

# CJEU Ruled on Duplication of Criminal and Administrative Penalties in French System

## News

Thomas Wahl

Following its landmark rulings in 2018 on the duplication of criminal penalties and administrative sanctions of a criminal nature as an exception to the *ne bis in idem* principle in Art. 50 CFR (in particular Case C-584/15, *Luca Menci* → [eucriM 1/2018, 24-25](#)), the CJEU was asked whether duplications are possible under the French system. The case is referred to as [C-570/20, BV v Direction départementale des finances publiques de la Haute-Savoie](#).

### Facts and background of the case

In the case at issue before the referring *Cour de Cassation* (Court of Cassation, France), the defendant was convicted for evasion of VAT to 12 months' imprisonment by a criminal court. He appealed and maintained that he had already been subject of a tax adjustment procedure which resulted in the imposition of final tax penalties in respect of the same acts, amounting to 40% of the charges evaded. He argued that the requirements with which a duplication of prosecution and penalties of a criminal nature must comply as established by the CJEU in *Menci* are not satisfied in French law. In particular, the French rules lack clarity and foreseeability and do not satisfy the requirements of necessity and proportionality of the duplication of penalties.

The peculiarity of the case was that the legislative landscape in France results from the interaction between two statutory provisions (allowing for administrative penalties and for criminal penalties in the form of fines and prison sentences for certain acts in breach of the tax provisions) and the judicial interpretation of those provisions by the Conseil constitutionnel, which developed three interpretative reservations on these provisions.

### Decision by the CJEU

By its [judgment of 5 May 2022](#), the CJEU held that the fundamental right guaranteed by Art. 50 CFR, read in conjunction with Art. 52(1) thereof, does not preclude a situation whereby the limitation of the duplication of proceedings and penalties of a criminal nature to the most serious cases of fraudulent concealment or omissions from a return relating to VAT is based only on settled case-law, provided that such duplication is reasonably foreseeable at the time when the offence was committed. However, Art. 50 and 52(1) CFR preclude national legislation which does not ensure, in cases of the duplication of a financial penalty and a custodial sentence, by clear and precise rules, where necessary as interpreted by the national courts, that all of the penalties imposed do not exceed the seriousness of the offence identified. The latter is for the referring court to determine.

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