



Administrative Justice in Ukraine: Problems of Theory and Practice

TAX DISPUTES IN ADMIN PROCEEDINGS



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**Ne bis in idem Principle
in Tax Disputes**

- **criminal law sanctions and tax (administrative) law proceedings**
 - **double track enforcement: admin and criminal law**
 - **ne bis in idem : national settings ->international conventions**
 - **common law system: “protection against double jeopardy”**
 - **principle questions arising:**
 - **“2 criminal offences”**
 - **“same offence”**
 - **“two different proceedings”/“tried or punished“**
 - **“first decision is final?”**
 - **basis: rule of law: res iudicata / legal certainty**



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ECHR: Art. 4 7th AP ECHR:

“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”

- **No protection for two decisions of two state parties**
- **“Criminal charge” Art. 6 ECHR: tax surplus/purpose**
- **“Bis”: two distinct proceedings**
- **“final”: one irrevocable decision**
- **“idem”: same facts/same legal classification?**
- **ECtHR, GC Zolotukhin v. Russia, 10.02.2009 (14939/03)**
- **ECtHR, GC A and B v. Norway, 15.11.2016 (24130/11 & 29758/11): “close connection in time and substance”**



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EU legal order – when implementing EU law (mainly VAT):

General principle of EU law

Art. 50 Fundamental Rights Charter:

“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”

- **Ackerberg Fransson case: GC CJEU C-617/10**
- **Baldetti and Orsi case: CJEU C-217/15 and C-350/15**
- **Luca Menci case: GC CJEU C-524/15**



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Conclusion:

- **European courts jurisprudence: similar approaches - “same offence” seems to be clarified- same facts**
- **General trend to “decriminalize” and “double track”**
- **Tax law: lines between criminal and admin proceedings!**
- **Further clarification and development of this principle**



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