



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 Justice.

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"

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2022 Relevant Case Law – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>25 (MS). Audits should respect the following principles: (i) Proportionality. (2) Ne bis in idem (prohibition of double jeopardy). (3) Audi alteram partem (right to be heard before any decision is taken). (4) Nemo tenetur se detegere (principle against self/incrimination). Tax notices issued in violation of these principles should be null and void.</p>	<p>C-363/20 MARCAS MC</p>	<p>13 January 2022</p>	<p>Art. 47 Art. 54</p>	<p>The tax authorities did not accept the method that the company had followed in order to invoice certain royalty fees. The Company challenged the tax assessment arguing that the tax authority did not apply correctly the provisions of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (repealed by Directive 2013/34/EU)</p>	<p>The Court declared itself incompetent, as the questions concerned the administrative practice on tax audit and tax sanctions in the area of corporate income tax</p>	<p>The Court did not consider that the practice of the Hungarian Tax Authorities infringed the accounting directive, and therefore could not establish a link with EU law that would render the Charter applicable in the case.</p>

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
70 (MS). If information is sought from third parties, judicial authorisation should be necessary.	C-175/20 SIA 'SS' v Valsts ienēmumu dienests	24 February 2022	GDPR	The Latvian tax authorities requested from an internet advertisement services provider to disclose information on the sellers of cars and on the cars that were put up for sale on the site operated by the company. The company argued that the request to disclose information was in breach of the GDPR.	<p>Article 5§1 of the GDPR applies also to the collection of information by the tax authorities.</p> <p>Tax authorities cannot derogate from the provisions of Art. 5§1 GDPR unless it is specifically granted such a right by law, in accordance with art. 23 GDPR.</p> <p>Tax authorities may request information concerning taxpayers who have published online advertisements provided that such data is necessary for the purposes for which they are collected and the period covered by the collection of</p>	Although not directly involving a Charter article, the decision is important as it clarifies the relationship between the GDPR and the powers of the tax authorities.

					data does not exceed what is strictly necessary to achieve the public interest objective pursued.	
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
28 (MS). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final	C-203/21 DELTA STROY 2003	10 November 2022	Arts. 48, 49 and 52	The Bulgarian tax authorities charged an individual with tax offences in relation to the payment of the VAT due by the company in which he is a manager. While the criminal case is pending, the tax authorities imposed a financial penalty on the company, for the offence committed by the individual. The company challenged the imposition of the	Article 48 of the Charter must be interpreted as precluding national legislation under which a national court may impose on a legal person a criminal penalty for an offence for which a natural person who has the power to bind or represent that legal person is allegedly liable, where that legal person has not been put in a position to dispute the reality of that	

				financial penalty arguing that the offence had not been yet definitively concluded.	offence.	
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
23 (MS). Legal professional privilege should apply to tax advice	C-694/20 Orde van Vlaamse Balies	8 December 2022	Art. 7 Art. 47	The Bar Associations challenged the obligation imposed by DAC on lawyers as intermediaries to disclose information relating to reportable	Article 8ab(5) of DAC is invalid in the light of Article 7 of the Charter , in so far as it has the effect of requiring a lawyer acting as an intermediary, within the meaning of Article 3(21) of that directive, where he or she is exempt from the reporting obligation laid down in paragraph 1 of Article 8ab of that directive, on account of the	The decision clarifies the extent of the legal professional privilege under DAC.

					legal professional privilege by which he or she is bound, to notify without delay any other intermediary who is not his or her client of that intermediary's reporting obligations under paragraph 6 of that Article 8ab.	
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>50 (MS). The right to appeal should not depend upon prior exhaustion of administrative reviews.</p> <p>51 (BP). Reviews and appeals should not exceed two years</p>	C-582/20 SC Cridar	24 February 2022	Art. 47	The taxpayer was denied the deduction of input VAT as after audit it was considered that he was involved in tax fraud. Criminal proceedings were initiated, whereas the taxpayer also filed an administrative appeal and challenged the tax	Article 47 of the Charter must be interpreted as not precluding national legislation which enables the national tax authorities to suspend the examination of an objection relating to a tax assessment which does not	The Court also pointed out (in paras. 45-46) that the right to good administration, which is an expression of a general principle of EU law, entails in particular the right of every person to have their affairs handled impartially and

<p>53 (MS). 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>assessment. The taxpayer could not ask for the suspension of the tax assessment as long as the case was pending before the tax administration in the quasi-judicial procedure, and the decision on the quasi-judicial procedure was suspended by the tax authority pending the decision on the case from the criminal court. In such a case the taxpayer does not have access to a court, as long as there is no decision in the quasi-judicial procedure, and accordingly cannot ask for a suspension of the effects of the tax assessment.</p>	<p>recognize the taxable person's right to deduct input VAT paid as a result of his participation in tax fraud, in order to obtain additional objective information relating to that participation, under conditions:</p> <ul style="list-style-type: none"> - first, that such a suspension does not lead to a delay in the outcome of that administrative appeal procedure beyond a reasonable period, - second, that the decision ordering the suspension is justified in both factual and legal terms and may be the subject of judicial review and, - third, that, where it is finally established that 	<p>within reasonable time, and also applies in the context of a tax inspection procedure in which a member state implements EU law.</p>
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					<p>the right of deduction has not been recognized in breach of EU law, it is possible to reimburse the taxable person in question within a reasonable period of time and to pay, where appropriate, default interest on that amount. In those circumstances, it is not necessary, during that suspension, to suspend the execution of the tax assessment in favor of the taxable person, unless, in the event of serious doubts as to the legality of that suspension, the to prevent serious and irreparable damage to the interests of the taxable person.</p>	
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
58 (MS). Proportionality and ne bis in idem should apply to tax penalties	C-570/20 BV - Direction départementale des finances publiques de la Haute-Savoie	5 May 2022	Art. 49 Art. 50 Art. 52(1)	BV, a sole trader, practised as an accountant and was subject to VAT. Following a tax audit, criminal procedures for tax evasion (VAT and income tax) were initiated and the taxpayer was convicted. The taxpayer claimed that his criminal conviction was contrary to the principle <i>ne bis in idem</i> enshrined in Article 50 of the Charter, on the ground that he had already been the subject of a tax adjustment procedure in respect of the same acts which resulted in the imposition of final tax penalties	The ne bis in idem principle (Article 50 of the Charter read in conjunction with Article 52(1) thereof), must be interpreted as meaning that it does not preclude a situation whereby the limitation of the duplication of proceedings and penalties of a criminal nature in the event of fraudulent concealment or omissions from a return relating to VAT provided for by national legislation to the most serious cases is based only on settled case-law interpreting restrictively the legal provisions laying down the conditions for the application of that duplication,	A follow-up to the cases of <i>Menci</i> (C-524/15, EU:C:2018:197), and <i>Garlsson Real Estate and Others</i> (C-537/16, EU:C:2018:193)

				amounting to 40% of the charges evaded.	provided that it is reasonably foreseeable, at the time when the offence is committed, that that offence is liable to be the subject of a duplication of proceedings and penalties of a criminal nature, but it precludes national legislation which does not ensure, in cases of the combination of a financial penalty and a custodial sentence, by means of clear and precise rules, where necessary as interpreted by the national courts, that all of the penalties imposed do not exceed the seriousness of the offence identified.	
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
35 (BP). Reasonable time limits should be fixed for the conduct of audits.	T-593/20 Tirrenia di navigazione v Commission	18 May 2022	Art. 41	Following a state aid investigation, the Commission concluded that certain measures relating to the appellant were to be regarded as illegal and incompatible State aid. The company complained inter alia for excessive length of the procedure, arguing that this is a breach of the principle of good administration enshrined in Article 41 of the Charter, as well as to the principles of legal certainty and proportionality.	The complaint was rejected.	The case is not a tax case - it concerns state aid procedures. Appeal Case before the Court of Justice C-514/22 P , Appeal brought on 29 July 2022

2022 Relevant AG Opinions – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	AG Opinion	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>

2022 Pending Case Law

European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	AG Opinion	Comments
<p>28 (MS). In application of audi alteram partem, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisors), the right to provide factual information, and to present their views before decisions of the tax authorities become final</p> <p>52 (MS). Audi alteram partem should apply in administrative reviews and</p>	C-746/22 (Slovenske Energeticke Strojarnje)	<p>Request for a preliminary ruling lodged on 6 Dec. 2022</p>	<p>Art. 47</p>	<p>The taxpayer filed an application for a VAT refund. By administrative act of 22 February 2021, the Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vámigazgatósága (Tax and Customs Directorate for Large Taxpayers of the National Tax and Customs Authority, Hungary; ‘the first-tier tax authority’), taking the view that it was unable to adopt a decision based on the information that it had at its disposal, requested the applicant to provide</p>	<p>N/A</p>	<p>The referring court questions whether there should be a finding that the right to an effective remedy and to a fair trial, enshrined in Article 47 of the Charter, has been breached, because, in Hungarian law, as a result of the prohibition of new facts and evidence applicable in appeal proceedings, there is a limitation of the right to evidence and to produce</p>

judicial appeals.				<p>information pursuant to Paragraph 251/F(1) of the VAT Law. Inter alia, it requested the applicant to provide, within one month of notification of the administrative act, invoices, together with the contracts and orders on which those invoices were based, which had not been attached to the initial application but which were necessary in order to examine that application, and also to submit a statement declaring for what purpose and for whom it had purchased the services referred to in the invoices and what connection they had to its</p>		<p>evidence which is available to the parties to proceedings. As a result of the prohibition of new facts and evidence, there is no possibility of presenting new facts or evidence, which clearly has a bearing on the decision of the second-tier tax authority seized of the appeal proceedings and on the final outcome of any judicial proceedings brought as a result of the administrative appeal which may be lodged against that decision.</p>
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				<p>economic activity. The first-tier tax authority sent the administrative act to the applicant's postal address and assumed that the applicant had received it. By decision of 6 May 2021, the first-tier tax authority, in accordance with Paragraph 49(1)(b) of the Law on tax administration, brought to a close the proceedings commenced as a result of the applicant's application, stating that the applicant had failed to comply with its obligation to provide information, despite having been requested to do so, and that, as a consequence, it was not possible to establish the</p>		
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				precise factual background using the information which that authority had at its disposal.		
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