

CJEU Delivers Leading Judgments on Combination of Administrative and Criminal Penalties

News

Thomas Wahl

On 20 March 2018, the CJEU [delivered three judgments](#) that addressed a fundamental question in relation to the *ne bis in idem* principle as set out in Article 50 CFR, namely whether it is possible to combine administrative and criminal proceedings/penalties.

Art. 50 of the Charter provides that “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” (*ne bis in idem* principle). This article prohibits a duplication of both proceedings and penalties of a criminal nature for the same acts and against the same person.

Limitations of this principle may, however, be justified on the basis of Art. 52(1) CFR. Therefore, the limitation must be provided for by law, respect the essence of the respective rights and freedoms, and – subject to the principle of proportionality – may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

The Court essentially concluded that a duplication of criminal proceedings/penalties and administrative ones (although they are criminal in nature) against the same person with respect to the same acts may be possible under certain conditions. The CJEU argued that the *ne bis in idem* principle could be limited to protect the financial interests of the European Union and its financial markets, but that this restriction must not go beyond what is strictly necessary to achieve the objective.

The cases had been referred to the CJEU by Italian courts and concerned Italian law. Notwithstanding, the issue occurred during the proceedings before the CJEU to which extent Art. 50 CFR must be interpreted in line with recent case law of the ECtHR on the *ne bis in idem* rule as enshrined in Art. 4 of Protocol No 7 annexed to the ECHR.

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