>	<p>C-570/20, BV</p>	<p>9-12-2021</p>	<p>Art. 50 Art. 52</p>	<p>BV, a sole trader, practised as an accountant. the tax authorities discovered that BV had declared less professional income than he had actually received, resulting in tax evasion in the amounts of EUR 82 507 in respect of VAT and EUR 108 833 in respect of taxable profits. The taxpayer was subject to an administrative penalty. Subsequently, the tax authorities forwarded to the public prosecutor's office a complaint alleging accounting irregularities and evasion of income tax and VAT, acts which involved the concealment of</p>	<p>Article 50 of the Charter of Fundamental Rights of the European Union is to be interpreted as meaning that:</p> <p>It does not preclude national legislation which permits the duplication of administrative and criminal proceedings and penalties in situations defined on the basis of clear and precise criteria that are laid down by law and properly defined by case-law.</p> <p>It precludes national legislation which does not make it possible to ensure the required proportionality between the seriousness of the</p>	<p>Duplication of administrative and criminal penalties which are imposed on the same person, in relation to the same acts, in order to punish, simultaneously or consecutively, tax offences related to, inter alia, valued added tax</p>

				<p>income received. The taxpayer complained that there was a breach of the ne bis in idem principle.</p>	<p>offence, on the one hand, and the severity of all the combined penalties, on the other, whether they be financial administrative penalties of a substantively criminal nature or prison sentences.</p>	
--	--	--	--	--	---	--

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	AG Opinion	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>C-257/20, <i>Viva Telecom Bulgaria EOOD</i></p>	<p>30-9-2021</p>	<p>Art. 47 Art. 51</p>	<p>An interest-free loan convertible into a capital contribution was granted to a company established in Bulgaria, Viva Telecom Bulgaria ('the applicant'), by its sole shareholder, a company established in Luxembourg, InterV Investment Sàrl ('InterV Investment'). Bulgarian law establishes an irrebutable presumption of tax avoidance when interest free loans are agreed. Notional interest was calculated and a withholding tax was imposed on the notional interest.</p>	<p>According to Bulgarian legislation, borrowing or lending at an interest rate that diverges from the market interest rate at the time of conclusion of the transaction, including interest-free loans, constitutes tax avoidance. That provision of Bulgarian legislation neither transposes an EU directive nor applies or implements any other provision of EU law. In the light of Article 51 of the Charter, it must be considered that the provisions of the Charter are inapplicable to such a provision of Bulgarian tax law which does not implement EU law.</p>	<p>Article 6 ATAD provides for the adoption of a GAAR by MS. Prohibition of abuse of law is also a general principle of EU law. Arguably, any domestic anti-avoidance rules, other than the GAAR, should be checked for their compatibility with the ATAD GAAR (or the characteristics that an anti-abuse rule should present), bringing the issue within the scope of application of EU law.</p>