



C/2024/3749

24.6.2024

**Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 12 April 2024 –
Pegazus Busz Fuvarozó Kft. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága**

(Case C-262/24, Pegazus Busz)

(C/2024/3749)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Pegazus Busz Fuvarozó Kft.

Defendant: Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága

Questions referred

- (1) Do Article 167, point (a) of the first paragraph of Article 168 and point (a) of the first paragraph of Article 178 of the VAT Directive, ⁽¹⁾ as well as the right to a fair trial enshrined as a general principle of law in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), in conjunction with the fundamental principles of proportionality and legal certainty, preclude the practice of the tax authority whereby:
 - (a) the taxable person is denied the right to deduct VAT, despite acknowledgement that the economic transaction shown on the invoice took place, on the grounds that, from all the circumstances deemed relevant – such as the use of subcontractors, the personal, organisational and ownership ties revealed, the behaviour towards workers of the person designated in the main contract between the client and the applicant as responsible for maintaining daily contact and the fact that the working conditions of workers remained unchanged with successive subcontractors – it could be inferred that the applicant's behaviour was contrary to the requirements of a legitimate exercise of the right and the economic activity is therefore considered to be contrived and created for the sole purpose of obtaining a tax advantage contrary to the purpose of the legislation on VAT, although the disputed circumstances necessarily follow from contractual freedom in the private sector, as well as the civil, labour and tax regulations governing those contracts, and there is no causal link to the right of the taxable person to deduct VAT?
 - (b) it is considered tax avoidance if the issuer of the invoice is in arrears in the payment of taxes declared and contributions, even if the tax authority gives the issuer the option to pay in instalments to rectify the situation and eventually recovers the amount owed in an enforced collection procedure against the subcontractor, so that there is no cost to the public purse, or does only concealment of tax from the tax authority, that is to say, failure to declare and pay tax, constitute fraudulent conduct?
 - (c) on the ground of tax secrecy, the tax authority does not inform the taxable person during the proceedings of the conduct that allegedly constitutes tax avoidance – that is to say, the nature of the non-compliance with the obligation to pay tax and contributions – and, therefore, does not identify the subcontractor specifically affected by the non-compliance, the type of tax (or contribution) or the scope and period of the non-compliance, but merely makes generic references to that effect?

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

- (d) as a prerequisite for the exercise of the right to deduct, by merely claiming that there are personal and organisational ties between the taxable person and the subcontractor, the tax authority not only imposes on the taxable person an obligation to carry out checks (on the tax liability of the subcontractor) for which it is not responsible and is not even authorised but, solely on the basis of that circumstance, presumes that the taxable person knows about the subcontractor's tax liability, without carrying out an examination of the knowledge of the taxable person and whether that knowledge could be obtained lawfully (taking into account tax secrecy), physically and logically? Is the fact that personal and organisational ties have been established by private individuals relevant when considering that that knowledge has been demonstrated?
- (e) without conducting a thorough examination of the relevant legal basis, the tax authority determines who is the employer with whom the worker has an employment relationship based not on the employment contract establishing the employment relationship, the identity of the person who registers employment relationships or the concordant declaration of the employers and employees – which confirms the documents – but on the statement to the contrary of two workers (currently only one), on the circumstances on the basis of which employment relationships were established with former subcontractors, on the similarities in working conditions and on the behaviour of the manager of the main employer, who is also the contact person under the main contract?
- (f) that tax authority applies its findings regarding previous periods literally to subsequent periods, without taking into account changes in the relevant facts in each period, in particular the disappearance of personal and organisational ties, and, despite such changes in the facts, does not examine the effect of those changes, in the period in question, on the tax authority's assessment of whether there was an abuse of rights, the contrived nature of the economic activity, whether there was fraudulent conduct or the knowledge of the taxable person in that regard?
- (2) In view of the answer to the previous question, are the aforementioned articles of the VAT Directive and, in particular, the principle of legal certainty consistent with the principle established in case-law according to which, where a personal tie can be established between the applicant and the issuers of the invoices that may also affect the implementation of the invoiced economic transaction, it can be concluded, without additional examination of the knowledge of the taxable person, that the latter is aware of the tax avoidance arising from unpaid tax?
- (3) Does the overall conduct of the tax authority as described comply with the obligation incumbent upon that authority to prove, to the requisite legal standard, the objective circumstances as regards VAT deduction, or does it constitute an assessment based on assumptions and suppositions, taking into account also the principle established by the Court of Justice according to which rules of evidence laid down in national law may not undermine the effectiveness of EU law?
- (4) Do Article 267 TFEU, the principle of the primacy of EU law and the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter preclude:
- a situation in which the national court of last instance, claiming that there are differences in the factual circumstances, does not implement the decision of the Court of Justice on the grounds that the subject matter of the proceedings that led to the decision of the Court of Justice is a delivery of goods, whereas the subject matter of the proceedings before it is a provision of services, or on the grounds that the objective circumstance relied on in the case before it is only one of the objective circumstances assessed in the applicable decision of the Court of Justice, and therefore only part of it at most would be relevant;

- a situation in which the national court of last instance, in connection with appeal proceedings, deviates from the judgment of the Court of Justice in the case in question as a result of preliminary ruling proceedings and takes a decision contrary to that judgment without bringing preliminary ruling proceedings itself, despite the contradictions with regard to the interpretation of EU law demonstrated in its decision?
- (5) Given the necessary respect for the rights and principles mentioned in the previous question and the obligation to disregard national law that is contrary to EU law, can a court of a Member State, ordered by the court of last instance to initiate new proceedings, deviate in the second proceedings from the guidelines given by the court of last instance – without referring a question for a preliminary ruling – if it deems those guidelines contrary to EU law, or if, following the order to initiate new proceedings, the Court of Justice delivers a decision on the same point of law in a case with similar facts that is contrary to the legal interpretation on which the obligation to initiate new proceedings is based? Or is it only possible to avoid the obligation imposed by the national court of last instance and to implement the subsequent decision of the Court of Justice if the court responsible for initiating new proceedings makes a request for a preliminary ruling in the new proceedings?
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