References to the ECJ in Tax Dispute Cases: Current Situation and Problems

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Dr. Gediminas Valantiejus
Senior Associate (Advocate) at ILAW Legal | Associate Professor at Mykolas Romeris University

9 articles

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In recent weeks (late January 2020), we have received references from several national tax litigation bodies in the Republic of Lithuania (Tax Disputes Commission, Supreme Administrative Court of Lithuania) to the European Court of Justice (CJEU) for preliminary rulings in tax cases [1]; [2]. Accordingly, these trends in national practices have become quite a widely discussed and topical issue [3]. Against this background, it is appropriate to discuss more broadly the current situation regarding national tax dispute resolution authorities' referrals to the ECtHR and its evolution, which have also recently been the subject of scientific studies and articles [4]; [7].

It should be noted that, to date, national courts have used the right to refer questions to the ECJ for the interpretation of EU legislation to tax disputes which have raised questions about the application and interpretation of EU tax law as defined in EU directives. This tendency was particularly noticeable due to (harmonized) indirect taxes, such as VAT or excise duties, which are regulated by EU directives in EU Member States (see, for example, C-126/14, *Sveda v. State Taxation) Inspectorate under the Ministry of Finance of the Republic of Lithuania* , C-638/17 *, Skonis and Smell UAB v State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania* , etc.).

applied in the EU Member States) and regulated by EU regulations (U
Combined Nomenclature (CN) and etc.) that need to be applied directl
presumed that such an application could raise more questions, as it is n
and other authorities to interpret and disclose their content directly (the
the real situation in Lithuania is quite different from that of many other
including the neighboring countries (the Baltic States). For example, d
National courts in the Republic of Latvia have referred to the ECJ 11 ti
- Cases C-382/09, C-558/11, C-233/15, C-547/13, C-199/09 (on the tar
goods), C-571/12, C-286/15, C-154/16 (on customs procedures), C-46/

goods). In addition, the courts of other new Member States, which join
Lithuania or even those that joined the EU at a later stage, were active
ECJ for customs duties [5]. Traditionally, the courts of the Federal Rep
Kingdom of the Netherlands and the United Kingdom have also often l
CJEU in the last decade [6]. the courts of the Member States which joi
Lithuania or even of the Member States which subsequently joined the
the courts of the Federal Republic of Germany, the Kingdom of the Ne
United Kingdom have also often been referred to the CJEU in the last
of the Member States which joined the Republic of Lithuania or even of the Member States which subsequently joined the EU [5]. Traditionally, the courts of the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom have also often been referred to the CJEU in the last decade [6].

The practice of the Republic of Lithuania in this area remains rather controversial, as national courts have until this year in cases concerning customs matters to the ECJ since their accession to the EU in 2004. by 2020 basically never called. This can be explained by a number of circumstances, in particular the fact that, as mentioned above (M. Bobek, K. Beal), the practice of other countries has often been to appeal to the ECJ specifically for the validity of EU regulations imposing trade defense duties. On the other hand, in Lithuania, this type of dispute was usually not due to the legality of the anti-dumping regulations themselves, but to the factual circumstances on which the level of duty depends, such as the country of origin of the goods [7]. There were undoubtedly cases among these disputes,*a priori* , the question was raised as to the lawfulness of the calculation of the anti-dumping duty itself (without calling into question the factual basis for the calculation of the duty) - see paras. e.g. Administrative case no. A-444-2863 / 2011. It is noteworthy that until 2020, national courts have also never referred to the ECJ in cases concerning the tariff classification of goods and the interpretation of the EU CN, although it is the uniform tariff classification of goods which forms the legal basis for the EU Common Customs Tariff [8]. Such national practices in this area are also quite different from those in other EU Member States, *inter alia*which joined the EU at the same time, together with the Republic of Lithuania, for example in the Republic of Latvia, where national courts have often initiated referrals to the ECJ on various questions of interpretation of the CN, cf. e.g. Case C-382/09, *Stils Met SIA v. State Procurement Service* ; C-558/11, *SIA Kurcums Metal v. State Revenue Service*). Similar trends can be identified in the analysis of case law of other new EU Member States, such as the Republic of Romania [9].

import VAT, excise duties, namely Case C-250/11 *AB Lithuania railu*
Territorial Customs and Customs Department under the Ministry
Republic of Lithuania. The present case essentially concerned only g
concerning the interpretation of import duty relief. In the present case,
essentially of the view that EU tax legislation (in the present case in th
customs duties on imports) should be interpreted in such a way as not u
exemptions to non-EU taxable entities. intentions (goals). Thus, in the
ECtHR saw the possibility of dealing with such charges (*inter alia*cus
simply calling into question the validity of the relevant EU legislation,
prohibiting its explicit interpretation, whereby a doubt or the taxable it
tax advantage must be guided by a literal interpretation of the relevant
legislation; the teleological aspects of its adoption.

Considering the above, it can be stated that this still rather episodic and
cooperation between national courts (in the Republic of Lithuania) and
cases may (and still may) be caused by shortcomings in national legal
legal culture of interinstitutional cooperation. problems [10] or even in
of the legal community about specific areas of legal regulation. This w
the fact that, according to the author's research, the majority of tax litigation cases in which requests for access to the ECJ were rejected were essentially without reference to current ECJ customs practice, referring to other categories of ECJ cases or omitting any reference at all. to the case law of the ECJ [7]. Therefore, although this situation is changing with today's practice [1]; [2], we can emphasize that certain systematic problems of judicial (national and ECJ) cooperation in tax litigation cases remain, especially in customs cases. The author considers it necessary to ensure proper cooperation between the ECJ and the national courts in this field, and to intensify the alignment of national case-law with the jurisprudence developed by the ECJ, in particular through a more active referral procedure. After all, as EU legal doctrine observes, for example, prof. dr. In particular, the active cooperation between national courts and the CJEU is one of the main preconditions for the coherence of the functioning of EU and national law [11]. some systematic problems remain in judicial cooperation (national and ECJ) in tax litigation cases, especially in customs cases. The author considers it necessary to ensure proper cooperation between the ECJ and the national courts in this field, and to intensify the alignment of national case-law with the jurisprudence developed by the ECJ, in particular through a more active referral procedure. After all, as EU legal doctrine observes, for example, prof. dr. In particular, the active cooperation between national courts and the CJEU is one of the main preconditions for the coherence of the functioning of EU and national law [11]. some systematic problems remain in judicial cooperation (national and ECJ) in tax litigation cases, especially in customs cases. According to the author, it is necessary to ensure proper cooperation between the ECJ and national courts in this field and to step up the alignment of national case-law with the jurisprudence developed by the ECJ, in particular through the application of the preliminary ruling procedure. After all, as EU legal doctrine observes, for example, prof. dr. In particular, the active cooperation between national courts and the CJEU is one of the main preconditions for the coherence of the functioning of EU and national law [11]. closer alignment of national case-law with jurisprudence developed by the ECJ, in particular through a more active use of the reference procedure. After all, as EU legal doctrine observes, for example, prof. dr. In particular, the active cooperation be

developed by the ECJ, in particular through the application of the preli procedure. After all, as EU legal doctrine observes, for example, prof. active cooperation between national courts and the CJEU is one of the for the coherence of the functioning of EU and national law [11].

In the author's view, one of the forms of development of this cooperati of legal acts. As mentioned above, no cases were identified in the Repu where, in the context of a dispute over the imputed duties and the ques and interpretation of EU legislation (Anti-Dumping Regulations) by th courts would refer to the ECJ. the recourse to the ECJ is exercised and the legal situations recognized by the jurisprudence of the ECtHR, for challenging the validity of customs regulations. Similar authors' tender categories in the Republic of Lithuania have been identified by other a the Republic of Lithuania on Administrative Proceedings [13], the obli administrative courts to refer to the ECJ in the event of a dispute over t act is defined in very abstract terms. For example, Article 4 (3) of the I Administrative Proceedings provides that '*In the cases provided for l* the *author*), the court seeks a preliminary ruling from the competent j the European Union on the interpretation or *validity of the* acts of the European Union (authored by the *author).*) ". In this case, although the law states that the existence of a dispute over the validity of an EU act creates a general legal basis for a national court to apply to the CJEU, both in the aforementioned Article 4 (3) and in other provisions of the law, for example 1, p. 9) does not specify how the term "statutory cases" should be understood and whether it covers all legal situations where the validity of an EU act is raised in a dispute. In addition, no provision in this regard is established in the Law on Tax Administration, which also regulates the pre-litigation procedure of tax disputes (including disputes concerning customs-administered duties and other taxes) in the Republic of Lithuania (see Articles 144-145 of this Law). This is especially important in light of the circumstance,*Nidera Handelscompagnie v. State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania*). Therefore, according to the ECJ's evolving practice, especially practice in Case C-533/10 *CIVAD* , it would be appropriate Administrative Proceedings Law Article 4, paragraph 3 to clarify the consolidation provision that "the cases prescribed by law, *including cases where a dispute is based on the relevant EU regulation, which could have been detrimental to the applicant 's application* (additionally recorded and distinguished by author - *author p.*), the court or tribunal shall apply to the competent judicial authority of the European Union for a preliminary ruling on the interpretation or validity of European Union law. ' A provision of a similar nature should be included in Article 155 of the Law on Tax Administration, supplementing it with paragraph 7 and defining identical powers of the Tax Disputes Commission.

It is believed that these changes would be important not only for ensuring proper application of EU customs legislation in the Republic of Lithuania, but also for the effectiveness of the legality control system adopted by other EU institutions, especially considering the current situation where There is very limited application at EU level and cooperation between national courts and the ECJ is not yet intensive and effective.

Dr. **Gediminas Valantiejus** is an associate professor at the Mykolas R
Faculty of Economics and Business and the Mykolas Romeris Law Sch
International and EU Law, a lecturer in law and customs, specializing i
and customs law and EU tax and customs law. This article is the autho

Dr. **Gediminas Valantiejus** is an Associate Professor at the Faculty of
Business at Mykolas Romeris University as well as Institute of Interna
of Mykolas Romeris Law school (Vilnius, Lithuania, https://www.mru
specializing in international trade and customs law as well as EU tax a
providing lectures on the related subjects. This article (*"Referrals of N
Dispute Authorities in the Republic of Lithuania to the Court of Ju
Cases Related to Customs Duties and Taxes: Current Situation a*
author's personal opinion.

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More information about these issues can be found in another author's article (in English):

Valantiejus, G., & Katuoka, S. (2019). Uniformity of Application of the EU Customs Law: Problematic Aspects in the Baltic States. *Economics and Culture*, 16(2), 21-38. [DOI: 10.2478/jec-2019-0019]; https://content.sciendo.com/view/journals/jec/16/2/article-p21.xml.

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Dr. Gediminas Valantiejus
Senior Associate (Advocate) and ILAW Legal | Associate Professor at Mykolas Romeris University
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In recent weeks, in the context of the increasing debate on referrals of national authorities (courts, Tax Disputes Commission) to the EU Court of Justice in customs cases (anti-dumping duties on imported fertilizers, customs valuation of imported goods, etc.) Overview of Court of Justice cooperation in this area! Glad to invite to get acquainted with my new article / review (in Lithuanian, summary in English) "Referrals of the National Tax Dispute Situation and Problems "!

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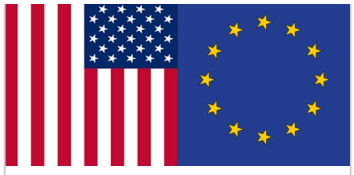
Dr. Gediminas Valantiejus on LinkedIn



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