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International taxation and human rights

*“A right is not what someone gives you;
it's what no one can take from you.”*

Ramsey Clark

This article is a summary of the author's master's thesis on “European double taxation and human rights in a globalised world”¹ and in the line of the previous research, it focuses on the European level of taxpayers' rights protection. The article address the right to privacy and exchange of information, right to property and non-discrimination, as well as the problem of double taxation and the right to a fair trial on tax matters. Thus, on the basis of the European case law, the article highlights taxpayers' rights violations and indicates the necessity to design an International taxpayer bill of rights and establish an International tax court.

1. Introduction

The major development of industrial states and the need to finance global infrastructures and social services led to a need to combat international double taxation (DT), with rules such as exemption and credit methods, and, as a consequence, exchange of information in order to ensure the protection of human rights. Thus, taxpayers' rights protection is increasingly coming under the radar of public scrutiny and, as will be presented in this article, should feature more prominently also in human rights discourses.

International tax coordination is under the patronage of international organisations, in particular, the Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN), which are the main source of tax treaty clauses around the world.

¹ Stepanova I., *European double taxation conventions and human rights in a globalized world*. 2016. Available at: <https://ssrn.com/abstract=2996112>

However, taking into account the doctrine of the margin of appreciation, in a lot of cases taxpayers' protection does not give a sense of justice.

It is a suitable point to open a discussion of the extent to which international taxation might give rise to issues of compatibility with human rights norms and whether changes might be made in order to ensure better conformity with those norms since the vast majority of international tax treaties predate the main progress in human rights. The intention is to investigate how the OECD and the UN tools i.e. Model Tax Conventions (MTC), strengthen and assist taxpayer' rights in a globalised world, together with the European Union (EU) and Council of Europe (CoE) remedies. Therefore, this article discusses and suggests possible solutions in order to improve systematic protection of human and, thus, taxpayers' rights from violations with a focus on the European context.

2. Taxpayers and human rights

International, regional and national legal acts guarantee rights for taxpayers. However, the American Convention on Human Rights (ACHR), for example, contains rights similar but not identical to those in the European Convention on Human Rights (ECHR).² A good example at the regional level is how an American Taxpayer Bill of Rights (ATBR) elaborated by the Internal Revenue Service (IRS) improved the daily life of taxpayers by setting out taxpayers' fundamental rights.³ The ATBR (2014) takes several existing rights, set forth in the tax code, and sets them to ten broad categories, making it more visible and easier for taxpayers to understand these rights. The fundamental articles of the ATBR include: the right to be informed, right to quality service; rights to pay no more than the correct amount of tax; rights to be heard; rights to appeal an IRS's decision in an Independent Forum; right to finality; right to privacy; right to confidentiality; right to retain representation; right to a fair and just tax system.

In Europe, forty-seven states are bound by the ECHR, which may be regarded as the highest level of European taxpayers' protection. Nevertheless, there are three main courts which work toward improvement of taxpayers' protection: the European Court of Human Rights (ECtHR); the European Court of Justice (ECJ), which covers disputes within the EU Member States (MS) and a tribunal under the EU Arbitration Convention, which embraces 31 states of the European Economic Area (EEA).⁴

² European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

³ IRS, *Taxpayer Bill of Rights*, 2016.

⁴ However, the EEA law does not cover tax policies. There are also ad hoc arbitral tribunals, but they do not create international precedents. See Baker, P., *International arbitration in tax matters*, IBFD, 2016, p. 471-472.

When surveying cases that have applied with the ECtHR (or the ECnHR), it could be worth noticing that only a few of the provisions in the ECHR have been tried in cases related to taxation, for instance: Article 13 Right to an effective remedy; Article 14 Prohibition of discrimination; Article 1 of the First Protocol (Article 1/1) Right to property; Article 2 of the Fourth Protocol (Article 2/4) Freedom of movement. In addition there are also the provisions in the International Covenant on Civil and Political Rights (ICCPR) equivalent to the above.

At the same time this development can also be exerted through other judicial instruments under the ECHR, such as Article 4 Prohibition of slavery and forced labour; Article 5 Right to liberty and security; Article 7 No punishment without law; Article 9 Freedom of thought, conscience and religion; Article 10 Freedom of expression; Article 4 of the seventh Protocol (Article 4/7) Right not to be tried or punished twice.

3. Taxpayers' protection at the European level

3.1. Introduction

A recent analysis of tax case law indicates that the ECJ is becoming an exponentially more important source of case law regarding taxpayers' rights protection than the ECtHR.⁵ An important fact is that the ECJ determines a preliminary ruling by a request - reinforced by a "community interest" - of a domestic court of an EU MS, which in the end held the final decision.⁶ On one hand, this makes taxpayers' protection better since there is no need to exhaust all domestic remedies. On the other hand, at the EU level, taxpayers still depend on the willingness of the domestic court to refer a case to the ECJ. In Sweden, for example, the prohibition for double jeopardy was invoked in different cases and there have been judgments where the EU Charter has been invoked but the courts have decided that it is not applicable. Thus, before the *Åkerberg Fransson* (2013),⁷ the Supreme Court of Sweden decided that the EU Charter was not applicable according to Article 51.1 of the EU Charter.⁸

Notwithstanding the two European courts have adopted a "limited taxpayer-favourable" position, it is always important to have a common case-law practice of the two European courts. Thus, the ECJ has accepted some of the ECHR principles with regard to tax law, namely:⁹

⁵ Alter, J. Karen, *The European Court's Political Power*, Northwestern University, Oxford, 2009., p. 184.

⁶ Baker, P. *Some comments on European Tax Law and Human Rights. Legal remedies in European tax law*, IBFD 2009, p. 539-540.

⁷ *Åkerberg Fransson* (ECJ, C-617/10).

⁸ Charter of Fundamental Rights of the European Union (2010/C83/02); Fast, K., *Tusen skäl att förekomma istället för att förekommas – en kommentar till dubbelbestraffningsfallen i EU-domstolen och Högsta domstolen 2013*, Juridisk Tidskrift 2013-14, p. 34.

⁹ Mancini, F.G., *La tutela dei diritti dell'uomo: il ruolo della Corte di Giustizia delle Comunità Europee*, Rivista trimestrale diritto e procedura civile, 2001.

1. “The right to enjoy property and the right to pursue an occupation or business;¹⁰
2. The non-retroactivity of criminal law;¹¹
3. The right to an effective juridical protection;¹²
4. The right of defense;¹³
5. The right not to give evidence against oneself;¹⁴
6. The right to respect for private life;¹⁵
7. The right to the inviolability of the home.”¹⁶

A good step was made by reviewing the European Commissions’ Communication on DT (2011). After the European Parliament gives its opinion the Council of the European Union will adopt a new Directive on DT dispute resolution mechanisms in the European Union.¹⁷ The Directive was agreed by the EU Council in May 2017 and once adopted all the EU MSs will have to implement it into domestic law, making the proposed rules a subject of the jurisdiction of the ECJ. The Directive is important as there are already an unacceptable number of outstanding cases worth an estimated € 10.5 million.¹⁸ This is a valuable impetus for further development and changes, since the EU law for tax purposes usually takes the form of directives and decisions of the ECJ.

3.2. Double taxation

A case of DT in itself represents a great risk for infringement of the protection of property as well as the prohibition of discrimination. It is worth mentioning that a fundamental difference is made between economic and juridical DT, which are contrasting to each other. Juridical DT is often international in the sense that taxation is imposed in more than one country and economic DT generally is of domestic nature. However, at present there does not seem to exist any case law on international DT and the protection of property. A plausible situation would be if the international DT would lead to an effective tax rate of e.g. 98 %.

¹⁰ *Hauer* (ECJ, 1979); *Vaolsabbia* (ECJ, 1980); *Schrader* (ECJ, 1989).

¹¹ *Kent Kirk* (ECJ, 1984); (ECJ, 1987); *Taricco* (ECJ, 2015), as of May 2017 the Italian Constitutional Court returned the case to the ECJ. Daniele L. *Il caso Taricco e il dialogo tra le Corti. L’ordinanza 24/2017 della Corte costituzionale*. Naples, 2017.

¹² *Landeweyck* (ECJ, 1980); *Johnston* (ECJ, 1986).

¹³ *Höchst* (ECJ, 1989); *Dow Benelux* (ECJ, 1989).

¹⁴ *Orkem v. Commission* (ECJ, 1989); *Otto BV* (ECJ, 1993).

¹⁵ *National Panasonic v. Commission* (ECJ, 1980); *Adams v Commission* (ECJ, 1985).

¹⁶ Kofler G., et al., *Human Rights and Taxation in Europe and the World*, IBFD, 2011, p. 90.

¹⁷ Directive 2016/0338 (CNS): *Directive on Double Taxation Dispute Resolution Mechanisms in the European Union*, 19 May 2017.

¹⁸ Opinion Statement FC 4/2017: *On the proposed Directive on Double Taxation Dispute Resolution Mechanisms in the European Union*. CFE Fiscal Committee. 23 May 2017, pp. 6-7.

The famous case *NKM v. Hungary*¹⁹ shows that a very high level of taxation can result in the violation of the protection of property, which could also be the case if a person's income is taxed by two countries. The *NKM* case is a rather extreme example of a national situation, but it is interesting since the taxation of 98 % of the income was regarded as an infringement. It is very interesting what outcome a similar case would have if the international DT would lead to an effective tax rate of e.g. 97 %. At the same time, the *NKM* case had a social dimension as it concerned the taxation of a severance payment due to Ms. NKM having been dismissed after more than 20 years as a civil servant.²⁰ Importantly, in the case the amount of compensation for having brought the case to the ECtHR was less than applicant's actual costs for referring the case to the Court.

Problems regarding the valuation of property or other differences in assessments between different countries can also arise in the international context that could prove to be a violation of Article 1/1. An example of this is the *Jokela case*,²¹ which relates to a national situation but which could have implications on DT. In this case there was a significant discrepancy between the valuation of a property for the purpose of expropriation and the valuation being undertaken for the purposes of inheritance tax, which was considered an infringement of Article 1/1 by the ECtHR.

The ECtHR has also deemed a national anti-avoidance rule contrary to Article 1/1 since it was considered too arbitrary. This took place in *Hentrich v. France*, which might also be applicable on an international rule concerning anti-avoidance.²²

There is certainly a need for further research regarding the impact of human rights on international taxation.

3.3. Exchange of information

The issue of exchange of information and infringement of the right of privacy was considered in *FS v. Germany*.²³ The ECnHR concluded that the exchange of information, under the European Community Directive on mutual administrative assistance,²⁴ was a violation of the rights to respect for private and family life.

¹⁹ *NKM v. Hungary* (ECtHR, 2013).

²⁰ Seara, A. Q., *The Protection of taxpayers' property rights in light of the recent ECtHR jurisprudence: Anything new on the horizon or just more of the same?* Kluwer Law International, 2014, pp.218-233.

²¹ *Jokela v. Finland* (ECtHR, 2002).

²² *Hentrich v France* (ECtHR, 1995).

²³ *FS v. Germany* (ECnHR, 1996).

²⁴ The EU Council Directive, 77/799/EEC, 1977.

It could be considered to be highly possible that the Court would have reached exactly the same conclusion – should the issue instead have been treated under the Article 26 of the OECD MTC: since the taxpayer does not receive information concerning the fact that information will be exchanged there is no possibility to challenge the exchange of information under Article 26 OECD MTC. Thus, it is considered to be a subject under human rights norms and it could be also argued that Article 13 ECHR has been breached.²⁵

Afterwards, there were a number of unsuccessful challenges where taxpayers have not, under Article 8 ECHR (Right to respect for private and family life), succeeded in challenging revenue authorities which have used a mixture of other means in order to gather information or impose taxes.²⁶

Finally, in the *Berlioz Investment Fund* (2017)²⁷ the ECJ stated that taxpayers have the right to challenge a tax information exchange order, improving thus the taxpayers' protection within the EU. This case is of precedential value in the possible debate of tax authorities' information exchange requests. It should be noted that this practice of application the EU Charter to the tax cases was perhaps promoted by the adoption of a European Taxpayers' Code by European Commission (2014).²⁸ Thus, notwithstanding it is not legally binding and there is no attempt to hold the tax administration accountable to taxpayers, the purpose of the Code is to facilitate the partnership between taxpayers and tax authorities, encouraging trust, understanding and confidence of both sides regarding the aim of their relations.²⁹

In order to provide taxpayers with a wider scope of procedural rights – e.g the right to be notified of the information exchange at the stage when the requested state receives the request and also to have the right to challenge such exchange – was introduced a “*minimum standard*”. Oberson and Elgar (2014) suggest that on occasions the notifications could be postponed in the case of extraordinary circumstances (e.g. if such a notification could jeopardise the outcome of the process), – but this rule should be an exception. Thus, since there does not exist an international court on tax matters (ITC), the reviews of a Global forum on transparency and exchange of information for tax purposes (Global Forum) could affect:

1. The efficiency of the case process between Contracting States (CS);
2. Implementation of treaties by each participant;
3. Implementation of the substantive and procedural rights of the taxpayers.

²⁵ According to Baker, Article 13 of the ECHR is completely independent of the issue of the applicability of Article 6 of the ECHR. See Baker P., *Double taxation and human rights*, IBFD, 2010, p. 69.

²⁶ *Visser v. Netherlands* (ECnHR, 1987); *Bernh Larsen Holding AS and Others v. Norway* (ECtHR, 2013).

²⁷ *Berlioz Investment Fund SA* (ECJ, C-682/150).

²⁸ European Commission: *Guidelines for a Model for a European Taxpayers' Code*. Ref. Ares (2016) 6598744 - 24/11/2016.

²⁹ Drysdale D., *Putting taxpayers' charters to the test*, ICAS, 24 January 2016.

Thus, the Global Forum could analyse the degree to which various states adhere to the protection of taxpayers' rights (e.g. secrecy and data protection rules).³⁰

The chance that states' conventions, modelled on the UN or OECD MTC, would be considered to fall outside of the states' margin of appreciation could be advised to be quite minimal, seeing the wide acceptance of the MTCs. Nevertheless, this should not lead to the conclusion that the Models' provisions per se should consequently be interpreted as compliant with human rights norms. Thus, due to a state's wide margin of appreciation may occur discrimination in tax matters.³¹

Article 14 of the ECHR is a non-discrimination provision stating that persons have the right not to be discriminated with respect to enjoyment to ECHR's rights and freedoms. The article is a non-free-standing provision and it provides a general protection against discriminatory taxation only in conjunction with Article 1/1 of the ECHR. As is known to the author, only one single tax case has been trialled in the ECtHR where it has been proved that a difference in treatment between CSs persons and non-CS-persons was not justifiable.³²

Particular attention to the right to silence in the tax matters was highlighted by Baker (2012).³³ The issue of whether a taxpayer may refuse to supply information that might prove the taxpayer's guilt in a subsequent penalty or criminal prosecution has risen from time to time before the ECtHR. Therefore, in *Van Weerelt (2015)*,³⁴ the Netherlands tax authorities obtained information from the German authorities under the mutual assistance directive (77/799 - before it was repealed by a new directive 2011/16),³⁵ the information indicated that the taxpayer had an interest in a Liechtenstein foundation that had been liquidated in 2000. Thus, the Court held that the tax administration was entitled to ask the applicant to supply information that could not be obtained from any other source, for the purpose of levying taxes and interest and, thus, no violation of the *nemo tenetur* principle (the right not to incriminate oneself) enshrined in Article 6 ECHR has been found.³⁶

3.4. The right to a fair trial in tax matters

³⁰ Oberson X., Edward E., *International exchange of information in tax matters. Towards Global transparency*, 2014, p. 13.

³¹ *Burden v. UK* (Grand Chamber, 1997; ECtHR, 2008); Ergec R. *Taxation and property rights under the ECHR*. Kluwer Law International, 2011, p. 10.

³² *Darby v. Sweden* (ECtHR, 1990).

³³ Baker, P. QC, Recent Tax Cases of the European Court of Human Rights. *European Taxation*, 2012, pp. 584-586.

³⁴ *Van Weerelt v. Netherlands* (ECtHR, 2015).

³⁵ Mutual Assistance Directive (1977): Council Directive 77/799/EEC Concerning Mutual Assistance by the Competent Authorities of the Member States in the Field of Direct Taxation and Taxation of Insurance Premiums, EU Law IBFD.

³⁶ Annual Report. International Law Division, Ministry of Foreign Affairs, *International Human Rights Proceedings*, 2015, p. 12.

As is known, the ECtHR concluded that Article 6 of the ECHR is not applicable to litigation relating to the determination of a tax liability, since it refers to the “determination of civil rights and obligations”.³⁷ In *Ferrazzini v. Italy* (2001)³⁸ a majority of ECHR judges decided that Article 6 did not apply to tax litigation. The ECtHR and ECnHR have declared that the ECHR originally was drafted with the intention not to include administrative law disputes due to the public law nature of administrative law disputes. Consequently, a number of researchers criticised the ECtHR judgments, stating that some cases were not decided properly (*Wienholtz v. Germany*, *Metalco Bt v Hungary* and *Jussila v. Finland*).³⁹

Even though, a recent analysis of the ECHR case law shows improvement of the taxpayers’ protection, however, there are a lot of steps to be made to provide a better fulfilment of taxpayers’ rights. There are many problems with which the ECHR, providing justice for a wide range of taxpayers, does not encroach on all challenges of taxpayers’ discrimination within one state or between different states. For instance, in *Jafarov v. Azerbaijan* (2016),⁴⁰ there was a need to justify the accuracy of the government’s tax policy. Thus, since there were no available levers to protect the citizen - the state used taxes to extinguish the activity of civil society. Or, for example, in *Larsson* (2015),⁴¹ where the Court failed to bring to justice a co-owner after a tax surcharge had been imposed on the company.⁴² Moreover, there are a lot of cases where domestic remedies had not been exhausted or applications were inadmissible and therefore probably the ECtHR does not always receive a chance to improve taxpayers’ protection of the CoE state parties which are not members of the EU and/or the OECD.

According to Baker (2000), the right to a fair trial requires special attention. It is a topical issue in tax matters and includes: the right to a reasonable length of proceedings, the right to obtain a decision having a judicial nature, the right to an independent and impartial judge, the right to a public hearing together with equality between the parties in the inquiry, the right of silence, and the right to legal assistance and fullness of juridical protection.⁴³ However, the lack of protection in the ECHR regarding tax procedures may be complemented by the protection provided for by Article 47 in the EU Charter (for EU MSs). The latter makes no reference to certain kinds of

³⁷ *Bendenoun v. France* (ECnHR, 1994).

³⁸ *Ferrazzini v. Italy* (ECtHR, 2001).

³⁹ *Wienholtz v. Germany* (ECtHR, 2010); *Metalco Bt v. Hungary* (ECtHR, 2011); *Jussila v. Finland* (ECtHR, 2006); Kofler G., Maduro, M. et al., 2015, p. 18; Baker P. QC, 2010, pp. 568-569; Baker P. QC, 2011, pp. 253-255.

⁴⁰ *Jafarov v. Azerbaijan* (ECtHR, 2016).

⁴¹ *Larsson v. Sweden* (ECtHR, 2015).

⁴² Baker P. QC, *Some recent decisions of the European Court of Human Rights on Tax Matters (and Related Decisions of the European Court of Justice)*. European Taxation August 2016, p. 342-351.

⁴³ Backer, P. QC, *Taxation and the European Convention on Human Rights*, British Tax Review, 2000, no 4, p. 4.

procedures as long as it is related to the application of EU law.⁴⁴ It is worth noting, for example, that the corresponding conditions in the ACHR adhere to fiscal disputes.⁴⁵

A somewhat diverse approach to public law procedures can be seen under the ICCPR when taking into account the jurisprudence in recent years before the Human Rights Committee.⁴⁶ Thus, for a long time it was stated that should a taxpayer be in a dispute regarding penalties and/or liabilities, it is highly probable that the taxpayer might have a better case under international human rights instruments, e.g. the ICCPR.⁴⁷

The new Article 25(5) of the OECD Model may be somewhat of a remedy to some of the shortcomings in the mutual agreement procedure, though it is not specified in the article the participation of the taxpayer in the proceeding. However, there exist several questions associated with Article 6 and competent authority proceedings.

In cases where a tax or a tax penalty have been considered a crime according to Article 6, this can in turn make Article 4/7 ECHR applicable, which provides the principle of double jeopardy.⁴⁸

Finally there are some new developments taking place at the EU level. For example, in 2016-2017 a package was designed with proposals on the elimination of DT and improvement of the existing framework. However, in this way, DT and failure to adhere to taxpayers' rights remain a systematic problem at the CoE level and, thus, this article argues for the possibility of amending a new Protocol to the ECHR on the elimination of DT and likewise strengthening of the taxpayers' rights. The proposed new protocol would include the main articles on tax principles relating to human rights.

4. Tax coordination between states and human rights protection

International tax coordination is under the patronage of international organisations,⁴⁹ however, much depends on the state itself. Thus, before the OECD published a practice note on

⁴⁴ Greggi, M., *Giusto Processo e Diritto Tributario Europeo: Applicazione e Limiti del Principio (il Caso Ferrazzini)*, Rivista di diritto tributario, 2002, p. 565; *Garage Molenheide (ECJ, C-401/95 and C-47/96)*; *Distillerie Fratelli Cipriani (ECJ, C395/00)*.

⁴⁵ Cfr. supra footnote 16, pp. 17-18.

⁴⁶ *Lederbauer v. Austria (ICCPR, 2007)*.

⁴⁷ Cfr. supra footnote 16, pp. 17-18.

⁴⁸ *K.S. and K.S. AG v. Switzerland (ECnHR, 1991)*; *H.B. v. Switzerland (ECtHR, 1995, 1991)*; *Liset v. France (ECtHR, 1996)*; *Ponsetti och Chesnel v. France (ECtHR, 1997 and 1998)*; *Lucky Dev v. Sweden (ECtHR, 2010)*. Brokelind C., *Swedish national report on taxpayers' rights protection*, Warsaw: Kluwer, 2009, pp. 328-348. See also *Rosenquist v. Sweden (ECtHR, 2004)*; *Zolotukhin v. Russia (ECtHR, 2009)*; Baker P. QC., *Taxation and the European Convention on Human Rights*, *Brittish Tax Review*, 2000, n. 4., p. 30; Press release ECHR 347 (2014).

⁴⁹ For example, for the OECD 142 members, the Global Forum, Tax Talks, G20 Summits as well as standards and guidance are of great importance.

taxpayers' rights and obligations (1990)⁵⁰ France has issued the Taxpayers' Charter (1987), which applies to all relationships between taxpayers and the tax authorities and includes provisions making the Charter legally binding.⁵¹ Furthermore, researchers from around the world argued that a Taxpayers' Charter of rights and obligations regarding taxation as a new legislation is likely to be a new model to follow and it is always positive for the relations between taxpayers and tax agencies.⁵²

Deserves attention an idea to establish a European tax ombudsman – following the USA, Canada, Australia and India – and, thus, improve taxpayers' legal protection at the EU level. However, it is clear that the establishment of a separate European tax ombudsman and/or European tax court would require a heavy legislative and political procedure including an amendment to the European community treaty.⁵³

Interestingly, as soon as multilateral DTCs started to go into effect, Bühler (1998) sought an ITC to be created and it was argued that the main objective for such a court would be to interpret the convention itself - since an objective body for interpretation is considered to be of utmost importance for a multilateral treaty. The court should, furthermore, have to be a multilateral instrument, rather than a conciliation board which on bilateral basis would gather whenever disputes between states would occur on taxation. It was also suggested that the judges should hold true independence in order to guarantee that the tax administration should not be able to influence the appointment of the judges. In addition, in order to prevent the tax administration from influencing the appointment of judges, it was suggested that the true independence of the judges should somehow be guaranteed. Despite these discussions about the need for the ITC, since 1961, after the OECD was founded, the topic has not been further discussed in this context on an official level.⁵⁴ Thus, there is a need of European/International supervision on tax matters related to DT since the non-discrimination as understood by international human rights law is treated differently in different jurisdictions.

One could argue that the likelihood of the establishment of the ITC is quite unlikely and that it consequently is more probable that already existing international tribunals such as the ECJ, ECtHR or the International Court of Justice (ICJ) will continue to settle tax cases. It can be argued that multilateral disputes on the interpretation of double taxation conventions (DTCs) should be referred to the ICJ. However, not a single case has been recognised in which the ICJ

⁵⁰ *Taxpayers' Rights and Obligations – A Survey of the Legal Situation in the OECD Countries*, OECD, 1990.

⁵¹ CFE Forum 2008: *The Taxpayer's Charter – a Model for Europe?* Stephane Austry, Associe', CMS Bureau Francis Lefebvre, Paris, considered the topic of "France: Taxpayers' Charters".

⁵² Fast K., Taxpayers' Charter – ett alternativ för Sverige?, *Skattenytt* 2009, pp. 721-733.

⁵³ Pistone P., *Legal Remedies in European Tax Law*, IBFD 2009, p. 179, pp. 219-220.

⁵⁴ The question of the creation of an ITC was also raised in 1947 and in 1960. See Lang M., et al., *Multilateral Tax Treaties. New Development in International Tax Law*. Kluwer Law International, 1998, pp.167-169.

has decided a tax dispute over the interpretation of a DTC.⁵⁵ Thus, perhaps the question whether tax court has to be an independent institution or an integrated part to the European courts (and ICJ) depends on how this issue will be implemented in practice: independence of judges in relation to the economic policies of the states and staff competence since tax cases affect criminal, civil, environmental law etc.

Furthermore, it is argued by many of the mentioned scholars (e.g. Baker, Bentley, Sawyer, Maisto) that there is a need for a fully pervasive legislation and legal instruments (courts) on preserving the rights of taxpayers. Possible solutions may activate the current treaties under the UN and/or OECD which could be further developed, for example, with the amendment of an equivalency to the ATBR. An amendment of a binding European and/or International taxpayers' bill of rights (ITBR) to the current UN and/or OECD legal framework would have the benefit of already existing and functioning surveillance of legislation under EU Charter or the ECHR. However, history shows us a lack of political will towards such measures due to the complexity of these decisions and different domestic backgrounds. For example, even within the EU the problem of DT still exists regarding the direct income and heritage. Therefore, making a 'European taxpayer bill of rights' binding by way of appropriate measures – in the form of a Protocol to the ECHR or a directive on the EU level – would be good solutions for both taxpayers and contracting European states.

5. Conclusions and possible outcomes

Tempus exigit mutationem and if it violates human rights relevant measures should be taken even if the national legislation or international legal acts does not include situations of, for example, DT. Otherwise, it means the right to a fair trial is not being implemented properly and everything has to start from the beginning, with a definition of the concept of equity in taxation. Thus, as practice shows, there are questions that require a better understanding of the national taxation system and solving problems of a purely fiscal nature. The need of an international body for establishing justice in tax matters - administrative matters - is obvious. In this way, the ITC on the basis of an ITBR could play a key role in enhancing the effectiveness of the process for the benefit of participating states. All the cases presented in the article provide a good rationale to establish the Court. It would not be a tool for harmonisation of tax law and tax systems, changing domestic policies, but the court would work towards the improvement of taxpayers' protection worldwide. The ITC could also play an instrumental role in each state's

⁵⁵ *ibid.*, pp. 167-169.

implementation and, most importantly, the procedural and substantive rights of taxpayers which are so difficult to put into practice nowadays.

Therefore, it is important to solve the problems, faced by taxpayers every day, and provide appropriate solutions, such as:

- Adopt a new directive on DT dispute resolution mechanisms in the EU (2017);
- Make the European taxpayers' code legally binding;
- Development of an updated draft proposal for the Common Consolidated Corporate Tax Base (2016), which will help to avoid juridical DT within the EU in the future;
- Complete framework of DTCs between the EU MSs.
- Adopt a new protocol to the ECHR, expanding the rights that are protected by the Convention.
- Establish an ITC on the basis of an ITBR as a guarantee for taxpayers, making states responsible for violations of taxpayers' rights.
- Create and expand an international tax case law database, available for everyone.⁵⁶

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⁵⁶ Maisto G., Äimä K., Helminen M., *Multilingual Texts and Interpretation of Tax Treaties and EC Tax Law*, IBFD, 2005, p. 331-332.