



Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS

delivered on 2 February 2023¹

Case C-615/21

Napfény-Toll Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

(Request for a preliminary ruling from the Szegedi Törvényszék (Szeged High Court, Hungary))

(Reference for a preliminary ruling – National taxation procedure – Value added tax – National legislation providing for the suspension of the limitation period relating to taxation matters, in the context of judicial review, without any temporal limit, regardless of the number of repeat tax procedures – Principles of legal certainty and of effectiveness of EU law)

Introduction

1. This request for a preliminary ruling concerns the interpretation of the principles of legal certainty and effectiveness of EU law in the context of the application of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax² (‘the VAT Directive’).
2. The request has been made in proceedings between Napfény-Toll Kft. (‘the applicant’) and the Hungarian tax authority regarding amounts of value added tax (VAT) deducted by the applicant as VAT due on various acquisitions of products entitling it to deduction made in June 2010 and between November 2010 and September 2011.

¹ Original language: French.

² OJ 2006 L 347, p. 1.

Legal context

European Union law

3. Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests,³ provides:

‘1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogeneous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. “Irregularity” shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.’

4. Article 3 of that regulation provides:

‘1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. ...

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. ...

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6(1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.’

5. Article 4(1) and (4) of the regulation states:

‘1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

– by an obligation to pay or repay the amounts due or wrongly received,

³ OJ 1995 L 312, p. 1.

...

4. The measures provided for in this Article shall not be regarded as penalties.’

6. As set out in Article 6(1) of the same regulation:

‘Without prejudice to the Community administrative measures and penalties ..., the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.’

Hungarian law

7. Under Paragraph 164 of the adózás rendjéről szóló 2003. évi XCII. Törvény (Law XCII of 2003 establishing a code of tax procedure),⁴ in the version in force at the date of the tax inspection at issue (‘the former Code of Tax Procedure’):

‘(1) The right to make a tax assessment is time-barred after five years from the last day of the calendar year in which the declaration or notification relating to that tax should have been made or, where there is no declaration or notification, in which the tax should have been paid.

...

(5) In the event of judicial review of a decision of a tax authority, the limitation period in respect of the right to assess the correct amount of tax due ceases to run from the moment when the decision of the second-level tax authority became final until that when the court decision becomes final or, in the event of an appeal, until a ruling has been given on that appeal.’

8. As of 1 January 2018, the former Code of Tax Procedure was repealed and replaced by the provisions of the az adóigazgatási rendtartásról szóló 2017. évi CLI. törvény (Law CLI of 2017 setting out a code of tax administration; ‘the Code of Tax Administration’)⁵ and the az adózás rendjéről szóló 2017. évi CL. törvény (Law CL of 2017 establishing a code of tax procedure; ‘the new Code of Tax Procedure’).⁶

9. Paragraph 203(3) of the new Code of Tax Procedure reproduces, in essence, the content of Paragraph 164 of the former Code of Tax Procedure. Under that provision, if a taxpayer has initiated an administrative court action against a decision of a tax authority, the limitation period in respect of the right to assess the correct amount of tax due is suspended from the moment when the decision of the second-level tax authority became binding until that when the court decision becomes final or, in the event of an appeal, until a ruling has been given on that appeal.

10. Paragraph 203(7)(c) of the new Code of Tax Procedure states that the limitation period in respect of the right to make a tax assessment is to be extended once by 12 months if, in the context of an administrative court action against a decision of a tax authority, a court orders that a new procedure be conducted.

⁴ *Magyar Közlöny* 2003/131, 14 November 2003, p. 9990.

⁵ *Magyar Közlöny* 2017/192, 22 November 2017, p. 31694.

⁶ *Magyar Közlöny* 2017/192, 22 November 2017, p. 31586.

11. Pursuant to Paragraph 271(1) of the new Code of Tax Procedure, whose wording is identical to that of Paragraph 139(1) of the Code of Tax Administration, the provisions of that law, and therefore of Paragraph 203(7)(c) of the new Code of Tax Procedure, must be applied to procedures which are begun or repeated after the entry into force of that law.

The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court

12. The applicant deducted from the VAT for which it was liable the amount of that tax due in respect of products that it had acquired in June 2010 and in the course of the period from November 2010 to September 2011.

13. In December 2011, the Nemzeti Adó – és Vámhivatal Dél-budapesti Igazgatósága (National Tax and Customs Administration – Tax and Customs Directorate for Budapest South, Hungary, ‘the defendant tax authority’) as the first-level tax authority, began a review that was communicated to the applicant on 13 December 2011.

14. At the conclusion of the review, the authority ruled that some of the VAT that had been deducted should not have been, because some of the invoices put forward for that purpose did not, in its view, correspond to any real economic transaction and others related to a tax fraud of which the applicant was aware. Therefore, by a decision dated 8 October 2015, the defendant tax authority ordered the applicant to pay tax arrears of a total of 144 785 000 Hungarian forint (HUF) (approximately EUR 464 581) and imposed a fine on it of HUF 108 588 000 (approximately EUR 348 433), and a late-payment penalty of HUF 46 080 000 (approximately EUR 147 860).

First second-level administrative decision

15. Having received a complaint from the applicant, by decision of 11 November 2015, notified on 14 December 2015, the Nemzeti Adó – és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága (National Tax and Customs Administration – Principal Regional Tax Directorate for Central Hungary, Hungary), the predecessor of the defendant tax authority, as the second-level administrative tax authority, reversed the first-level decision with regard to the late-payment penalty imposed, while upholding it as to the remainder. The applicant brought an action against that decision.

16. By a judgment of 2 March 2018, which became final on the same day, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary) set aside the second-level decision by the administrative tax authority and ordered that authority to conduct a new procedure. The court indicated that the basis for its judgment was that the decision was vitiated by contradictory grounds. The court said that the second-level decision set out facts which were different from those found in the first-level decision, but at the same time stated that the first-level tax authority had correctly established the facts.

Second second-level administrative decision

17. By decision of 5 March 2018, notified to the applicant on 7 March 2018, the defendant tax authority adopted a second second-level administrative decision that, in essence, confirmed the decision at first instance. Nonetheless, the decision reduced the amount of the late-payment penalty imposed.

18. By a judgment of 5 July 2018, which became final on the same day, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court), before which the applicant had brought an action, set aside the second second-level decision by the defendant tax authority and ordered that authority to conduct a new procedure. As grounds for its decision, the court indicated that, first, the second second-level decision, taken on the first business day following the delivery of the judgment of 2 March 2018, repeated largely word for word the first second-level decision, without showing to what extent it was amending the finding made by the first-level tax authority. Consequently, that court took the view that the tax authority satisfied only as a matter of form the obligations arising from the said judgment. Secondly, the second second-level decision still contained contradictory findings with regard to whether the transactions concerned were real.

19. By a judgment of 30 January 2020, the Kúria (Supreme Court, Hungary), ruling on an appeal brought by the tax authority, upheld the judgment of 5 July 2018 on the substance. First, in so far as the statement of reasons of the second second-level decision reproduced those of the first second-level decision, the Kúria (Supreme Court) held that the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court) was right to have held that the defendant tax authority had failed to comply with the binding guidance established in the judgment of 2 March 2018. Admittedly, that authority, as it had submitted, only had a short period of time before the right to make a tax assessment and, consequently, to establish the amount of VAT to be repaid, would be time-barred, but in the Kúria's (Supreme Court's) view such a circumstance could not exempt it from performing its legal obligations. Moreover, as the Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court) had found, the second second-level decision was vitiated by contradictory grounds.

The third second-level administrative decision

20. On 6 April 2020, the defendant tax authority adopted a new decision, upholding the first-level decision, whilst amending the late-payment penalty imposed. As grounds for its position, the tax authority indicated that its findings of fact were no different from those established by the first-level tax authority in its decision, and that that authority had satisfied its obligation to establish the facts.

21. The applicant brought an appeal against this third decision before the Szegedi Törvényszék (Szeged High Court, Hungary), the referring court, on the ground, among others, that, pursuant to Paragraph 164(1) and (5) of the former Code of Tax Procedure, the tax authority's right to assess VAT amounts to be repaid is to be time-barred by five years from the last day of the calendar year in which the declaration or notification relating to that tax was made or, where there is no declaration or notification, during which the tax should have been paid. It argues that the tax authority's right to assess VAT amounts to be repaid in respect of the periods at issue ended before the date of the third second-level decision (namely 6 April 2020). The applicant takes the view that the repeated adoption of decisions is contrary to the principle of legal certainty that the limitation is intended to protect. Such a view is only strengthened if, in the main proceedings, the

second repeated procedure took place because of the fact that the tax authority had failed to comply with the guidance contained in the first court decision. The applicant argues that it is therefore due to the fault of the tax authority that the procedure has gone on for nearly 10 years from the start of the review.

22. The referring court states that Paragraph 164(5) of the former Code of Tax Procedure makes no provision for an upper limit with regard to the number of repeat procedures that the tax authority may conduct or the total duration of the suspension. Under the case-law of the Kúria (Supreme Court), limitation is suspended throughout the duration of the judicial review of a decision by the tax authority. As a result, there is no time limit on the suspension of the limitation period in cases of judicial review, and therefore the tax authority's right to assess VAT amounts to be repaid could be extended by several years or even, in extreme cases, by decades. For this reason, the referring court expresses doubts as to the compatibility of the relevant national legislation and related case-law with the EU principles of legal certainty and effectiveness.

23. In those circumstances the Szegedi Törvényszék (Szeged High Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are the principles of legal certainty and of effectiveness, which form part of [EU] law, to be interpreted as not precluding legislation of a Member State which does not allow the courts to exercise any discretion, such as [that provided for in] Paragraph 164(5) of [the former Code of Tax Procedure], and the practice based on that legislation, under which, in matters of [VAT], the limitation period in respect of the right of the tax authorities to make a tax assessment is to be suspended for the whole duration of judicial review, regardless of the number of repeat administrative tax procedures, with no ceiling on the cumulative duration of the suspensions where there are several rounds of judicial review, one after another, including in cases where the court ruling on a decision of a tax authority taken as part of a repeat procedure following on from an earlier court decision finds that the tax authority failed to comply with the guidance contained in that court decision, that is to say, where it is due to the fault of that authority that the new court proceedings took place?’

24. Subsequent to the lodging of this request for a preliminary ruling, the referring court sent the Court, by letter of 3 May 2022, a copy of the decision of the Alkotmánybíróság (Constitutional Court, Hungary) of 25 January 2022 by which that court removed the reference to repeat procedures appearing in Paragraph 271(1) of the new Code of Tax Procedure, as well as a copy of a second decision of the Alkotmánybíróság (Constitutional Court), to the same effect, of 26 April 2022.

25. By letter of 30 June 2022, the referring court was requested by the Court, in a request for information, to confirm, having regard to certain information initially provided, that, following the decision of the Alkotmánybíróság (Constitutional Court) to remove the reference to repeat procedures appearing in Paragraph 271(1) of the new Code of Tax Procedure, the main proceedings were not, in any event, time-barred.

26. By letter of 7 July 2022, the referring court indicated, in essence, that the sole effect of the decision of the Alkotmánybíróság (Constitutional Court) was to time-bar the right of the tax authority to assess the amount of VAT collected that had to be repaid in respect of the period subject to review in 2010. However, with regard to the tax year 2011, the Court's response would determine whether or not the tax authority's action was time-barred.

27. Written observations were lodged by the applicant, the Hungarian and Spanish Governments and the European Commission. Those parties also presented oral argument at the hearing on 10 November 2022.

Analysis

Preliminary observations

28. First of all, it must be observed that the main proceedings do not relate to the compatibility, as such, with EU law of a limitation period during which, on the one hand, the taxable person may exercise his or her right to make deductions nor, on the other hand, that during which the tax authority may question the declarations made by a taxable person, but rather to the compatibility with EU law of the suspension of such a period in the event of court proceedings, without any restriction on time and irrespective of the reasons for which, where applicable, such proceedings have had to be repeated.

29. In this case, it must be stated that the present case takes place in a specific context in which, within the framework of the same tax dispute, several administrative and court proceedings have followed each other, but it has not been possible to settle the case definitively for reasons which are, according to the referring court, the fault of the tax authority, without the tax legislation applicable providing for such a scenario and being able to offer a remedy.

30. The referring court submits, in this regard, that it is the practice of the Member State in question, when there are several rounds of judicial review, for there to be no ceiling on the cumulative duration of the suspensions, even if the court ruling on a decision of a tax authority taken as part of a new procedure following on from an earlier court decision finds that the tax authority failed to comply with the guidance contained in the prior court decision and that it is due to the fault of that authority that the new court proceedings took place.

31. In such a scenario, the referring court questions the compatibility with EU law of the Hungarian legislation and practice regarding the suspension of limitation periods for an essentially unlimited time and the extent to which such legislation and practice may adversely affect the principles of legal certainty and effectiveness. The referring court notes, furthermore, that the exercise of the right of deduction laid down by the VAT Directive could prove to be excessively difficult, particularly in cases such as those in the main proceedings, where the tax authority adopts new decisions but does not comply with the previous decisions delivered by the competent courts, within a short period of time following the decisions ordering new procedures, and thus the limitation period in respect of the right to make a tax assessment could be extended significantly as a result of the suspension of limitation during judicial review.

32. In such a context where it is not clear that the situation at issue is caused solely (and directly) by the legislation at issue in the main proceedings but may rather be due to the conduct, or failings, of the tax authority, and potentially of the national courts, I consider it appropriate to examine these two aspects separately within this Opinion.

Compatibility of the legislation on the suspension of the limitation period with EU law

33. Before analysing the compatibility of the Hungarian legislation with the principles of effectiveness and legal certainty of EU law, as the referring court asks, it is appropriate to examine whether this legislation does indeed fall within the scope of specific provisions of EU tax law.

Applicability of the VAT Directive

34. First of all, it must be noted that despite the fact that the present case has been brought in connection with a dispute linked to VAT, the question for preliminary ruling does not relate to the interpretation of any provision of the VAT Directive. In that regard, the directive restricts itself to setting out the substantive and formal conditions concerning the right to deduct VAT,⁷ but does not lay down a period within which taxable persons may submit an application for the refund of VAT⁸ or within which, once the existence of a right to a refund of a certain amount of tax paid has been recognised, the refund must take place.

Applicability of Regulation No 2988/95

35. It should be noted, first, that it is clear from the scope of Regulation No 2988/95 that it covers any ‘irregularity’ identified by the authority and ‘any infringement of a provision of [EU] law resulting from an act or omission by an economic operator’ which would have the effect of prejudicing the general budget and own resources of the European Union.

36. The Court has held that the European Union’s own resources include revenue from application of a uniform rate to the harmonised VAT assessment bases determined according to European Union rules and that there is a direct link between the collection of VAT revenue in compliance with the EU law applicable and the availability to the EU budget of the appropriate VAT resource, since failure to collect the first potentially causes a reduction in the second.⁹ It could be deduced from the above that a limitation period during which the national tax authorities may assess the correct amount of VAT to be repaid for a specific period falls within the scope of Regulation No 2988/95.

37. With regard, secondly, to limitation periods, Article 3(1) of Regulation No 2988/95 provides for a limitation period for proceedings of four years with regard to the ‘irregularities’ covered by the regulation. According to the Court’s case-law, the limitation period set in the abovementioned article is applicable both to irregularities leading to the imposition of an administrative penalty for the purposes of Article 5 of that regulation and to irregularities which are the subject of an administrative measure for the purposes of Article 4 of the regulation, a measure which is intended to withdraw the wrongly obtained advantage without however constituting a penalty.¹⁰

⁷ The VAT Directive governs both substantive and formal conditions in Title X, in Chapters 1 (‘Origin and scope of right of deduction’, Article 168 et seq.) and 4 (‘Rules governing exercise of the right of deduction’, Article 178 et seq.), respectively.

⁸ Judgment of 14 February 2019, *Nestrade* (C-562/17, EU:C:2019:115, paragraph 35).

⁹ Judgments of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 26), and of 8 September 2015, *Taricco and Others* (C-105/14, EU:C:2015:555, paragraph 38).

¹⁰ Judgments of 24 June 2004, *Handlbauer* (C-278/02, EU:C:2004:388, paragraphs 33 and 34), and of 17 September 2014, *Cruz & Companhia* (C-341/13, EU:C:2014:2230, paragraph 45).

38. It should be noted, however, that by adopting Regulation No 2988/95, in particular the first subparagraph of Article 3(1) thereof, the EU legislature decided solely to define a minimum period that must be applied in all Member States. Indeed, pursuant to Article 3(3) of the regulation, Member States may apply limitation periods which are longer than the four-year period set out in Article 3(1) of the regulation.¹¹ As that possibility is implicitly, but necessarily, subject to the condition that the periods chosen must be reasonable, any longer duration must therefore be examined in the light of the same principles as those applicable to periods that do not fall within the scope of the abovementioned Regulation.¹²

39. Thirdly, it is important to note that the first subparagraph of Article 3(1) of Regulation No 2988/95 sets rules on the calculation of the limitation periods. First, the third subparagraph of Article 3(1) of the regulation provides that the limitation period for legal proceedings, a term which has been assimilated by the case-law to cover more generally any form of action by the authorities, shall be interrupted by any act relating to investigation or legal proceedings concerning the irregularity. Secondly, the fourth subparagraph of Article 3(1) of the regulation states that the limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, and this provision has been interpreted by the Court as setting an absolute limit,¹³ with the sole exception that has been recognised being suspension in the event of criminal proceedings, pursuant to Article 6(1) of Regulation No 2988/95. That is not the case here, as is apparent from both the order for reference and the reply provided on that point by the Hungarian Government at the hearing.

40. Moreover, the regulation only applies to administrative proceedings and none of its provisions cover the length of judicial proceedings brought by a party on whom an administrative penalty has been imposed nor the suspension of the limitation periods in the event of judicial review.

41. It follows from the foregoing that, although Regulation No 2988/95 may apply with regard to the national rules laying down the limitation period within which the national tax authorities may make a tax assessment, legislation such as that at issue in the present case providing for the suspension of the limitation period for the assessment of the VAT amount for the entire length of the judicial reviews does not fall within its scope.

Analysis of the legislation at issue in view of the general principles of EU law

42. In the absence of EU legislation on this area [and since neither the VAT Directive nor Regulation No 2988/95 contains specific rules making it possible to reply to the question for preliminary ruling], in accordance with the Court's settled case-law it is for the domestic legal systems of Member States to set the rules on the limitation of judicial proceedings and the suspension of such limitation periods, in accordance with the principle of procedural autonomy of the Member States and in particular the principles of equivalence and effectiveness, provided that the Member States exercise their competences in compliance with EU law.¹⁴

¹¹ See judgment of 7 April 2022, *IFAP* (C-447/20 and C-448/20, EU:C:2022:265, paragraph 48 and the case-law cited).

¹² See, to that effect, judgment of 17 September 2014, *Cruz & Companhia* (C-341/13, EU:C:2014:2230, paragraph 59 and the case-law cited).

¹³ See, to that effect, judgment of 2 March 2017, *Glencore Céréales France* (C-584/15, EU:C:2017:160, paragraph 54 and the case-law cited).

¹⁴ Judgment of 28 July 2016, *Astone* (C-332/15, EU:C:2016:614, paragraph 34 and the case-law cited).

43. In that regard, although the wording of the referring court's question for preliminary ruling refers solely to the principles of legal certainty and of effectiveness, that is no obstacle to taking into account, both as part of this analysis and in the analysis that the Court is to carry out, other general principles of EU law that may be relevant within the context of the present case.

44. With regard, in the first place, to the principle of equivalence, it requires the procedural rules for the implementation of EU law laid down by national law not to be more restrictive than those concerning the implementation of national law with a similar purpose or rationale. In the case of rules governing limitation periods, respect for that principle implies the existence, in addition to the rule on limitation periods at issue, of a rule on limitation periods applicable to domestic situations that, having regard to their purpose and essential characteristics, may be considered similar.¹⁵

45. It should be noted, in this regard, that it is not apparent, from the facts described by the referring court, from the written observations of the parties or from the clarifications made at the hearing, that the procedural system in the Hungarian Code of Tax Procedure (including the regulation at issue in the main proceedings) is less favourable in terms of limitation periods than that applicable to domestic situations. It appears that the system applies both to actions based on the infringement of EU law and on those, of the same kind, alleging the infringement of national law.

46. In the second place, the principle of effectiveness means that the provisions governing the national procedure must not be such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.¹⁶

47. It should be recalled, first, that within the context of the VAT Directive the Member States have two obligations. On the one hand, they must ensure that taxable persons may effectively exercise their right to deduct VAT without being prevented from doing so by rules of procedure or substantive rules that are incompatible with EU law and, in particular, with the VAT Directive. On the other, they must adopt all legislative and administrative measures necessary to ensure collection of all the VAT due on their territory and to prevent tax fraud and evasion.¹⁷

48. While, in the present case, the applicant submits that its right to deduct VAT has been restricted, it is apparent from the order for reference that the tax authority found that tax evasion was present and that that conclusion does not yet seem to have been challenged in the judgments to date delivered in the main proceedings. It should be noted, in that regard, that, according to the Court's case-law, a Member State may, in principle, suspend the refund of VAT until the dispute has been definitively resolved by an administrative procedure or by judicial proceedings, inasmuch as the right to deduction must always comply with the principle of proportionality,¹⁸ which is a matter for the national courts to verify.

¹⁵ Judgment of 20 December 2017, *Caterpillar Financial Services* (C-500/16, EU:C:2017:996, paragraph 38 and the case-law cited).

¹⁶ Judgment of 15 March 2017, *Aquino* (C-3/16, EU:C:2017:209, paragraph 52).

¹⁷ See Article 273 of the VAT Directive and judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraphs 25 and 26).

¹⁸ Judgment of 18 December 1997, *Molenheide and Others* (C-286/94, C-340/95, C-401/95 and C-47/96, EU:C:1997:623, paragraph 54 and 55).

49. Secondly, in tax matters, the existence of a limitation period is of interest both to the taxable person and to the tax authority, in so far as setting reasonable limitation periods is designed to protect both the taxable person and the tax authority by not rendering impossible or excessively difficult the exercise of the rights conferred by the EU legal order.

50. In that regard, a distinction should be drawn between the period within which taxable persons may exercise their right to deduct VAT and the limitation period within which the tax authority may act.¹⁹ Thus, in some judgments, the Court has acknowledged that the periods in which authorities may take action may be different from those applicable to individuals.²⁰ With regard to the limitation period applying to the tax authority, the Court has previously held that a five-year limitation period beginning to run on the date on which the declaration should in principle have been made was consistent with the principle of effectiveness.²¹

51. It should be clarified, however, that although the issue of a possible restriction of the exercise of the applicant's right to deduction was highlighted in the present case, the case does not directly relate to the compatibility with EU law of the procedural rules governing that right but rather to the national legislation governing the limitation period applicable to the tax authority's actions.

52. Thirdly, in relation to the suspension of the limitation period during judicial proceedings, it should be noted that reasons for interrupting the limitation period are set out precisely in order to ensure compliance with the principle of effectiveness by guaranteeing that the limitation period does not expire during the judicial proceedings, at the very time when rights conferred by the EU legal order are being exercised by the taxable person. In addition, the aim of suspending the limitation period during judicial proceedings is to enable the tax authority to take account of the outcome of the judicial review. In the absence of such legislation, the right to redress could be abused because, should the limitation take place during any judicial proceedings (the length of which is not determined in a precise manner and which, in any event, depends not on the measures taken by the tax authorities but on the judicial proceedings) the tax authority would be unable to make any findings even if its decision were held to be consistent with the law in both procedural and substantive terms.

53. In the third place, with regard to the principle of legal certainty, it should be recalled that a limitation period, in general, fulfils the function of ensuring legal certainty and that, in order to fulfil that function, the rules setting out those periods must be fixed in advance and be sufficiently clear and precise to ensure that situations and legal relations are foreseeable.²² In addition, in tax matters, the rules on limitation periods are designed to ensure that the tax position of a taxable person vis-à-vis the tax authority is not open to challenge indefinitely.²³

¹⁹ On the one hand, in relation to a taxable person, the existence of a limitation period in the context of the exercise of his or her rights enables him or her to challenge the tax authority's decisions in order to request and, where applicable, to obtain, refunds of undue payments or of payments provided for by the legislation specific to each tax. On the other hand, the limitation period enables tax authorities to carry out the checks necessary to determine the tax situation of a taxable person and to identify any irregularities or abuse that may have taken place, and their consequences, in order to prevent the loss of VAT revenue.

²⁰ See, inter alia, judgment of 8 May 2008, *Ecotrade* (C-95/07 and C-96/07, EU:C:2008:267, paragraphs 49 to 54), in which the Court held that the principle of effectiveness is not infringed in the case of a national limitation period allegedly more advantageous for the tax authority than that applicable for individuals.

²¹ Judgments of 8 September 2011, *Q-Beef and Bosschaert* (C-89/10 and C-96/10, EU:C:2011:555, paragraph 37), and of 20 December 2017, *Caterpillar Financial Services* (C-500/16, EU:C:2017:996, paragraph 43).

²² Judgment of 5 March 2019, *Eesti Pagar* (C-349/17, EU:C:2019:172, paragraph 112 and the case-law cited).

²³ Judgment of 20 May 2021, *BTA Baltic Insurance Company* (C-230/20, not published, EU:C:2021:410, paragraph 46).

54. In the present case, it is not a matter of dispute that the rules on limitation and the suspension of limitation periods are known by the taxable persons, who are aware that the fact of exercising the guarantees available to them, such as the right to lodge an appeal, may result in the suspension of the limitation period.

55. In addition, it should be noted that the rules on limitation are designed precisely to prevent a legal situation being indefinitely open to challenge. Limitation periods are designed not to leave rights indefinitely uncertain and to sanction the abandonment of rights by the rights holder. However, this mechanism requires the existence of reasons for interrupting the limitation period, particularly in the event of the exercise of rights by rights holders and, more specifically, through the bringing of appeal proceedings, since such a mechanism is based on the fact that the rights holders are not exercising their rights or, if they decide to do so, that such a decision involves a delay in the procedure. It follows that the fact that limitation periods are suspended when a taxable person exercises such rights cannot, in principle, be considered to be an element that (indefinitely) leaves those rights open to challenge, since the suspension is linked to the initiation of a new procedure separate from the administrative procedure, namely that of judicial review, which is governed by different rules, including with regard to the time periods applicable to its procedures.²⁴

56. In addition, the Court has held that the principle of legal certainty does not preclude a practice of the national tax authorities whereby, within the limitation period, they revoke a decision by which they granted the taxable person the right to deduct VAT and then, following a fresh investigation, order him or her to pay that tax together with default interest.²⁵ If such a practice by the tax authority within the context of an administrative procedure (and without a court decision intervening) has been held not to render the tax position of the taxable person open to challenge indefinitely, there is no doubt that the adoption by the tax authority of new decisions for the purposes of enforcing judgments delivered cannot in itself constitute an infringement of the principle of legal certainty.

57. It follows from the foregoing that the principles of legal certainty and of effectiveness do not preclude national legislation providing that the limitation period is to be suspended for the whole duration of the review procedure, in the event that a taxable person exercises his or her right to redress, and that it is to be extended in the event that the tax authority is ordered to carry out a new procedure. If it were otherwise, a time-bar might intervene even during the review procedure, including when that procedure is linked to a reference for a preliminary ruling (and even in a scenario where the tax authority's decision is completely well founded), which would make the procedure purposeless, would deprive the taxable person of the option to exercise his or her right to redress and, in addition, would prevent the tax authority from ruling, pursuant to the national court's decision, on the taxable person's tax position.

The Hungarian authority's practice regarding the suspension of the limitation period

58. It is apparent from the findings made by the referring court that the extension of the procedure is due, in part, to the tax authority because it failed to comply with the guidance supplied in the relevant court decision when it adopted a new decision. In the opinion of that

²⁴ The period applicable to the judicial proceedings whose initiation results in the suspension of the limitation period is governed not by tax legislation but by the rules on judicial proceedings.

²⁵ See, to that effect, judgment of 9 July 2015, *Salomie and Oltean* (C-183/14, EU:C:2015:454, paragraphs 40 and 41).

court, the result of such an unjustified extension, for a period which is impossible to predict, of a tax procedure intended to examine the financial and material conditions of the right of deduction is that it renders the exercise of the right of deduction (of VAT) excessively difficult.²⁶

59. In such a context, and although the referring court made no request in that regard, it is appropriate to examine, in the first place, the relevance to the present case of the principle of sound administration.

60. In its case-law, the Court has previously held that, where a Member State implements EU law, the requirements pertaining to the right to sound administration, which reflects a general principle of EU law, and in particular the right of every person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a tax inspection procedure.²⁷ The Court has also stated that that principle of good administration requires administrative authorities, such as the tax authority in question in the main proceedings, when carrying out their inspection duties, to conduct a diligent and impartial examination of all the relevant matters so that they can be sure that, when they adopt a final decision, they have at their disposal the most complete and reliable information possible for that purpose.²⁸

61. It is therefore a matter for the referring court (which alone is aware of all the circumstances of the main proceedings) to determine whether the complexity of this case may have led to the lengthening of the procedure, or whether the repetition of tax procedures and the many suspensions of the limitation period may be ascribed to a failure by the tax authority; it is also for the referring court to examine the extent to which that practice may have caused harm for the applicant. However, any error by the tax authority or any unsuccessful attempt by it to comply with a court decision, even where it has taken place more than once, does not, as such, constitute negligence on the authority's part of such a kind as to cast doubt on the applicability of the provisions on the suspension of the limitation period.

62. In the second place, it is important to note that at the hearing the Hungarian Government argued that national courts had the means necessary to enable them, in principle, to remedy a situation such as the one in the present case. Thus, should the tax authority not comply with the instructions given to it by a national court (for reasons which may be directly ascribed to it), the national court could, according to the government, 'take control' of the case brought before it and rule on it by amending a decision taken by the tax authority, thus definitively resolving the dispute.

63. It should be recalled, in that regard, that the second subparagraph of Article 47 of the Charter of Fundamental Rights of the European Union states, *inter alia*, that everyone is entitled to a hearing within a reasonable time. It is apparent from the Court's case-law that the reasonableness of the period taken for the judgment must be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities.²⁹

²⁶ That opinion is shared by the applicant, who argues that the slow pace of the procedure was due to shortcomings in the examination of the facts by the tax authority, which in the end led to suspensions of the limitation period.

²⁷ Judgment of 14 May 2020, *Agrobet CZ* (C-446/18, EU:C:2020:369, paragraph 43).

²⁸ Judgment of 14 May 2020, *Agrobet CZ* (C-446/18, EU:C:2020:369, paragraph 44).

²⁹ See, to that effect, judgment of 9 September 2008, *FIAMM and Others v Council and Commission* (C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 212 and the case-law cited).

64. It is therefore for the competent national court to verify the extent to which the lengthening of the procedure could be ascribed to the national courts, if it were to be found that, although such courts had the means to remedy such a situation, they did not make use of those means. In such a scenario, it is for the competent national court to examine whether there are grounds for awarding compensation to the applicant for a delay or a failure that may be ascribed not only to the tax authorities but also to the national courts.

65. It follows from the foregoing that it is for the competent national court, taking into account all the circumstances of the case, such as its complexity, to assess whether the repetition of the tax procedure and the judicial reviews concerned were mainly due to failures by the tax authority or whether the delay may be ascribed to the national courts, and to draw the requisite conclusions, including whether the taxable person concerned is entitled to any compensation.

Conclusion

66. In the light of the foregoing considerations, I propose that the Court should respond to the question referred for a preliminary ruling by the Szegedi Törvényszék (Szeged High Court, Hungary) as follows:

The principles of legal certainty and of effectiveness of EU law must be interpreted as not precluding legislation of a Member State under which, in matters of value added tax, the limitation period in respect of the right of the tax authorities to make a tax assessment is to be suspended for the whole duration of the judicial review concerned, even where the review concerns consecutive decisions made by a tax authority and concerning the same tax.

However, it is for the competent national court, taking into account all the circumstances of the case, such as its complexity, to assess whether the repetition of the tax procedure and the judicial reviews concerned were mainly due to failures by the tax authority or whether the delay may be ascribed to the national courts, and to draw the requisite conclusions, including whether the taxable person concerned is entitled to any compensation.