

JUDGMENT OF THE COURT (Grand Chamber)

26 February 2013

(Charter of Fundamental Rights of the European Union – Field of application – Article 51 – Implementation of European Union law – Punishment of conduct prejudicial to own resources of the European Union – Article 50 – Ne bis in idem principle – National system involving two separate sets of proceedings, administrative and criminal, to punish the same wrongful conduct – Compatibility)

In Case C-617/10,

REQUEST for a preliminary ruling under Article 267 TFEU from the Haparanda tingsrätt (Sweden), made by decision of 23 December 2010, received at the Court on 27 December 2010, in the proceedings

Åklagaren

v

Hans Åkerberg Fransson,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, M. Ilešič, G. Arestis, J. Malenovský, Presidents of Chambers, A. Borg Barthet, J.-C. Bonichot, C. Toader, J.-J. Kasel and M. Safjan (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 24 January 2012,

after considering the observations submitted on behalf of:

- Mr Åkerberg Fransson, by J. Sterner, advokat, and U. Bernitz, professor,
- the Swedish Government, by A. Falk and S. Johannesson, acting as Agents,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Danish Government, by C. Vang, acting as Agent,
- the German Government, by T. Henze, acting as Agent,
- Ireland, by D. O'Hagan, acting as Agent, and M. McDowell SC,
- the Greek Government, by K. Paraskevopoulou and Z. Khatzipavlou, acting as Agents,
- the French Government, by N. Rouam, acting as Agent,

- the Netherlands Government, by C. Wissels and J. Langer, acting as Agents,
 - the Austrian Government, by C. Pesendorfer, acting as Agent,
 - the European Commission, by R. Lyal and J. Enegren, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 12 June 2012,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the *ne bis in idem* principle in European Union law.
- 2 The request has been made in the context of a dispute between the Åklagaren (Public Prosecutor's Office) and Mr Åkerberg Fransson concerning proceedings brought by the Public Prosecutor's Office for serious tax offences.

Legal context

European Convention for the Protection of Human Rights and Fundamental Freedoms

- 3 In Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in Strasbourg on 22 November 1984 ('Protocol No 7 to the ECHR'), Article 4, headed 'Right not to be tried or punished twice', provides as follows:
 1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
 3. No derogation from this Article shall be made under Article 15 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950; "the ECHR"].'

European Union law

Charter of Fundamental Rights of the European Union

- 4 Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter'), which is headed 'Right not to be tried or punished twice in criminal proceedings for the same criminal offence', reads as follows:

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.'

5 Article 51 defines the Charter's field of application in the following terms:

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. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.'

Sixth Directive 77/388/EEC

6 Article 22 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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; 'the Sixth Directive'), in the version resulting from Article 28h thereof, states:

'...

4. (a) Every taxable person shall submit a return by a deadline to be determined by Member States. ...

...

8. Member States may impose other obligations which they deem necessary for the correct collection of the tax and for the prevention of evasion ...

...'

Swedish law

7 Paragraph 2 of Law 1971:69 on tax offences (skattebrottslagen (1971:69); 'the skattebrottslagen') is worded as follows:

'Any person who intentionally provides false information to the authorities, other than orally, or fails to submit to the authorities declarations, statements of income or other required information and thereby creates the risk that tax will be withheld from the community or will be wrongly credited or repaid to him or a third party shall be sentenced to a maximum of two years' imprisonment for tax offences.'

8 Paragraph 4 of the skattebrottslagen states:

If an offence within the meaning of Paragraph 2 is to be regarded as serious, the sentence for such a tax offence shall be a minimum of six months' imprisonment and a maximum of six years.

In determining whether the offence is serious, particular regard shall be had to whether it relates to very large amounts, whether the perpetrator used false documents or misleading accounts or whether the conduct formed part of a criminal activity which was committed systematically or on a large scale or was otherwise particularly grave.'

- 9 Law 1990:324 on tax assessment (taxeringslagen (1990:324); 'the taxeringslagen') provides, in Paragraph 1 of Chapter 5:

If, during the procedure, the taxable person has provided false information, other than orally, for the purposes of the tax assessment, a special charge (tax surcharge) shall be levied. The same shall apply if the taxable person has provided such information in legal proceedings relating to taxation and the information has not been accepted following a substantive examination.

Information shall be regarded as false if it is clear that information provided by the taxable person is inaccurate or that the taxable person has omitted information for the purposes of the tax assessment which he was required to provide. However, information shall not be regarded as false if the information, together with other information provided, constitutes a sufficient basis for a correct decision. Information also shall not be regarded as false if the information is so unreasonable that it manifestly cannot form the basis for a decision.⁹

- 10 Paragraph 4 of Chapter 5 of the taxeringslagen states:

If false information has been provided, the tax surcharge shall be 40% of the tax referred to in points 1 to 5 of the first subparagraph of Paragraph 1 of Chapter 1 which, if the false information had been accepted, would not have been charged to the taxable person or his spouse. With regard to value added tax, the tax surcharge shall be 20% of the tax which would have been wrongly credited to the taxable person.

The tax surcharge shall be calculated at 10% or, with regard to value added tax, 5% where the false information was corrected or could have been corrected with the aid of confirming documents which are normally available to the Skatteverket [(Tax Board)] and which were available to the Skatteverket before the end of November of the tax year.⁹

- 11 Paragraph 14 of Chapter 5 of the taxeringslagen states:

The taxable person shall be exempted wholly or partially from special charges if errors or omissions become evident which are excusable or if it would be otherwise unreasonable to levy the charge at the full amount. If the taxable person is exempted partially from the charge, it shall be reduced to a half or a quarter.

...

In assessing whether it would be otherwise unreasonable to levy the charge at the full amount, particular regard shall be had to whether:

...

3. errors or omissions have also resulted in the taxable person becoming liable for offences under the skattebrottslagen ... or becoming the subject of forfeiture of proceeds of criminal activity within the meaning of Paragraph 1b of Chapter 36 of the Criminal Code (brottsbalken).⁹

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 12 Mr Åkerberg Fransson was summoned to appear before the Haparanda tingsrätt (Haparanda District Court) on 9 June 2009, in particular on charges of serious tax offences. He was accused of having provided, in his tax returns for 2004 and 2005, false information which exposed the national exchequer to a loss of revenue linked to the levying of income tax and

value added tax ("VAT"), amounting to SEK 319 143 for 2004, of which SEK 60 000 was in respect of VAT, and to SEK 307 633 for 2005, of which SEK 87 550 was in respect of VAT. Mr Åkerberg Fransson was also prosecuted for failing to declare employers' contributions for the accounting periods from October 2004 and October 2005, which exposed the social security bodies to a loss of revenue amounting to SEK 35 690 and SEK 35 862 respectively. According to the indictment, the offences were to be regarded as serious, first, because they related to very large amounts and, second, because they formed part of a criminal activity committed systematically on a large scale.

- 13 By decision of 24 May 2007, the Skatteverket had ordered Mr Åkerberg Fransson to pay, for the 2004 tax year, a tax surcharge of SEK 35 542 in respect of income from his economic activity, of SEK 4 872 in respect of VAT and of SEK 7 138 in respect of employers' contributions. By the same decision it had also imposed for the 2005 tax year a tax surcharge of SEK 54 240 in respect of income from his economic activity, of SEK 3 255 in respect of VAT and of SEK 7 172 in respect of employers' contributions. Interest was payable on those penalties. Proceedings challenging the penalties were not brought before the administrative courts, the period prescribed for this purpose expiring on 31 December 2010 in relation to the 2004 tax year and on 31 December 2011 in relation to the 2005 tax year. The decision imposing the penalties was based on the same acts of providing false information as those relied upon by the Public Prosecutor's Office in the criminal proceedings.
- 14 Before the referring court, the question arises as to whether the charges brought against Mr Åkerberg Fransson must be dismissed on the ground that he has already been punished for the same acts in other proceedings, as the prohibition on being punished twice laid down by Article 4 of Protocol No 7 to the ECHR and Article 50 of the Charter would be infringed.
- 15 It is in those circumstances that the Haparanda tingsrätt decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
 1. Under Swedish law there must be clear support in the [ECHR] or the case-law of the European Court of Human Rights for a national court to be able to disapply national provisions which may be suspected of infringing the *ne bis in idem* principle under Article 4 of Protocol No 7 to the ECHR and may also therefore be suspected of infringing Article 50 of the [Charter]. Is such a condition under national law for disapplying national provisions compatible with European Union law and in particular its general principles, including the primacy and direct effect of European Union law?
 2. Does the admissibility of a charge of tax offences come under the *ne bis in idem* principle under Article 4 of Protocol No 7 to the ECHR and Article 50 of the Charter where a certain financial penalty (tax surcharge) was previously imposed on the defendant in administrative proceedings by reason of the same act of providing false information?
 3. Is the answer to Question 2 affected by the fact that there must be coordination of these sanctions in such a way that ordinary courts are able to reduce the penalty in the criminal proceedings because a tax surcharge has also been imposed on the defendant by reason of the same act of providing false information?
 4. Under certain circumstances it may be permitted, within the scope of the *ne bis in idem* principle ..., to order further sanctions in fresh proceedings in respect of the same conduct which was examined and led to a decision to impose sanctions on the individual. If Question 2 is answered in the affirmative, are the conditions under the *ne bis in idem* principle for the imposition of several sanctions in separate proceedings

satisfied where in the later proceedings there is an examination of the circumstances of the case which is fresh and independent of the earlier proceedings?

5. The Swedish system of imposing tax surcharges and examining liability for tax offences in separate proceedings is motivated by a number of reasons of general interest ... If Question 2 is answered in the affirmative, is a system like the Swedish one compatible with the *ne bis in idem* principle when it would be possible to establish a system which would not come under the *ne bis in idem* principle without it being necessary to refrain from either imposing tax surcharges or ruling on liability for tax offences by, if liability for tax offences is relevant, transferring the decision on the imposition of tax surcharges from the Skatteverket and, where appropriate, administrative courts to ordinary courts in connection with their examination of the charge of tax offences?

Jurisdiction of the Court

- 16 The Swedish, Czech and Danish Governments, Ireland, the Netherlands Government and the European Commission dispute the admissibility of the questions referred for a preliminary ruling. In their submission, the Court would have jurisdiction to answer them only if the tax penalties imposed on Mr Åkerberg Fransson and the criminal proceedings brought against him that are the subject-matter of the main proceedings arose from implementation of European Union law. However, that is not so in the case of either the national legislation on whose basis the tax penalties were ordered to be paid or the national legislation upon which the criminal proceedings are founded. In accordance with Article 51(1) of the Charter, those penalties and proceedings therefore do not come under the *ne bis in idem* principle secured by Article 50 of the Charter.
- 17 It is to be recalled in respect of those submissions that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing European Union law.
- 18 That article of the Charter thus confirms the Court's case-law relating to the extent to which actions of the Member States must comply with the requirements flowing from the fundamental rights guaranteed in the legal order of the European Union.
- 19 The Court's settled case-law indeed states, in essence, that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations. In this respect the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law. On the other hand, if such legislation falls within the scope of European Union law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures (see *inter alia*, to this effect, Case C-260/89 *ERT* [1991] I-2925, paragraph 42; Case C-299/95 *Kremzow* [1997] ECR I-2629, paragraph 15; Case C-309/96 *Annibaldi* [2007] ECR I-7493, paragraph 13; Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraph 25; Case C-349/07 *Sopropé* [2008] ECR I-10369, paragraph 34; Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 72; and Case C-27/11 *Vinkov* [2012] ECR, paragraph 58).
- 20 That definition of the field of application of the fundamental rights of the European Union is borne out by the explanations relating to Article 51 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purpose of interpreting it (see, to this effect, Case C-279/09

DEB [2010] ECR I-13849, paragraph 32). According to those explanations, ‘the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law’.

- 21 Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.
- 22 Where, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (see, to this effect, the order in Case C-466/11 *Currà and Others* [2012] ECR, paragraph 26).
- 23 These considerations correspond to those underlying Article 6(1) TEU, according to which the provisions of the Charter are not to extend in any way the competences of the European Union as defined in the Treaties. Likewise, the Charter, pursuant to Article 51(2) thereof, does not extend the field of application of European Union law beyond the powers of the European Union or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties (see *Dereci and Others*, paragraph 71).
- 24 In the case in point, it is to be noted at the outset that the tax penalties and criminal proceedings to which Mr Åkerberg Fransson has been or is subject are connected in part to breaches of his obligations to declare VAT.
- 25 In relation to VAT, it follows, first, from Articles 2, 250(1) and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), which reproduce inter alia the provisions of Article 2 of the Sixth Directive and of Article 22(4) and (8) of that directive in the version resulting from Article 28h thereof, and second, from Article 4(3) TEU that every Member State is under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion (see Case C-132/06 *Commission v Italy* [2008] ECR I-5457, paragraphs 37 and 46).
- 26 Furthermore, Article 325 TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, obliges them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests (see, to this effect, Case C-367/09 *SGS Belgium and Others* [2010] ECR I-10761, paragraphs 40 to 42). Given that the European Union’s own resources include, as provided in Article 2(1) of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European [Union]’ own resources (OJ 2007 L 163, p. 17), revenue from application of a uniform rate to the harmonised VAT assessment bases determined according to European Union rules, there is thus a direct link between the collection of VAT revenue in compliance with the European Union law applicable and the availability to the European Union budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second (see, to this effect, Case C-539/09 *Commission v Germany* [2011] ECR I-11235, paragraph 72).
- 27 It follows that tax penalties and criminal proceedings for tax evasion, such as those to which the defendant in the main proceedings has been or is subject because the information concerning VAT that was provided was false, constitute implementation of Articles 2, 250(1) and 273 of Directive 2006/112 (previously Articles 2 and 22 of the Sixth Directive) and of

Article 325 TFEU and, therefore, of European Union law, for the purposes of Article 51(1) of the Charter.

- 28 The fact that the national legislation upon which those tax penalties and criminal proceedings are founded has not been adopted to transpose Directive 2006/112 cannot call that conclusion into question, since its application is designed to penalise an infringement of that directive and is therefore intended to implement the obligation imposed on the Member States by the Treaty to impose effective penalties for conduct prejudicial to the financial interests of the European Union.
- 29 That said, where a court of a Member State is called upon to review whether fundamental rights are complied with by a national provision or measure which, in a situation where action of the Member States is not entirely determined by European Union law, implements the latter for the purposes of Article 51(1) of the Charter, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised (see, in relation to the latter aspect, Case C-399/11 *Melloni* [2013] ECR, paragraph 60).
- 30 For this purpose, where national courts find it necessary to interpret the Charter they may, and in some cases must, make a reference to the Court of Justice for a preliminary ruling under Article 267 TFEU.
- 31 It follows from the foregoing considerations that the Court has jurisdiction to answer the questions referred and to provide all the guidance as to interpretation needed in order for the referring court to determine whether the national legislation is compatible with the *ne bis in idem* principle laid down in Article 50 of the Charter.

Consideration of the questions referred

Questions 2, 3 and 4

- 32 By these questions, to which it is appropriate to give a joint reply, the Haparanda tingsrätt asks the Court, in essence, whether the *ne bis in idem* principle laid down in Article 50 of the Charter should be interpreted as precluding criminal proceedings for tax evasion from being brought against a defendant where a tax penalty has already been imposed upon him for the same acts of providing false information.
- 33 Application of the *ne bis in idem* principle laid down in Article 50 of the Charter to a prosecution for tax evasion such as that which is the subject of the main proceedings presupposes that the measures which have already been adopted against the defendant by means of a decision that has become final are of a criminal nature.
- 34 In this connection, it is to be noted first of all that Article 50 of the Charter does not preclude a Member State from imposing, for the same acts of non-compliance with declaration obligations in the field of VAT, a combination of tax penalties and criminal penalties. In order to ensure that all VAT revenue is collected and, in so doing, that the financial interests of the European Union are protected, the Member States have freedom to choose the applicable penalties (see, to this effect, Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraph 24; Case C-213/99 *de Andrade* [2000] ECR I-11083, paragraph 19; and Case C-91/02 *Hannl-Hofstetter* [2003] ECR I-12077, paragraph 17). These penalties may therefore take the form of administrative penalties, criminal penalties or a combination of the two. It is only if the tax penalty is criminal in nature for the purposes of Article 50 of the

Charter and has become final that that provision precludes criminal proceedings in respect of the same acts from being brought against the same person.

- 35 Next, three criteria are relevant for the purpose of assessing whether tax penalties are criminal in nature. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur (Case C-489/10 *Bonda* [2012] ECR, paragraph 37).
- 36 It is for the referring court to determine, in the light of those criteria, whether the combining of tax penalties and criminal penalties that is provided for by national law should be examined in relation to the national standards as referred to in paragraph 29 of the present judgment, which could lead it, as the case may be, to regard their combination as contrary to those standards, as long as the remaining penalties are effective, proportionate and dissuasive (see, to this effect, inter alia *Commission v Greece*, paragraph 24; Case C-326/88 *Hansen* [1990] ECR I-2911, paragraph 17; Case C-167/01 *Inspire Art* [2003] ECR I-10155, paragraph 62; Case C-230/01 *Penycoed* [2004] ECR I-937, paragraph 36; and Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565 paragraph 65).
- 37 It follows from the foregoing considerations that the answer to the second, third and fourth questions is that the *ne bis in idem* principle laid down in Article 50 of the Charter does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of VAT, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.

Question 5

- 38 By its fifth question, the Haparanda tingsrätt asks the Court, in essence, whether national legislation which allows the same court to impose tax penalties in combination with criminal penalties in the event of tax evasion is compatible with the *ne bis in idem* principle guaranteed by Article 50 of the Charter.
- 39 It should be recalled at the outset that, in proceedings under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, inter alia, Joined Cases C-78/08 to C-80/08 *Paint Graphos and Others* [2011] ECR I-7611, paragraph 30 and the case-law cited).
- 40 The presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to this effect, inter alia *Paint Graphos*, paragraph 31 and the case-law cited).
- 41 Here, it is apparent from the order for reference that the national legislation to which the Haparanda tingsrätt makes reference is not the legislation applicable to the dispute in the main proceedings and currently does not exist in Swedish law.

42 The fifth question must therefore be declared inadmissible, as the function entrusted to the Court within the framework of Article 267 TFEU is to contribute to the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, *inter alia*, *Paint Graphos*, paragraph 32 and the case-law cited)

Question 1

43 By its first question, the Haparanda tingsrätt asks the Court, in essence, whether a national judicial practice is compatible with European Union law if it makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the ECHR and by the Charter conditional upon that infringement being clear from the instruments concerned or the case-law relating to them.

44 As regards, first, the conclusions to be drawn by a national court from a conflict between national law and the ECHR, it is to be remembered that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of the European Union's law and whilst Article 52(3) of the Charter requires rights contained in the Charter which correspond to rights guaranteed by the ECHR to be given the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law. Consequently, European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law (see, to this effect, Case C-571/10 *Kamberaj* [2012] ECR, paragraph 62).

45 As regards, next, the conclusions to be drawn by a national court from a conflict between provisions of domestic law and rights guaranteed by the Charter, it is settled case-law that a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of European Union law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such a provision by legislative or other constitutional means (Case 106/77 *Simmmenthal* [1978] ECR 629, paragraphs 21 and 24; Case C-314/08 *Filipiak* [2009] ECR I-11049, paragraph 81; and Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 43).

46 Any provision of a national legal system and any legislative, administrative or judicial practice which might impair the effectiveness of European Union law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent European Union rules from having full force and effect are incompatible with those requirements, which are the very essence of European Union law (*Melki and Abdeli*, paragraph 44 and the case-law cited).

47 Furthermore, in accordance with Article 267 TFEU, a national court hearing a case concerning European Union law the meaning or scope of which is not clear to it may or, in certain circumstances, must refer to the Court questions on the interpretation of the provision of European Union law at issue (see, to this effect, Case 283/81 *Cilfit and Others* [1982] ECR 3415).

48 It follows that European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess

fully, with, as the case may be, the cooperation of the Court of Justice, whether that provision is compatible with the Charter.

49 In the light of the foregoing considerations, the answer to the first question is:

- European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law;
- European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice, whether that provision is compatible with the Charter.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The *ne bis in idem* principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.**
2. **European Union law does not govern the relations between the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law.**

European Union law precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the Charter of Fundamental Rights of the European Union conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice of the European Union, whether that provision is compatible with the Charter.

[Signatures]