



# Taxpayer Rights and Legal Certainty in the Digital Era

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# Taxpayer Rights and Legal Certainty in the Digital Era

- IBFD Observatory on the Protection of Taxpayers' Rights
- Art 47 of the European Charter of Fundamental Rights and the Ferrazzini case
- Is a dedicated European Tax Court desirable from the perspective of taxpayers' rights protection?

# IBFD Observatory on the Protection of Taxpayers' Rights

- [Observatory on the Protection of Taxpayers' Rights – IBFD](#)
  - Free-access data base
  - National reporters – tax administrations; tax professionals; tax academics
- Grew out of the 2015 IFA Basel Congress General Report on the “Practical Protection of Taxpayers' Rights” – available on the IFA and IBFD websites
- Identified 56 minimum standards and 45 best practices
- 2019 General Report on the Protection of Taxpayers' Rights
  - [2019 IBFD Yearbook on Taxpayers' Rights \(final\).pdf](#)
  - 43 countries included
- Identifies trends towards / away from the minimum standards and best practices

# Art 47 of the European Charter of Fundamental Rights and the Ferrazzini case

- Ferrazzini v. Italy (Application no. 44759/98) Grand Chamber (11 – 6), 12 July 2001
- Art 6 ECHR

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”
- Art 47 ECFR

Article 47 Right to an effective remedy and to a fair trial  
Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

# Art 47 of the European Charter of Fundamental Rights and the Ferrazzini case

- Article 51 Field of application
  1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.
- Article 52 Scope and interpretation of rights and principles
  3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
- Explanation to Art 47 ECFR

"In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, '*Les Verts*' v *European Parliament* (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union."

# Is a dedicated European Tax Court desirable from the perspective of taxpayers' rights protection?

- Generally: a substantial part of the CJEU's case law now involves tax issues, many of them of growing complexity – there is an argument for an expert tribunal
- BUT
- Issues of protection of taxpayers' rights are general questions, and should be coordinated with the protection of rights in other fields – that is best left to a generalist court

# Is a dedicated European Tax Court desirable from the perspective of taxpayers' rights protection?

- Possible solutions
- Article 257 TFEU

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission. The regulation establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the regulation establishing the specialised court, a right of appeal also on matters of fact, before the General Court.

- September 2019 – creation of specialised chambers of the General Court:  
...the General Court has decided to create specialised Chambers. Thus, among the ten Chambers of the General Court, four will handle staff cases and six Chambers will deal with intellectual property matters.

