

Spain, CJEU, Banco Santander, 21 January 2020

Member State

 Spain

Topic

Independence (appointment and removal), impartiality

Deciding Court Original Language

Tribunal Económico-Administrativo Central

Deciding Court English translation

Central Tax Tribunal

Date Decision

2 April 2014

National Follow Up Of (when relevant)

The preliminary reference brought by the Central Tax Tribunal before the CJEU was declared inadmissible

EU legal sources and CJEU jurisprudence

Article 267 TFEU

Subject Matter

Reference for a preliminary ruling — Article 267 TFEU — Definition of ‘court or tribunal of a Member State’ — Criteria — Independence of the national body concerned — Irremovability of the members — Inadmissibility of the request for a preliminary ruling

Legal issue(s)

Independence of the Central Tax Tribunal, which is a body that hears and determines at first and

last instance complaints against decisions taken by certain central tax authorities.

The main legal issue was whether the Central Tax Tribunal (TEAC) is a court in terms of Article 267 TFEU and in particular whether it is independent.

Request for expedited/PPU procedures

No

National Law Sources

Ley 58/2003, General Tributaria (Law 58/2003 establishing the General Tax Code) of 17 December 2003, as amended by Ley 34/2015 of 21 September 2015 (LGT), Chapter IV entitled 'Economic-administrative complaints', in Title V thereof, entitled 'Administrative review'.

Facts of the case

Banco de Santander SA brought proceedings before the Central Tax Tribunal (Tribunal Económico-Administrativo Central, TEAC) against a recovery notice issued by the Inspección Financiera (Tax Inspectorate, Spain) concerning the deduction of goodwill resulting from the acquisition by that bank of all the shares in a holding company governed by German law, holding shares in companies established in the European Union.

The TEAC decided to submit a request for a preliminary ruling concerning the interpretation of Article 1(2) of Commission Decision 2011/5/EC of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions, implemented by Spain; the validity of the Commission's decision of 17 July 2013 to initiate the procedure laid down in Article 108(2) TFEU in relation to State aid SA.35550 (13/C) (ex 13/NN) (ex 12/CP) — Tax amortisation of financial goodwill for foreign shareholding acquisitions; and the validity of Commission Decision (EU) 2015/314 of 15 October 2014 on the State aid SA.35550 (13/C) (ex 13/NN) (ex 12/CP) implemented by Spain — Scheme for the tax amortisation of financial goodwill for foreign shareholding acquisitions.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The CJEU examined whether the TEAC is a court or tribunal for the purposes of Article 267 TFEU. Until the case Banco Santander, the CJEU had declared that the Spanish Tax Tribunals had to be regarded as a judicial body entitled to send a preliminary reference.

However, in Banco Santander, the CJEU changed its position. Tax Tribunals lack the independence requirement which entitles bodies to send a preliminary reference.

Regarding the external aspect of independence, the main problem is that their members are nominated and separated freely by the Government. In particular their removal is not limited to certain exceptional cases reflecting legitimate and compelling grounds that warrant the adoption of such a measure and therefore the principle of irremovability was not ensured.

Regarding the internal aspect of independence, there is a close connection between Tax Tribunals and the administrative authorities that they oversee, especially because these authorities can bring a special administrative appeal against the decision of the Tax Tribunals. Therefore, Tax Tribunals are not external to the public administration.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

Preliminary reference

Strategic use of judicial interaction technique (purpose aimed by the national court)

The TEAC made a preliminary reference regarding the interpretation and validity of several provisions of EU law. The TEAC reformulated the questions twice as a consequence of new developments (several judgments by the General Court and the Court of Justice).

Impact on Legislation / Policy

N/A

(Link to) full text

Not available

Author

Aida Torres Pérez, UPF
