Provisional text

JUDGMENT OF THE COURT (First Chamber)

4 May 2023 (*)

(Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Article 273 – Failure to issue a fiscal cash register receipt – Charter of Fundamental Rights of the European Union – Article 50 – Principle ne bis in idem – Cumulation of administrative penalties of a criminal nature for the same act – Article 49(3) – Proportionality of penalties – Article 47 – Right to an effective remedy – Scope of judicial review relating to the provisional enforcement of a penalty)

In Case C-97/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria), made by decision of 12 February 2021, received at the Court on 16 February 2021, in the proceedings

MV – 98

v

Nachalnik na otdel 'Operativni deynosti' – Sofia v Glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb, T. von Danwitz (Rapporteur), A. Kumin and I. Ziemele, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Bulgarian Government, by M. Georgieva and L. Zaharieva, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by D. Drambozova, C. Giolito and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 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; 'the VAT Directive') and of Article 47, Article 49(3) and Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between MV – 98 and the Nachalnik na otdel 'Operativni deynosti' – Sofia v Glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite (Head of the Department 'Operational Activities' – City of Sofia, Directorate-General for 'Fiscal Supervision' within the Central Administration of the National Revenue Agency, Bulgaria), concerning a sealing measure for business premises in which MV – 98 had sold a packet of cigarettes without issuing a fiscal cash register receipt.

Legal context

European Union law

3 Under Article 2(1)(a) of the VAT Directive, the supply of goods for consideration within the territory of a Member State by a taxable person acting as such is subject to value added tax (VAT).

4 Article 273 of that directive provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

Bulgarian law

The Law on VAT

5 Article 118(1) of the Zakon za danak varhu dobavenata stoynost (Law on value added tax) of 21 July 2006 (DV No 63 of 4 August 2006, p. 8), in the version applicable to the facts at issue in the main proceedings ('the Law on VAT'), provides:

'Any person registered or not registered under this law is obliged to register and record in writing the supplies and sales made by him or her on business premises by issuing a fiscal cash register receipt generated by a fiscal memory device (cash register receipt) or a cash register receipt generated by an automatic integrated business management system (system receipt), irrespective of whether or not another tax document is requested. The recipient must receive the cash register receipt or the system receipt and keep it until he or she has left the premises.'

6 Article 185(1) and (2) of that law provides:

'(1) Failure to issue a supporting document referred to in Article 118(1) shall, for natural persons who are not traders, be sanctioned by a fine of between 100 and 500 leva (BGN) and, for legal persons and individual traders, by a financial penalty of between BGN 500 and BGN 2 000.

(2) Apart from the cases referred to in paragraph 1, any person who commits or permits the commission of an offence referred to in Article 118 or in a legislative act implementing that article shall be liable to a fine of between BGN 300 and BGN 1 000 for natural persons who are not traders, or to a financial penalty of between BGN 3 000 and BGN 10 000 for legal persons and individual traders.

Where the offence does not result in a failure to indicate tax revenue, the penalties provided for in paragraph 1 shall be imposed.'

7 Article 186 of that law provides:

'(1) The coercive administrative measure of sealing business premises for a period of up to 30 days shall be ordered, irrespective of the fines or financial penalties provided for, against any person who:

1. fails to comply with the procedure relating to

(a) the issuance of a document evidencing the sale concerned in accordance with the formalities laid down for supplies/sales.

…

(3) The coercive administrative measure pursuant to paragraph 1 shall be applied by means of a reasoned injunction issued by the revenue service or by an official authorised by that department.

(4) An appeal shall lie against the injunction referred to in paragraph 3 in accordance with the procedure laid down in the Code of Administrative Procedure.'

8 Article 187(1) and (4) of that law is worded as follows:

'(1) Where a coercive administrative measure is ordered pursuant to Article 186(1), access to the person's business premises shall also be prohibited and the property present in those premises and in the adjoining storage facilities shall be removed by the person or by his or her authorised representative. The measure shall apply to the premises where the offences were established, including where the premises are managed by a third party at the time of sealing, if that third party knows that the premises will be placed under seal. The National Revenue Agency shall publish on its website the lists of business premises to be sealed and their location. The person shall be deemed to be aware of the sealing of the premises where a notice of sealing has been permanently affixed to the premises or where information about the business premises to be sealed and their location has been published on the website of the revenue administration.

…

(4) At the request of the offender and subject to his or her providing proof of full payment of the fine or financial penalty, the authority shall terminate the coercive administrative measure imposed by it. The removal of seals shall be subject to an obligation of cooperation on the part of the offender. In the event of a repeat offence, removal of the seals from the premises shall not be permitted until one month has elapsed since its placing under seal.'

9 Under Article 188 of the Law on VAT:

'The coercive administrative measure referred to in Article 186(1) shall be provisionally enforceable under the conditions laid down in the Code of Administrative Procedure.'

10 Article 193 of that law provides:

'(1) The Law on administrative offences and penalties shall govern the establishment of offences under this Law and under the legislative acts implementing it, the adoption and enforcement of decisions imposing administrative penalties, and any appeals against such decisions.

(2) Findings of offences shall be established by the revenue services and the decisions imposing administrative penalties shall be adopted by the Executive Director of the National Revenue Agency or by the official authorised by him or her for that purpose.'

The Code of Administrative Procedure

11 Under Article 6(5) of the Administrativnoprotsetsualen kodeks (Code of Administrative Procedure) (DV No 30 of 11 April 2006), in the version applicable to the facts at issue in the main proceedings, administrative authorities must refrain from adopting acts and engaging in conduct liable to cause damage which is manifestly disproportionate in view of the aim pursued.

12 Article 60 of that code provides:

'(1) The administrative act shall comprise an order for its provisional enforcement where required by the life or health of citizens, so as to protect particularly important State or public interests where enforcement of the decision is liable to be prevented or significantly impeded, or if the delay in enforcement is likely to cause damage which is serious or reparable only with difficulty, or at the request of one of the parties – to protect one of its particularly important interests. In the latter case, the administrative authority shall require the corresponding guarantee.

(2) The provisional enforcement order shall state the grounds on which it is based.

…

(5) An appeal may be lodged against the order authorising or refusing provisional enforcement, through the administrative authority before the court within three days of notification of the order, irrespective of whether or not an appeal has been lodged against the administrative act.

(6) The appeal shall be examined as soon as possible in chamber by the Board without notification of copies of the appeal to the parties. The appeal does not suspend provisional enforcement, but the court may suspend provisional enforcement until it has given a final ruling on the appeal.

(7) When setting aside the order under appeal, the court shall rule on the substance of the case. If provisional enforcement is set aside, the administrative authority shall restore the pre-enforcement situation.

(8) An appeal may be brought against the order of the court.'

13 Under Article 128(1)(1) of that code, the administrative courts have jurisdiction to hear and determine cases seeking, inter alia, amendment or annulment of administrative acts.

14 Article 166 of that code, entitled 'Suspension of enforcement of the administrative act', provides in paragraphs 1 and 2:

'(1) An appeal shall suspend enforcement of the administrative act.

(2) At each stage of the proceedings until the judgment becomes final, the court may, at the request of the applicant, suspend provisional enforcement, authorised by a final order of the authority which adopted the act referred to in Article 60(1), if the provisional enforcement would be likely to cause the applicant damage which is serious or reparable only with difficulty. …'

The Law on administrative offences and penalties

15 Under Article 22 of the Zakon za administrativnite narushenia i nakazania (Law on administrative offences and penalties) (DV No 92 of 28 November 1969), in the version applicable to the facts in the main proceedings ('the Law on administrative offences and penalties'), coercive administrative measures may be applied to prevent and stop administrative offences and to prevent and eliminate their harmful consequences.

16 Article 27(1), (2), (4) and (5) of that law provides:

'(1) The administrative penalty shall be determined in accordance with the provisions of this Law within the limits laid down for the offence committed.

(2) In the determination of the penalty, account shall be taken of the severity of the offence, the reasons for its commission and other mitigating and aggravating circumstances, as well as the financial situation of the offender.

…

(4) Except in the cases provided for in Article 15(2), the penalties attached to offences may not be replaced by penalties of a lighter nature.

(5) Nor is it permissible to fix the penalty below the minimum penalty provided for, whether it be a fine or a temporary deprivation of the right to pursue a particular occupation or activity.'

17 Under Article 59 of that law, an appeal may be brought against an administrative penalty decision before the Rayonen sad (District Court) within one week of its notification.

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

18 MV – 98, whose main activity is the purchase and resale of goods, such as cigarettes, operates business premises for that purpose in Gotse Delchev (Bulgaria).

19 On 9 October 2019, during an inspection carried out at those business premises, the Bulgarian tax authorities found that MV – 98 had failed to record the sale of a packet of cigarettes worth BGN 5.20 (approximately EUR 2.60) and to issue the fiscal cash register receipt relating to that sale. On that basis, a finding of an administrative offence under Article 118(1) of the Law on VAT was established.

20 The tax authorities then adopted two measures. First, in accordance with Article 185 of the Law on VAT, it imposed a financial penalty on MV – 98. Second, acting pursuant to Article 186 of that law, it adopted a coercive administrative measure involving sealing the premises in question for a period of 14 days. The latter measure was accompanied by a provisional authorisation for enforcement issued by order under Article 60 of the Code of Administrative Procedure, those authorities having taken the view that such provisional enforcement was essential in order to protect the interests of the State and, in particular, those of the State Treasury.

21 MV – 98 brought an action against the sealing measure before the referring court, claiming that that measure was disproportionate in view of the minimal value of the sale involved and the fact that it was its first offence under Article 118(1) of the Law on VAT.

22 After finding that the Law on VAT transposes the provisions of the VAT Directive and constitutes an implementation of EU law, the referring court is uncertain whether the scheme established by Articles 185 and 186 of that law is consistent with Article 50 of the Charter.

23 In that regard, the referring court notes that, in the event of an offence under Article 118(1) of the Law on VAT, that law provides, in Article 185, not only for the imposition of a financial penalty but also, in Article 186, for the obligation, on the basis of the same acts, for the imposition of a coercive measure involving sealing the premises in question. That court adds that both the financial penalty and the sealing are criminal in nature for the purposes of Article 50 of the Charter and the case-law of the Court of Justice, in particular the judgment of 5 June 2012, *Bonda* (C-489/10, EU:C:2012:319). Moreover, the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) has also recognised that a placing under seal is punitive in nature.

24 The financial penalty and the placing under seal are imposed following separate and independent procedures. Furthermore, although they may be challenged by appeal, those two measures fall within the jurisdiction of different courts, namely the district court for the financial penalty and the administrative court for the sealing measure. The referring court notes, in that regard, that the Bulgarian procedural rules do not provide for the possibility of staying one set of proceedings until the other is closed, with the result that there is no coordination mechanism to ensure observance of the requirement of proportionality in relation to the seriousness of the offence committed. Thus, the scheme established in Articles 185 and 186 of the Law on VAT does not meet the criteria identified in the case-law of the Court, in particular in the judgment of 20 March 2018, *Menci* (C-524/15, EU:C:2018:197).

25 Lastly, the referring court asks whether the judicial review of a provisional enforcement order involving a placing under seal measure satisfies the requirements of Article 47 of the Charter. It explains in that regard that the court hearing an appeal against such an order may not re-examine the facts, since they are regarded as established once they appear in the report drawn up by the tax authorities concerning the check carried out at the business premises. Thus, the court hearing the case can only weigh the protection of the interests of the State against the risk of damage to the person concerned which is serious or reparable only with difficulty.

26 It is in that context that the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Article 273 of [the VAT Directive] and Article 50 of [the Charter] to be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which, for an act consisting in not having registered the sale of goods and not having recorded it by issuing a document evidencing the sale, administrative proceedings for the ordering of a coercive administrative measure and administrative penalty proceedings for the imposition of [a financial] penalty may be brought against the same person in a cumulative manner?

(1.1) If that question is answered in the affirmative, must Article 273 of [the VAT Directive] and Article 52(1) of the [Charter] be interpreted as [precluding] national legislation, such as that at issue in the main proceedings, under which, for an act consisting in not having registered the sale of goods and not having recorded it by issuing a document evidencing the sale, administrative proceedings for the ordering of a coercive administrative measure and administrative penalty proceedings for the imposition of [a financial] penalty may be brought against the same

person in a cumulative manner, taking account of the fact that that legislation does not at the same time impose on the authorities competent for conducting the two sets of proceedings and on the courts the obligation to ensure the effective application of the principle of proportionality with regard to the overall severity of all the cumulated measures in relation to the seriousness of the specific offence?

(2) If [Article] 50 and [Article] 52(1) of the [Charter] are found not to be applicable in the present case, must Article 273 of [the VAT Directive] and Article 49(3) of the [Charter] then be interpreted as precluding a national provision such as Article 186(1) of the [Law on VAT], which, for an offence consisting in not having registered the sale of goods and not having recorded it by issuing a document evidencing the sale, provides for the imposition on the same person of the coercive administrative measure of "sealing of business premises" for a period of up to 30 days in addition to the imposition of [a financial] penalty under Article 185(2) of [that law]?

(3) Is Article 47(1) of the [Charter] to be interpreted as not precluding measures introduced by the national legislature in order to safeguard the interest under Article 273 of [the VAT Directive], such as the provisional enforcement of the coercive administrative measure of "sealing of business premises" for a period of up to 30 days in order to protect a presumed public interest, where judicial protection against that measure is limited to an assessment of a comparable private interest opposing that public interest?'

Consideration of the questions referred

The first question

27 By its first question, the referring court asks, in essence, whether Article 273 of the VAT Directive and Article 50 of the Charter must be interpreted as precluding national legislation under which, for one and the same tax-related offence and as a result of separate, autonomous sets of proceedings, a financial penalty and a sealing of business premises, which measures may be challenged before different courts, may be imposed on a taxpayer.

Admissibility

28 The European Commission submits that the first question is inadmissible on the ground that the request for a preliminary ruling does not meet the requirements set out in Article 94 of the Rules of Procedure of the Court of Justice since, as regards the financial penalty imposed on the applicant in the

main proceedings, the referring court does not establish the legal and factual context of the dispute in the main proceedings in a sufficiently precise manner.

29 Under Article 94(a) and (b) of the Rules of Procedure, a request for a preliminary ruling must contain 'a summary of the subject matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based' and 'the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law'.

30 According to the Court's case-law, the information provided in orders for reference serves not only to enable the Court to provide useful answers but also to give the governments of the Member States and other interested parties the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It must be ensured that that opportunity is safeguarded, given that, under that article, only the orders for reference are notified to the interested parties (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 20 and the case-law cited).

31 In the present case, the request for a preliminary ruling contains an account of the subject matter of the dispute in the main proceedings and the relevant facts, and sets out the relevant national provisions, including those relating to the financial penalty incurred for an offence under Article 118(1) of the Law on VAT.

32 Furthermore, it is clear from the observations submitted by the governments of the Member States which participated in the preliminary ruling procedure and by the Commission that the information contained in the request for a preliminary ruling enabled them effectively to state their views on the question referred.

33 The first question is accordingly admissible.

Substance

34 As a preliminary point, it should be recalled that, according to settled case-law, administrative penalties imposed by national tax authorities in the field of VAT constitute an implementation of Articles 2 and 273 of the VAT Directive and, therefore, of EU law for the purposes of Article 51(1) of the Charter. They must therefore comply with the fundamental right guaranteed by Article 50 thereof (see, to that effect, judgment of 5 May 2022, *BV*, C-570/20, EU:C:2022:348, paragraph 26 and the case-law cited).

35 Article 50 of the Charter provides that ‘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’. Therefore, the principle *ne bis in idem* prohibits a cumulation both of proceedings and of penalties of a criminal nature for the purposes of that article for the same acts and against the same person (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 24 and the case-law cited).

36 In the present case, it is common ground that the measures at issue in the main proceedings were imposed on the same undertaking, namely the applicant in the main proceedings, for the same fact, namely a sale of cigarettes which was not recorded and documented by the issuance of a fiscal cash register receipt. Furthermore, it is apparent from the information provided both by the referring court and by the Bulgarian Government that those measures were imposed following separate, autonomous procedures.

37 In that context, in order to establish the applicability of Article 50 of the Charter, it is still necessary to examine whether the measures concerned, namely the financial penalty imposed under Article 185 of the Law on VAT, and the sealing of the business premises of the applicant in the main proceedings, imposed under Article 186 of that law, may be classified as ‘penalties of a criminal nature’.

– *The criminal nature of the measures at issue in the main proceedings*

38 As regards the assessment as to whether the proceedings and penalties concerned are criminal in nature, it must be noted that, according to the Court’s settled case-law, three criteria are relevant. The first is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty which the person concerned is liable to incur (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 25 and the case-law cited).

39 Although it is for the referring court to assess, in the light of those criteria, whether the criminal and administrative proceedings and penalties in question are criminal in nature for the purposes of Article 50 of the Charter, the Court, when giving a preliminary ruling, may nevertheless provide clarification designed to give the national court guidance in its assessment (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 27 and the case-law cited).

40 In the present case, as regards the first criterion, it is apparent from the information provided by the referring court that the procedures and measures at issue in the main proceedings are classified as administrative proceedings under national law.

41 Nevertheless, the application of Article 50 of the Charter is not limited to proceedings and penalties which are classified as 'criminal' by national law, but extends, irrespective of such a classification under domestic law, to proceedings and penalties which must be considered to have a criminal nature on the basis of the two other criteria referred to in paragraph 38 of the present judgment. The intrinsic nature of the offence in question and the degree of severity of the penalties which it is liable to entail may result in its being criminal in nature (see, to that effect, judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 30, and of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraph 88).

42 As regards the second criterion, relating to the intrinsic nature of the offence, it must be ascertained whether the penalty at issue has a punitive purpose and the mere fact that it also pursues a deterrent purpose does not mean that it cannot be characterised as a criminal penalty. It is of the very nature of criminal penalties that they seek both to punish and to deter unlawful conduct. By contrast, a measure which merely repairs the damage caused by the offence at issue is not criminal in nature (see, to that effect, judgment of 22 June 2021, *Latvijas Republikas Saeima (Penalty points)*, C-439/19, EU:C:2021:504, paragraph 89 and the case-law cited).

43 In the present case, it is apparent from the order for reference that the measures at issue in the main proceedings both pursue objectives of deterrence and punishment of VAT-related offences.

44 Although, in their written observations, the Bulgarian and Polish Governments submitted that the purpose of the sealing measure was precautionary and not punitive, it should nevertheless be noted that, according to the information provided by the referring court, that measure is not intended to enable the recovery of tax debts or the gathering of evidence or to prevent the concealment of the latter. As evidenced by Article 22 of the Law on administrative offences and penalties, that measure is intended to bring to an end administrative offences committed and to prevent further offences by preventing the trader concerned from operating his or her business premises. In that regard, the referring court states that the sealing measure pursues both a preventive and a punitive purpose, in so far as it also seeks to deter the persons concerned from failing to comply with the obligation laid down in Article 118(1) of the Law on VAT.

45 As regards the third criterion, namely the degree of severity of the measures at issue in the main proceedings, it should be noted, as pointed out by the Commission in its written observations, that those measures each appear to be of high severity.

46 In that regard, it should be made clear that the degree of severity is determined by reference to the maximum potential penalty for which the relevant provisions provide (see, to that effect, judgment of the ECtHR of 9 October 2003, *Ezeh and Connors v. The United Kingdom*, CE:ECHR:2003:1009JUD003966598, § 120).

47 A placing under seal for a period of 30 days could, particularly for an individual trader who has only one set of business premises, be categorised as severe, especially since it prevents him or her from carrying on his or her business, thus depriving him or her of his or her income.

48 As regards the financial penalty, the fact that its amount, in respect of a first offence, cannot be less than BGN 500 (approximately EUR 250) and may be as high as BGN 2 000 (approximately EUR 1 000), as well as the relationship between the VAT evaded on the sale of the packet of cigarettes at issue in the main proceedings, namely an amount of less than BGN 1 (approximately EUR 0.50), and the penalty imposed, which, according to the information provided by the Bulgarian Government, amounts to BGN 500 (approximately EUR 250), attest to the severe nature of that penalty.

49 In that context, if, as is apparent from the information provided by the referring court, the measures at issue in the main proceedings must be classified as penalties of a criminal nature, the cumulation of those penalties must be regarded as entailing a limitation of the fundamental right guaranteed in Article 50 of the Charter.

– *Justification for a possible limitation of the fundamental right guaranteed by Article 50 of the Charter*

50 According to the Court's settled case-law, a limitation of the fundamental right guaranteed in Article 50 of the Charter may be justified on the basis of Article 52(1) thereof (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 40 and the case-law cited).

51 In accordance with the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. According to the second sentence of Article 52(1), subject to the principle of proportionality, limitations on those rights and freedoms may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

52 In the present case, as regards, in the first place, the condition that any limitation on the exercise of the rights and freedoms recognised by the Charter

must be provided for by law, that condition is satisfied since the Law on VAT expressly provides, in the event of an offence under Article 118(1) thereof, for the cumulative application of a financial penalty and the sealing of the business premises concerned.

53 As regards, in the second place, respect for the essence of the fundamental right guaranteed in Article 50 of the Charter, it is apparent from the case-law of the Court that such a cumulation must, in principle, be subject to conditions which are exhaustively defined, thereby ensuring that the right guaranteed in Article 50 is not called into question as such (see, to that effect, judgment of 20 March 2018, *Menci* (C-524/15, EU:C:2018:197, paragraph 43).

54 In that regard, it must be held that automatic cumulation, which is not subject to any exhaustively defined condition, cannot be regarded as respecting the essence of that right.

55 In the present case, it is apparent from the information provided by the referring court and the Bulgarian Government that the cumulation of the two measures provided for in Article 185 and Article 186 of the Law on VAT respectively appears to be automatic, since the tax authorities are required, where one and the same offence under Article 118(1) of that law has been committed, systematically to apply both of those measures. Such a cumulation does not therefore appear to be subject to 'exhaustively defined conditions' for the purposes of the case-law referred to in paragraph 53 of the present judgment, with the result that the national legislation at issue in the main proceedings does not appear to contain the framework necessary to ensure respect for the essence of the right provided for in Article 50 of the Charter.

56 As regards, in the third place, observance of the principle of proportionality, suffice it to bear in mind that it requires that the cumulation of proceedings and penalties provided for by national legislation, such as that at issue in the main proceedings, not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 5 May 2022, *BV*, C-570/20, EU:C:2022:348, paragraph 34 and the case-law cited).

57 In that regard, the Court has stated that such national legislation must provide for clear and precise rules which, first of all, allow the individual to predict which acts and omissions are liable to entail such a cumulation of proceedings and penalties; next, ensure the procedures are coordinated so as to reduce to what is strictly necessary the additional disadvantage associated with the cumulation of proceedings of a criminal nature conducted independently; and, lastly, make it possible to guarantee that the severity of all of the penalties

imposed is commensurate with the seriousness of the offence concerned (judgment of 5 May 2022, *BV*, C-570/20, EU:C:2022:348, paragraph 36 and the case-law cited).

58 In the present case, although it is common ground that measures such as those at issue in the main proceedings are intended to ensure the correct collection of VAT and to prevent evasion, which are objectives of public interest referred to in Article 273 of the VAT Directive, and that the relevant provisions of the Law on VAT are appropriate for attaining those objectives and are both sufficiently clear and precise, it will nevertheless be for the referring court to examine whether those provisions ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of measures imposed to be reduced to what is strictly necessary and to ensure that the severity of all of those measures is commensurate with the seriousness of the offence concerned.

59 As regards the coordination of procedures, it should be noted that, although the tax authority is required, under Article 6(5) of the Code of Administrative Procedure and Article 27(2) of the Law on administrative offences and penalties respectively, to comply with the principle of proportionality when applying the penalties referred to in Articles 185 and 186 of the Law on VAT, the national legislation at issue in the main proceedings nevertheless does not authorise it to circumvent the obligation to impose either of those penalties, in view of the automatic nature of the cumulation referred to in paragraph 55 of the present judgment, or to suspend one of those proceedings until the conclusion of the other. It is apparent from the information provided by the referring court that nor does that legislation allow that authority to carry out an overall assessment of the proportionality of the cumulative penalties.

60 Furthermore, although Article 187(4) of the Law on VAT allows the offender to have the seal removed early by voluntarily paying the amount imposed under the financial penalty, there is nothing obliging the tax authority to impose that penalty whilst the sealing measure is in place. Here, in the case in the main proceedings, the financial penalty was imposed only several months after enforcement of the sealing measure, the effects of which were thus completely exhausted in the meantime.

61 Lastly, although the measures referred to in Articles 185 and 186 of the Law on VAT respectively may be challenged, those challenges must be brought before different courts, namely the district court for the financial penalty and the administrative court for the sealing measure. The referring court states, in essence, that the national legislation at issue in the main proceedings does not provide for any procedure ensuring the necessary coordination between those actions or between those courts and that the latter must each carry out an independent assessment of the proportionality of the measures referred to them.

62 As to whether the provisions at issue in the main proceedings make it possible to ensure that the severity of all of the measures imposed is commensurate with the seriousness of the offence concerned, it must be borne in mind that, in the present case, each of the measures imposed on the applicant in the main proceedings appears to present an inherently high degree of severity, as is apparent from paragraphs 47 and 48 of the present judgment. Consequently, it seems that the cumulative effect of those measures may exceed the seriousness of the offence committed by the applicant in the main proceedings and contravene the requirements of the principle of proportionality, as referred to in paragraphs 56 and 57 of the present judgment, which it is for the referring court to ascertain.

63 Thus, the answer to the first question is that Article 273 of the VAT Directive and Article 50 of the Charter must be interpreted as precluding national legislation under which a financial penalty and a measure involving sealing of business premises may be imposed on a taxpayer for one and the same offence relating to a tax obligation at the end of separate and autonomous procedures, where those measures are liable to challenge before different courts and where that legislation does not ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of those measures to be reduced to what is strictly necessary and does not ensure that the severity of all penalties imposed is commensurate with the seriousness of the offence concerned.

The second question

64 In view of the answer given to the first question, it is not necessary to adjudicate on the second question.

The third question

65 By its third question, the referring court asks, in essence, whether Article 47(1) of the Charter must be interpreted as precluding national legislation under which the court hearing an action challenging an authorisation for provisional enforcement of a measure involving the sealing of business premises, implementing Article 273 of the VAT Directive, is empowered only to examine whether there is a risk of damage to the taxpayer concerned which is serious or reparable only with difficulty, without being able to re-examine the facts established by the tax authorities justifying the imposition of such a measure.

66 In order to ensure that a request for a preliminary ruling meets the need inherent in the effective resolution of a dispute concerning EU law, the content of such a request must satisfy the requirements expressly set out in Article 94 of the Rules of Procedure, requirements of which the referring court is deemed,

in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound to observe scrupulously (see, to that effect, order of 22 June 2021, *Mitliv Exim*, C-81/20, not published, EU:C:2021:510, paragraphs 29 and 30 and the case-law cited).

67 In the present case, the Commission expresses doubts about the action brought before the referring court challenging the authorisation for provisional enforcement of the sealing of business premises at issue in the main proceedings.

68 In that regard, it is apparent from Article 60(5) of the Code of Administrative Procedure that an order authorising the provisional enforcement of a sealing measure must be the subject of an action separate from that directed against that measure.

69 The request for a preliminary ruling does not state that such a separate action has been brought before the referring court; nor does it mention the arguments which could have been put forward by the parties to the main proceedings in such a context, in particular as regards the alleged need to balance the interests of the State, on the one hand, and the risk of damage to the applicant in the main proceedings which is serious or reparable only with difficulty, on the other. The dispute in the main proceedings thus appears to relate only to the lawfulness of the sealing and not to the provisional authorisation for its execution.

70 Consequently, the third question does not satisfy the requirements of Article 94(c) of the Rules of Procedure in that, in the grounds set out therein, the referring court does not specify the link it seeks to establish between, on the one hand, the first paragraph of Article 47 of the Charter and, on the other, the subject matter of the dispute in the main proceedings.

71 In those circumstances, the third question is inadmissible.

Costs

72 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 (First Chamber) hereby rules:

Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Article 50 of the Charter of

Fundamental Rights of the European Union must be interpreted as precluding national legislation under which a financial penalty and a measure involving sealing of business premises may be imposed on a taxpayer for one and the same offence relating to a tax obligation at the end of separate and autonomous procedures, where those measures are liable to challenge before different courts and where that legislation does not ensure coordination of the procedures enabling the additional disadvantage associated with the cumulation of those measures to be reduced to what is strictly necessary and does not ensure that the severity of all penalties imposed is commensurate with the seriousness of the offence concerned.

[Signatures]

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* Language of the case: Bulgarian.