



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

Findings of the Court of Justice of the European Union

1. Applicability of the Charter

The Court found the Charter to be applicable because the tax penalties and criminal proceedings were connected “in part” to breaches of obligations to declare VAT and hence constituted implementation of a number of provisions of EU law, which relate to VAT and to protection of the financial interests of the EU. According to the Court, this link to EU law was sufficient to trigger the applicability of the Charter. The fact that the national measures, on the basis of which the tax penalties were imposed, did not actually refer to/transpose the relevant EU directive did not matter since the overall goal of the national measures corresponded to the goal of the directive.

2. Violation of Charter right(s)?

With respect to the *ne bis in idem* principle enshrined in Article 50 of the Charter, the Court observed that the principle does not preclude a Member State from imposing, for the same acts of evading declaration obligations in the field of VAT, a combination of tax penalties and criminal penalties. In order to ensure that all VAT revenue is collected and, in so doing, that the financial interests of the EU are protected, the Member States have freedom to choose the applicable penalties.

It is only if the tax penalty is criminal in nature and has become final within the meaning of the Charter that the principle preventing a person from being punished twice precludes criminal proceedings in respect of the same acts from being brought against the same person. The question as to whether tax penalties are criminal in nature must be assessed by national courts taking into account the following three criteria: classification in national law; nature of the offence; and nature and degree of severity of the penalty (para. 32-37).

See: Åklagaren v. Hans Åkerberg Fransson, C-617/10, Judgement of the Court (Grand Chamber) 26.02.2013



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