



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 16395/18
ITALMODA MARIANO PREVITI and Others
against the Netherlands

The European Court of Human Rights (Fourth Section), sitting on
23 September 2025 as a Chamber composed of:

Lado Chanturia, *President*,
Jolien Schukking,
Faris Vehabović,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Rădulețu,
András Jakab, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 April 2018,

Having regard to the observations submitted by the respondent
Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Italian Government
(Article 36 § 1 of the Convention) and by the Governments of the Czech
Republic and the Kingdom of Spain, the European Commission and CFE Tax
Advisers, who were granted leave to intervene by the President of the Section
(Article 36 § 2 of the Convention),

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns the issuing of supplementary tax assessments on the ground that the conditions for eligibility for value added tax (“VAT”) benefits were not met. The applicants complained that these measures amounted to a “penalty” without a legal basis in national law, in violation of Article 7 of the Convention.

THE FACTS

2. A list of the applicants is set out in the appendix. They were represented by Mr P. van Hagen, a lawyer practising in Breda.

3. The Government of the Kingdom of the Netherlands (“the Government”) were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

The circumstances of the case

4. The facts of the case may be summarised as follows.

5. The applicant company, Schoenimport Italmoda Mariano Previti (“Italmoda”), was a registered partnership (*vennootschap onder firma*) that was created in 1994 and dissolved with effect from 31 December 2000. The other four applicants (“the partners”) were at the time members of the partnership. One of them, Mr Stefano Adrian Previti, became Italmoda’s liquidator (*vereffenaar*) and introduced the company’s complaint on its behalf.

6. A fifth member of the registered partnership, Mr Mariano Previti, died in 2013; his name appears in the Court’s account of the facts, although he was not at any time an applicant.

7. The applicants acquired goods from vendors in the Netherlands and Germany for resale to clients in Italy. In respect of those goods the applicants applied the “zero rate” (*nultarief*) for intra-Community supplies (sales carried out within the European Union) – that is, they paid no VAT in the Netherlands, on the assumption that such resales were exempt from VAT (see paragraph 57 below).

1. Administrative proceedings

8. On 1 November 2002 the Dutch Tax and Customs Administration (*Belastingdienst* – “the TCA”) notified Italmoda that it had received information that client companies in Italy, to which Italmoda had purportedly supplied goods in 1999 and 2000, were inactive, untraceable and/or had not declared that they had received those goods. The TCA indicated that Italmoda had thus not complied with the conditions for applying the exemption

(*vrijstelling*). Italmoda was also found liable for payment of VAT in respect of goods that it had acquired from German suppliers.

9. By two decisions of the same day, the TCA issued supplementary tax assessments (*naheffingsaanslagen*) and ordered Italmoda to pay:

(i) in respect of the year 1999, VAT amounting to 273,306 euros (EUR), plus interest and a fine; and

(ii) in respect of the year 2000, VAT of EUR 968,190, plus interest.

10. On 13 November 2002 Italmoda lodged an objection (*bezwaar*) against those decisions, submitting that it had in fact delivered the above-mentioned goods to its clients in Italy and had otherwise complied with the conditions for applying the zero rate, and that it could not be held liable for payment of the tax owed by its clients.

11. An audit by the TCA of 18 November 2005 concerning Italmoda's VAT liability for 2000 found further irregularities that had been uncovered by TCA's own investigation and through cooperation with, among others, the Italian tax authorities. The audit noted that client companies in Italy – to which Italmoda had declared that it had sold goods – were in fact owned or directed by three of Italmoda's partners (see paragraph 5 above) while “strawmen” (*stromannen*) were the legally registered owners or directors. Those client companies had later been wound up and had ceased trading without having first declared any intra-Community acquisitions and without having paid VAT in Italy. The audit referred to them as “missing traders” (or “poppers” [*ploffers*], as a colloquial expression for “businesses that go ‘pop’”).

12. The audit described the fraud as follows: (i) applying the zero rate, Italmoda delivered goods to missing traders in Italy; (ii) charging VAT, the missing traders sold the goods to a third party which was represented by two of Italmoda's partners (the missing traders were able to increase the profit margin on their sales because they did not declare those transactions and did not pay VAT in Italy); and (iii) the third party received a refund from the Italian tax authority for the VAT charged.

13. The audit noted further that Italmoda had declared input tax (*invoerbelaasting*) and had claimed a corresponding tax deduction (by which a tax authority deducts from another tax liability the amount of tax that is due) in respect of goods that it had acquired from Germany for the purpose of subsequent delivery to Italy. It was established, however, that the goods in question had been delivered directly from Germany to Mr Mariano Previti (see paragraph 6 above) in Italy. Italmoda had thus not been entitled to a VAT deduction in respect of these intra-Community acquisitions.

14. In the light of these findings, the audit concluded that Italmoda was still liable for payment of VAT in the Netherlands. It recommended the issuing of another supplementary tax assessment for 2000, in addition to the one that had been issued in 2002 (see paragraph 9 above, under (ii)).

15. On 15 December 2005 the TCA issued an additional supplementary tax assessment of EUR 183,393 for VAT due for the year 2000, plus interest and a fine.

16. On 6 January 2006 Italmoda lodged an objection with the TCA against the latter decision, reiterating the arguments that it had raised against the TCA's decisions of 1 November 2002.

17. On 13 and 17 July 2006 the TCA issued decisions in respect of Italmoda's objections (see paragraphs 10 and 16 above). It upheld its decisions of 1 November 2002 in respect of the years 1999 and 2000 (see paragraph 9 above), except for the fine. It also upheld the decision of 15 December 2005 in respect of the year 2000 (see paragraph 15 above), including the fine.

2. First round of domestic judicial proceedings

(a) Regional Court

18. On 31 July 2006 Italmoda lodged an appeal with the Regional Court (*rechtbank*) of North Holland against the TCA's decisions of 13 and 17 July 2006.

19. On 22 April 2008 the Regional Court declared the appeal largely unfounded. It noted that the findings of the investigation indicated that VAT fraud had been committed in Italy and that the applicants had not shown that these findings were incorrect nor that they had no knowledge of it. The court found that the applicants knew, or at least should have known, of this VAT fraud and that they were therefore not entitled to the exemption. The appeal was declared well-founded on another point (not relevant for the present proceedings).

(b) Court of Appeal

20. On 29 May 2008 Italmoda lodged a further appeal with the Court of Appeal (*gerechtshof*) of Amsterdam against the Regional Court's judgment of 22 April 2008. It submitted, in essence, that since the fraud had allegedly been committed in Italy, it was not clear on what grounds the Netherlands tax authorities had felt entitled to issue supplementary tax assessments.

21. In the appellate proceedings the legal issue was whether the nature of the fraud found should stand in the way of the zero rate being applied and the VAT paid being refunded; it was no longer in dispute that the fines in respect of 1999 and 2000 (see paragraphs 9 and 15 above) should not have been imposed.

22. In its judgment of 12 May 2011, the Court of Appeal considered that it followed from the case-law of the Court of Justice of the European Union ("CJEU") that litigants cannot invoke Community law in cases of fraud, abuse or tax evasion. If this risk exists, it must be assessed whether there are grounds for deviating from the normal VAT rules (on intra Community

transactions). The principles of proportionality, legal certainty and fiscal neutrality did not preclude this where the supplier's involvement in the fraud, abuse or tax evasion had been established.

23. Turning to the facts of the case, the appellate court noted that it had been established that all relevant acquisitions had been taxed in Italy and that the Italian tax authorities had refused to allow the deduction in respect of these acquisitions on the grounds of fraud, and that the fraud had taken place exclusively in Italy. It further noted that the applicants had stated at the hearing – which had not been contested by the TCA – that they had always provided the correct information to the Dutch tax authorities, both with regard to the identity of their customers and with regard to the transport of the goods, and that they had never otherwise misrepresented the transactions in question. In those circumstances, the Court of Appeal held that, given the system of the Sixth Directive (see paragraphs 55-57 below) and the Turnover Taxation Act (see paragraphs 49-51 below), a deviation in the case of the applicants from the normal VAT rules applicable on intra Community transactions was not justified. The court took no position regarding Italmoda's alleged involvement in the fraud.

24. The Court of Appeal declared Italmoda's appeal well-founded, quashed the Regional Court's judgment of 22 April 2008 (see paragraph 19 above), the TCA's decisions on Italmoda's objections (see paragraph 17 above) and the TCA's supplementary tax assessments and fines (see paragraphs 9 and 15 above).

(c) Supreme Court

25. On 21 June 2011 the Deputy Minister of Finance (*Staatssecretaris van Financiën*), in his capacity as head of the TCA, lodged an appeal on points of law with the Supreme Court (*Hoge Raad*). In his ground for appeal the Deputy Minister submitted that the Court of Appeal had erred in law when, without taking a position on Italmoda's alleged involvement in fraud and wrongly assuming that the fraud had taken place in Italy only, it had held that there had been no reason to deny the application of the zero rate and the refund of VAT in respect of Italmoda's intra-Community supplies and intra-Community acquisitions. The Deputy Minister argued that the appellate court had interpreted the CJEU's case-law on fraud too narrowly.

26. On 19 April 2012 the Advocate General to the Supreme Court submitted an advisory opinion, recommending that the appeal on points of law be dismissed.

27. On 22 February 2013 the Supreme Court gave its judgment.

28. Unlike the Court of Appeal, the Supreme Court found that the TCA had in fact asserted during the appellate proceedings that Italmoda had given a misleading representation of the transactions in question. The Court of Appeal's decision could therefore not be based on the finding that Italmoda's

statement to the contrary, had been uncontested. The Deputy Minister's complaint succeeded in this respect.

29. The Supreme Court went on to note that according to case-law of the CJEU, the zero rate or the right to the deduction or a refund of VAT are not applicable in the event of fraud or an abuse of which the VAT payer in question was aware. The appeal on points of law thus also succeeded on the ground that the Court of Appeal had taken no position on Italmoda's alleged involvement in fraud.

30. The Supreme Court further noted that, during the years at issue, the application of the zero rate or the right to a deduction was not subject, under Dutch law, to the condition that the taxable person had not knowingly been involved in VAT evasion or fraud. The question accordingly arose as to whether participation in such evasion or fraud precluded the application of the zero rate or the right to the deduction or a refund of VAT, notwithstanding the absence of a provision to that effect in national law. In other words, whether the principle of European law laid down in the case-law of the CJEU according to which a taxpayer involved in VAT fraud or abuse cannot claim the exemption for intra-Community supplies and the right to deduct, had direct effect. The Supreme Court decided to stay the proceedings and to refer the following questions to the CJEU for a preliminary ruling:

“(1) Should the national authorities and courts, on the basis of the law of the European Union, refuse to apply the exemption [*vrijstelling*] pertaining to an intra-Community supply, the right to the deduction [*aftrek*] of VAT in respect of the purchase of goods which, after the purchase, were dispatched to another Member State, or the refund [*teruggaaf*] of VAT pursuant to the application of the second sentence of [Article 28b(A)(2)] of the Sixth Directive, when, on the basis of objective data, it has been established that there has been VAT evasion in respect of the goods concerned, and that the taxable person knew, or should have known, that it was participating therein, if national law does not make provision for refusal of the exemption, the deduction or the refund under those circumstances?

(2) If Question 1 is answered in the affirmative, should the aforementioned exemption, deduction or refund also be refused if the VAT evasion occurred in another Member State (other than the Member State from which the goods were dispatched) and the taxable person was, or should have been, aware of the VAT evasion, while the taxable person in the Member State from which the goods were dispatched has met all the (formal) conditions which national statutory provisions impose on the exemption, the deduction or the refund, and it has always provided the tax authorities in that Member State with all the required information in respect of the goods, the dispatch and the persons acquiring the goods in the Member State of arrival of the goods?

...”

3. *The preliminary ruling of the CJEU*

31. In his Opinion of 11 September 2014, the Advocate General to the CJEU observed, *inter alia*, that a refusal to grant rights stemming from the VAT system is not, as Italmoda had claimed, a “penalty in the substantive sense” which, under Article 7 of the Convention and Article 49 of the Charter

of Fundamental Rights of the European Union, must be provided for by an earlier legislative provision. As the good faith of the taxable person is a prior condition for the acquisition of those rights, their refusal has to be regarded, not as a penalty, but as an element inherent in the VAT system.

32. The CJEU handed down its preliminary ruling on 18 December 2014 (*Schoenimport "Italmoda" Mariano Previti*, C-131/13, C-163/13 and C-164/13, EU:C:2014:2455) which included the following reasoning (some references omitted):

“41. By its first question, the referring court asks, in essence, whether national authorities and courts must refuse a taxable person which knew, or should have known, that it was participating, in the context of intra-Community supplies, in a transaction involving VAT evasion, the right to deduct input VAT under Article 17(3) of the Sixth Directive, the right to an exemption under Article 28c(A)(a) of that directive, and the right to a refund of VAT under Article 28b(A)(2) of that directive, in the event that national law does not contain provisions providing for such a refusal.

...

48. ... [T]he central function of the right of deduction provided for in Article 17(3) of the Sixth Directive, in the VAT mechanism designed to ensure complete neutrality of the tax, does not preclude that right from being refused to a taxable person in the event of participation in fraud (see ...). Similarly, the specific function of the right to a VAT refund, intended to ensure the neutrality of VAT, cannot preclude that right from being refused to a taxable person in such a situation.

49. In the light of the foregoing considerations, it is, in principle, the responsibility of the national authorities and courts to refuse the benefit of the rights laid down by the Sixth Directive when they are claimed fraudulently or abusively, irrespective of whether those rights are rights to a deduction, to an exemption or to a VAT refund in respect of intra-Community supplies, as at issue in the case in the main proceedings.

50. [T]hat is the position not only where tax evasion has been carried out by the taxable person itself but also where a taxable person knew, or should have known, that, by the transaction concerned, it was participating in a transaction involving evasion of VAT carried out by the supplier or by another trader acting upstream or downstream in the supply chain (see ...).

51. As regards the question whether the national authorities and courts are also required to issue such a refusal if there are no specific provisions to that effect in the national legal order, it should be noted, in the first place, that the Netherlands Government insisted ... that there were no lacunae in Netherlands law with regard to the transposition of the Sixth Directive and that the prevention of fraud applies as a general principle of law in the application of the national provisions transposing that directive.

52. In this respect, it must be recalled that it is for the national court to interpret the national law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive, which requires that national court to do whatever lies within its jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by that law (see ...).

53. It is consequently for the referring court to ascertain whether there are, in Netherlands law, as the Netherlands Government submits, rules of law, whether a

provision or a general principle prohibiting abuse of rights, or other provisions relating to tax evasion or tax avoidance which might be interpreted in accordance with the requirements of EU law in regard to combatting tax evasion, such as those noted in paragraphs 49 and 50 of the present judgment (see ...).

54. However, should it transpire, in the second place, that, in this case, national law contains no such rules which may be interpreted in accordance with the requirements of EU law, it cannot nevertheless be inferred from this that the national authorities and courts would, in circumstances such as those at issue in the main proceedings, be prevented from satisfying those requirements and, accordingly, refusing a benefit derived from a right laid down by the Sixth Directive in the event of fraud.

...

56. ... [R]ules of EU law cannot be relied on for abusive or fraudulent ends as the application of those rules cannot be extended to cover abusive, let alone fraudulent, practices (see ...).

57. Accordingly, in so far as abusive or fraudulent acts cannot form the basis of a right under EU law, the refusal of a benefit under ... the Sixth Directive does not amount to imposing an obligation on the individual concerned under that directive, but is merely the consequence of the finding that the objective conditions required for obtaining the advantage sought, under the directive as regards that right, have, in fact, not been satisfied (see ...).

58. Consequently, the present case concerns rather the impossibility for the taxable person to claim a right under the Sixth Directive, the objective criteria for the granting of which have not been satisfied either because of fraud affecting the transaction carried out by the taxable person itself or because of the fraudulent nature of a chain of transactions as a whole, in which that taxable person participated, as has been stated in paragraph 50 of the present judgment.

59. In such a situation, however, express authorisation cannot be required in order for the national authorities and courts to be able to refuse a benefit under the common system of VAT, as that consequence must be regarded as being inherent in the system.

...

61. Finally, since refusal of the benefit of a right stemming from the common system of VAT in the case where a taxable person is involved in fraud is merely the consequence of a failure to satisfy the conditions required in that respect by the relevant provisions of the Sixth Directive, that refusal is not, as the Advocate General observed ... [see paragraph 31 above], in the nature of a penalty or a sanction within the meaning of Article 7 of the [Convention] or Article 49 of the Charter of Fundamental Rights of the European Union (see to that effect, judgments in *Emsland-Stärke*, C-110/99, EU:C:2000:695, paragraph 56; *Halifax and Others*, EU:C:2006:121, paragraph 93; and *Döhler Neuenkirchen*, C-262/10, EU:C:2012:559, paragraph 43).

...”

33. In the light of all these considerations, the CJEU answered the first question as follows:

“[The] Sixth Directive ... must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of [VAT], even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should

have known, that, by the transaction relied on as a basis for the right concerned, it was participating in evasion of [VAT] committed in the context of a chain of supplies.”

34. The CJEU answered the second question as follows:

“[The] Sixth Directive ... must be interpreted as meaning that a taxable person who knew, or should have known, that, by the transaction relied on as a basis for rights to deduction of, exemption from or refund of VAT, that person was participating in evasion of VAT committed in the context of a chain of supplies, may be refused the benefit of those rights, notwithstanding the fact that the evasion was carried out in a Member State other than that in which the benefit of those rights has been sought and that taxable person has, in the latter Member State, complied with the formal requirements laid down by national legislation for the purpose of benefiting from those rights.”

4. Second round of domestic judicial proceedings

(a) Supreme Court (resumed proceedings)

35. On 1 February 2016 the Advocate General to the Supreme Court submitted an advisory opinion, recommending that the Deputy Minister’s appeal on points of law be declared well-founded. The Advocate General noted that the CJEU had ruled that in the event of fraud, not all the conditions for the application of the exemption or the right to the deduction or refund of VAT were met. He concluded that the case should be remitted to an appellate court to determine whether the applicants in the present case knew or should have known that they had participated in VAT fraud within the setting of a chain of supplies. Unlike the CJEU, the Advocate General believed that if the refusal of the exemption and the rights to the deduction or refund of VAT would lead to double VAT taxation of the same taxpayer in respect of the same taxable transaction, this would in fact amount to a “penalty”.

36. The Supreme Court gave judgment on 18 March 2016.

37. Taking account of its judgment of 22 February 2013 (see paragraphs 27-30 above) and the CJEU’s preliminary ruling of 18 December 2014 (see paragraphs 32-34 above), the Supreme Court held that as a result of implementing the Turnover Tax Act in compliance with Union law, the Dutch authorities were to deny the benefit of the rights to exemption from, or deduction or refund of VAT, as laid down in that Act, to the taxable person who knew or should have known of fraud in the supply chain. The Supreme Court added that this was also the case if, within the context of a supply chain, the VAT fraud in question had taken place not in the Netherlands but in another EU member State.

38. In the light of that finding, the Supreme Court held that the Court of Appeal’s judgment of 12 May 2011 reflected an incorrect understanding of the law; the appellate court ought to have established whether Italmoda had been involved in the VAT fraud. It allowed the appeal on points of law, quashed the judgment of the Amsterdam Court of Appeal and remitted the case to a different court of appeal.

(b) Court of Appeal

39. In a written submission to the Court of Appeal of The Hague of 20 April 2016, the TCA asserted that it had been established that Italmoda had taken part in VAT evasion. The TCA also submitted that it was undisputed that two of Italmoda's partners had been convicted for fraud in Italy in that connection. It concluded that the supplementary tax assessments should be reformulated as follows:

(i) VAT due in respect of the year 1999 was to be set at EUR 232,601;

(ii) VAT due in respect of the year 2000 was to be set at EUR 799,525.

The TCA also concluded that the additional supplementary tax assessment in respect of the year 2000 was to be cancelled.

40. For their part, the applicants argued that the TCA had failed to prove that all the supply chains in question had been fraudulent. Nor was it proven that the applicants had had (or ought to have had) any knowledge of the fraud. Moreover, the ruling of the CJEU, inasmuch as it purported to remove the denial of the rights stemming from the VAT system from the ambit of criminal law, contradicted Article 49 of the Charter of Fundamental Rights of the European Union and Article 7 of the Convention.

41. The Court of Appeal of The Hague gave judgment on 4 November 2016. Its procedural starting point – since it was not contested – was that the transactions that had prompted the levying of VAT, had actually been carried out. It further noted that the calculations of the VAT amounts – EUR 232,601 in respect of 1999 and EUR 799,525 in respect of 2000 (see paragraph 39 above) – were no longer in dispute; the only issue remaining was whether the supplementary tax assessments were justified.

42. In assessing the dispute, the Court of Appeal took as its starting point that, according to the ruling of the CJEU, a taxable person must be denied the benefits of the VAT system in the context of an intra-Community supply if he knew or should have known that he was participating in VAT fraud in the context of a chain of supplies. With reference to the judgment of the Regional Court (see paragraph 19 above), the Court of Appeal found it established that there had been a chain of transactions aimed at carrying out VAT fraud. Based on the established facts and circumstances, it reached the conclusion that some of Italmoda's partners (and thus Italmoda itself) had been the brains behind the fraud (or, at the very least, had been aware of it), and that they had either set it up or helped to carry it out. The court noted that Italmoda had admitted its involvement in the fraud during one of the hearings that had culminated in the Court of Appeal's judgment of 12 May 2011.

43. As regards Italmoda's assertion that a penalty had been imposed without a domestic legal basis, the Court of Appeal dismissed it as unsubstantiated. In that connection the Court of Appeal also noted that the Supreme Court had not found it necessary to devote any attention to this question, and that the CJEU had held in its *Italmoda*-ruling that both in this case and in general, the denial of VAT rights had not constituted and did not

constitute a punitive measure. In any event, the Court of Appeal considered independently that in the light of case-law criteria developed on this point, no punitive measure had been imposed.

44. In sum, the Court of Appeal dismissed as unfounded Italmoda's appeal against the Regional Court's judgment of 22 April 2008 (see paragraph 19 above) on the above-mentioned grounds. It further quashed that judgment as regards the VAT amounts and set the supplementary tax assessments at the amounts which had been proposed in the TCA's written submission (see paragraph 39 above).

(c) Supreme Court

45. On 23 November 2016 Italmoda lodged an appeal on points of law with the Supreme Court. It argued, in so far as relevant to the present application, that there had been a violation of Article 7 of the Convention. In that connection it submitted that the Court of Appeal could and should have examined this matter itself instead of deferring to the CJEU, precisely because that was the responsibility of the domestic courts under the ultimate supervision of the European Court of Human Rights, and that the application of the "*Engel criteria*" (*Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22) would lead to the finding that a criminal sanction had in fact been imposed.

46. On 20 October 2017 the Supreme Court gave a judgment in which it quashed the Court of Appeal's decision because of a minor technical issue relating to costs. The remainder of Italmoda's appeal on points of law was summarily dismissed.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law

47. Article 104 of the Constitution of the Kingdom of the Netherlands provides that taxes imposed by the State shall be levied pursuant to an Act of Parliament and that other levies imposed by the State shall be regulated by an Act of Parliament.

48. Under section 20(1) of the General Act on State Taxes (*Algemene wet inzake rijksbelastingen*) a supplementary assessment for tax shall be made if tax in respect of which the taxpayer is under an obligation to file a declaration is not paid.

49. The 1968 Turnover Tax Act (*Wet op de omzetbelasting 1968*), as amended, and delegated legislation adopted under this Act transposed the relevant provisions of Council Directive 77/388/EEC (see paragraph 55-57 below) into national law.

50. Under item (a) (6) of Schedule II to the 1968 Turnover Tax Act (*Tabel II behorende bij de Wet op de omzetbelasting 1968*), the zero rate was

applicable to goods transported to another member State, provided that those goods were subject in that other member State to tax on the intra-Community acquisition of those goods.

51. As in force at the relevant time, Section 12 § 1 of the 1968 Turnover Tax Implementation Decree (*Uitvoeringsbesluit omzetbelasting 1968*) provided that the entitlement to the application of the zero rate in respect of intra-Community acquisitions (as referred to in Schedule II to the Turnover Tax Act) was applicable only if it was evidenced by records and documents.

B. European Union law

1. European Union's Charter of Fundamental Rights

52. Article 49 § 1 of the Charter of Fundamental Rights of the European Union provides that no one shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national law at the time when it was committed.

53. Article 52 § 3 of the Charter provides that the meaning and scope of those Charter rights that correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms shall be the same as those laid down by the Convention.

54. Article 53 of the Charter provides that nothing in the Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party (including the Convention) and by the Member States' constitutions.

2. Council Directive 77/388/EEC of 17 May 1977

55. The principle of neutrality (which underpins the European VAT system) allows a person undertaking taxable supplies to deduct input tax, so that the chain of supply is “neutral”, and the tax is ultimately paid by the final consumer.

56. At the relevant time, the right to deduct input tax was set out by Article 17 of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes, as amended by Council Directive 95/7/EC of 10 April 1995 (“the Sixth Directive”), which provides:

“...

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) [VAT] due or paid within the territory of the country in respect of goods or services supplied or to be supplied to him by another taxable person;

...

(d) [VAT] due pursuant to Article 28a(1)(a).

3. Member States shall also grant to every taxable person the right to the deduction or refund of the [VAT] referred to in paragraph 2 in so far as the goods and services are used for the purposes of:

...

(b) transactions which are exempt pursuant to Article ... 28c(A) ...”

57. Supplies of goods between taxable persons from different Member States are based on the principle of exemption in the Member State of supply (known as “intra-Community supply”), with retention of the right to deduct input tax, and taxation in the Member State of acquisition (known as “intra-Community acquisition”) at the rate in force in that State. This type of exemption is also called “zero taxation”. As intra-Community acquisition immediately gives rise to a right to deduct, the amount of tax due in respect of such acquisition is zero. It is only after a taxable output supply has been made that the purchaser will be liable to pay the tax charged in connection with that supply. These rules stem from, *inter alia*, Articles 28a, 28b and 28c of the Sixth Directive, which provide as follows:

Article 28a

“1. The following shall also be subject to [VAT]:

(a) intra-Community acquisitions of goods for consideration within the territory of the country by a taxable person acting as such or by a non-taxable legal person where the vendor is a taxable person acting as such who is not eligible for the tax exemption provided for in Article 24 and who is not covered by the arrangements laid down in the second sentence of Article 8(1)(a) or in Article 28b(B)(1).

...

3. ‘Intra-Community acquisition of goods’ shall mean acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods by or on behalf of the vendor or the person acquiring the goods to a Member State other than that from which the goods are dispatched or transported.

...”

Article 28b

“(A) Place of the intra-Community acquisition of goods

1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.

2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a(1)(a) shall, however, be deemed to be within the territory of the Member State which issued the [VAT] identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in accordance with paragraph 1.

If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be reduced accordingly in the Member State which issued the [VAT] identification number under which the person acquiring the goods made the acquisition.

For the purposes of applying the first subparagraph, the intra-Community acquisition of goods shall be deemed to have been subject to tax in accordance with paragraph 1 when the following conditions have been met:

- the acquirer establishes that he has effected this intra-Community acquisition for the needs of a subsequent supply effected in the Member State referred to in paragraph 1 and for which the consignee has been designated as the person liable for the tax due in accordance with Article 28c(E)(3),

- the obligations for declaration set out in the last subparagraph of Article 22(6)(b) have been satisfied by the acquirer.

...”

Article 28c

“(A) Exempt supplies of goods

Without prejudice to other Community provisions and subject to conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions provided for below and preventing any evasion, avoidance or abuse, Member States shall exempt:

- (a) supplies of goods, as defined in Article 5, dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory referred to in Article 3 but within the Community, effected for another taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods.

...”

58. The Sixth Directive was repealed and replaced by Council Directive 2006/112/EC of 28 November 2006.

3. *EU case-law*

59. The CJEU – or Court of Justice of the European Communities before it – has issued several rulings concerning non-compliance with the Sixth Directive in the context of carousel frauds or other situations involving a trader who, having incurred liability for VAT, failed to discharge that liability with the tax authorities.

60. In all such cases the CJEU has held, essentially, that the right of a taxable person carrying out transactions to deduct input VAT could be affected by the fact that, in the chain of supply of which those transactions formed part, another prior or subsequent transaction was vitiated by VAT fraud of which that taxable person knew or had means of knowing (see, for example, judgment of 21 February 2006 in *Halifax and Others*, cited above; judgment of 12 January 2006 in *Optigen and Others*, C-354/03, C-355/03 and

C-484/03, EU:C:2006:16; and judgment of 6 July 2006 in *Recolta Recycling*, C-439/04 and C-440/04, EU:C:2006:446).

61. The CJEU gave a similar ruling in the case of *Mahagében and Dávid* (judgment of 21 June 2012 in, C-80/11 and C-142/11, 21 June 2012, EU:C:2012:373) concerning Council Directive 2006/112/EC of 28 November 2006 (see paragraph 58 above). It ruled that the Directive precludes a national practice whereby the tax authority refuses a taxable person the right to deduct, from the VAT which he is liable to pay, the amount of the VAT due or paid in respect of the services supplied to him on the grounds that the issuer of the invoice (or one of his suppliers) acted improperly, unless that authority has established that the taxable person concerned knew (or ought to have known) that the issuer of the invoice (or another trader acting earlier in the supply chain) had committed fraud.

COMPLAINT

62. The applicants complained that the issuing of supplementary VAT assessments was a “penalty” without a legal basis in domestic law, in violation of Article 7 of the Convention, which provides:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national ... law at the time when it was committed. ...”

THE LAW

Applicability of Article 7 of the Convention

1. The parties’ submissions

(a) The Government

63. The respondent Government submitted that the supplementary tax assessments did not constitute a “penalty” within the meaning of Article 7 of the Convention and that this provision was therefore inapplicable.

64. Relying on the criteria from the case of *Engel* (cited above) the Government noted that, as a matter of domestic law, the measure complained of was one that qualified as an administrative measure and had been taken in implementation of the Turnover Tax Act – not under criminal law. Intra-Community supplies were taxed at the zero rate only if the relevant conditions were met; if it was found that this had not been the case, the appropriate tax that had to be paid was levied through supplementary tax assessments. The refusal of a benefit under the Sixth Directive was merely the consequence of the finding that the objective conditions required for obtaining the advantage sought had not been met (the Government referred to paragraph 57 of the CJEU’s preliminary ruling – see paragraph 32 above).

65. As regards the nature of the measure, the Government submitted that the tax provisions at question were not aimed at all citizens or taxable persons; rather, they applied only to a specific target group – namely, enterprises wishing to qualify for the zero VAT rate in respect of an intra-Community transaction. In addition, the Government, relying on *Société Oxygène Plus v. France* ((dec.), no. 76959/11, § 49, 17 May 2016), argued that the measure complained of was not “punitive” in nature as it was not intended to deter reoffending; rather, it served to redress a situation in which the specific requirements for applying the zero rate and VAT deduction had not been met, resulting in too little tax being paid.

66. As to the severity of the measure, the Government noted (with reference to *Société Oxygène Plus* (ibid., § 50) that the amounts of additional tax levied were not in themselves decisive and submitted that, although the amounts in the present case were considerable, they were based on a standard calculation of the tax owed. The impugned measure’s nature and severity thus did not indicate that it constituted a punitive sanction.

(b) The applicants

67. As regards the applicability of Article 7 of the Convention, the applicants, relying on the *Engel* criteria, submitted that the supplementary tax assessments issued on them had constituted a “penalty” for the purposes of that provision.

68. In that connection, they submitted that the tax fraud committed, for which blame was imputed to them, had been criminal in nature; indeed, prosecutions had in fact been brought against two actual fraudsters in Italy. From this it followed that the supplementary tax assessments issued had amounted to “penalties”.

69. The applicants further submitted that the legal rule created by the CJEU in respect of the present case (see paragraphs 32-34 above) was not aimed at any specific category of persons, but at all citizens in their capacity as taxpayers subject to VAT.

70. As regards the nature of the supplementary tax assessments, the applicants argued that they had not been restorative in nature; rather they had been punitive in nature and intended to serve as a deterrent. In that connection they noted that it was not the case that tax had been levied that would normally have been due in any case. They further noted that while the CJEU had presented the issue as merely constituting a consequence of the failure to satisfy the conditions governing the right to a VAT deduction or exemption, it remained the case that the denial of that right had been by its nature subjective and dependent on the finding of guilt (which constituted an important characteristic of a penalty). Moreover, the application of the rule set out by the CJEU in its ruling in the present case had led to more tax being levied than would otherwise have been owed had the fraud not occurred. This too demonstrated that the purpose of the refusal of VAT rights had not been

solely compensatory but had rather been intended to serve as a deterrent and had been punitive in nature.

71. Lastly, the applicants noted that the potential consequences in the event of failure to pay were severe: deprivation of liberty in the form of coercive imprisonment (*lijfsdwang*) might be ordered; moreover, given the fact that the sums that might be demanded were based on turnover, those sums were, in theory at least, limitless.

2. Submissions of the intervening third parties

(a) The Czech Government

72. The Government of the Czech Republic took the view that Article 7 was not applicable. They submitted that since the criteria for the applicability of Article 7 were the same as those for the applicability of Article 6 under its criminal head, no “punitive penalty” or surcharge had been imposed. The matters complained of therefore fell squarely within the ambit of tax law and, for the purposes of the Convention, found their justification in the second paragraph of Article 1 of Protocol No. 1.

(b) The Italian Government

73. The Italian Government submitted that Article 7 was not applicable. Echoing the ruling of the CJEU, they argued that the refusal to grant to a taxable person a benefit under the Sixth Directive was merely the consequence of the finding that the objective conditions required for obtaining that benefit had not been satisfied. The aim of such a refusal was neither deterrent nor punitive in nature; rather, it was to rectify a situation in which too little tax had been paid. As regards the degree of severity, the measure complained of had not entailed the deprivation of freedom or of a right but had rather regulated the consequences of non-compliance with VAT tax rules. The present case concerned a purely tax-related matter; the only peculiarity of the case was that the right to deduct VAT had been refused not only to the actual perpetrator of the fraud in question but also to a “transferor”, who had knowingly participated in the fraud.

(c) The Spanish Government

74. The Spanish Government submitted that the measure complained of did not fall within the scope of Article 7. They pointed to the need to ensure the effectiveness of the VAT system by countering fraud. Referring to the ruling of the CJEU – and specifically to the principle that a right could not be based on fraudulent or abusive acts – they submitted that a refusal to grant an exemption or deduction in respect of a transaction that was based on a fraudulent or abusive act was merely a consequence inherent in the VAT system itself.

75. Referring to Article 1 of Protocol No. 1, they further argued that the measure in question had been aimed at securing the payment of taxes – a field in which the Contracting State enjoyed a wide margin of appreciation. It had not been disproportionate, given that the requirements of the community prevailed over the expectations of a taxable person who had known, or should have known, that they were participating in fraud.

76. Lastly, they submitted that the measure in question had not been imposed following a criminal conviction, and nor was it in any way associated with a procedure that could have a repressive or punitive effect. It was classified as an administrative measure in domestic law, not as a criminal sanction. Neither, by its very nature, did it constitute a criminal sanction. The disputed measure had been aimed at restoring a state of legality by correctly applying the laws relating to the payment of VAT; that was all the more important given the fact that the VAT system required that the taxation system be harmonised between different jurisdictions.

77. As to the seriousness of the measure, they argued that the refusal to grant the exemption or deduction sought had not been prompted by the applicants' turnover, but solely by the levels of liability for VAT involved in the intra-Community operation (specifically, the levels of tax liability pertaining to intra-Community transactions in which blatant anomalies had been detected). The potential consequences were therefore not unlimited, as the applicants had argued.

(d) The European Commission

78. As regards the applicability of Article 7 of the Convention, the European Commission submitted that the measure in question had not followed a conviction for a criminal offence. The refusal of a benefit under the Sixth Directive had merely been a consequence of the finding that the objective conditions required for obtaining the advantage sought under that directive as regards that right had in fact not been satisfied. As to the severity of the measure, the refusal to grant a deduction, exemption or refund in respect of VAT had not constituted a surcharge or a fine but had merely reflected the fact that no rights had been acquired.

(e) CFE Tax Advisers Europe

79. CFE Tax Advisers Europe – an umbrella association of national tax institutes, associations and tax advisers in Europe – submitted that the measure in question constituted a “penalty” within the meaning of Article 7 of the Convention.

80. CFE argued that the CJEU's ruling in respect of the present case – namely, that a trader selling goods to another EU member State would lose both the entitlement to recover input tax paid to their supplier and the VAT exemption on the sale of goods to their customer – was clearly incompatible

with the neutrality of the VAT system and constituted a double penalty. This was particularly harsh on traders who had not actually been aware of any fraud. Traders might find that the authorities refused their right to deduct the VAT on their purchase, or they might in practice be unable to recover the VAT from their customer. If the trader's customer turned out to be the fraudster, the trader would be unlikely to recover any VAT at all.

81. CFE further noted that if the fraud happened in a different member State (as in the present case), then the double penalty outlined in the previous paragraph would not compensate the member State enforcing the claims for any loss suffered. Instead, it would benefit a member State that suffered no loss; the latter member State would thus realise a windfall. The member State might, moreover, refuse the right to deduct VAT from other traders in the supply chain who were within its jurisdiction, thus magnifying its windfall from the fraud.

82. The combination of these “penalties” was, in the submission of CFE Tax Advisers Europe, disproportionate. The “penalties” punished traders who were at fault – either because they had had actual knowledge of fraud or because they ought to have been aware of fraud. It deprived those traders of rights they would have had under the literal wording of the legislation in the Netherlands.

3. *The Court's assessment*

83. The Court notes at the outset that, while the applicants complained that the supplementary tax assessments breached Article 7 of the Convention (see paragraph 62 above), the Government disputed the applicability of that provision in the present case. It is therefore for the Court to examine first whether the issuing of the supplementary tax assessments constituted a “penalty” within the meaning of that provision.

84. The Court reiterates that the concept of a “penalty” in Article 7 of the Convention, like that of “criminal charge” in Article 6 § 1 of the Convention, has an autonomous meaning. To render the protection offered by this Article effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a “penalty” within the meaning of this provision (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06, 34163/07 and 19029/11, § 210, 28 June 2018; *Welch v. the United Kingdom*, 9 February 1995, § 27, Series A no. 307-A; and *Jamil v. France*, 8 June 1995, § 30, Series A no. 317-B).

85. The wording of Article 7 § 1, second sentence, of the Convention indicates that the starting-point in any assessment of the existence of a “penalty” is whether the measure in question is imposed following a decision that a person is guilty of a criminal offence. However, other factors may also be taken into account as relevant in this connection, namely the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure;

and its severity (see *G.I.E.M. S.R.L. and Others*, cited above, § 211; *Welch*, cited above, § 28; *Jamil*, cited above, § 31; *Kafkaris v. Cyprus* [GC], no. 21906/04, § 142, ECHR 2008; *M. v. Germany*, no. 19359/04, § 120, ECHR 2009; *Del Río Prada v. Spain* [GC], no. 42750/09, § 82, ECHR 2013; and *Société Oxygène Plus*, cited above § 47). However, the severity of the measure is not decisive in itself, since many non-criminal measures of a preventive nature may have a substantial impact on the person concerned (*Welch*, cited above, § 32; *Société Oxygène Plus*, cited above, § 50; and *Van der Velden v. the Netherlands* (dec.), no. 29514/05, ECHR 2006 XV).

86. The criteria for “penalty” are thus directly transposed from the three *Engel* criteria identified by the Court to determine whether proceedings are “criminal” within the meaning of Article 6 of the Convention: the classification of the offence at the domestic level, the nature of the offence, and the nature and severity of the penalty that may be imposed (*Engel and Others*, cited above, §§ 82-83). The Court has already had occasion to consider that if the facts do not fall within the scope of “criminal matters” within the meaning of Article 6 of the Convention, they can no longer be classified as a “penalty” within the meaning of Article 7 (see, for example, *Bowler International Unit v. France*, no. 1946/06, § 67, 23 July 2009).

87. In the present case, the Court notes, first of all, that the supplementary tax assessments complained of did not follow a ruling that the applicants were guilty of a criminal offence. Likewise, these tax assessments were not issued pursuant to a statutory provision threatening punishment for wrongdoing; they were characterised under national law as administrative measures based on tax law and were reviewed by courts with jurisdiction in matters of taxation. However, this is only one of the factors to be taken into account in determining whether a measure amounts to a penalty. The Court will therefore turn to the other above-mentioned criteria.

88. As regards the nature of the measures at issue, which constitutes a factor of greater importance, the Court reiterates that it has had regard to the group of persons at whom the rule infringed was directed, the type and nature of the interests protected and the existence of a deterrent and punitive purpose (see, for instance, *Saqueti Iglesias v. Spain*, no. 50514/13, § 25, 30 June 2020). In this connection the Court notes and considers the following.

89. The impugned measures do not concern the imposition of tax fines or surcharges but the obligation to pay reassessed VAT liabilities. The supplementary tax assessments were issued on the grounds that Italmoda had not complied with the conditions for applying the exemption from, or deduction or refund of VAT for intra-Community supplies. The VAT-system for such intra-Community supplies is regulated by the Sixth Directive (see paragraphs 56-57 above). The Court agrees with the Government (see paragraph 65 above) that the supplementary tax assessments were the result of a tax regime that applied only to a target group – namely, taxable persons wishing to benefit from this VAT-system.

90. Further, the Court has emphasised in several cases the need to prevent and curb any fraudulent abuses of this VAT-system and, ultimately, to preserve the financial stability of that system in the public interest (see, *mutatis mutandis*, “*Bulves*” *AD v. Bulgaria*, no. 3991/03, § 65, 22 January 2009; *Atev v. Bulgaria* (dec.), no. 39689/05, § 27, 18 March 2014; and *Formela v. Poland* (dec.), no. 31651/08, § 121, 5 February 2019). More generally, Court has held that the prevention of tax evasion falls within the notion of public interest (*Hentrich v. France*, 22 September 1994, § 39, Series A no. 296-A), and so does securing payment of a tax debt (*Rustamkhanli v. Azerbaijan*, no. 24460/16, § 58, 4 July 2024).

91. The Court notes that in its judgment of 4 November 2016 the Court of Appeal established that some of Italmoda’s partners (and thus Italmoda itself) had actual or constructive knowledge of the fraud, and that they had either set it up or helped to carry it out (see paragraph 42 above). Such knowledge of and participation in VAT fraud cannot be reconciled with allowing the applicants to successfully claim their entitlement to the VAT rights in question (see also *Société Oxygène Plus*, cited above, § 49). In that connection the Court also notes that the CJEU held that a refusal of VAT rights is an expression of the principle that rules laid down by EU law cannot be relied on in pursuit of abusive or fraudulent ends and must be regarded as a consequence of the finding that the objective conditions required for obtaining those VAT rights have, in fact, not been satisfied (see paragraph 32 above). Moreover, it cannot be maintained that Italmoda was found liable for the tax obligations of persons or entities outside its power and in relation to which they had no means of monitoring or securing compliance (compare and contrast “*Bulves*” *AD*, cited above, §§ 54, 57 and 69-71; *Business Support Centre v. Bulgaria*, no. 6689/03, § 24, 18 March 2010; and *Atev*, cited above, § 31, all within the context of Article 1 of Protocol No. 1).

92. On the basis of these considerations, the Court finds that the supplementary tax assessments, which were issued to collect tax in respect of which Italmoda turned out to be under an obligation to pay, did not pursue a punitive aim; they were issued on the mere grounds that Italmoda had not complied with the conditions for applying the exemption from, or deduction or refund of VAT for intra-Community supplies (see also *Société Oxygène Plus*, cited above, § 49).

93. As regards the degree of the severity of the measures, the Court notes that it has previously held that payment of sums limited to the amount of the tax reassessment were not of a criminal nature (*Mieg de Boofzheim v. France* (dec.), no. 52938/99, ECHR 2002-X; and *Poniatowski v. France* (dec.), no. 29494/08, 6 October 2009). The Court further notes that although the amounts of the supplementary tax issued on Italmoda were considerable, they were based on a standard calculation of the tax owed. In the light of the foregoing, the Court considers that the severity of the impugned measures

does not render them “criminal” in the autonomous sense in which that term is applied by the Convention.

94. Having regard to the above considerations, the Court finds that the proceedings at hand do not fall within the scope of “criminal matters” within the meaning of Article 6 of the Convention (see *Nazarev and Others v. Bulgaria* (dec.), nos. 26553/05, 25912/09, 40107/09 and 12509/10, 18 March 2014; and *Formela*, cited above, § 128) and that, for the same reasons, the supplementary tax assessments issued on Italmoda cannot be considered as amounting to a “penalty” within the meaning of Article 7 of the Convention. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 October 2025.

Simeon Petrovski
Deputy Registrar

Lado Chanturia
President

APPENDIX

List of applicants:

Application no. 16395/18

No.	Name	Year of creation / birth	State of registration / Nationality	Registered seat / Place of residence
1	ITALMODA MARIANO PREVITI	1994	the Netherlands	Bergen (N.H.)
2	Giovanna Maria Adriana PREVITI	1971	Italian, Dutch	Daverio
3	Maurizio Aart PREVITI	1973	Italian, Dutch	Bergen (N.H.)
4	Stefano Adrian PREVITI	1969	Dutch	Bergen (N.H.)
5	Maria Everdina PREVITI-VAN GINKEL	1947	Italian, Dutch	Bergen (N.H.)