



Reports of Cases

Case C-617/10

Åklagaren
v
Hans Åkerberg Fransson

(Request for a preliminary ruling from the Haparanda tingsrätt)

(Charter of Fundamental Rights of the European Union — Field of application — Article 51 — Implementation of European Union law — Punishment of conduct prejudicial to own resources of the European Union — Article 50 — Ne bis in idem principle — National system involving two separate sets of proceedings, administrative and criminal, to punish the same wrongful conduct — Compatibility)

Summary — Judgment of the Court (Grand Chamber), 26 February 2013

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Request to interpret the Charter of Fundamental Rights of the European Union — National legislation displaying a factor connecting it with European Union law — Jurisdiction of the Court*

(Art. 267 TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1))

2. *Fundamental rights — Charter of Fundamental Rights of the European Union — Field of application — National legislation displaying a factor connecting it with European Union law — Legislation penalising infringement of the provisions of European Union law — Action of the Member State not entirely determined by European Union law — Applicability of the Charter and of national standards of protection of fundamental rights*

(Art. 325 TFEU; Charter of Fundamental Rights of the European Union, Art. 51(1); Council Directives 77/388, Arts 2 and 22, and 2006/112, Arts 2, 250(1) and 273)

3. *Fundamental rights — Ne bis in idem principle — Both criminal and administrative penalties for the same wrongful conduct — Tax evasion — No infringement of that principle*

(Charter of Fundamental Rights of the European Union, Art. 50)

4. *Preliminary rulings — Jurisdiction of the Court — Limits — General or hypothetical questions — Question that is abstract and purely hypothetical in the light of the subject-matter of the dispute in the main proceedings — Inadmissible*

(Art. 267 TFEU)

5. *Fundamental rights — European Convention on Human Rights — Relationship between the convention and a rule of national law — Relationship not falling within the scope of European Union law*

(Art. 6(3) TEU; Charter of Fundamental Rights of the European Union, Art. 52(3))

6. *European Union law — Primacy — Judicial practice restricting the obligation to disapply a provision contrary to the Charter of Fundamental Rights of the European Union — Not permissible*

(Art. 267 TFEU; Charter of Fundamental Rights of the European Union)

1. The field of application of the Charter of Fundamental Rights of the European Union, so far as concerns action of the Member States, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing European Union law. The fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations.

The Court thus has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law. On the other hand, if such legislation falls within the scope of European Union law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures.

(see paras 17 and 19)

2. 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 European Union law, implements the latter for the purposes of Article 51(1) of the Charter of Fundamental Rights of the European Union, 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 European Union law are not thereby compromised. For this purpose, where national courts find it necessary to interpret the Charter they may, and in some cases must, make a reference to the Court of Justice for a preliminary ruling under Article 267 TFEU.

Thus, tax penalties and criminal proceedings for tax evasion on account of the information concerning value added tax that has been provided being false constitute implementation of Articles 2, 250(1) and 273 of Directive 2006/112 on the common system of value added tax (previously Articles 2 and 22 of the Sixth Directive) and of Article 325 TFEU and, therefore, of European Union law, for the purposes of Article 51(1) of the Charter.

The fact that the national legislation upon which those tax penalties and criminal proceedings are founded has not been adopted to transpose Directive 2006/112 cannot call that conclusion into question, since its application is designed to penalise an infringement of that directive and is therefore intended to implement the obligation imposed on the Member States by the Treaty to impose effective penalties for conduct prejudicial to the financial interests of the European Union.

(see paras 27-30)

3. The *ne bis in idem* principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of valued added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.

In order to ensure that all value added tax revenue is collected and, in so doing, that the financial interests of the European Union 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 for the purposes of Article 50 of the Charter and has become final that that provision precludes criminal proceedings in respect of the same acts from being brought against the same person.

Three criteria are relevant for the purpose of assessing whether tax penalties are criminal in nature. 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.

(see paras 34, 35, 37, operative part 1)

4. See the text of the decision.

(see paras 40-42)

5. European Union law does not govern the relations between the European Convention on Human Rights 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.

Whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the European Convention on Human Rights constitute general principles of the European Union's law and whilst Article 52(3) of the Charter of Fundamental Rights of the European Union requires rights contained in the Charter which correspond to rights guaranteed by the European Convention on Human Rights to be given the same meaning and scope as those laid down by that convention, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law.

(see para. 44, operative part 2)

6. European Union 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 of Fundamental Rights of the European Union conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, 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.

Such a practice impairs the effectiveness of European Union 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 European Union rules from having full force and effect.

(see paras 46, 48, operative part 2)