# Administrative and Criminal Sanctions in Polish Law

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**Article**

## ABSTRACT

This article analyses the complex relationship between administrative and criminal sanctions in Polish law, focusing on tax and social security cases and the constitutional ne bis in idem principle. It centres on the 2011 judgment of the Polish Constitutional Tribunal (P 90/08), which held that the 75% lump-sum tax on undisclosed income under the Personal Income Tax Act is a "special type of tax" rather than a criminal sanction, and thus its cumulative application alongside fiscal-criminal liability under the tax penal code does not violate ne bis in idem. The article reconstructs the Tribunal's reasoning on the preventive and compensatory nature of such tax measures, contrasts it with dissenting views emphasising excessive repressiveness, and situates the ruling within earlier Constitutional Tribunal case law on VAT "additional tax obligations" and other double-sanction scenarios. It further explores the emergence of an "administrative-criminal law" sphere in which economic sanctions imposed by administrative authorities function de facto as punishments, raising proportionality and fair-trial concerns. Finally, the article discusses the evolving influence of ECtHR and CJEU jurisprudence on double sanctions, highlighting pending preliminary questions and arguing that future Polish and EU practice will need to refine the boundary between preventive administrative measures and genuinely punitive sanctions in order to give meaningful effect to the ne bis in idem guarantee.

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On 12 April 2011, the Constitutional Tribunal of the Republic Poland (official translation of "Trybunał Konstytucyjny Rzeczpospolitej Polski", hereinafter "CT") heard case P 90/08 and adjudicated that the provisions of law – based on which, first, the lump-sum tax liability and, second, the criminal liability of the taxpayer (natural person) for the fiscal misdemeanor or the fiscal crime (for the same act) was imposed – are in accordance with the Constitution of the Republic of Poland (hereinafter "Constitution").[1]

The CT adjudicated that taxes from undisclosed earnings are not a criminal sanction but a "special type of tax." In its conclusion, the CT stated that imposing both additional taxes and criminal sanctions does not constitute a breach of the *ne bis in idem rule*.

# I. The Background of the Case

The issue of constitutional aspects appeared in connection with a case in which, 75% additional tax from undisclosed earnings was imposed on the taxpayer on the basis of personal income tax law[2] (hereinafter "PIT") as a sanction, on the one hand, and, on the other, a criminal sanction was imposed on the same natural person for the same act on the basis of Art. 54 § 1, 2, and 3 of the tax penal code[3] (hereinafter "k.k.s.").

The District Court for the City of Miedzyrzecz, VI Grodzki Division, referred this legal question to the CT. In the applicant's opinion, according to the law, there is no mechanism to avoid double liability – administrative and criminal sanctions – for the same act. In the opinion of the District Court this situation is too restrictive. As a result of his particular situation of not paying taxes from undisclosed earnings to the proper authority, the taxpayer was imposed with a 75% tax on undisclosed earnings. Additionally, the taxpayer was also liable as a perpetrator of the fiscal misdemeanor or the fiscal crime under the provisions of Art. 54 § 1, 2, and 3 of the k.k.s.. In the District Court's opinion, this situation breached the *ne bis in idem rule* and also constituted a disproportionate reaction on the part of the State for the breach of the law.[4]

The lump-sum tax is calculated for income from undisclosed sources or earnings whose source is not visible in the real income, in the event that the increase in property or incurred expenses is higher than the disclosed earnings. If so and if the person cannot justify in a credible manner the sources of his expenses or the increase in property, the tax authority, on the basis of internal fiscal indications, will calculate the amount of earnings and assess the tax to the amount of 75% (Art. 30 section 1 point 7 PIT). The high 75% tax is considered to have a repressive effect and to be a serious burden for the taxpayer to pay. It is not the normal tax rate calculated on the basis of PIT but a sanction connected with the disclosure of earnings from illegal sources or earnings from unknown sources.

In accordance with Art. 54 of the k.k.s., the taxpayer who evades taxes, does not disclose income to the tax authorities or the basis for a certain tax payment, or does not make a tax declaration (which results in the evasion of tax) will be sentenced to a fine of 720 daily rates[5] or to imprisonment, or to both of these two punishments. If the amount of tax evaded is small, only the fine can be applied. However, "small value" means an amount that does not exceed two thirds of the amount of minimum wage (Art. 53 § 14 k.k.s.) at the time the crime was committed.

The question of double sanctions shall be considered in the context of the proportionality of the reaction of the State upon infringement of the law, as derived from Art. 2 of the Constitution. Due to excessive repressiveness, the situation here can be assessed as disproportionally burdensome because of the accumulation of several negative results of one situation: not only the criminal sanction but also the administrative sanction, its severity, procedural restrictions, evidence restrictions, etc.

The CT did not agree with these arguments. In the CT's opinion, the sentence is proportional and did not breach Art. 2 of the Constitution because this type of tax is not a criminal sanction.

# II. The Constitutional Court's Opinion

The CT adjudicated that the lump-sum tax is one of the instruments used to fight criminal acts that lie in the "grey area,"[6] hence these acts are on the verge of legal economic activity. Furthermore, the payment of a 75% tax is a type of compensation of the state treasury for not paying tax and interest on time and is intended to have a preventive effect. The aim of this tax is to compensate the decrease in the state budget by the amount of tax and interest. The 75% rate is so high in order to demonstrate that tax evasion is not profitable.

Additionally, the high amount of the lump-sum tax is justified by the fact that, besides the tax itself, interest for the delay caused by not paying income tax is not calculated, and the Inland Revenue Department bears the costs of calculation.

The obligation for all taxpayers to fund the State's financial resources in the form of taxes is an important issue from a constitutional point of view. This type of financing is a way of ensuring maintenance and efficient functioning of the State – Art. 84 of the Constitution.[7] Art. 2 of the Constitution[8] includes rules of social justice: the system of competition in a capitalist economy is combined with the rule of fairness require paying taxes.

In this context, it is also important that sanctions can be imposed on the basis of provisions of the k.k.s. that were in effect prior to a decision on the guilt of the taxpayer.

The new opinion of the Polish Parliament dated 31.03.2011, which replaced the opinion on similar issues dated 22.04.2009, states that improper calculation of taxes can have many reasons (an unintentional act, a mistake in accounting, lack of knowledge about the interpretation of the tax law), but not disclosing certain earnings is more likely to have been an intentional action. This type of omission does not require knowledge of tax law but it is important from a social point of view.[9]

Undisclosed earnings and their sources forced the State to introduce a special instrument and create a new legal construction to ensure the rule of social equality and generalization of tax. This construction also has another aim, namely restoring the legal situation by imposing a 75% tax on undisclosed earnings.[10]

In the new opinion of the Polish Parliament dated 31.03.2011, the rate of 75% is connected with a special type of tax and, more importantly, it is a mechanism for compensation of interest that has not been collected. Not the aim, nor the legal construction, nor even the amount of taxes on these earnings is a basis for the introduction of a "punishment." The above-mentioned regulation fulfills the constructive elements of tax. It is not connected with the taxpayer but with his earnings, and its aim is not to punish the taxpayer but only to make him realize that he has an obligation to pay taxes and to restore the legal situation. The location of Art. 30 PIT (not in the k.k.s.) supports this opinion.

Paying taxes is an obligation. In the case of imposing tax on undisclosed earnings, it is assumed that it is impossible to reconstruct the value and the costs of earnings. For this reason, the calculation of the value of earnings is based on the proven lack of justification for expenses incurred and the value of the property that comes from taxed earnings or that is free from tax.[11] Taxation of undisclosed earnings is connected with the interpretation of the phrase "expenses incurred" and "value of the collected property in this year" in Art. 20 section 3 PIT.

This problem is of concern only with regard to natural persons, because only in these cases is there a possibility to share the sources of earnings: types of criminal acts (legal or factual) for which income is received as a basis for tax.[12]

From a procedural point of view, the taxation of earnings from undisclosed sources is an extraordinary, substitute, and amended method of measurement of an obligation that replaced taxation based on the general rules of tax law.[13] Taxation of earnings from undisclosed sources and taxation based on general rules of tax law differ as to their base of taxation.[14]

The ratio of this rule is the fact that it is useful if the restoration of the former legal situation is not possible by reconstruction of the real tax state. For the taxation of undisclosed earnings, the State incorporates equality into the taxation process. This form of restitution completes and compensates losses of the State that resulted from the unreliable fulfillment of the taxpayer's obligation.[15]

To answer the legal question raised here, the main issue was the definition of criminal sanctions and administrative sanctions. The lines between administrative sanctions, misdemeanors, and penal offences are undefined.[16] From a constitutional point of view, the main point is not the "name" of the type of tax but its "essence". This means that restrictive provisions are not sensu stricto criminal provisions but provisions which imposed some form of punishment on the person.[17] The European Court of Human Rights (hereinafter "ECtHR") has a similar point of view in this matter.[18] The ECtHR stated that the term "criminal case" refers to the repressive character of a sanction.[19]

Based on this point of view, the CT adjudicated that Art. 30 PIT does not have a repressive essence. However, it has a preventive function.[20] Therefore, it should not be assessed in the context of breaching the ne bis in idem rule.

Questioning the penal character of Art. 30 PIT does not mean that we do not have elements of a criminal sanction in this provision. Tax sanctions cause a financial burden.[21]

Judge M. Zubik submitted another opinion to the judgment of CT P 90/08. The judge said that this situation causes excessive taxation and disproportional repressiveness: paying a lump-sum tax of a higher than normal value (75% of the earnings) exceeds the reasonable level that should serve the public interest and is not balanced with the taxpayer's interests.

A double sanction for one person, meaning the obligation to pay the lump-sum as well as criminal measures according to the k.k.s., can lead to the deprivation of all undisclosed earnings and also to an excessive burden due to the deterioration of the personal and economic situation of the person concerned.

# III. Ne bis in idem…

The *ne bis in idem rule* is not explicitly formulated in the Constitution but, as a fundamental principle of the criminal law, it is derived from the rule of law. The rule of ne bis in idem means that a person cannot be punished twice for the same crime. Double punishment of the same person for the same act breaches the principle of proportionality.[22]

The CT adjudicated that the *ne bis in idem rule* refers not only to the criminal sanctions for the offence but also to the administrative sanctions.[23] The additional fine is a sanction that has a repressive effect and shall be considered when evaluating the ne bis in idem rule. This situation is intensified by the tendency to guarantee compliance with different obligations of a public nature in a different manner, e.g., using economic sanctions that have a different name but without using the term "punishment." These sanctions are not

imposed by a court but by an administrative authority. Imposing the sanctions is done objectively as the "guilt" of the perpetrator is not referred to. This means that, beyond the official bearing of criminal liability, we have an additional manner of imposing burdensome sanctions such as economic sanctions.[24]

With regard to the ratio legis of this argumentation, the CT stated that the tax described in Art. 30 PIT does not have the character of a tax that would double the criminal sanction.

# IV. In the past….

The problem of double sanctions was also considered by the CT in other judgments.

In the judgment dated 29.04.1998 r., sygn. K 17/97,[25] the CT issues a reminder that

> *"the taxpayers' actions to calculate their taxes is based on trust in the taxpayer. This trust includes not only the honesty of the taxpayers, but also appropriate care in their calculation of the amount of due tax liability. Sanctions for decreasing the amount that is due to the tax office in the tax declaration are applied automatically under tax law based on his objective fault and has a preventive character. The aim of that preventive character is to convince taxpayers that the reliable and careful completion of the tax declaration is in his best interest. Making mistakes in the tax declaration entails the obligation to pay an increased amount which equals the difference between the taxes that were due and taxes that were declared."*

This argumentation was strengthened in the judgment of the CT dated 30.11.2004, sygn. akt. SK 31/04 (OTK ZZU no 10/A/2004, pos. 110), in which the CT considered the constitutional complaint of a limited liability company, which is a legal entity, and confirmed the constitutionality of Art. 27 section 6 of the Act of VAT.[26]

The CT thus concluded, with a significant statement for the assessment of Art. 27 section 6 of the Act of VAT, that "this provision does not establish a "normal" tax or pecuniary burden, which decreases the property of the taxpayer. This provision establishes a sanction for breaching the rules on the tax on goods and services such as the obligation to provide evidence."

The CT continued: "Additional tax obligations (sanctions) arising in connection with defaulting on the duty to provide evidence refer to the situation when the taxpayer did not regularly submit a reliable tax declaration in the form of VAT-7. The main aim of this obligation is assuring quality, it is a general rule with regard to taxes (article 32 in connection with article 84 of the Constitution). Additional tax obligations are an obligatory administrative sanction for the submission of unreliable tax declarations. Applying a sanction is the necessary result of a breach by the taxpayer of the evidence obligation that is specified by the act. It is important for the efficient functioning of taxes on goods and services that are based on the fundament of self-accounting and "evidence efficiency" of taxpayers. Each breach of this efficiency, even if not followed by a decrease in the amount of tax liabilities to the state, is an obstacle in the efficient functioning of this tax. The liability of the taxpayer has an objective nature, because in article 27 of the act the terms "guilt" or "dishonesty" are not included, however "unreliability" is. Each violation, even if accidentally and unintentional, of the evidence obligation that is specified in the hypothesis of article 27 section 6 is threatened by a sanction."

Additionally, the CT agreed with the conclusions of the judgment dated 29.04.1998 in that "accumulation of administrative and penal responsibility is too harsh and does not respect the interest of the taxpayers, who also bear an administrative sanction" (sygn. K 17/97, p. 173).

In this context, the Human Rights Defender said that increasing an established tax is the equivalent of a new fine imposed without starting a criminal procedure. In the situation discussed above, the sanction was imposed in the administrative procedure and not in a fiscal-penal procedure. In an administrative procedure, the person who committed the prohibited act does not have the right to defense and is deprived of the right to demand an investigation of the case.[27]

In addition, the Act of VAT neither defines the offence or misdemeanor nor does it include other criminal provisions. The provisions of the Act of VAT were not clear enough, which means that it could be interpreted in different ways. [28]

Here, it is important that continued coexistence of both types of sanctions – administrative and penal – requires a precise specification of the limits for imposing fiscal-penal sanctions. At present, we can refer to the judgment of the CT dated 12.09.2005,[29] in which the view is expressed that many tax regulations need to include a proportionality rule with regard to imposing fiscal-penal sanctions. It is unacceptable to shift onto the taxpayer not only the economic risks connected with a deficient implementation of the rules of European Community law into Polish tax law but also criminal liability. Additionally, Art. 42 section 3 of the Constitution excludes the presumption of innocence of the taxpayer in a fiscal-penal procedure. It also refers to the taxpayer who performs a business activity, due to the fact that the tax law is complicated and unclear and that simple use of the rule ignorantia iuris nocet is unjustified in these situations.[30]

Next came a judgment sygn. akt P 43/06 dated 04.09.2007 ruling on a legal question posed by the Provincial Administrative Court in Poznań. The judgment had been issued in connection with the case of a taxpayer who sold imported cars. In the opinion of the tax authorities, the taxpayer overstated the amount of the calculated tax in order to transfer this tax to the next year of assessment. In this situation, taxes on goods and services were calculated and "additional tax liability" was imposed to the amount of 30% of the over-stated amount. The Provincial Administrative Court, which heard the case, submitted the following legal question: if applying to the same person for the same act, is the administrative sanction specified as "additional tax liability" and is liability for a fiscal crime or fiscal misdemeanor in a fiscal penal proceeding lawful and in accordance with the Constitution, making Art. 109 section 5 and 6 of the act dated 11.03.2004 of the tax on goods and services constitutional?

This issue goes beyond the scope of the tax liability of a natural person carrying out a business activity. The Provincial Administrative Court argued that in, Art. 109 sections 5 and 6 of the act on taxes on goods and services dated 11.03.2004,[31] we can distinguish between three hypothetical situations:

- The taxpayer, in a tax declaration, submits the refund amount of difference between paid and due tax as higher than the due amount;
- The taxpayer, in the tax declaration, submits the refund amount of calculated tax as higher than the due amount;
- The taxpayer, in the tax declaration, submits the amount of the surplus of calculated tax, which will be transferred to the future year of assessment as higher than the due amount.

In the Provincial Administrative Court's opinion, each of these types of behavior on the part of the taxpayer is also penalized in Art. 56 of the k.k.s. as a treasury offence or crime. This means that actions resulting from administrative liability in the form of VAT tax ("additional tax obligation") can, in relation to a natural person, be additionally classified as fiscal misdemeanors or fiscal crimes threatened by sanctions mentioned in the k.k.s. In the opinion of the Provincial Administrative Court, combining both administrative and fiscal-penal liability is not consistent with democratic rules (Art. 2 of Constitution) and the rules of tax law.[32] Moreover, it is excessive from a fiscal point of view, and the interests of the taxpayer are not taken into consideration.

The CT, in its reasoning, referred to the resolution of the Supreme Administrative Court dated 16.10.2006 in which said Court stated that "the provisions of article 27 section 6 of act dated 08.01.1993 of taxes on goods and services and excise tax[33] are not the basis for additional obligations for the natural person if there is also a sanction for the fiscal crime. It is unacceptable in the state of law to impose double sanctions for the same act".[34] Referring to the judgment regarding the act dated 08.01.1993 concerning taxes on goods and services and excise tax, the Constitutional Court of the Republic of Poland remarked that this is a conclusion a minori ad maius (a more general rule is contained in a strictly formulated rule).

In its reasoning, the CT had the possibility to refer to the previous judgment of the CT - P 43/06 (prejudicial question from the Provincial Administrative Court dated 28.07.2006 (sygn. akt I SA/Po 1196/05)) dated 04.09.2007 and state that Art. 109 section 5 and 6 of the act dated 11.03.2004 on taxes on goods and services is unconstitutional.

In the opinion of the lawyer D. Korczyński, which I support, this view can be approved, as a result of the fact that the judgment from the CT refers to the Supreme Court of the Republic of Poland and the Supreme Administrative Court judgments. The problem of accumulating administrative and criminal liability, which is the conclusion of the judgment, is a broad and very significant problem from a theoretical and from a practical point of view as to the nature of administrative sanctions, including tax sanctions. In this context, we should point out that, in the Polish law, there are no clear instructions on how to use administrative sanctions, which means that the rules of the process of imposing these sanctions is based on general rules of administrative and criminal law. As a result, we have new branch of law – administrative-criminal law – which is a precedent. The existence of this branch of law is based on the judgments from the ECtHR, the CT, the Supreme Court of the Republic of Poland, and the Supreme Administrative Court.[35]

This issue was also under discussion by the Parliament of the Republic of Poland. In the opinion of the Ministry of Justice, in answer to parliamentary question no 8454, the ne bis in idem rule in criminal procedure means that one person should not be punished twice for the same criminal act. On the basis of criminal law, this rule is applicable, and there is no doubt about how to use it but, based on the conjunction of both administrative and criminal law, this rule is not easy to use. The main problem is the close connection between the result of the acts that fall within the scope of both criminal law and administrative law.

If the provisions of administrative law foresee imposing on the perpetrator of the crime act- specific consequences of a repressive nature that are connected with the injury caused by his criminal behavior, applying both administrative and criminal sanctions for the same person breaches the rule of the state of law expressed in Art. 2 of the Constitution.[36] However, if the main aim of the administrative sanction imposed on the perpetrator for committing a prohibited act is not repressive (e.g., the aim could be to ensure the regularity of the fulfillment by public officers in their functions, to ensure the credibility of documents, or to ensure the security of road traffic), it is impossible to conclude that the rule of double punishment has been violated – even in the situation in which using administrative sanctions would also cause hardship to the perpetrator. The essence of administrative interference in this situation is the protection of specific social values, which also happens to result in the deterioration of the personal liberty of the citizen.

On 18.11.2010, the CT ruled in a case in which the issue of Social Insurance Institute (Zakład Ubezpieczeń Społecznych, hereinafter "ZUS") sanctions (sanctions of an administrative character) and criminal sanctions (104/9/A/2010, sygn. akt P 29/09) was settled. The CT stated that the provisions of law imposed on the same person for the same act regarding criminal responsibility (Penal Code dated 06.06.1997)[37] and the additional fee (on the basis of act dated 13 October 1998 on the system of social insurance[38], hereinafter "Act of Social Insurance") are not in accordance with Art. 2 of the Constitution. The background of the case is as follows: Rafał K. was the owner of a firm employing several employees. The employer did not pay fees into the Social Insurance Fund and the Welfare Insurance Fund. The ZUS, on the basis of Art. 24 section 1 of

Act of Social Insurance, imposed additional fees as a sanction for not paying the fees that were due. Subsequently, the prosecutor charged the employer for the criminal act described in Art. 218 of the criminal code.

The statement of the Polish Parliament dated 14.09.2010 explains that the aim and legal function of the additional fee, specified in Art. 24 section 1 of the Act of Social Insurance, is a sui generis sanction for non-performance or undue performance of the obligatory payment, the aim of which is not to "automatically" punish the taxpayer in relation to the ZUS but rather to exercise a disciplinary measure. The additional fee shall be imposed if it is possible to ascribe guilt for lack of compliance with the offender's obligation in relation to the ZUS. The additional fee has a strict penal character. It is therefore a measure of an administrative-penal nature.

In the CT's opinion, the ne bis in idem rule should not be limited to the criminal matter in the code of criminal procedure (hereinafter "k.p.k."). The CT stated that "in Polish law there is no special provision, on the basis of which it can be possible to use analogy and using the instruments included in criminal code."[39]

# V. The Next Steps – Prejudicial Question in Case No. V KK 179/10

On 27 September 2010, the Supreme Court of the Republic of Poland on the basis of Art. 267 of the Treaty of the Functioning of the European Union (hereinafter "TFEU") referred to the Court of Justice of the European Union (hereinafter "ECJ") the prejudicial question of whether the legal character of the proceedings that lead to imposing an administrative sanction can be recognized as the proceedings mentioned in Art. 17 § 1 point 7 of the k.p.k. Taken literally, the provisions in which "criminal proceedings" are mentioned would lead to a negative answer to this question. The reason for this is that the provision of Art. 17 § 1 point 7 k.p.k. must be interpreted in connection with Art. 5 of the additional protocol to the European Convention of Human Rights (hereinafter "ECHR"), in which a prohibition of repeated judgment or punishment is laid down. This provision must be interpreted by taking Art. 6 section 1 ECHR into consideration with regard to the interpretation of the term "criminal case." As regards the nature of the proceedings, during which administrative sanctions are imposed, the question of whether or not there is a double sanction must be decided not only based on the type and nature of the sanction but also based on the functions of both types of liability: administrative liability and criminal liability.[40]

Some conclusions can be drawn from the reasoning of the sentence by the First Instance Court (hereinafter "FIC") dated 26.09.2002 in the case of T. – 199/99. A situation in which the authority of a Member State did not take into consideration sanctions of an administrative character imposed by an authority of the EU can lead to a violation of both the ne bis in idem rule and the proportionality rule (point 138).[41]

Other conclusions follow from case C – 45/08 (ETS judgment dated 23.12.2009 r., Spector Photo Group NV, Chris Van Raemdonck v. Commissie voor het Bank, Financie en Assurantiewezen, par. 74 ff.), in which the possibility to impose a criminal sanction on a person who had previously been punished with a sanction of an administrative nature, under the condition that the legislative conditions of the proportionality principle are in place in the national state. In this judgment, the ECJ remarked that "administrative sanctions were efficient, proportional and deterrent without damage for the law of the member states to impose the criminal sanctions" (point 75). However, the ECJ added that, if a Member State provides the possibility to impose criminal sanctions of a pecuniary nature in addition to administrative sanctions "it is not necessary, for the purposes of assessing whether the administrative sanction is effective, proportionate and dissuasive, to take

account of the possibility and/or the level of a criminal sanction which may subsequently be imposed" (point 77).[42]

More arguments on this subject can be found in the jurisprudence of the ECtHR. In particular, in the judgment dated 16.06.2009 regarding the case of Ruotsalainen v. Finland,[43] the ECtHR stated the breach of Art. 4 additional protocol No. 7 as regards the situation in which a criminal and, subsequently, an administrative sanction had been imposed for a tax offence. Also, in the case Gradinger v. Austria,[44] in which the perpetrator of a traffic accident resulting in death had been sanctioned first on the basis of criminal liability, and then received an administrative sanction on the basis of traffic law, the ECtHR concluded a breach of this provision (the ECtHR concluded that there was no breach of the Art. 4 Additional Protocol No. 7 in the case of Göktan v. France).[45]

# Conclusion

The Supreme Court of the Republic of Poland leans towards the standpoint that takes the nature of the proceedings into account. This means that when an administrative sanction is imposed, the decision as to whether or not there is a double (penal) sanction should be decided based on not only the type and legal character of this sanction, but also the function which they both fulfill.[46]

This issue was also touched upon in the judgments of ECtHR, which in its opinion stated that the issue of the qualification of the case as criminal is connected with the retributive character of the sanction. At the same time, the Court ruled that, if a sanction does not have a repressive character but only a deterrent character, the sanction is preventive and the case is not a criminal case.[47]

The "competition" between administrative and criminal sanctions is a controversial issue as we can observe on the basis of the above-mentioned judgments. As a result, we can anticipate the creation of a new legal discipline: criminal-administrative law. In the future, we can also count on the opinion of the ECJ to provide answers to questions posed by the Supreme Court of the Republic of Poland.

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1. Sygn. akt P 90/08.↩
2. Act of 26 July 1991 regarding income tax from natural person (unofficial translation of *„ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych*"), Dz. U. from 2010, No. 51, pos. 455.↩
3. Act of 10 September 1999 regarding tax penal code (unofficial translation of "*Kodeks karny skarbowy*"), Dz. U. 2007, No. 111, pos. 765.↩
4. K. Potocki, http://www.iform.pl/wyrok-tk-w-sprawie-zroznicowania-opodatkowania-w-zaleznosci-od-posiadania-rodziny-na-utrzymaniu---dotyczy-pit-N455.html↩
5. In the Polish law, criminal sanctions in the form of fines are calculated on the basis of a daily rate. This means that the daily rate is connected to the minimum wage for work. Minimum wage for work is currently 1.386,00 PLN.↩
6. Judgments of Supreme Administrative Court (hereinafter "NSA") sygn. akt I SA/Wr 948/96, Lex No. 31000, dated 04.09.1997 and sygn. akt I Sa/Wr 291/96, Lex No. 29058, dated 28.02.1997.↩
7. "Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute" (unofficial translation of "*Każdy jest obowiązany do ponoszenia ciężarów i świadczeń publicznych, w tym podatków, określonych w ustawie*").↩
8. "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice" (unofficial translation of "*Rzeczpospolita Polska jest demokratycznym państwem prawnym, urzeczywistniającym zasady sprawiedliwości społecznej*").↩
9. T. Dębowska-Romanowska, What should the taxpayer pay, and what should the State be responsible for in relation to taxpayer in good faith? (unofficial translation of "*Za co karać podatnika, a za co powinno odpowiadać państwo w stosunku do działających w dobrej wierze podatników?*") cz. 1, Prawo i Podatki, No. 11/2007, p. 1.↩
10. R. Mastalski, Tax law (unofficial translation of "*Prawo podatkowe*"), Warszawa, 2004, p. 454; H. Dzwonkowski, Z. Zgierski, Tax procedures (unofficial translation of "*Procedury podatkowe*"), Warszawa, 2006, p. 325.↩
11. T. Dębowska – Romanowska, Remarks about the way of defining the subject and the tax base in term of calculating ( unofficial translation of "*Uwagi o sposobie definiowania przedmiotu i podstawy opodatkowania z punktu widzenia obliczenia prawidłowej (jednej i jedynej) kwoty podatku*"), (in:) Memorial book dedicated to Professor Apoloniusz Kostecki, Studies on tax law (unofficial translation of "*Księga pamiątkowa ku czci Profesora Apoloniusza Kosteckiego, Studia z dziedziny prawa podatkowego*"), Toruń, 1998, p. 43.↩
12. J. Kulicki, Taxation of earnings from undiclosed sources (unofficial translation of "*Opodatkowanie dochodów z nieujawnionych źródeł przychodów*"), Biuro Studiów i Ekspertyz, Information No. 1139/2005, p. 1.↩

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