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ERA
11.02.2021
Case study

THE FIELD OF APPLICATION OF THE CHARTER

CASE 1

Mr. A was accused of having provided, in his tax declarations for the 2004 and 2005 tax years, inaccurate information which exposed the public Treasury to the loss of revenue in the form of income tax and value added tax (VAT). He was also prosecuted for failing to declare employer's contributions for the reference periods of October 2004 and October 2005, which exposed the social security institutions to the loss of revenue. In respect of the two tax years at issue, the tax administration had imposed a number of penalties on Mr A., namely penalties as regards the income from his economic activity, as regards the VAT and as regards the employer's contributions. Interest was payable on those penalties and they were not challenged before the administrative court. The reasons for the decision issuing them were the same facts of false declarations as those stated by the public prosecutor in the criminal proceedings.

The principle of ne bis in idem set forth in article 50 of the Charter is applicable?

Group 1 and 2 argue why it should not be applicable. Group 3 why it should.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=134202&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4664700>

CASE 2

A number of third country nationals who had claimed asylum in the United Kingdom or in Ireland while having previously transited through Greece. They objected to their transfer to Greece, the Member State normally responsible for examining their asylum claims by application of Regulation (EC) No 343/2003 8 ('the Dublin II Regulation').

They argued that such a transfer would infringe their fundamental rights or that the procedures and conditions for asylum seekers in Greece are inadequate and that the Member State in whose territory they were at the time was required to exercise its power under Article 3(2) of the Dublin II Regulation to accept responsibility for examining and deciding on their asylum claims.

Article 3(2) of the Dublin II Regulation grants Member States a discretionary power which forms an integral part of the Common European Asylum System provided for by the Treaty on the Functioning of the European Union and developed by the Union legislature.



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<http://curia.europa.eu/juris/document/document.jsf?text=&docid=117187&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4664888>

CASE 3

A requested, before a national court, the performance of the conciliation settlement which he had concluded with the defendant company which had dismissed him. That settlement stated in particular that, for the purposes of reaching a settlement, the defendant company acknowledged that the dismissal was unfair and undertook to pay compensation to the appellant. However, the defendant company was subject to a recovery plan.

Although the referring court ordered the enforcement of the conciliation settlement, its execution had immediately been stayed on the ground that the defendant company was under a recovery plan and there were no assets capable of seizure which existed before that plan. By a second order, the referring court dismissed the appeal brought by the appellant seeking variation of the first order, on the ground that the first order remained in force while the recovery plan had not been closed. Before the referring court, the appellant, who intended to appeal, disputed the request made to him to produce a certificate of payment of a fee laid down in national law for authorisation to lodge an appeal.

Article 47 of the Charter is of application, given that the national law requires employees to pay a judicial fee for lodging an appeal in enforcement proceedings with a view to obtaining a legal declaration of the insolvency of the employer in order to allow access to the competent guarantee institution, in accordance with Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer?

Group 1 argues why it should not be applicable. Group 2 and 3 why it should.

<http://curia.europa.eu/juris/document/document.jsf?text=fogasa&docid=149921&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4665097#ctx1>

CASE 4

Gaming machines, that operated without authorisation and thus allegedly used to organise prohibited games of chance, were provisionally seized following controls carried out in various places in Austria. Those machines had in fact been used without prior authorisation from the administrative authorities, required by the Austrian Federal Law on games of chance.

The owners of the gaming machines claim that the seizure goes against the freedom to provide services guaranteed in Article 56 TFEU and Articles 15 to 17, 47 and 50 of the Charter.



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The field of games of chance is not harmonized.

Place your bets!

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=151521&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4665308>