



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-617/10  
Åklagaren v Hans Åkerberg Fransson

## **The Court explains the field of application of the Charter of Fundamental Rights and interprets the principle preventing a person from being punished twice**

*That principle does not preclude a Member State from imposing successively, for the same acts of tax evasion, a tax penalty and a criminal penalty where the tax penalty is not criminal in nature*

The Member States and 20 other European States have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Compliance with the obligations resulting from that convention is ensured by the European Court of Human Rights, the seat of which is in Strasbourg.

In parallel, the EU has given itself a Charter of Fundamental Rights, which has been binding in nature since the Treaty of Lisbon entered into force. Where a fundamental right is recognised both by the Charter and by the ECHR, the Charter provides that the right has the same meaning and scope as laid down by the ECHR. One of the rights recognised by the Charter<sup>1</sup> and the ECHR<sup>2</sup> is the fundamental right not to be tried or punished **in criminal proceedings** twice for the same offence (the *ne bis in idem* principle).

It is in connection with this prohibition on being punished twice that the Haparanda tingsrätt (Haparanda District Court, Sweden) is uncertain whether criminal proceedings for tax evasion may be brought against a defendant where a tax penalty has already been imposed upon him for the same acts of providing false information.

The case concerns Mr Hans Åkerberg Fransson, who is self-employed and whose main activity is fishing and the sale of his catch. He fishes in the waters of the River Kalix (Sweden), although he sells his catch on both Swedish and Finnish territory.

The Swedish tax authorities accused Mr Åkerberg Fransson of having infringed his declaration obligations with regard to tax in 2004 and 2005, which resulted in a loss of revenue from various taxes. By decision of 24 May 2007, the Swedish tax authorities imposed tax penalties upon Mr Åkerberg Fransson for the 2004 and 2005 tax years.<sup>3</sup>

In 2009 criminal proceedings were brought against Mr Åkerberg Fransson in the Haparanda tingsrätt. The Public Prosecutor's Office accuses him of having committed an offence of tax evasion (in respect of 2004 and 2005) punishable, under Swedish law, by a term of imprisonment of up to six years. The acts of providing false information which have given rise to those proceedings are the same as the acts that led to the tax penalties.

The Swedish court wonders whether the criminal charges against Mr Åkerberg Fransson must be dismissed on the ground that he has already been punished for the same acts. It is also uncertain

<sup>1</sup> Article 50 of the Charter of Fundamental Rights.

<sup>2</sup> Protocol No 7 (Article 4) to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

<sup>3</sup> For the 2004 tax year, a tax surcharge of SEK 35 542 (nearly €4,117) in respect of income from his economic activity, of SEK 4 872 (nearly €564) in respect of VAT and of SEK 7 138 (nearly €826) in respect of employers' contributions; for the 2005 tax year, a tax surcharge of SEK 54 240 (nearly €6,283) in respect of income from his economic activity, of SEK 3 255 (nearly €377) in respect of VAT and of SEK 7 172 (nearly €830) in respect of employers' contributions.

as to the compatibility with EU law of the Swedish judicial practice which makes the obligation to disapply any provision contrary to a fundamental right guaranteed by the ECHR and by the Charter conditional upon that infringement being clear from the instruments or case-law concerned.

In its judgment delivered today, the Court of Justice points out first of all that the Charter states that it is addressed to the Member States only when they are implementing EU law. Thus, the Charter confirms the Court's case-law according to which the fundamental rights guaranteed by the Charter must be complied with where national legislation falls within the scope of EU law. Accordingly, situations cannot exist which are covered in that way by EU law without those fundamental rights being applicable. The applicability of EU law entails applicability of the fundamental rights guaranteed by the Charter. The Court explains that tax penalties and criminal proceedings for tax evasion which are based on falseness of the information concerning VAT that has been provided constitute implementation of a number of provisions of EU law which relate to VAT and to protection of the financial interests of the EU<sup>4</sup>. That is why the Charter and, therefore, the prohibition on being punished twice which it contains are applicable to Mr Åkerberg Fransson's situation and may be interpreted by the Court.

That said, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where action of the Member States is not entirely determined by EU law, implements the latter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised.

The Court observes with regard to the **principle preventing a person from being punished twice** that that 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. These penalties may therefore take the form of administrative penalties, criminal penalties or a combination of the two. **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 whether tax penalties are criminal in nature must be assessed having regard to three criteria. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur. It is for the national court to determine, in the light of those criteria, whether the combining of tax penalties and criminal penalties that is provided for by national law should be examined in relation to the national standards, which could lead it, as the case may be, to regard their combination as contrary to those standards, as long as the remaining penalties are effective, proportionate and dissuasive. Next, the Court observes that EU law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law.

The Court sets out, however, the conclusions to be drawn by a national court from a conflict that exists between national provisions and rights guaranteed by the Charter. A national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such a provision by legislative or other constitutional means.

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<sup>4</sup> Articles 2, 250(1) and 273 of Directive 2006/112 on VAT (previously Articles 2 and 22 of the Sixth Directive) and Article 325 TFEU.

Any national provision and any legislative, administrative or judicial practice which might impair the effectiveness of EU law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary – at the moment of its application – to set aside national legislative provisions which might prevent EU rules from having full force and effect are incompatible with those requirements, which are the very essence of EU law.

It follows that EU law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter conditional upon that infringement being clear from the text of the Charter or the relevant case-law, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice, whether that provision is compatible with the Charter.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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