



Observatory on the Protection of Taxpayers' Rights

Below you will find a report prepared by Felix Desmyttere, Postdoctoral Researcher at the *Instituut voor Belastingrecht, University of Gent* and Reporter of the OPTR Unit for the *European Court of Human Rights*.

This set of questionnaires comprises the National Reporter's assessment of the country's practice during 2024 in protecting taxpayers' rights and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights."

2024 Relevant Case Law – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
<p>9 (BP). Establish a constructive dialogue between taxpayers and revenue authorities to ensure a fair assessment of taxes based on equality of arms.</p>	<p>Application No. 64806/16 Case Of Maroslavac V. Croatia</p>	<p>Judgement of 13 February 2024</p>	<p>P1-1</p>	<p>The case concerns the applicant's complaints that a tax audit of her financial affairs was flawed, and that she was ordered to pay taxes for periods for which the right of the State to collect those taxes had become time-barred. She also complains that she was unable to participate effectively in the determination of her obligation to pay income</p>	<p>There has been no violation of Article 1 of Protocol No. 1 to the Convention.</p>	

				tax as the decision extending the tax audit to include her income tax had been served only a day before the tax inspection ended.		
58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application No. 24460/16 , Case of Rustamkhanli v. Azerbaijan	Judgement of 4 July 2024	Art. 8 P1-1 Art. 6, §1	The case concerns the conduct of an unannounced on-site tax audit, and the freezing of the applicant's bank accounts by the tax authorities. The applicant complains that the search and seizure carried out on the premises of the company breached his Convention	There has been a violation of Article 1 of Protocol No. 1 to the Convention and of Article 8 of the Convention.	The court found that the unannounced on-site tax audit and the subsequent freezing of the company's bank accounts by the Azerbaijani authorities violated the law, as they lacked sufficient safeguards and proportionality.

				rights and that the domestic proceedings were not fair in that his right to a reasoned decision had been violated.		
MS 21: Freedom of information legislation may allow a 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	Application Nos. 51010/13 and 2843/16 Case of Romanenko v. Ukraine	Judgement of 18 April 2024	Art. 10	The applicant requested copies of income declarations from the Mayor of Kramatorsk, his deputies, and certain local council officials. The request was denied, stating that only the information in the declarations, not the documents themselves, was public. The applicant challenged that	There has been a violation of Article 10 of the Convention.	As there must have existed, in principle, a possibility of satisfying the applicant's request, for example, by providing the declarations with the personal data redacted in order to preserve the rights of the persons concerned under Article 8 of the Convention, the Court ruled that the limitation in Article 10 of the

<p>outweighs the right of confidentiality, and only after a hearing where the taxpayer has an opportunity to be heard</p>					<p>Convention was not proportionate to the aim pursued.</p>
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				<p>After one re-examination of the case, the High Administrative Court upheld the decision of the court of appeal which partly allowed the applicant's claims ordering to disclose the information contained in the financial declarations. The courts, however, concluded that the copies of the originals of financial declarations could not be provided to the applicant as part of the information contained in them (like, for example, the</p>		
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				address and the individual tax number) was confidential in nature.		
<p>MS 43: Inspection of the taxpayer's home should require authorization by the judiciary and only be given in exceptional cases</p> <p>BP 47: If data are held on a computer hard drive, then a backup should be made in the presence of the taxpayer's advisers and the original left with the taxpayer</p>	<p>Application No. 67101/17, Case of N.B. V. Lativa</p>	<p>Judgement of 24 October 2024</p>	<p>Art. 8</p>	<p>The application concerns the search at the applicant's home, which premises she also used for providing legal and accounting services, and the seizure of her computer in connection with criminal proceedings against her clients concerning tax evasion. The applicant is a witness in those proceedings. The search of the applicant's home was authorised</p>	<p>There has been a violation of Article 10 of the Convention.</p>	<p>To substantiate the conclusion to the disproportionate nature of the seizure, the Court concluded that the 15-month retention of the applicant's computer was disproportionate, as the Government failed to justify the prolonged seizure, periods of inactivity, and delays in ordering forensic examinations, despite knowing the data was impractical to decrypt within a</p>

				<p>based on a search warrant of 12 December 2016 issued by an investigating judge. On 13 February 2017 police officers of the Finance Police Department of the State Revenue Service arrived at her home and seized her computer. The applicant lodged complaints regarding the search warrant and actions taken by the police officers during the search. On 10 March 2017 an appellate court judge upheld the lawfulness of the search</p>		<p>reasonable time.</p>
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				<p>warrant. On 25 May 2017 a superior prosecutor dismissed the applicant's request to return her computer. Upon repeated requests by the applicant, on 29 May 2018 the computer was returned to her. There is no information about the current stage of proceedings in relation to the criminal investigation.</p>		
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2024 Relevant Inadmissibility Decisions – European Court of Human Rights

Minimum Standard Best Practice	Case	Date	ECtHR Articles	Facts	Decision	Comments
<p>52 (MS). Audi alteram partem should apply in administrative reviews and judicial appeals.</p>	<p>Application No 57718/15, Case Fin Fer S.P.A. v. Italy</p>	<p>Decision of 5 September 2024</p>	<p>Art. 6, §1 Art. 6, §3</p>	<p>A tax assessment against a company was 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</p>	<p>The Court concludes that the present application is manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.</p>	

				<p>courts, the applicant could not counter - examine before the competent courts the witnesses that had made statements 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>		
<p>53 (MS). Where tax must be paid in whole or in part before an appeal, there</p>	<p>Application No 78572/17, Case Bourikas Avee v. Greece</p>	<p>Decision of 19 November 2024</p>	<p>Art. 6, §1</p>	<p>The Administrative Court of Appeal declared the appeals inadmissible</p>	<p>The application was rejected under Article 35 §§ 1 and 4 of the Convention for non-</p>	<p>Similar issue as in Application No. 6405/18, Case Dimitris Konstantellos And Grafodianomiki</p>

<p>must be an effective mechanism for providing interim suspension of payment.</p>				<p>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 applicable to appeals on</p>	<p>exhaustion of domestic remedies.</p>	<p>Dimitrios Konstantellos Monoprosopi Epe v. Greece</p> <p>This case was also deemed inadmissible by Decision of 19 November 2024 under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.</p>
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				points of law. 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.		
58 (MS). Proportionality and ne bis in idem should apply to tax penalties.	Application no. 25311/17 , Case Immoreks Makedonija Doo Skopje v. North Macedonia	Decision of 24 September 2024	P1-1 Art. 13	Relying on P1-1, the applicant company complained that in the proceedings ending with the Higher	The application was rejected under Art. 35, §4 of the Convention.	the Court concludes that the applicant company had no “legitimate expectation” of deducting the VAT in question and, consequently, what

				<p>Administrative Court's judgment of 6 July 2016, the domestic authorities had arbitrarily refused to allow the VAT deduction. In addition, the Higher Administrative Court had not addressed on the merits its argument that the statutory limitation period had expired in respect of the 2005 tax debt.</p>		<p>is at stake with regard to its transactions with the aforementioned suppliers cannot be seen as a "possession" within the meaning of Article 1 Protocol No. 1 to the Convention. Accordingly, this part of the application is incompatible <i>ratione materiae</i> with the provisions of the Convention.</p>
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2024 Relevant Communicated Cases – European Court of Human Rights

Minimum Standard Best Practice	Case	Date Communicated	ECtHR Articles	Facts	Decision	Comments
	<p>Application No. 32264/23 Conseil National Des Barreaux et autres</p>	<p>Communicated on 16 May 2024</p>	<p>Art. 6(1)</p>	<p>As a result of the withdrawal of the French Council of State of the preliminary question relating to the validity of the Council Directive (EU) 2018/822 ('DAC6'), different professional bodies and lawyers referred the matter to the ECtHR. The applicants, in application of Art. 6, §1 ECHR, critique the Council of State for not giving the Court of Justice of the European Union</p>	<p>No decision</p>	<p>In its judgement of 29 July 2024, the European Court of Justice ruled in the (unrelated) case (C-623/22) that the reporting obligation of DAC6 did not violate the right to respect for private life and is necessary and proportionate. Therefore, indirectly, the Court of Justice of the European Union has ruled on the necessity and proportionality of DAC6, which forms the main critique of the</p>

				the possibility to rule on the compatibility of DAC6 with the principles of necessity and proportionality.		applicants in the communicated case.
46 (MS). Seizure of documents should be subject to a requirement to give reasons why seizure is indispensable, and to fix the time when documents will be returned; seizure should be limited in time.	Application No. 24344/21 Adrian-Marin Mititelu and Gigel Preoteasa v. Romania	Communicated on 9 July 2024	Art. 6(1) Art. 7 and 14	The case examines whether the applicants received a fair hearing under Article 6 of the Convention, focusing on whether the Court of Appeal's judgment violated legal certainty by allegedly ignoring prior final judgments that deemed the tax authorities' seizure unlawful. It also questions whether the	No decision	

				<p>applicants' conviction for tax evasion relied on a flawed premise of lawful asset seizure. Additionally, the case evaluates whether the conviction complied with Article 7 of the Convention, considering if the applicants were convicted for acts that did not meet the legal definition of a criminal offence and whether they could have foreseen the risk of criminal conviction under the national law.</p>		
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