



How often can a violation of a tax provision be sanctioned?

Fact of the case:

Mr. Fiskare is a Swedish fisher.

He was accused

- of having provided, in his tax returns for 2004 and 2005, false information which exposed the national Ministry of Finance to a loss of revenue linked to the levying of income tax and value added tax (VAT) and
- for failing to declare employers' contributions for the accounting periods from October 2004 and October 2005.

He was ordered to pay the taxes and employers' contributions with penalties by the tax authorities and did not challenge these orders in administrative proceedings.

In 2009, criminal proceedings for tax evasion were brought against Mr. Fiskare by the Public Prosecutor's Office. The acts of providing false information, which had given rise to those proceedings, are the same as the acts that led to the tax penalties. According to the indictment, the offences were to be regarded as serious, first, because they related to very large amounts and, second, because they formed part of a criminal activity committed systematically on a large scale.

The Swedish Court referred the case to the CJEU with the preliminary question whether the charges brought against Mr. Fiskare must be dismissed on the ground that he has already been punished for the same acts in other proceedings.

Legal Framework

Sixth Directive 77/388/EEC

Article 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; 'the Sixth Directive'), . . . , states:

. . . *Every taxable person shall submit a return by a deadline to be determined by Member States.*

8. Member States may impose other obligations, which they deem necessary for the correct collection of the tax and for the prevention of evasion ...



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Questions

- 1** Is the Charter applicable in this case?
 - a.** How could you argue in favour or against applicability?
 - b.** How would you decide?
- 2** Which articles of the Charter would be relevant in this case?
 - c.** How could restrictions of these Charter rights be argued for?
 - d.** Could restrictions be legitimised?
- 3** Would the application of Charter rights make a difference when you take into account the situation in your national context?