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**THE PRINCIPLE OF *NE BIS IN IDEM* AND THE PUNITIVE
ADMINISTRATIVE SANCTIONS IN THE LIGHT OF THE
COURT OF JUSTICE OF THE EUROPEAN UNION AND THE
EUROPEAN COURT OF HUMAN RIGHTS**

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ABSTRACT

The *ne bis in idem* principle is widely recognised principle which is, among other legal instruments, established in the Article 50 of the Charter of Fundamental Rights of the European Union and the Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The interpretation of the principle have developed through the case-law of the Court of Justice of the European Union and the European Court of Human Rights, which have given the content and the meaning to the principle.

The principle also covers some punitive administrative sanctions which have caused the problems of the principle's coverage and how it should be applied. In the recent case-law the both European courts have given judgements provided limitation to the principle but relied on the different criterions. So saying, the limitation to the principle does not rule out possibility to prosecute and punish twice the same person in the criminal proceeding and in the administrative proceeding that has criminal effect and which is arising from the same act.

Because the Charter should guarantee the same meaning and the scope than the Convention, the two European Courts have recently separated in their judgements of the *ne bis in idem* principle relating to the punitive administrative sanctions. The thesis will seek the direction of the *ne bis in idem* principle provided by the two European courts and their relationship in the context of the subject.

Keywords: *ne bis in idem*, The CJEU, The ECtHR, administrative sanction, criminal punishment, proceedings

INTRODUCTION

The *ne bis in idem* is a fundamental principle which ensures that no one shall be punished or prosecuted twice based on the same act which has already lead to prosecution or sanction.¹ In this research referring to the principle concerns exactly the principle of *ne bis in idem*. The *ne bis in idem* principle has been established in Article 4 of Protocol No. 7 to European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as well as in Article 50 of the Charter of Fundamental Rights of the European Union, where the Charter of Fundamental Rights of the European Union (Charter) is applicable to the Member States of the European Union (EU) and Protocol No. 7 to the parties of ECHR. Almost every Member State has been ratified Protocol No. 7 except the Netherlands, Germany and The United Kingdom.² This has practical effect since interpretation and application of the *ne bis in idem* principle comes from the two different worded provisions, where the scope and the meaning may alternate.

The principle sounds quite unambiguous, but it is multidimensional principle which has caused application issues in several countries.³ The Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) have both given judgements which interprets the principle of *ne bis in idem*. In this research I will use the wording the European Courts when referring to the both courts at the same time. The principle has generally acquired its content through the case law. However, the principle has caused divergent interpretations especially in the cases where administrative sanctions and criminal penalties are sentenced for the same act.

Originally the principle applied in criminal justice, but the ECtHR has widened the scope to cover administrative sanctions which are recognized as criminal penalties even though the national

¹ Neagu, N. (2012). The *ne bis in idem* Principle in the Interpretation of European Courts: Towards Uniform Interpretation – *Leiden Journal of International Law*, p 955.

² Council of Europe. Chart of signatures and ratifications of Treaty 117. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Rights. Status as of 15/03/2018. Accessible at: https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/117/signatures?p_auth=mdTindI7, 29 April 2018.

³ Van Bockel, B. (2010). *The ne bis in idem principle in EU Law*. The Netherlands: Kluwer Law International, p 3.

legislation itself does not classify them as such.⁴ At the EU level the recognition has not been as clear which highlights when the states with the different legal systems are applying the principle in the absence of common understanding at the EU level.⁵

Although the Article 4 of the Protocol No. 7 to the ECHR and Article 50 of the Charter both provide the principle of *ne bis in idem*, the provisions have different scope since the ECHR applies only in national context while the Charter has extended the protection to the transnational dimension.⁶ The ECtHR has developed its interpretation of the *ne bis in idem* principle relating to the punitive administrative sanctions more consistent until recently where it gave quite reverse judgement. In addition to the prevailing precarious situation, question about Article 50 of the Charter's coverage has waited to clarifying judgement, which why several cases were handed to the CJEU lately.

In March 2018 the CJEU delivered new judgements answering to the previous mentioned issues. For those reasons this subject is again topical, and the recent judgements should be analyzed more closely. This thesis will study whether through the judgements Article 50 of the Charter will provide the same level protection than the ECHR does or whether it establishes more extensive protection. In addition, Article 50 of the Charter may even reach autonomous approach and this thesis will analyses how it could impact to the states implementation.

The focus on this study is the material scope of the *ne bis in idem* principle and the connection between Article 50 of the Charter and Article 4 of Protocol no. 7 to the ECHR provided by the CJEU and ECtHR. Even though transnational justice exists due to the principle of *ne bis in idem*, it does not lay down criminal law jurisdiction between the Member States within the EU. It would be interesting to examine the system for coordination of the allocation of cases where more than one Member State have jurisdiction over the subject matter. However, that part of the principle is excluded from this study and transnational dimension is examined only to an extend what is necessary for getting comprehensive picture about the operation of the principle at the national and European level.

⁴ Vervaele, J. A. E. (2013). The Application of the EU Charter of Fundamental Rights (CFR) and its *Ne bis in idem* Principle in the Member States of the EU. – *Review of European Administrative Law*, Vol. 6, p 115.

⁵ Van Bockel (2010), *supra nota* 3, p 25.

⁶ Luchtman, M. (2011). Transnational Law Enforcement in the European Union and the *Ne Bis in Idem* Principle. – *Review of European Administrative Law*, Vol. 4(2), Paris legal publishers, p 5.

The aim of the thesis is to examine an interplay between the ECtHR and the CJEU relating to the principle of *ne bis in idem* established in Article 4 of the Protocol No. 7 to the ECHR and in Article 50 of the Charter. The second aim is to seek the current criteria which would allow possibility to double proceedings and penalties. The third aim is to examine how the decisions impact on the implementation at the national level. For getting profound view about how the decisions of the CJEU and the ECtHR are affecting to the national application, the thesis will apply for support from some countries legal systems.

For the aims, the research questions are the following: To what extent the CJEU and the ECtHR are applying the *ne bis in idem* principle in line? The thesis will also open to the reader the recent criteria which allows parallel criminal and administrative proceedings and punishments. The thesis will also bring up what kind of impact the decision of the courts has at the national level. The hypothesis is constructed in the following manner: The CJEU and the ECtHR are not interpreting the principle of *ne bis in idem* exactly in line with each other.

To answer the presented research question, the thesis will use legal method by making conceptual analysis, which includes studying recent interpretation of the principle, the current implementation and defining the future scenario based on the current literature about the topic. The thesis subject insists to scrutiny respective court decisions of the case law of the CJEU and the ECtHR through a jurisprudential analysis and furthermore make comparative analysis.

The thesis consists of the following structure:

The first chapter introduce the concept of principle of *ne bis in idem*. It includes a brief about the principles content and the sources which are relevant for this thesis. The chapter also opens the connection between the two sources of the *ne bis in idem* principle, Article 4 of Protocol No. 7 to the ECHR and Article 50 of the Charter. The meaning of the first chapter is to give the reader understanding about the principle of the *ne bis in idem* and how it is interpreted by the different instruments, but not going so much for details at this point.

The second chapter will introduce the different elements of the *ne bis in idem* principle. The aim is to open those components including the concepts of criminal in nature, *idem*, *bis* and *res judicata*. The chapter demonstrates the complexity of the principle and how it is evolved through the case-law. Consequently, this chapter will clarify to the reader the whole diversity of the principle.

The third chapter analyses the main problems and seek for answers from the recent judgements made by the ECtHR and the CJEU relating to subject matter. This is also comparative part because it concludes the views of ECtHR and CJEU and what connection they have concerning the principle of *ne bis in idem*. The final chapter will introduce results of this research. Conclusion is following in the end.

1. THE PRINCIPLE OF *NE BIS IN IDEM*

1.1. The concept

The principle of *ne bis in idem* means that no one should be punished or prosecuted twice based on the same offence, act or facts. It is fundamental principle which gives a person protection by limiting the states' ability to use its *ius puniendi*, which means the state's right to punish a person who commits a crime pursuant to its laws.⁷ The roots of the principle lead far from history, where it applied national criminal justice establishing its very basic idea of “not twice for the same offence”.⁸

The sources of the *ne bis in idem* principle have been established in different international instruments such as Article 14(7) of the 1966 International Covenant on Civil and Political Rights, the 1945 Charter of the International Military Tribunal, the Statutes of the ad hoc International Criminal tribunals for the former Yugoslavia and Rwanda, the statute of the International Criminal Court and the American Convention on Human Rights.⁹ At the European level the principle is enshrined in Article 4 Protocol no. 7 to the ECHR, Article 50 of the Charter and Article 54 of the Convention on the Implementation of the Schengen Agreement. Traditionally the *ne bis in idem* principle was applicable only in national level but the principle is now brought applicable additionally in international level.¹⁰ The relevant framework for this study is limited to cover instruments provided by the European Union and the Council of Europe.

Historically the principle was mainly linked to the law enforcement, but nowadays it is furthermore recognized as an undebatable human right.¹¹ Thus the aim of the principle can be seen pronged to

⁷ Ilic, G. P. (2017). Observations on the *ne bis in idem* principle in the light of European Court of Human Rights' judgement: Milenkovic v. Serbia. – *Journal of Eastern-European Criminal Law*, No. 1 p 218.

⁸ Van Bockel (2010), *supra nota* 3, p 2.

⁹ *Ibid.* p 10–12.

¹⁰ Vervaele, J. A. E. (2005). The transnational *ne bis in idem* Principle in the EU: Mutual Recognition and Equivalent Protection of Human Rights – *Utrecht Law Review*, Vol. 1, No. 2, 103.

¹¹ Rosano, A. (2017). *Ne Bis Interpretatio In Idem?* The Two Faces of the *Ne Bis In Idem* Principle in the Case Law of the European Court of Justice. – *German Law Journal*, Vol 18, No. 1, p 44.

cover individual protection and also guarantee the state's sovereignty, legitimacy and legal certainty in judicial proceedings.¹² In addition, the compliance with the principle saves the state's resources, because the finality of the judgement is sought, and the first proceeding should be profound. From an individual point of view, the *ne bis in idem* principle reduce the mental stress which could be increased if the judgement does not remove the possibility to be investigated or prosecuted again and an individual cannot anticipate the future and invest to it.¹³ The principle also guarantees that the judgement would in the most probability be right, because the executive party can make the case only once, so it should be compile it properly.¹⁴ Also the ongoing or endless prosecution or investigation would raise the risk to undermine an effective defense, which may ultimately lead to wrong decision since the defendant is not able to provide the best defense or the defendant would not have enough financial resources to defend himself over and over again.

The compliance of the principle can be seen to some extent as compliance of the procedural principle, but it is also closely linked to the content of the matter because its applicability depends on the similarity of the offences, acts or facts.¹⁵ The substantial differences between the states application of the principle would lead to situation where some states would guarantee to the individuals different level of judicial protection as other states. For that reason, it would be necessary to interpret the principle uniformly. It is also premise to the application of the principle in transnational situation.¹⁶

The principle of *ne bis in idem* prevents a person to be prosecuted again in the same proceedings, which means that a person generally could be prosecuted in criminal proceeding and the same offence could further lead to administrative or civil procedures and vice versa.¹⁷ Because the states have power to establish its own laws, the applicability of the *ne bis in idem* principle cannot vary based on the different legislations. For that reason, even though a person is subject to administrative punishment, it can actually have criminal effect.

¹² Vervaele, J. A. E. (2013). *Ne Bis in Idem: Towards a Transnational Constitutional Principle in the EU?* – *Utrecht Law Review*, No. 9(4), p 212.

¹³ Lelieur, J. (2013). 'Transnationalising' *Ne Bis in Idem*: How the Rule of *Ne Bis In Idem* Reveals the Principle of Personal Legal Certainty. – *Utrecht Law Review*, Vol. 9, No. 4, p 210.

¹⁴ Bernard, D. (2011). *Ne bis in idem* – Protector of Defendants' Rights or Jurisdictional Pointsman? – *Journal of International Criminal Justice*, Vol 9. p 878.

¹⁵ De La Cuesta, J. L. (2002). Concurrent national and international criminal jurisdiction and the principle '*ne bis in idem*', General report. – *Revue Internationale de droit pénal*, Vol. 73, p 710.

¹⁶ *Ibid.*, p 708.

¹⁷ Neagu, *supra nota* 5, p 955.

1.2. The sources

1.2.1. The European Convention of Human Rights and the *ne bis in idem* principle

The *ne bis in idem* principle has long history for securing human rights protection and it is an important part ensuring the principle of fair trial, which is established in Article 6 of the ECHR.¹⁸ The principle was not originally written down in ECHR, but it was subsequently amended in Article 4 of Protocol No. 7. to the ECHR to become the EU Member States, the states have obligation to ratify the ECHR, but the Protocol No. 7 is detached treaty and therefore there is no binding obligation to sign and ratify it.

Despite that almost every state of EU has been ratified the Protocol no. 7, there has been some disinclination for accepting it. Germany and the Netherlands have not ratified, and the UK has not assigned the protocol no. 7.¹⁹ France, Italy, Portugal and Austria restricted the application only to the criminal offences. The reasons can be explained partly that imposing the administrative penalties is effective and important part in many national legal systems, especially in the fields where the public authority is essential actor for securing compliance with law, such as fields of taxation, finance and public safety. In addition, the states may be willing to maintain the decision-making power about to which elements constitutes a criminal penalty.²⁰ Nevertheless, many national legislations contain the *ne bis in idem* principle, for example Germany, which has set the principle in its Constitution.²¹ This proves that contrariness for ratifying the Protocol as a whole does not relate to the principle itself, but the state is willing to hold the decision-making power in their own discretion.

Article 4 of Protocol no. 7 to the ECHR says as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

¹⁸ Helenius, D. (2010). *Ne bid in idem -kiellon rakenne ja ongelmakohdat viimeaikaisen oikeuskäytännön valossa.* (Die Struktur und die Problemstellen des ne bis in idem-Verbots im Lichte der aktuellen Rechtsprechung). *Defensor Legis*, No. 6, p 771.

¹⁹ Council of Europe, Chart of signatures and ratifications of Treaty 117. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Rights. Accessible: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/117/signatures?p_auth=dvf24Orr, 29 April 2018.

²⁰ Opinion of Advocate General, 12.6.2012, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, ECLI:EU:C:2012:340, point 72–74.

²¹ Vervaele, (2013), *supra nota* 4, p 114.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.”

As Article 4 of Protocol No. 7 to the ECHR has been worded, it provides protection in two cases which are against double prosecution and double punishment. Article 4 of Protocol No. 7 to the ECHR is distinctly limited to concern the same state, which means that the transnational effect is excluded. According to the second paragraph, the reopening a case is possible if new evidence or facts are discovered or if there has been a fundamental defect in the first proceeding which affected the decision of the case.²²

As it is laid down in the article, the scope of application is restricted to the criminal proceedings under the jurisdiction of state. However, ECtHR has interpreted autonomously the article in its case law, which means that it is up to ECtHR to decide how the ECHR and its provisions should be interpreted and applied at the national level.²³ Autonomous interpretation does not give a lot of attention to the different legal systems of the parties of the ECHR which can cause conflicts between the decisions of the ECtHR and the national legal systems. Nevertheless, the national courts have obligation to follow ECtHR’s decisions in order to obtain the function and the aim of the ECHR.²⁴

The Article 4 of Protocol No. 7 to the ECHR does not exceed to the cases where the same act or offence leads to parallel prosecutions in the administrative and criminal proceedings. However, ECtHR has widened the scope of application establishing that the term “criminal proceedings” may include also other fields of law such as administrative law.²⁵ The reasoning behind this is the differences within the national jurisdictions, since the consideration of criminal proceeding is left to the domestic jurisdiction and can thus lead to differing treatments based on the state jurisdiction. Lack of common understanding of the concept of criminal proceeding occurs both in legislative

²² See Article 4 of Protocol No. 7 paragraph 2 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

²³ Coffey, G. (2013). Resolving Conflicts of Jurisdiction in Criminal Proceedings – Interpreting Ne Bis in Idem in Conjunction with the Principle of Complementarity. – *New Journal of European Criminal Law*, Vol. 4, Issue 1–2, p 64.

²⁴ Virolainen, J., Pölonen, P. (2003). Rikosprosessin perusteet, Rikosprosessioikeus I. Helsinki: WSOY Lakitieto, p 61.

²⁵ Van Bockel (2010), *supra nota* 3, p 18.

drafting and in the case law.²⁶ The ECtHR have tried to solve the problem by introducing the general “Engel-criteria”, which attempts to harmonize the definition between the national jurisdictions.²⁷ Assessing whether the administrative procedure is criminal in nature using the Engel-criteria and not only based on the national jurisdiction is an alternative option to the national courts. Even though the Engel-criteria has been widely used by the ECtHR and even the CJEU, it has not lead to exact uniform application between the different states.

1.2.2 The Charter of Fundamental Rights of the European Union and the *ne bis in idem* principle

The Charter of Fundamental Rights of the European Union also known and hereafter referred as the Charter was drafted by the EU and proclaimed on 7 December 2000 in Nice. The Charter guarantees explicitly the principle of *ne bis in idem* in Article 50, which reads as follows:

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

The most effective change for the protection of human rights was established in Article 6 of the Treaty on the Functioning of the European Union, also known as Lisbon Treaty, which came into force first of December in 2009. Article 6 of the Lisbon Treaty granted the EU to affiliate to the ECHR and made the Charter legally binding to all EU member states and as EU’s primary source of the human rights.²⁸ Through the article 54 of the Schengen Agreement of 1985, the *ne bis in idem* principle was recognized in the area of freedom, security and justice, but after the Lisbon Treaty the principle came binding through Article 50 of the Charter in all areas of EU competence and not just in criminal matters and transnational cases.²⁹ The aim of the EU to accede to the ECHR as it is provided in Article 6(2) of the Lisbon Treaty, was to bring the two international instruments closer connection with each other in order to develop uniform protection of human rights.³⁰

²⁶ Neagu, *supra nota* 1, p 958.

²⁷ *Engel and Others v. The Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, § 83–84, ECHR 1976.

²⁸ Eur-Lex. Glossary of Summaries. Accessible: http://eur-lex.europa.eu/summary/glossary/eu_human_rights_convention.html?locale=en, 29 April 2018.

²⁹ See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

³⁰ Douglass-Scott, S. (2011). The European Union and Human Rights after the Treaty of Lisbon. – *Human Rights Law Review*, No. 11(4), p 655.

The similar attempt is found in Article 52(3) of the Charter, where it is established that the Charter has same value as the ECHR in the area of EU and that the provisions laid down in the Charter should provide the same meaning and scope as the ECHR.³¹ The paragraph enacts that the ECHR guarantees minimum human rights protection for the individuals in the EU, which means that the Charter is not restricted to provide wider protection as what is established in the ECHR.³² The CJEU has restated that the *ne bis in idem* right settled in Article 50 of the Charter should comply with the right established in Article 4 of Protocol No. 7 to the ECHR, which means that the Charter should accompany the scope and the meaning of the principle guaranteed in the ECHR and the protection provided through the ECtHR case-law should not be undermined by the Charter either.³³ This means that the meaning and the scope of the principle extends also to the court's case law. Taking into consideration that the protection guaranteed by the Charter cannot be less than what is guaranteed by the ECHR, the CJEU can be seen to some extent to be obliged to follow the decisions made by the ECtHR.

Despite of previous, there are still conspicuous differences between the two *ne bis in idem* principles and their scope of application. The ECHR provides only national dimension, but the Charter extends the *ne bis in idem* principle by putting it to words “within the Union”, which aim to cover double prosecutions by the Commission and a state or the two Member States in question.³⁴ Article 51(1) of the Charter is crucial for the Article 50 of the Charter because it sets the whole Charter's scope of application. As it is laid down in the Article 51(1), the Charter applies to the Member States only when they are implementing EU law.³⁵ The wording ‘only when they are implementing EU law’ leaves the scope of application of Article 50 of the Charter quite open. The question arises especially in situation where the domestic authorities are indirectly enforcing EU law, where the different understanding of “implementing EU law” is conceivable.³⁶ As the Charter only applies when the punitive administrative sanctions and the criminal proceedings brought against a person are subject-matter which requires that the Member State are

³¹ Douglass-Scott, *supra nota* 30, p 655.

³² *Ibid.*, p 655.

³³ Eurojust. The Principle of *Ne Bis in Idem* in Criminal Matters in the Case Law of the Court of Justice of the European Union, The Hague, Netherlands, updated until September 2017, p 5. Accessible: [http://www.eurojust.europa.eu/doclibrary/Eurojustframework/caselawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20\(Sept.%202017\)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojustframework/caselawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20(Sept.%202017)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf), 25 January 2018.

³⁴ Wils, W. (2005). Principles of European Antitrust Enforcement. Oxford and Portland, Oregon: Hart Publishing. p 75–76.

³⁵ See Article 51(1) of the Charter of Fundamental Rights of the European Union.

³⁶ Vervaele (2013), *supra nota* 4, p 117.

implementing the Union law, the problem is the conflicting wording used in the Charter and the CJEU. The CJEU has stated in its case-law that the EU fundamental rights apply when the Member States are acting within the scope of Union law, which have wider meaning than the Charter wording “implementing”. Thus, the consequence would be that Article 51(1) of the Charter is restricting the application of the Charter and following the *ne bis in idem* principle.

In case *Åklagaren v. Hans Åkerberg Fransson* the CJEU got opportunity to clarify the application of the Charter, especially Article 50 of the Charter and what means “when the Member States are implementing Union law”.³⁷ In the judgement, the Court reasoned that the states are obliged to protect the financial interests of the Union by taking effective measures which operates as a deterrence at the Union as well as national level. The states are implementing Directive 2006/112/EC on the common system of value added tax by deciding measures in their domestic legislation which means that they are ensuring expedient collection of value added tax (VAT). Because the Member State are under the obligation to take safeguarding measures against illegal activities in the Union and ensure financial interest of the Union, the Court found out that there is direct link between the member state’s VAT measures and the European Union VAT resources. Consequently, the national courts are assessing whether those national measures meet the criterion of fundamental rights of the Charter, so they are implementing the Union law by the meaning of Article 51(1) of the Charter.³⁸

The judgement consequently clarified the existing uncertainty that whether implementing is the same as scope of application or applying the EU law. The reasoning has a lot of weight in the future because it opened the scope of Article 50 of the Charter to cover all the fields where the EU has competence and the states are applying the directives. Consequently, the judgement cleared that Article 50 of the Charter applies also national cases which means that the scope of application is overlapping with Article 4 of Protocol No. 7 to the ECHR.

³⁷ See Court decision, 26.2.2013, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, EU:C:2013:105.

³⁸ *Ibid.*, points 27–31.

2. ELEMENTS OF THE *NE BIS IN IDEM* PRINCIPLE

Since the Article 4 of Protocol No. 7 to the ECHR existed before the Charter established the *ne bis in idem* principle, the content of different elements of *ne bis in idem* have developed broadly through the ECtHR's case-law. By acquiring protection of the *ne bis in idem* principle the principle includes four essential elements.³⁹ Firstly, the person must be same in both prosecutions or penalties. Secondly, the prosecution or penalty must arise from the same act (*idem*). Thirdly, there must be duplication of the proceedings (*bis*) and the last condition requires that at least one proceeding acquires finality of the judgement (*res judicata*). So in order to determine if there was violation against the *ne bis in idem* principle, the court needs to assess all the elements.

2.1. *Res judicata*

For getting comprehensive picture and not undermining the finality element, a short introduction of the *res judicata* is needed before going to other elements. *Res judicata* means that the judgement acquires binding effect for the subsequent judicial proceedings.⁴⁰ The main thing is to decide standard for which point of time the case become final. The negative effect of the *res judicata* construct principle of *ne bis in idem*, since it forms barrier for re-examination of the case which have gained finality of the judgement and guarantees effective enforcement system therein.⁴¹ The judgement usually receives legal force in criminal proceedings as well as in administrative proceedings after expiry of an appeal period and there is not remedies obtainable.⁴² Subsequently, the parallel proceedings shall not be continued after the first set of proceedings is final whether the judgement rejects or admits the charges so the outcome of the proceeding is irrelevant.⁴³

³⁹ See for example Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197.

⁴⁰ Virolainen, *supra nota* 24, p 401–402.

⁴¹ Heiskala, J. (2011). *Veronkorotus ja ne bis in idem*. Vaajakoski: University of Helsinki Conflict Management Institute, p 31.

⁴² *Zolotukhin v. Russia*, no. 14939/03, § 107–108, ECHR 2009.

⁴³ *Zigarella v Italy*, no. 41604/11, ECHR 2002.

2.2. Punitive administrative sanctions

The basic purpose of criminal sanction is to control and enforce harmful behaviour. However, the criminal law is not the only option which enable to attain this aim, but there is alternative choice of control mechanism such as administrative sanctions.⁴⁴ Even though the administrative sanctions generally serve the similar aim as the criminal sanctions, which is to prevent the detrimental behaviour, the *ne bis in idem* principle concerns only matters falling into the criminal proceedings.⁴⁵ The ECHR and the Charter both refer the principle of *ne bis in idem* to apply the criminal proceedings, which generally excludes the administrative sanctions from the scope of two articles in question. However, what is understood as criminal proceeding is under the national jurisdiction and relies on the nature of the public or administrative body.⁴⁶ Consequently the uniform interpretation is needed in order to maintain equal application within the EU Member States and the parties of the ECHR. In the absence of uniform interpretation of what is considered as “criminal”, inconsistent protection could exist since one state could guarantee *ne bis in idem* protection and the other state could put a person under the accusation in both the administrative and the criminal proceedings even if the administrative sanction would actually be criminal in nature.

In the *Sergey Zolotukhin v. Russia* case the Court referred to the case *Engel and Others v. the Netherlands* where the ECtHR established the Engel-criteria to assess whether the nature of the sanction forms in fact criminal charge within the meaning of the Article 6 of the ECHR.⁴⁷ In the judgement the Court held that the application of the ECHR cannot alternate based on national laws of each parties of the ECHR and furthermore, the general principles must underline meaning of the criminal in nature.⁴⁸ The Court referred to the “criminal charge” and “penalty” used in Article 6 and Article 7 of the ECHR, which the Article 4 of Protocol No. 7 to the ECHR must comply when assessing the criminal nature of the procedure.⁴⁹ The Member States are allowed to

⁴⁴ Bowles, R., Faure, M., Garoupa, N. (2008). The Scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications. – *Journal of Law and Society*, Vol 35, No. 3, p 390.

⁴⁵ Van Bockel, B. (2012). The *ne bis in idem* principle in the European Union legal order: between scope and substance. – *Journal of the academy of European law*, Vol. 13, p 334.

⁴⁶ Van Bockel (2010), *supra nota* 3, p 40.

⁴⁷ *Engel and Others v. The Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, § 83–84, ECHR 1976.

⁴⁸ *Zolotukhin v. Russia*, no. 14939/03, § 52, ECHR 2009.

⁴⁹ *Ibid.*

determine the classification of the offences, but this cannot be made by ruling out the offence from the scope of Articles 6 and 7 which may lead to incompatibility of the ECHR.⁵⁰

In the assessment, the first step is to examine whether the offence is criminal under the national law and is decisive in that case.⁵¹ In other case the more closely examination should be made by evaluating the nature of offence and the severity of the penalty in question.⁵² It was noted that sanction could be criminal by its nature if purpose is to be deterrent or punitive towards people.⁵³ In the *Bendenoun v. France* case the sentenced charge was not just compensate the damage, but the purpose was to punish and deter the public, because the charge was appointed to concern the taxpayers, which basically means all the citizens and not specific group of people.⁵⁴ In *Benham v. The United Kingdom* case the Court introduced that the community charge may be criminal in nature when the proceedings are brought by a public authority under statutory powers of enforcement.⁵⁵

The third Engel-criteria is to examine the degree of severity of the penalty that is imposed to a person. A penalty may be such severe that it actually prove to be criminal deterrence.⁵⁶ In *Jussila v. Finland* case the court held that a lack of seriousness does not deprive an offence its criminal character.⁵⁷ The imposed sanction is essential when the degree of severity is assessed, but it cannot be isolated from the maximum potential sanction.⁵⁸ In addition it stated that the second and third criteria are alternative approaches, but it does not exclude the possibility to use those cumulatively.⁵⁹

The ECtHR has attempted to unify the notion of criminal matter within the meaning of article Article 4 of Protocol No. 7 to the ECHR and thus solve the prevailed problem where the different interpretation existed between the Contracting States. Relying to the Engel-criteria thus passes the protection of the principle in certain situations in a field of administrative sanctions.

⁵⁰ *Öztürk v. Germany*, no. 8544/79, § 49–50, ECHR 1984.

⁵¹ Neagu (2012), *supra nota* 1, p 960.

⁵² *Engel and Others v. The Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, § 82, ECHR 1976.

⁵³ *Öztürk v. Germany*, no. 8544/79, § 53, ECHR 1984.

⁵⁴ *Bendenoun v. France*, no. 12547/86, § 47, ECHR 1994.

⁵⁵ *Benham v. the United Kingdom*, no. 7/1995/513/597, § 56, ECHR 1996 III.

⁵⁶ *Grande Stevens and others v. Italy*, no. 18640/10, ECHR 2014.

⁵⁷ *Jussila v. Finland*, no. 73053/01, § 31, ECHR 2006.

⁵⁸ *Muslija c. Bosnia and Herzegovina*, no. 32042/11, § 29, ECHR 2014.

⁵⁹ *Jussila v. Finland*, no. 73053/01, § 31, ECHR 2006.

As ECtHR has been referred in its case-law to the Engel-criteria, the CJEU has not been as anxious to recognize the same assessment until the *Bonda* case where it referred to the ECtHR's case law.⁶⁰ After the *Bonda* case the CJEU has adopted same approach as the ECtHR but instead of referring to the ECtHR's case law, it has been continued to refer the *Bonda* case where it used the Engel-criteria.⁶¹ Thus they indirectly pointed out the link between the CJEU and the ECtHR. So it can be concluded that the two *ne bis in idem* provisions are in line with each other when assessing the criminal nature.

2.3. The concept of *idem*

In the context of *ne bis in idem* principle, the *idem* element protects against prosecution based on the same facts in both proceedings.⁶² Article 4 of Protocol No. 7 to the ECHR states that protection is guaranteed against double prosecution or punishment based on the offence of which a person has already been finally convicted or acquitted. Similarly, Article 50 of the Charter uses the wording offence. Thus, the term "offence" forms the element of "*idem*" and is generally seen in the light of its legal classification of the act (*idem crimen*).⁶³

The term *idem* can be divided into a number of approaches. Apart from the legal classification of the offence is the "same conduct" (*idem factum*), where the judgement is based on the conduct by the accused irrespective of the designation, nature and purpose of the offences.⁶⁴ The second situation exists where the conduct is the same, but it may result in various offences in the separate proceedings. In *Oliveira* case the applicant drove a vehicle and because of her negligent driving he smashed a car whose driver got serious injuries. The incident resulted in conviction of negligent driving and additionally conviction of causing physical injury to another person. The single act led to separate offences without breaching Article 4 of Protocol No. 7 to the ECHR, since the provision does not prevent separate offences occurring from the same conduct, particularly where the penalties are not constituting a cumulative outcome.⁶⁵

⁶⁰ Hancox, E. (2013). Meaning of Implementing EU Law under Article 51(1) of the Charter: Åkerberg Fransson. – *Common Market Law Review*, Vol. 50, p 1414.

⁶¹ Court decision, 26.2.2013, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, EU:C:2013:105, point 35.

⁶² Van Bockel (2010), *supra nota* 3, p 43.

⁶³ Court decision, 9.3.2006, *Leopold Henri Van Esbroeck*, C-436/04, point 28.

⁶⁴ *Gradinger v. Austria*, no. 15963/90, § 55, ECHR 1993.

⁶⁵ See *Oliveira v. Switzerland*, no. 84/1997/868/1080, ECHR 1998.

The third approach takes a closer examination of the “essential elements” of the offences. In *Fischer v. Austria* (2001) the Court verified already established situation in *Oliveira* case, where two or more offences may follow from the same conduct. However, they added that in case a person is convicted or prosecuted twice for “nominally different” offences that may cause an infringe of the provision.⁶⁶ The Court referred to the situations which may exist before the national courts, where the same conduct constitutes several offences even though the offences overlap and include exactly the same elements, so the further examination for the offences’ essential elements is needed. The ECtHR has been established the use for the concept of “essential elements” in its further case-laws.⁶⁷

The *Maresti v Croatia* case concerned whether the applicant was first convicted for the minor offence and following the criminal offence based on the same conduct. The minor offence did not require physical harm involved as was required for the conviction for the criminal offence. However, the Minor-offences Court was taking into consideration the applicant’s physical assault which the Municipal Court was also based on the conviction. For that reason, the Court found that because the applicant was already convicted for the minor offence and the facts which constituted also the criminal offence where essentially the same, there is violation against the Article 4 of Protocol No. 7 to the ECHR. The forty days’ imprisonment imposed by the Minor-offences Court was deducted from the Municipal Court’s criminal offence which imposed one-year imprisonment did not change the fact that the applicant was convicted twice based on the same conduct and thus violated the Article 4 of Protocol No. 7 to the ECHR.⁶⁸

In the case *Zolotukhin v. Russian* the Court acknowledged that the different approaches to assess whether the sentenced offences are the same may induce uncertainty and incompatible with the *ne bis in idem* principle, which why they advised to harmonize interpretation of the concept of *idem* for guarantee the legal certainty.⁶⁹ In the case the Chamber found that there was separation between the acts which consequently leads to the conviction under administrative offences and acts which leads to criminal offences and subsequently the acts could be separated in time. However, the Chamber came to conclusion that the offences were based on the same essential elements and for

⁶⁶ *Franz Fischer v. Austria*, no. 37950/97, § 25, ECHR 2001.

⁶⁷ *Zolotukhin v. Russian*, no. 14939/03, § 70–77, ECHR, 2009

⁶⁸ *Maresti v Croatia*, no. 55759/07, § 63–65, ECHR, 25.6.2009.

⁶⁹ *Zolotukhin v. Russian*, no. 14939/03, § 78, ECHR, 2009.

that reason the applicant had been prosecuted twice based on the same offence of which he had been already convicted.⁷⁰ The Court hold that if the two offences are examined merely based on their legal characterization, the result might prejudice the guarantees provided in Article 4 of Protocol No. 7 to the ECHR rather than made it practical and effective. Hence the Court established that as it is laid down in Article 4 of Protocol No. 7 to the ECHR, the “offence” compose of facts which are identical or substantially the same.⁷¹ So the judgement clarified that the approach to be taken should be concrete factual circumstances which are connected in time and space and the examination of legal classification should be rejected.

The CJEU has stated that lack of harmonization of legal classification of criminal acts between the Contracting States leads to the situation where the only relevant criterion is identity of the material acts in the context of existed circumstances of the case.⁷² The CJEU hold that existing differences between the “same acts” or the “same cause” and the term “same offence” induce to adopt the concept of material acts rather than the legal classification of the acts which are irrelevant.⁷³ Thus the CJEU admitted that legal classification is not enough to determine the same element but it did not take exactly the same line with the ECtHR’s *idem* criterion about the factual circumstances established in the *Zolotukhin* case but instead hold the approach of the material acts.

2.4. The concept of *bis*

The scope of *bis* element does not limit to the second punishment but provides that a person is not liable to be tried, tried or punished again based on the same conduct, facts or offence.⁷⁴ *Bis* element requires that the second trial or prosecution arises after the first one has become final. In this sense the *bis* element is closely linked to *res iudicata*, which acquires its force from the national jurisdiction. As the principle originally concerned only criminal proceedings it was simpler to determine when the criminal court judgement has become final and consequently arises the barrier effect for the second criminal trial.⁷⁵ However, as the ECtHR has widened its scope of application to some administrative proceedings since provisions cannot be frame as administrative law, it has constituted more complicated procedure.

⁷⁰ *Zolotukhin v. Russian*, no. 14939/03, § 81–82, ECHR, 2009, § 59.

⁷¹ *Ibid.*, § 81–82.

⁷² Court decision, 9.3.2006, *Leopold Henri Van Esbroeck*, C-436/04, points 35–36.

⁷³ *Zolotukhin v. Russian*, no. 14939/03, § 79, ECHR, 2009.

⁷⁴ See for example case *Nykänen v. Finland*, no. 11828/11, ECHR, point. 47.

⁷⁵ Van Bockel (2010), *supra nota* 3, p 41–42.

The *Zolotukhin* case was a landmark case for settle down the concept of *idem* element which must be assessed based on the factual circumstances. The judgement should have put end for double prosecution in the administrative and criminal proceedings, especially in the states where the dual legal system exists. In Finland the *Zolotukhin* case strengthen already adopted interpretation but the different approach was taken in Sweden, where the Swedish Supreme Court granted the conclusion of *idem* element but held that the *bis* element allows two consecutive proceedings which was introduced in case *Nilsson v. Sweden*.⁷⁶ It stated that the *bis* element still permits to grant several sanctions based on the same offence or act even when the sanctions are passed by the different authorities if they are foreseeable and closely connected to each other in substance and in time.⁷⁷

The Swedish Supreme Court thus held that the system prevailing in the Sweden does not necessarily conflict with the interpretation of the *ne bis in idem* principle made by the ECtHR. The Swedish approach demonstrates well how the elements are working separately, which makes possible for the states to take different course of application. For this reason, even after the *Zolotukhin* case, which clearly set the direction for the *idem* element, it left the *bis* element unclear and different application remained between the states.

In *A. and B. v. Norway* case the ECHR subsequently found that Article 4 of Protocol No. 7 to the ECHR is not infringed even though there is parallel criminal proceeding and administrative proceeding which is criminal in nature.⁷⁸ The reasoning behind the decision was that the proceedings are sufficiently closely connected in time and in substance, consequently resulting that there is no duplication of *bis* element.⁷⁹ The ECtHR reasoned that the duplication of the proceedings is possible if there is sufficiently close connection in substance and in time, where in substance the criterions included in particular that the offence is forcing to impose the complementary measures, the upcoming proceedings are foreseeable, the authorities ensures that the duplication of the proceedings does not require duplication of the collection and examination of the facts and lastly the penalties have been taken complementary into account.⁸⁰ The ECtHR's

⁷⁶ *Nilsson v. Sweden*, no. 73661/01, ECHR 2005.

⁷⁷ *Human Rights in Contemporary European Law. Swedish Studies in European Law Volume 6.* (2015)/Eds. J. Nergelius, E. Kristoffersson. Oxford and Portland, Oregon: Hart publishing, p 145.

⁷⁸ *A and B v. Norway*, no. 24130/11 and 29758/11, § 85–86, ECHR 2016.

⁷⁹ *Ibid.*, § 130.

⁸⁰ *Ibid.*, § 132.

wording *includes* should be seen as defining non-exhaustive list of requirements. Furthermore, the connection in time remained even more open in the judgement in question.

3. ANALYSIS OF THE CURRENT STATE OF AFFAIRS

3.1. Prevalled problems

The *ne bis in idem* principle has not caused as much confusion in the countries which have a single court system handling with both administrative and criminal law cases, as in the countries which have parallel jurisdiction.⁸¹ For example Finland, Sweden and Italy have dual legal system and consequently have been dealing with the cases to find out whether the national legislation and actions took by the authorities correspond the principle of *ne bis in idem*.⁸² The problem arises especially in situations where the EU has laid down the directive which means that the states are independent to choose how to execute the objectives. The member states are under the duty to ensure that the appropriate measures are taken to guarantee what is laid down in the Union law. When the directive provides to adjust both administrative sanctions and criminal penalties, the states which have dual justice system adopt the penalties under the both administrative law and criminal law. The independent authorities may execute the law and seek the justice without taking into consideration of the duplication of the proceedings and sanctions which ultimately leads to conflicting situation where a person is subject to the parallel prosecutions or sanctions. The EU would exceed its competence if it prescribes how the national justice system should be arranged, so the states are ending up to the different implementations.

For example, for a long time Finnish legislation provided administrative sanctions in conjunction with criminal penalties in the field of taxation. In order to comply with the ECtHR's decisions Finland made legislative change. Although the similar situation prevailed in Sweden, it disinclined to take similar actions. Even after the *Zolotukhin* case, the situation in Sweden continued existing as they sentenced administrative sanctions which were clearly incompatible with the ECtHR's standpoint.⁸³ It was not until the *Åkerberg Fransson* case when the CJEU found the Swedish system of dual procedures to be incompatible with Article 50 of the Charter and consequently with Article 4 of Protocol no 7 to the ECHR. The *Åkerberg Fransson* judgement verified what was already found in the *Zolotukhin* case, which lead to Swedish court system to admit that the

⁸¹Eds. J. Nergelius, E. Kristoffersson, *supra nota* 78, p 135.

⁸² Lahti, R. (2002). Finland, Concurrent National and international criminal jurisdiction and the principle of *ne bis in idem*. – *Revue internationale de droit pénal*, Vol. 73, p 901.

⁸³ Eds. J. Nergelius, E. Kristoffersson, *supra nota* 78, p 134.

Zolotukhin case already showed that the Swedish dual prosecution system may constitute incompatibility with Article 4 of Protocol no 7 to the ECHR.⁸⁴

The problem is not limited to the Scandinavian legal systems. The Italian court has stated that the *ne bis in idem* principle does not apply to the relationship between the criminal and administrative penalties in Italian legal system.⁸⁵ So the Italian legislation enable to impose administrative sanction without prejudice to criminal penalties. The parallel penalties are taking into account each other but it does not change the fact that a person can be prosecuted and sanctioned twice based on the same act. Consequently, the first problem is that the interpretation of the *ne bis in idem* principle does not settle to some legal systems.

The second issue relates to the first one which is that the interpretation of the principle delivered by the ECtHR and the CJEU have not settled which affects to the implementation at the national level. The *Åkerberg Fransson* case was epoch-making because the national courts are legally binding the follow the decision of the CJEU. However, the *Åkerberg Fransson* judgement was not as definite and explicit as was expected and hence left room for uncertainty and different interpretations by the national courts. Thus, it was still open for discussion that should the CJEU took autonomous interpretation of the principle which would clear the interpretation that should be taken by the member states.

The third major issue is the relationship with the Article 4 to the Protocol No. 7 to the ECHR and Article 50 of the Charter and the diverging opinions between the CJEU and the ECtHR. It can be said that the judgement of the *Åkerberg Fransson* indicated that the CJEU and the ECtHR were in the same line of the given interpretation of the *ne bis in idem* principle. However, after the new approach taken by the ECtHR in case *A and B v. Norway* it was again questionable should the CJEU follow the ECtHR interpretation or not.

3.2. Suggestions

The ECtHR clearly altered the scope of *ne bis in idem* to more restrictive in the *A and B v. Norway* judgement. The Advocate General Campos Sánchez-Bordona introduced his opinion in the *Luca*

⁸⁴ Eds. J. Nergelius, E. Kristoffersson, *supra nota* 78, p 134.

⁸⁵ For example Court Decision, 20.3.2018, *Garlsson Real Estate and others*, C-537/16, EU:C:2018:193, point 15.

Menci case that this alteration of the scope of *ne bis in idem* principle leads to the point, where the CJEU can choose between the accepting what was established by the ECtHR or reject the new approach and appeal that Article 52(3) of the Charter does not prevent to adopt more extensive protection.⁸⁶ This leads to the situation that if the CJEU would take an autonomous interpretation of the principle, the ECtHR and the CJEU would not be exactly in line because the Charter would guarantee higher level protection and the ECtHR would left the dual-track open for the national jurisdiction.

Consequently, *A and B v. Norway* judgement opened the door to the CJEU to deliver the judgement which allows autonomous interpretation and establishes limitation to the principle in order that the Union objectives will be met. After the ECtHR judgement, the CJEU could have justified reasons to take its own approach. In my opinion, for a long time the ECtHR have tried to solve the problem of the *ne bis in idem* principle through its case-law. It has changed from time to time its interpretation and partly stabilized it in order that the states would be able to interpret it similarly. The reason why the problems still occur is that the main problem is not unclear interpretation of the principle but that it does not adopt to some national systems, which why the limitation to the principle may solve the problem.

However, the limitation given by the ECtHR is not very comprehensive solution. The limitation is allowed in case where the proceedings are close connection in time and in substance. First of all, the national courts have difficult task to address whether the requirements of close connection in time and in substance are founded in the case. The requirements defining connection in substance are quite uncertain and established in the non-exhaustive list. Also, the ECtHR has not exactly defined what is considered connection in time. Consequently, the problem is again that the requirements are uncertain, and it would leave room for interpretation, arbitrariness and unequal treatment between the states. Furthermore, the ECtHR judgement is not satisfying since it undermines the protection guaranteed to the people by using quite precarious concept which would ultimately lead to further uncertainty of when there is connection in substance and in time. The *ne bis in idem* principle requires harmonization of the principle rather than turning point which would add one unclear element for the national courts to examine.

⁸⁶ Opinion of Advocate General, 12.9.2017, *Luca Menci*, C-524/15, ECLI:EU:C:2017:667, point 61.

For this reason, the CJEU should either clarify the requirements of the limitation or establish an autonomous interpretation. Of course, the autonomous approach would mean that the European Courts are not at the same line what comes to the interpretation of the *ne bis in idem* principle, which will have subsequent consequences.

3.3. Autonomous interpretation by the Court of Justice of the European Union

In March 2018 the CJEU delivered four judgements which came to prominence by the Italian courts asking for clarifying judgements to the issues in *ne bis in idem* principle. The judgements would show the course in which the CJEU is currently taking. The Italian legislation provided administrative sanctions parallel with criminal sanctions relying on what was established in the Union directives. Those directives generally assign that the Member States have obligation to ensure that the objectives of each directives should be guaranteed with effective, proportionate and dissuasive measures through the administrative sanctions and criminal penalties.⁸⁷ In order to fulfil obligations regulated in the Union law, the Italian law was executing the objectives through the administrative and the criminal proceedings. The cases have huge impact on how the *ne bis in idem* established in Article 50 of the Charter appears to be and what is the relationship with Article 4 Protocol no. 7 to the ECHR.

The case *Menci* was considering the VAT directive, the joined case *Di Puma and Zecca* and the *Garlsson Real Estate and others* to the market abuse directive. The cases were handed to the CJEU for answering the essential questions of should Article 50 of the Charter interpreted in the light of Article 4 of protocol No 7 to the ECHR and subsequently within the ECtHR case-law, is Article 50 of the Charter allowing possibility of second criminal proceedings after finality of the administrative penalty and is there possibility for the second proceedings after finality of the judgement where the grounds for the criminal offence was not found but the second proceeding is consequently based on the same acts.

The CJEU had already adopted in its case-law that even though it is established in the Charter that it corresponds to the rights guaranteed in the ECHR and the rights should be given the same

⁸⁷ Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197, point 31.

meaning and the scope, the Charter is still the legal instrument within the Union as long as the Union is not itself acceded to the ECHR.⁸⁸ The reasoning shows that the CJEU enable itself to take an autonomous interpretation of what is guaranteed in the Charter and furthermore in Article 50 of the Charter as long as it guarantees at least what is guaranteed in the ECHR. Thus, the CJEU is not bound to interpret the Charter similarly with the ECtHR.

In *Spasic* the CJEU established that the duplication of the proceedings and penalties could be justified based on Article 52(1) of the Charter if the certain exhaustive list of criteria are fulfilled.⁸⁹ Thus the judgement presents a scenario where the double sanction is not totally excluded. The limitation can be justified if it is proportional, necessary and genuinely serve the general interest recognized by the Union or the rights and freedoms of others.⁹⁰ In the cases the Court considered that the financial aim of the Union may serve purposes for allowing the complementary aims and thus limiting the *ne bis in idem* principle. The exhaustive list included four key requirements which each must be fulfilled in strict sense.

Firstly, the national legislation which limits the essential content of Article 50 of the Charter for allowing duplication of the proceedings and penalties, must pursue of objective that the measures are necessary to ensure general interest.⁹¹ This means that there should not be less restricting alternative to ensure the objectives of the Union. In the general sense, it could be questioned if the VAT collecting or financial interest are objectives which should displace the fundamental right of the individuals. In turn, the internal market is one of the main interest of the whole European Union, so the aim is to ensure effective functioning of the Union. In its reasoning the CJEU restated this aspect and that the member states are obliged to protect the Union interest where VAT collection and financial interest are essential functions of it. The Advocate General did not find the limitation necessary since there are states which are able to execute the purposes of the Union law without limiting the *ne bis in idem* principle.⁹² This argument is not very comprehensive because the principle of *ne bis in idem* culminates to the problem that the interpretation of the

⁸⁸ Court decision, 26.2.2013, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, EU:C:2013:105 point 44. Court decision, 15.2.2016, *N.*, C-601/15 PPU, EU:C:2016:84, point 45.

⁸⁹ Court decision, 27.5.2014, *Zoran Spasic*, C-129/14 PPU, ECLI:EU:C:2014:586, points 55–56.

⁹⁰ Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197, point 41.

⁹¹ Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197, point 46.

⁹² Opinion of Advocate General, 12.9.2017, *Luca Menci*, C-524/15, ECLI:EU:C:2017:667, points 82–83.

principle does not adapt to the different legal systems which ultimately leads to an unequal treatment between the states.

In the second requirement the limitation should be established in clear and precise law so that an individual is able to foresee the proceedings and penalties which are following of his actions.⁹³ The requirement prevents arbitrariness which undeniably have causing the uncertainty and different practices between the member states. The ECtHR's approach was appointing to the similar direction when it stated that duplication of the proceedings is justified if there is close connection in substance, which is guaranteed when the outcome is foreseeable. This is not questionable because the limitation in fundamental right should be as clear defined in law as possible. However, in the most cases the problem of *ne bis in idem* principle have not arisen due to unclear national laws, but the lack of coordination between the different proceedings.

In that sense, the third requirement is essential where it is stated that the rules should regulate the mechanism and the coordination covering the duplication proceedings in order to ensure that an individual is not subject of any further disadvantaged than what is necessity.⁹⁴ This has been an essential problem of *ne bis in idem* principle in the national level since some national legislation which are allowing duplication proceedings have not been in full awareness of another proceedings and actions by another authority.

The final requirement is that the duplication of penalties requires that the overall penalty corresponds with the severity of an offence.⁹⁵ In some part, the ECtHR found also that criterion necessary in *A and B v. Norway* judgement. The requirement guarantees that the parallel proceedings and sanctions does not exceed what should be imposed to a person but meet the principle of proportionality.

Hence the CJEU referred in all three judgments that Article 50 of the Charter does not rule out the national legislation which permits duplication of the proceedings and penalties of a criminal nature against the person occurring from the same acts if the purpose requires the complementary measures to ensure the Union financial interest. The CJEU's approach requires that the national

⁹³ Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197, point 49. Court Decision, 20.3.2018, *Garlsson Real Estate and others*, C-537/16, EU:C:2018:193, points 43–44.

⁹⁴ *Ibid.*, point 53. *Ibid.* point 45.

⁹⁵ *Ibid.*, point 55. *Ibid.* points 46-50.

laws which allows duplication of the proceedings and sanctioned must be examined as a whole, taking into consideration that all the requirements are fulfilled.

In *Carlsson Real Estate* the Court stated that the aim of the complementary proceedings and punishments is to achieve the objective of the general interest, which is at this case the integrity and trust to the financial market of the Union.⁹⁶ So said, the measures can only include what is strictly necessary.⁹⁷ In the reasoning the Court found that the criminal penalty was already sufficient punishment in a effective, proportionate and dissuasive manner, so it must be seen as the further proceedings and punishments may go beyond what is strictly necessary.⁹⁸ For this reason the Court came to conclusion that the national legislation which allows the double punishment in those circumstances where the measures are already effective, proportionate and dissuasive to punish a person its acts are violating the *ne bis in idem* principle. The judgement showed that in case the principle of proportionality has been ignored the national legislation is incompatible with the Article 50 of the Charter.

In joined case *Di Puma and Zecca* the Court found that after finality of acquittal finding in criminal judgement, the second proceedings under administrative law which is criminal in nature would infringe *ne bis in idem* principle.⁹⁹ Even though the judgement in the *Menci* set the limitation to the principle under Article 52(1) of the Charter which set the condition where the person could be faced the parallel proceedings and punishment in certain circumstances, that does not mean that the parallel proceeding after the criminal offence was not established could be justified. The second proceeding would clearly exceed the necessary requirement.

The judgement in *Di Puma and Zecca* is very easily reasoned since allowing the second prosecution after the finality of the acquittal judgement would contravene against the legal certainty of individuals and the *res judicata*. It would undermine the whole justice system if the person could not be sure when he is finally free from charges. The circumstances where the limitation is found justified provided the complementary measures to achieve objectives of the Union law respecting to the principle of proportionality and were strictly necessary. Any less

⁹⁶ Court decision, 20.3.2018, *Garlsson Real Estate and others*, C-537/16, EU:C:2018:193, points 5 and 46.

⁹⁷ *Ibid.*, point 48.

⁹⁸ *Ibid.*, points 59–61.

⁹⁹ Court decision, 20.3.2018, joined case *Di Puma and Consob*, C-596/16 and C-597/16, points 40–41.

convincing reasons would impair the *ne bis in idem* principle, so the three judgements established the strict borderlines to the limitation of the principle.

4. ASSESSMENT OF THE RESULTS

The ECtHR judgement in *A and B v. Norway* unbalanced the developed of *ne bis in idem* principle because the new approach opened the possibility to dual track for the criminal proceedings and the administrative proceedings based on the same facts. The *ne bis in idem* principle guarantees protection to the individuals and generally the limitation to the principle would undermine its protectiveness. Through the recent judgements the CJEU took also completely new autonomous direction by defining criteria which allow double proceedings and punishment without infringing the *ne bis in idem* principle guaranteed in Article 50 of the Charter.

It could be argued whether the recent CJEU judgements are any better than the ECtHR's approach, since it now attenuates the protection by allowing limitation to the principle. However, as it is case in some fundamental rights, the limitations can be justified by the legitimate reasons as it ensures the effective execution of the law. Exhaustive list of defined criteria might be the only possible and justified way to limit the right guaranteed to protect the individual's rights against the state power to punish the people.

As the CJEU has established it can provide an autonomous interpretation as the Charter is the primary law of the Union and not itself access to the ECHR. Thus Article 50 of the Charter can be interpreted without obligation to follow ECtHR's decisions of Article 4 of protocol No. 7 to the ECHR, as long as Article 50 of the Charter does not guarantee less than the Article 4 of protocol no 7. It could be questioned whether the recent CJEU judgement would have been justified if the ECtHR was not establish the limitation to the principle. In my opinion, if the ECtHR would not have established the limitation, the CJEU's limitation had resulted less than what is secured in the ECHR and thus infringed the Article 53 of the Charter, which sets that the ECHR guarantees the minimum protection. Consequently, the ECtHR's judgement opened the door to the CJEU also defining the limitation to the *ne bis in idem* principle.

The CJEU's limitation could provide solution to the *ne bis in idem* principle, because it could be seen as more define, necessary and it serves the Union aims comparing to the ECtHR's limitation which is lacking the same kind of reasoning and is based on the uncertain substances. Thus, the ECtHR places the principle to the risk for different interpretations as the situation has been hitherto. However, the limitation does not come to practice without any obstacles.

The CJEU has left to the national courts to examine if duplication of the proceedings and the sanctions are justified in case the measures aim to achieve complementary objectives. Taking into consideration of previous reluctance to ratify Article 4 of protocol no. 7, the opening the dual track raise concerns if the national benefit would affect to the assessment of the courts as was situation in Sweden before the *Åkerberg Fransson* judgement.

In order to a person not facing too excessive punishment, as was case in *Garlsson Real Estate and others*, sustained cooperation between the authorities is necessary requirement. However, the different national legal systems may not be organized in such a way which allows correspond with different authorities in different proceedings. This was the case in *Nykänen v. Finland*, where administrative sanction and the criminal penalty were imposed by the separate authorities which were not in any connection with each other.¹⁰⁰ So the limitation to the *ne bis in idem* principle guaranteed by the ECHR would only be possible in those countries where the system provides interaction with different authorities. Otherwise the precise laws and coordination mechanism should be reformed to control system of parallel procedures.

The reasoning behind the recent CJEU judgements pursue to guarantee the EU financial interest including effective VAT collection, which should be secured by the member states. So said, if the member states does not impose effective sanctions which comply with an offence committed, they are not ensuring the Union objectives in that sense. For example, in 2013 Finland was obliged to make changes to their legislation in order to comply with the ECtHR judgement relating to the VAT collection.¹⁰¹ The new reform disposed that the charges in the secondary proceedings, whether under the criminal proceedings or administrative proceedings, must be dropped out after the first proceeding is pending. So after a turnaround in the interpretation of the *ne bis in idem* principle, could it be even said that the Finnish legislation is now incompatible with the EU law because it does not lay down effective sanctions?

Without going too much for the details of Finnish VAT legislation, the current legislation can be incompatible with the EU law, if it does not guarantee the Union objectives with the effective, proportionate and dissuasive manner through the administrative sanctions and criminal penalties. Ultimately, the member states can decide how they are going to guarantee the Union objectives and the Finnish legislation does not rule out possibility to impose effective sanctions trough the

¹⁰⁰ *Nykänen v. Finland*, no. 11828/11, § 51, ECHR 2011.

¹⁰¹ Laki erillisellä päätöksellä määrättävästä veron- tai tullinkorotuksesta (781/2013), 8.11.2013.

measures in which they are choosing. If the Finnish legislation is ensuring effective VAT collection and at the same time their national laws prevents double punishment, it cannot be thought to be incompatible with the EU law, because the member states are free to provide more protective laws to the individuals. In turn, if the Finnish law does not provide possibility to ensure effective VAT collection, then the changes for ensuring the Union objectives would be required but the state can still decide measures which guarantees the Union aims.

The most essential question in this research related to the connection between the two European Courts and to what extent they are in same line with each other. At the moment the two European Courts seem to be adopted a similar approach in order to define how the national courts should assess what constitutes criminal in nature as was case in *Bonda* where the CJEU referred to the Engel-criteria and later on has been used that assessment by referring to the particular case. Moreover, the different approach was also taken by establishing the limitation to the principle. What they seem to agree with, is that the limitation is needed to harmonize the differences between the states.

Because the two courts are not exactly in the same line at the moment when implementing the *ne bis in idem* principle and defining the criterions which allows in the certain circumstances duplication of the proceedings, the situation is problematic in the states point of view. The European courts seemed to take similar direction on how strictly the principle should be interpreted since the limitation is now established in the Article 50 of the Charter as well as in the Article 4 of Protocol No. 7 to the ECHR. The previous approach where the limitation was not allowed did not consider different legal systems between the states resulting incompatibleness with the national legal systems. Even though the European courts did not adapt identical approach, the courts seem to develop the *ne bis in idem* principle to the same direction.

In order to prevent problems which can occur from the different interpretation of provided limitations, I would strongly suggest that in the upcoming cases, the ECtHR would adapt similar assessment to the limitation than what has been provided by the CJEU. If the ECtHR would not follow the CJEU's approach, the conflicts may come to exist between the two different *ne bis in idem* principles. The member states are implementing the EU law but at the same time, most of the member states are also parties to the protocol no. 7, where the ECtHR has given different course of application to the states to implement *ne bis in idem* principle. This would mean that the state should follow two differing and to some extent, mutually overwhelming *ne bis in idem*

principles. Because the member states have obligation to follow the CJEU judgements, it could be argued that the recent direction of the CJEU is invalidating the ECtHR approach to some extent.

Furthermore, if the member state is also party to the Protocol No. 7 to the ECHR, the situation where the state should follow the *ne bis in idem* principle with two different meaning can cause issues in practice. For the reason that the CJEU is the primary law of the Union and the member states are legally obliged to follow the CJEU's decisions. After the CJEU judged the limitation to the principle, the situation is not as conflicting as it could be if the limitation would only exist in Article 4 of Protocol No. 7 to the ECHR. However, the state could end up in conflicting situation if the ECtHR would establish that the state is not complying the Article 4 of Protocol No. 7 to the ECHR. The controversial interpretation of the limitation can cause problems if the state is applying the limitation provided by the ECtHR and at the same time, it does not fulfil the requirements established by the CJEU. Thus, complying the ECtHR's decision could infringe the Article 50 of the Charter.

Consequently, these diverging judgements brought up an essential legal problem especially at the states point of view as regards to the different interpretation by the European Courts relating to the *ne bis in idem* principle. For harmonizing the principle at the states point of view, the CJEU's current direction could be right, but the ECtHR should provide similar assessment than what was introduced in the CJEU's judgements. The CJEU's solution also requires steps to be taken by the member states to ensure that they are fulfilling the standards. In view of previous complications of the *ne bis in idem* principle it is quite hard to believe that there would not appear problems especially what comes to the interpretation of the requirements appointed by the CJEU. However, it could be concluded that the CJEU's new approach may integrate the different national approaches and deduct prevailed implementing problems, especially in the countries with a dual justice system. In case the ECtHR is not accepting the similar interpretation of the *ne bis in idem* principle and will go its own path, it remains to be seen whether the conflicting interpretation by the two European courts is damaging the possible solution to the *ne bis in idem* principle established by the CJEU.

CONCLUSION

The aim of the thesis is to examine the relationship between the ECtHR and the CJEU relating to the principle of *ne bis in idem* established in Article 4 of Protocol No. 7 to the ECHR and in Article 50 of the Charter. Consequently, the research will establish the extent which the two European Courts are applying the principle in line. Generally, the both articles provide principle of *ne bis in idem* which have developed more or less separately through the two European Courts' case-law. The research will also seek the current criteria which allow limitation to the principle of *ne bis in idem* presented first by the ECtHR and recently by the CJEU. The research also examines how the decisions could impact on the state's implementation.

Article 52(3) of the Charter establishes that the Charter should guarantee the same meaning and the scope than the ECHR, which would consequently mean that Article 50 of the Charter should establish the same meaning and the scope than Article 4 Protocol No. 7. The content of those articles has been acquired from the decisions delivered by the CJEU and the ECtHR. The hypothesis stated that the CJEU and the ECtHR are not interpreting the principle of *ne bis in idem* exactly in line with each other. Before the ECtHR's judgement of the case *A and B v. Norway*, the hypothesis would have proved to be wrong most likely since the both European Courts were accepting the similar assessment of the essential elements of the principle with slightly divergences which did not make difference in the scope and the meaning of the principle.

In March 2018 the CJEU delivered the judgements relating to the limitation to the *ne bis in idem* principle and at the same time clarify its connection to the ECtHR's judgements relating to the principle. The CJEU took its autonomous approach by establishing divergent criteria which allows the limitation. It could be said that since the both courts provided limitation to the principle they accepted its necessity and provided the same level of protection to some extent. However, the CJEU introduced exhaustive list of requirements which must be fulfilled in order to allow limitation to the principle whereas the ECtHR have established the assessment of its own including the non-exhaustive list of criteria. Based on the differing requirements for a limitation

established, it can be concluded referring to the hypothesis that the ECtHR and the CJEU are not exactly in line with each other what comes to the interpretation of the *ne bis in idem* principle.

In the current case-law the CJEU took separation from the ECtHR establishing that it could provide an autonomous interpretation as the Charter is the primary law of the Union and not itself access to the ECHR. The autonomous interpretation could not undermine the level of protection which the ECHR is guaranteeing. Since the ECtHR provided a limitation to the principle of *ne bis in idem*, the CJEU's judgement can be seen as securing the minimum protection as established in the ECHR.

The delivered judgements by the CJEU changed the course of application of the *ne bis in idem* principle. Hence the CJEU referred in the latest judgments that Article 50 of the Charter does not rule out the national legislation which permits duplication of the proceedings and penalties of a criminal nature against the person occurring from the same acts if the purpose requires the complementary measures to ensure the general interest. So the reasoning behind the limitation was that it would ensure the common interest of others. That arises question if the individual protection should not be prejudiced in order to pursue the financial interest which was accepted to fulfil the meaning of general interest. However, I found it acceptable by the two reasons. Firstly, the economic unity is the main elements of the EU and secondly, it is commonly acceptable that some human rights are limited for the legitimate reasons. In addition, the judgement in *Garlsson Real Estate and others* showed that the principle of proportionality must be respected, and the additional punishments only imposes what is necessary. For that reason, it could be said, that the parallel punishments do not hamper the individuals' protection because the parallel punishments respond the offence committed.

In this research I found The CJEU's limitation to the principle is complying with the different legal systems and thus can harmonize the interpretation of the principle between the member states. Keep in mind the previous diverging interpretations of the principle and the current situation, I found two main actions which should be consequently taken in order to guarantee the harmonizing of the principle.

The first action pertains to the member states. The CJEU established the limitation to the principle but the execution would require that all the requirements must be complied. This demands

specially to regulate and reform the workable system of coordination between the proceedings, which have caused problems in some countries such as in Finland.

The second suggestion concerns the extent in which the two European Courts are complying with each other. In order to avoid any further uncertainty and inequality concerning the execution of the principle between the member states, the European Courts should interpret the principle in line with each other. Considering that the CJEU's limitation provided more specific and unconditional limitation than the ECtHR, I strongly suggest that the ECtHR would comply with the similar assessment of the limitation to the principle.

The applicability of the proposals could extend beyond the context of introduced above. The limitation to the *ne bis in idem* may be used only in exceptional circumstances but the result is that the coherent consequences can be taken through the European Union, despite the legal system of the member state. This can be a relevant influencer to the transnational situations where more than one member state has jurisdiction over the situation. Therefore, further research could examine what kind of impact a limitation to the principle may have in the transnational situations. The second further research could be relevant, if the both European Courts provide their own limitation to the principle and the two *ne bis in idem* articles appear to conflict in practice, so the research could examine its practical consequences.

LIST OF REFERENCES

Science books:

1. Heiskala, J. (2011). *Veronkorotus ja ne bis in idem*. Vaajakoski: University of Helsinki Conflict Management Institute.
2. *Human Rights in Contemporary European Law. Swedish Studies in European Law Volume 6*. (2015)./Eds. J. Nergelius, E. Kristoffersson. Oxford and Portland, Oregon: Hart publishing.
3. Van Bockel, B. (2010). *The ne bis in idem principle in EU Law*. The Netherlands: Kluwer Law International.
4. Vervaele, J. A. E. (2012). *Administrative Sanctioning Powers of and in the Community. Towards a System of European Administrative Sanctions?* Administrative Law Application 161–201.
5. Virolainen, J., Pölönen, P. (2003). *Rikosprosessin perusteet, Rikosprosessioikeus I*. Helsinki: WSOY Lakitieto.
6. Wils, W. (2005). *Principles of European Antitrust Enforcement*. Oxford and Portland, Oregon: Hart Publishing.

Science articles:

7. Bernard, D. (2011) *Ne bis in idem – Protector of Defendants’ Rights or Jurisdictional Pointsman? – Journal of International Criminal Justice*, Vol. 9, 863–880.
8. Bowles, R., Faure, M., Garoupa, N. (2008). The Scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications. – *Journal of Law and Society*, Vol 35, No. 3, 389–416.
9. Coffey, G. (2013). Resolving Conflicts of Jurisdiction in Criminal Proceedings – Interpreting Ne Bis in Idem in Conjunction with the Principle of Complementarity. – *New Journal of European Criminal Law*, Vol. 4, No. 1–2, 59–81.
10. De La Cuesta, J. L. (2002). Concurrent national and international criminal jurisdiction and the principle ‘ne bis in idem’, General report. – *Revue Internationale de droit pénal*, Vol. 73.
11. Douglas-Scott, S. (2011). The European Union and Human Rights after the Treaty of Lisbon. – *Human Rights Law Review*, No. 11(4), 645–682.
12. Hancox, E. (2013). Meaning of Implementing EU Law under Article 51(1) of the Charter: Åkerbeg Fransson. – *Common Market Law Review*, Vol. 50, 1411–1432.

13. Helenius, D. (2010). Ne bis in idem -kiellon rakenne ja ongelmakohtat viimeaikaisen oikeuskäytännön valossa. (Die Struktur und die Problemstellen des ne bis in idem-Verbots im Lichte der aktuellen Rechtsprechung). – *Defensor Legis*, No. 6, 764–777.
14. Ilic, G. P. (2017). Observations on the *ne bis in idem* principle in the light of European Court of Human Rights’ judgement: Milenkovic v. Serbia. – *Journal of Eastern-European Criminal Law*, No. 1, 211–230.
15. Lahti, R. (2002). Finland, Concurrent National and international criminal jurisdiction and the principle of *ne bis in idem*. – *Revue internationale de droit pénal*, Vol. 73, 901–911.
16. Lelieur, J. (2013). ‘Transnationalising’ *Ne Bis in Idem*: How the Rule of *Ne Bis In Idem* Reveals the Principle of Personal Legal Certainty. – *Utrecht Law Review*, Vol. 9, No. 4, 198–210.
17. Luchtman, M. (2011). Transnational Law Enforcement in the European Union and the *Ne Bis in Idem* Principle. – *Review of European Administrative Law*, Vol. 4(2), Paris legal publishers, 5–29.
18. Neagu, N. (2012). The *ne bis in idem* Principle in the Interpretation of European Courts: Towards Uniform Interpretation. – *Leiden Journal of International Law*, vol. 25, 955–977.
19. Rosano, A. (2017). Ne Bis Interpretatio In Idem? The Two Faces of the *Ne Bis In Idem* Principle in the Case Law of the European Court of Justice. – *German Law Journal*, Vol 18, No. 1, 39–58.
20. Van Bockel, B. (2012). The *ne bis in idem* principle in the European Union legal order: between scope and substance. – *Journal of the academy of European law*, Vol. 13, 325–347.
21. Vervaele, J. A. E. (2005). The transnational *ne bis in idem* Principle in the EU: Mutual Recognition and Equivalent Protection of Human Rights – *Utrecht Law Review*, Vol. 1, No. 2, 100–118.
22. Vervaele, J. A. E. (2013). *Ne Bis in Idem*: Towards a Transnational Constitutional Principle in the EU? – *Utrecht Law Review*, No. 9(4), 211–229.
23. Vervaele, J. A. E. (2013). The Application of the EU Charter of Fundamental Rights (CFR) and its *Ne bis in idem* Principle in the Member States of the EU. – *Review of European Administrative Law*, Vol. 6, 113–134.

EU legal acts and international conventions:

24. European Union, Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community, signed at Lisbon, 13 December 2007, 2007/C 306/91, Published in the Official Journal of the European Union.

25. European Union, The Charter of Fundamental Rights of European Union, 26 November 2012, 2012/C 362/02, Published in the Official Journal of the European Union.
26. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5.
27. Commission Regulation (EC) 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IV of that Regulation and the use of land set aside for the production of raw materials, OJ L 345/1.

National legislation:

28. Laki erillisellä päätöksellä määrättävästä veron- tai tullinkorotuksesta (781/2013), 8.11.2013.

The case-law:

CJEU case-law:

29. Court decision, 5.12.2012, *Lukasz Marcin Bonda*, C-489/10, EU:C:2012:319.
30. Court decision, 9.3.2006, *Leopold Henri Van Esbroeck*, Case C-436/04, EU:C:2006:165.
31. Court decision, 26.2.2013, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, EU:C:2013:105.
32. Court decision, 27.5.2014, *Zoran Spasic*, C-129/14 PPU, EU:C:2014:586.
33. Court decision, 15.2.2016, *N.*, C-601/15 PPU, EU:C:2016:84.
34. Court decision, 20.3.2018, joined case *Di Puma and Consob*, C-596/16 and C-597/16.
35. Court decision, 20.3.2018, *Garlsson Real Estate and others*, C-537/16, EU:C:2018:193.
36. Court decision, 20.3.2018, *Luca Menci*, C-524/15, EU:C:2018:197.
37. Opinion of Advocate General, 12.6.2012, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, EU:C:2012:340.
38. Opinion of Advocate General, 12.9.2017, *Luca Menci*, C-524/15, ECLI:EU:C:2017:667.

ECtHR case-law:

39. *A and B v. Norway*, no. 24130/11 and 29758/11, ECHR 2016.
40. *Engel and Others v. The Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, ECHR 1976.
41. *Bendenoun v. France*, no. 12547/86, ECHR 1994.
42. *Benham v. the United Kingdom*, no. 7/1995/513/597, ECHR 1996 III.

43. *Franz Fischer v. Austria*, no. 37950/97, ECHR 2001.
44. *Gradinger v. Austria*, no. 15963/90, ECHR 1993.
45. *Grande Stevens and others v. Italy*, no. 18640/10, ECHR 2014.
46. *Oliveira v. Switzerland*, no. 84/1997/868/1080, ECHR 1998.
47. *Maresti v Croatia*, no. 55759/07, ECHR 2009.
48. *Muslija c. Bosnia and Herzegovina*, no. 32042/11, ECHR 2014.
49. *Nilsson v. Sweden*, no. 73661/01, ECHR 2005.
50. *Nykänen v. Finland*, no. 11828/11, ECHR 2011.
51. *Zigarella v Italy*, no. 41604/11, ECHR 2002.
52. *Zolotukhin v. Russia*, no. 14939/03, ECHR 2009.
53. *Öztürk v. Germany*, no. 8544/79, ECHR 1984.

Other sources:

54. Council of Europe. Chart of signatures and ratifications of Treaty 117. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Rights. Status as of 15/03/2018. Available at: https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/117/signatures?p_auth=mdTindI7, 10 May 2018.
55. Eurojust. The Principle of *Ne Bis in Idem* in Criminal Matters in the Case Law of the Court of Justice of the European Union, The Hague, Netherlands, updated until September 2017. Accessible: [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20\(Sept.%202017\)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20(Sept.%202017)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf), 25.1.2018.
56. Eur-Lex. Glossary of Summaries. European Convention on Human Rights. Accessible: http://eur-lex.europa.eu/summary/glossary/eu_human_rights_convention.html?locale=en, 10 May 2018.