

## European Union, CJEU, Belvedere, judgement of 29 March 2012

### Deciding bodies and decisions

CJEU, judgement of 29 March 2012, Case C-500/10, Belvedere, EU:C:2012:186

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### Area of law

Effective Judicial Protection

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### Subject matter

Access to a court - Reasonable time of the proceedings - Tax law

The *Belvedere* judgement clarified whether EU law precludes national legislation under which the court with jurisdiction in tax matters may not rule on the existence of an alleged tax debt when the case has been pending for several years and the courts of first and second instance have concluded that the tax debt does not exist.

National legislation providing for the automatic conclusion of proceedings on VAT issues pending before a court of third instance, if they had lasted for more than 10 years (at the time of the entry into force of the law), and the courts of first and second instance had ruled in favour of tax-payers.

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### Summary Facts Of The Case

Preliminarily, the CJEU examined the question of admissibility of the referred question. The Italian government had, indeed, argued that the question referred to the Court for a preliminary ruling was inadmissible due to the fact that the Court had not been provided with all the elements of fact and law enabling it to properly understand the content of Article 3(2bis)(a) of Law Decree No.40/2010. The CJEU, after recalling its well- established case law on the issue of admissibility of references for a preliminary ruling, rejected the Italian Government's argument on several grounds. First, the order for reference did contain indications as to the facts and the relevant national legislation applicable to the main proceedings. Moreover, the order also included a clear explanation of the reasons why the *Commissione Tributaria Centrale* doubted of the compatibility of national law with EU law. Finally, the Court found that the question raised was decisive for the outcome of the proceedings.

Moving to the substantial level, the Court acknowledged, at the outset, that, pursuant to Articles 2 and 22 of the Sixth Directive and Article 4(3) TEU, Member States are required to adopt all

legislative and administrative measures appropriate for ensuring the collection of VAT on their territories. This means, inter alia, that Member States are under an obligation to check taxpayers' returns and accounts, and ensure that they comply with their tax obligations. The Court further recognized that, in this

respect, Member States enjoy a certain degree of discretion as to the most appropriate means to be used. However, according to the CJEU, this discretion finds nonetheless a limit in the Member States' obligations to ensure the effective collection of the EU's own resources and to respect the principle of the so- called "fiscal neutrality" (pursuant to which economic operators carrying out the same transactions cannot be treated differently with respect to VAT).

The Court, however, also observed that the obligation to ensure the effective collection of the EU's own resources cannot, in turn, infringes on the right to a trial within a reasonable time enshrined in Article 47 CFR and Article 6(1) ECHR, that Member States have to respect when they implement EU law.

Taking this into account, the Court focused specifically on the case at stake in the main proceedings and noticed that Article 3(2bis)(a) of Italian Law Decree No. 40/2010 pursued the objective of remedying the breach of the right to a reasonable length of proceedings, given that the conclusion of tax trials only apply to cases that had been pending for more than 10 years (and, in practice, for more than 14 years, since the Law Decree had entered into force more than 14 years after the last date in which appeals could be brought before the *Commissione Tributaria Centrale*). According to the Court, the excessive length of many tax proceedings infringed both the reasonable time principle and the obligation to ensure the effective collection of EU's own resources.

The Court further observed that, due to its specific and limited nature, Article 3(2bis) of Decree-Law No. 40/2010 did not provide for a general waiver of the collection of VAT and did not infringe on the principle of fiscal neutrality.

In light of the foregoing, the CJEU concluded that EU law does not preclude national legislation such as that at issue.

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### Relation to the scope of the Charter

Article 47(2) EU Charter -Right to an effective remedy and to a fair trial – Right to a trial within a reasonable time

The relevance of the Charter in the case at stake derives from the fact that the case involved proceedings on VAT matters, thus falling within the scope of the VAT Directive (Sixth VAT

Directive) in force at the time.

Although the Member States have discretion with respect to the means to achieve the objective of ensuring the effective collection of VAT resources, such discretion shall nonetheless respect the EU obligation to effectively achieve that objective. At the same time, however, this objective cannot be achieved in a way that infringes upon EU fundamental rights.

Along the lines of this reasoning, in *Belvedere*, the Court explicitly acknowledged the relevance of the EU Charter by stating that “the obligation to ensure effective collection of European Union resources cannot run counter to compliance with the principle that judgment should be given within a reasonable time, which, under the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be observed by the Member States when they implement European Union law, and must also be observed under Article 6(1) of the ECHR. [...] The facts of the dispute in the main proceedings, which go back about 30 years, show that some of those proceedings have lasted for a much greater number of years. Such a length of proceedings is a priori capable in itself of infringing the reasonable time principle and, moreover, the obligation to ensure the effective collection of the European Union’s own resources” (paras. 23 and 25).

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#### Relation between the Charter and ECHR

Article 47(2) CFR corresponds to Article 6(1) ECHR, but has a broader scope, insofar as it is relevant to any proceedings involving rights conferred on individuals by EU law, whereas the right to a trial within a reasonable time under the ECHR concerns criminal proceedings and cases on “the determination of civil rights and obligations”. Article 47(2) CFR is applicable, for instance, also to administrative and tax proceedings.

Article 52(3) CFR requires that, insofar as the scope of Article 47(2) CFR overlaps with that of the right to trial within a reasonable time under the ECHR, the former must be granted the same meaning as the latter, it is subject to the same limitations, and its level of protection cannot go below the ECHR threshold. By contrast, the case law of the ECtHR cannot be relied on with the purpose to reduce the scope of Article 47(2) CFR and the protection offered by it.

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#### Sources - EU and national law

## National Law

- Article 3(2 bis)(a) of Law Decree No. 40/2010 (*decreto legge n. 40/2010*) of 26 March 2010 (GURI No. 71/2010, converted, with amendments, into Law No. 73/2010 (*legge n.73/2010*) of 25 May 2010 (GURI No. 120/2010).

## EU law

- Article 4(3) Treaty on European Union (TEU)
- Articles 2 and 22 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

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## Sources - ECHR

### On the admissibility of the reference for a preliminary ruling

- C-415/93 *Bosman*, EU:C:1995:463
- C-450/09 *Schröder*, EU:C:2011:198
- C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International*, EU:C:2009:519

### On the interpretation of the Sixth Directive

- C - 132/06, *Commission v. Italy*, EU:C:2008:412

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## Comments

The ECJ decided on a reference for preliminary ruling issued by *Commissione Tributaria Centrale* (Tax Court of Third Instance of Bologna, Italy).

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