

CJEU: Acquittal in Criminal Proceedings Can Block Administrative Fines

News

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On 20 March 2018, the CJEU rendered decisions in two cases that dealt with another aspect within the framework of the admissibility of the duplication of administrative and criminal penalties under EU law. The [joined cases C-596/16 and C-597/16 \(Enzo Di Puma and Antonio Zecca\)](#) concerned the conflict of obligations imposed by EU law, i.e., on the one hand, to respect the *ne bis in idem* principle enshrined in Art. 50 CFR, and, on the other hand, to provide for effective, proportionate, and dissuasive penalties for insider dealing (Directive 2003/6/EC).

In the cases at issue, the Italian National Companies and Stock Exchange Commission (Commissione Nazionale per le Società e la Borsa, – “Con-sob”) imposed administrative fines against Mr. Di Puma and Mr. Zecca because of their participation in insider dealing. In their appeal proceedings, they argued that, in criminal proceedings against them for the same acts, the criminal courts held that the acts constituting the offence of insider dealing were not established. Therefore, Mr. Di Puma and Mr. Zecca were acquitted in the criminal proceedings. Under Italian procedural law, judgment of acquittal has a *res judicata* effect with regard to administrative proceedings for the same acts.

The referring Corte suprema di cassazione (Court of Cassation, Italy) called into question whether this *res judicata* effect is in line with the obligations for EU Member States to effectively combat insider dealing in accordance with Art. 14(1) of Directive 2003/6.

The CJEU stated that said Art. 14(1) requires that, in order to apply effective, proportionate and dissuasive administrative sanctions for violations of the prohibition on insider dealing, the competent national authorities must also establish facts proving such an act. In the present case, however, the criminal proceedings had merely shown that the facts of the insider dealing had not been proven.

Although Art. 14(1) of Directive 2003/6 does not regulate the effect of a final criminal judgment on an administrative procedure, the principle of *res judicata* is of such importance that Union law does not require the non-application of national legislation governing *res judicata*.

As a result, the CJEU ruled that the obligation of Member States under Art. 14(1) of Directive 2003/6 to provide for effective sanctions cannot lead to a breach of the principle of *res judicata*.

The CJEU added that Art. 50 CFR confirms this result. The Court first notes that, according to the wording of Art. 50 CFR, the scope of protection extends to situations in which a person is finally acquitted.

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Although the bringing of proceedings for an administrative fine of a criminal nature in addition to criminal proceedings is, in principle possible, this limitation to Art. 50 CFR must be justified on the basis of Art. 52(1) CFR. Here, the CJEU follows the approach developed in the cases [C-524/15 \(Luca Menci\)](#) and [C-537/16 \(Garlsson Real Estate SA\)](#).

The CJEU concluded that the principle of proportionality had not been respected in the given case. The continuation of administrative proceedings following a final acquittal in criminal proceedings obviously goes beyond what is necessary to achieve the objective of protecting financial markets and public confidence in financial instruments. The CJEU stated that there was no basis whatsoever for continuing the administrative proceedings after the acquittal in the criminal proceedings.

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