



C/2023/7

9.10.2023

**Request for a preliminary ruling from the Tribunal de première instance du Luxembourg (Belgium)
lodged on 16 June 2023 — UN v État belge**

(Case C-380/23, Monmorieux ⁽¹⁾)

(C/2023/7)

Language of the case: French

Referring court

Tribunal de première instance du Luxembourg

Parties to the main proceedings

Applicant: UN

Defendant: État belge, represented by the Minister for Finance

Questions referred

1. Does Article 24 of the Convention between France and Belgium for the avoidance of double taxation and the establishment of rules of reciprocal administrative and legal assistance with respect to taxes on income, signed at Brussels on 10 March 1964, ratified by the law of 14 April 1965, interpreted as meaning that a Belgian citizen who claims to be resident for tax purposes in France — which is, however, contested by the Belgian tax authority — and who, as a precautionary measure, has applied for the mutual agreement procedure in order to recover the tax paid in France, who is required by the Belgian and French tax authorities, in order to have the right to the restitution of that tax, to withdraw unconditionally the judicial proceedings brought before the Belgian courts principally to challenge his being automatically taxed in Belgium, infringe Article 19 of the Treaty on the European Union, Article 45 of the Treaty on the Functioning of the European Union and Article 47 of the Charter of Fundamental Rights of the European Union, in conjunction with the principle of proportionality, in so far as he or she would permanently forfeit the right to the restitution of French tax if he or she were to pursue his or her principal challenge to being taxed in Belgium before the Belgian ordinary court?
2. If the answer to the first question is in the negative, does the answer remain the same if, in order to recover the tax paid in France, the applicant, by withdrawing his or her legal action challenging the taxation in Belgium, also loses the right to an effective judicial review of the administrative penalties of a coercive nature, which the European Convention on Human Rights defines as criminal and which increase the amount of tax, thereby losing the right to review the proportionality of the penalty and apply for a suspension, modes of customising the penalty that are recognised by both the Constitutional Court and the Court of Cassation?
3. If the answer to the first two questions is in the negative, does the answer remain the same if there is an administrative policy whereby the applicant is refused access to documents relating to the mutual agreement procedure between the two Contracting States, which refusal has repeatedly been deemed contrary to Article 32 of the Constitution and Articles 4 and 6 of the law of 11 April 1994 on disclosure of information by the administration by the Commission for Access to Administrative Documents and by the Conseil d'État (Council of State, Belgium)?

⁽¹⁾ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.