



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"

2023 Relevant Case Law – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p>BP 51.</p> <p>Reviews and appeals should not exceed two years.</p>	<p>C-615/21</p> <p><i>Napfény-Toll</i></p>	<p>13/7/2023</p>	<p>Art. 47</p>	<p>The issue is whether the principles of legal certainty and effectiveness of EU law preclude legislation and the administrative practice related to it, under which, in relation to VAT, the limitation period in respect of right of the tax authorities to assess that tax is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures following those reviews and with no ceiling on the cumulative duration of the suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as</p>	<p>The principles of legal certainty and effectiveness of EU law must be interpreted as not precluding legislation of a Member State or the related administrative practice, under which, in relation to value added tax, the limitation period in respect of the right of the tax authorities to assess that tax is suspended for the whole duration of judicial review, regardless of the number of times the administrative tax procedure has had to be repeated following those reviews and with no ceiling on the cumulative duration of the</p>	<p>See §63 of AG Rantos' Opinion (2-2-2023):</p> <p>The second subparagraph of Article 47 of the Charter states, inter alia, that everyone is entitled to a hearing within a reasonable time. It is apparent from the Court's case-law that the reasonableness of the period taken for the judgment must be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities.</p>

				part of a repeat procedure following on from an earlier court decision finds that that tax authority failed to comply with the guidance contained in that court decision.	suspensions of that period, including in cases where the court ruling on a decision of the tax authority concerned taken as part of a repeat procedure, following on from an earlier court decision, finds that that tax authority failed to comply with the guidance contained in that court decision.	
MS 58. Proportionality and ne bis in idem should apply to tax penalties	C-97/21 MV-98	4/5/2023	Art. 47 Art. 49(3) Art. 50	MV – 98, whose main activity is the purchase and resale of goods, such as cigarettes, operates business premises for that purpose in Bulgaria. During an inspection carried out at those business premises, the Bulgarian tax authorities found that MV – 98 had failed to record the sale of a packet of cigarettes worth BGN 5.20 (approximately	Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 50 of the Charter of Fundamental Rights must be interpreted as precluding national legislation under which a financial penalty and a measure involving sealing of business premises may be	

				<p>EUR 2.60) and to issue the fiscal cash register receipt relating to that sale. On that basis, a finding of an administrative offence under Article 118(1) of the Law on VAT was established. The tax authorities then adopted two measures: a financial penalty and a coercive administrative measure involving sealing the premises in question for a period of 14 days. MV – 98 brought an action against the sealing measure before the referring court, claiming that that measure was disproportionate in view of the minimal value of the sale involved and the fact that it was its first offence under Article 118(1) of the Law on VAT.</p>	<p>imposed on a taxpayer for one and the same offence relating to a tax obligation at the end of separate and autonomous procedures, where those measures are liable to challenge before different courts and where that legislation does not ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of those measures to be reduced to what is strictly necessary and does not ensure that the severity of all penalties imposed is commensurate with the seriousness of the offence concerned.</p>	
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<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>23/3/2023</p>	<p>Art. 48 (1) Art. 50</p>	<p>Dual Prod is a company authorised to operate in the field of the production of alcohol and alcoholic beverages subject to excise duty. Following a search in its premises, criminal proceedings <i>in rem</i> were initiated for suspected infringements of the Tax Code. In parallel with the initiation of criminal proceedings <i>in rem</i>, the competent administrative authority suspended, for a period of 12 months, the authorisation granted to that company to operate as a tax warehouse for products subject to excise duty. That suspension was reduced to eight months, following an action brought by Dual Prod. At the</p>	<p>Article 48(1) of the Charter (presumption of innocence) precludes an authorisation to operate as a tax warehouse for products subject to excise duty from being suspended for administrative purposes, until the conclusion of criminal proceedings, on the sole ground that the holder of that authorisation has been formally charged in those criminal proceedings, if that suspension constitutes a criminal penalty.</p> <p>Article 50 (ne bis in idem) does not preclude a criminal penalty, for infringement of the rules on products subject to excise duty, from being imposed on a legal</p>	
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				<p>end of that suspension, that administrative authority once more suspended, pursuant to Article 369(3)(c) of the Tax Code, the same authorisation, for an indefinite period, on the ground that Dual Prod had been formally charged in the criminal proceedings brought against it following the search at its premises.</p>	<p>person who has already been subject, in respect of the same facts, to a criminal penalty that has become final, provided that:</p> <ul style="list-style-type: none">- the possibility of duplicating those two penalties is provided for by law;- the national legislation does not allow for proceedings and penalties in respect of the same facts on the basis of the same offence or in pursuit of the same objective, but provides for only the possibility of a duplication of proceedings and penalties under different legislation;- those proceedings and penalties pursue complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at	
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					<p>issue;</p> <ul style="list-style-type: none">- there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the different authorities; that the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate time frame; and that any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly	
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					necessary and the overall penalties imposed correspond to the seriousness of the offences committed.	
MS 3. Impose obligations of confidentiality on third parties with respect to information gathered by them for tax purposes	C-268/21 <i>Norra Stockholm Bygg AB</i>	2/3/2023	Art. 7 Art. 8 Art. 47	The issue in the pending civil law proceedings is whether Article 6(3) and (4) of the GDPR must be interpreted as meaning that that provision applies, in the context of civil court proceedings, to the production as evidence of a staff register containing personal data of third parties collected principally for the purposes of tax inspection.	The Court held that Article 6(3) and (4) of the GDPR must be interpreted as meaning that that provision applies, in the context of civil court proceedings, to the production as evidence of a staff register containing personal data of third parties collected principally for the purposes of tax inspection.	

2023 Relevant AG Opinions – European Court of Justice

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