



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 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"

2022 Relevant Case Law – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
35 (BP). Reasonable time limits should be fixed for the conduct of audits.	Vegotex International v Belgium (Application no. 49812/09)	3 November 2022	6§1 (criminal)	<p>The company complained among others for unreasonable length of proceedings.</p> <p>The company was informed on 5 October 1995, of the tax authorities' intention to rectify its tax return and impose a surcharge. The proceedings ended with the Court of Cassation judgment of 13 March 2009.</p>	There has been a violation of Article 6 § 1 of the Convention on account of the failure to comply with the reasonable-time requirement	The starting-point for calculating the "reasonable time" is 5 October 1995, the date on which the applicant company was informed of the tax authorities' intention to rectify its tax return and impose a surcharge. The proceedings ended with the Court of Cassation judgment of 13 March 2009. The proceedings brought by the applicant

						company therefore lasted for over thirteen years and six months: the administrative phase lasted for four years and seven months at one level of decision-making, while the subsequent judicial phase lasted for almost nine years across three levels of jurisdiction.
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Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
29 (MS). In application of nemo tenetur, the right to remain silent should be respected in all tax audits.	De Legé v. the Netherlands (Application no. 58342/15)	4 October 2022	6§1 (criminal)	The case concerns the use of documents for the re-setting of a tax fine. Those documents	No violation of Article 6 § 1 of the Convention	Request for referral to the Grand Chamber pending

				relate to a foreign bank account and had been obtained from the applicant under threat of substantial penalty payments. The applicant alleged disrespect of the privilege against self-incrimination and invoked Article 6 § 1 of the Convention.		
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Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Krayeva v. Ukraine (Application no. 72858/13)	13 January 2022	P1-1	The case concerns an alleged breach of customs regulations by the applicant while conducting the customs	There has been a violation of Article 1 of Protocol No. 1 to the Convention.	The applicant complained in substance under Article 1 of Protocol No.1 to the Convention that the fine imposed on her

				clearance of imported goods and the sanction imposed on her in that connection, namely a fine in an amount equal to the value of the imported goods. It raises an issue under Article 1 of Protocol No. 1 to the Convention.		in the administrative offence proceedings had been unlawful and disproportionate.
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2022 Relevant Inadmissibility Decisions – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
Please indicate here the minimum standard and/or best practice to which the commented decision						In providing your comments, please make clear the relationship between the court declaration

<p>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>and the minimum standard/best practice affected by it.</p>
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2022 Relevant Communicated Cases – European Court of Human Rights

Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
52 (MS). Audi alteram partem should apply in	Application no. 57718/15 FIN FER SPA against Italy	Communicated on 25 October 2022	Article 6 § 1 in conjunction with Article 6 § 3 (d) of the	A tax assessment against a company was		<i>Related cases:</i> <i>Chap Ltd v. Armenia</i> , no. 15485/09 ,

<p>administrative reviews and judicial appeals.</p>	<p>lodged on 9 November 2015</p>		<p>Convention</p>	<p>largely based on the oral statements of witnesses, issued outside the judicial proceedings but positively assessed by the judicial authorities. However, pursuant to Article 7 § 4 of Decree no. 546 of 1992, which establishes a legal prohibition of witness evidence in judicial proceedings before tax courts, the applicant could not counter-examine before the competent courts the witnesses that had made statements</p>		<p>§§ 41-53, 4 May 2017, and, <i>a contrario</i>, <i>Jussila v. Finland</i> [GC], no. 73053/01, § 46,</p>
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				<p>against it. Therefore, in the applicant's view, it was precluded from assessing the credibility and reliability of the witnesses and to ask them to clarify the statements issued to the Tax Authority and recorded by the latter.</p>		
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
52 (MS). Audi alteram partem should apply in administrative reviews and judicial appeals.	Application no. 32077/12 Grazia BRAMBILLA against Italy lodged on 16 May 2012	communicated on 25 October 2022	6§1 (criminal)	The applicant complains under Article 6 of the Convention of a violation of the right to a fair trial. She argues that when requested to do so she could not, due to circumstances		

				<p>outside of her control, produce the documents requested by the Tax Authority which substantiated her allegations. Therefore, she considers that the application of Article 32 §§ 4 and 5 of Decree no. 600/1973, which precluded her from invoking the documents in judicial proceedings before tax courts, rendered her defence impossible.</p>		
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
53 (MS). Where tax must be paid in whole or	Application no. 78572/17 BOURIKAS	communicated on 7 December	6§1 (criminal)	The Pireaus Administrative Court of Appeal		The main question is whether there has

<p>in part before an appeal, there must be an effective mechanism for providing interim suspension of payment.</p>	<p>AVEE against Greece lodged on 1 November 2017</p>	<p>2022</p>		<p>declared the appeals inadmissible because the admissibility condition of paying 50% of the imposed tax or fine in the case was not met. The applicant did not appeal on points of law because it was in financial difficulty and arguing that it would have been an ineffective remedy that was bound to fail, in view of the standard case-law of the Supreme Administrative Court on the relevant legal question and the admissibility requirements</p>		<p>been a breach of the applicant's right of access to court as guaranteed by Article 6 § 1 of the Convention, on account of the requirement to pay 50% of the imposed fines.</p> <p>Same issues in</p> <p>Application no. 6405/18 Dimitris KONSTANTELLOS and GRAFODIANOMIKI DIMITRIOS KONSTANTELLOS MONOPROSOPI EPE against Greece lodged on 22 January 2018 communicated on 7 December 2022</p>
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				<p>applicable to appeals on points of law.</p> <p>Relying on Article 6 § 1 of the Convention the applicant company complains that it was deprived of the right of access to the Court of Appeal when it declared the appeals inadmissible because the amounts were such that it was not in a position to pay them because of its financial situation.</p>		
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
24 (MS). Where tax authorities enter premises which may	Applications nos. 32078/17 and 42335/19 Giovanni DI NARDO	communicated on 7 July 2022	Art. 8	The applicants, a lawyer and his wife, were not notified by tax authorities of the act		

<p>contain privileged material, arrangements should be made (e.g. an independent lawyer) to protect that privilege.</p>	<p>and Angela MERCURIO against Italy and Giovanni DI NARDO against Italy lodged on 2 May 2017 and 23 July 2019 respectively</p>			<p>authorising access to such data. They were subsequently summoned to provide the tax investigating authorities with clarifications concerning certain identified movements and transactions.</p> <p>The applicants complain under Article 8 of the Convention that the impugned measure has interfered with their private life, it has not been proportionate, as it concerned information indiscriminately relating to all their banking transactions and movements and was not subject to an <i>ex post facto</i> judicial review. The first applicant also submits that the authorities collected and stored information related to his profession. In that regard, he argues that</p>		
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				<p>the tax authorities have interfered with the privileged relationship between him as a defence lawyer and his clients. Moreover, he maintains that in order to justify said movements and transactions, in the exercise of his right to defence in the tax assessment proceedings, he would be compelled to deliver documents and information concerning his professional activities and, therefore, to violate his duty of confidentiality.</p>	
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application no. 16272/21 Josip KLEMM against Croatia lodged on 15 March 2021	communicated on 22 November 2022	P7, Art. 4§1 (ne bis in idem)	In 2012 the applicant was found guilty and convicted to pay a fine in the amount of 10,000 Croatian		Relevant cases: <i>A and B v. Norway</i> [GC], nos. 24130/11 and 29758/11 , 15 November

				<p>kunas (HRK) in administrative tax proceedings for the minor-offence under the VAT act of deducting VAT for fictitious services by third companies in 2006 and 2007.</p> <p>In the subsequent criminal proceedings, in respect of which the investigation had started in 2014, on 3 July 2017 the applicant was found guilty and sentenced to one year's imprisonment for abuse of trust in business dealings and damaging his own company by paying fictitious services to third</p>		<p>2016; <i>Jóhannesson and Others v. Iceland</i>, no. 22007/11, 18 May 2017; and <i>Milošević v. Croatia</i>, no. 12022/16, 31 August 2021)</p>
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				<p>companies between 2005 and 2007.</p> <p>The applicant complains, under Article 4 of Protocol No. 7 to the Convention, that he was punished twice for the same offence.</p>		
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
51 (BP). Reviews and appeals should not exceed two years.	Application no. 31624/18 Ēriks OSIS against Latvia lodged on 29 June 2018	communicated on 24 November 2022	6§1 (criminal)	The application concerns the length of criminal proceedings		

Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
58 (MS). Proportionality and ne bis in idem should apply to tax penalties	Application no. 15553/15 S.C. ZORINA INTERNATIONAL S.R.L. against Romania lodged on 23 March 2015	communicated on 20 November 2019 and 1 March 2022	P1-1 (peaceful enjoyment of possessions)	The applicant company complained that the sanctions imposed on it for having failed to issue receipts were disproportionate and thus did not strike a fair balance between the public interest and its property rights, as provided in Article 1 of Protocol No. 1.		

Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
34 (MS). Taxpayers should be informed of information	Application no. 40607/19 Matteo FERRIERI against Italy	communicated on 7 July 2022	Art. 8 and 13 Art. 6§1 and 13	The applications concern tax investigating authorities' access to the		

<p>gathering from third parties.</p> <p>44 (BP). Access to bank information should require judicial authorisation.</p>	<p>and 2 other applications</p>			<p>applicants' banking data regarding movements, transactions and any other disposition that could be related to the applicants or traced back to them. The applicants have not been notified by tax authorities of the authorisation. They have received letters from the banks informing them that they had received such requests from the investigating authority and that they were going to comply with their legal obligation to provide the requested</p>		
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				information.		
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Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
<p>41 (MS). Entering premises or interception of communications should be authorised by the judiciary.</p> <p>42 (MS). Authorisation within the revenue authorities should only be in cases of urgency, and subsequently reported to the judiciary for ex-post ratification.</p> <p>43 (BP). Where tax authorities intend to search</p>	<p>Application no. 36617/18 ITALGOMME PNEUMATICI S.R.L. against Italy and 12 other applications</p>	<p>communicated on 24 May 2022</p>	<p>Art. 8 and 13 Art. 6</p>	<p>The applicants complain of the absence in the Italian legal system of a judicial remedy directly accessible and aimed at assessing the lawfulness of, and justification for, the search warrants. As the applicants argue, search warrants are not subject to a direct appeal, pursuant to Article 19 of Decree no. 471 of 1997. They can be challenged only at the end of the</p>		<p>Similar issues in</p> <p>Application no. 32539/18 AGRISUD 2014 S.R.L. SEMPLIFICATA against Italy and 9 other applications (see list appended) communicated on 7 November 2022</p>

<p>the taxpayer's premises, the taxpayer should be informed and have an opportunity to appear before the judicial authority, subject to exception where there is evidence of danger that documents will be removed or destroyed.</p>				<p>tax assessment proceedings, provided that a final administrative act ("<i>avviso di accertamento del tributo</i>") has been adopted, and provided that it has been based on information and evidence gathered through the search.</p>		
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