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PROHIBITION OF DOUBLE ASSESSMENT – THE PROBLEM OF TAX ADMINISTRATION PROCEEDINGS RUNNING IN PARALLEL TO CRIMINAL PROCEEDINGS

ABSTRACT

The ne bis in idem principle, i.e., the prohibition of double jeopardy, is one of the cornerstones of criminal law in states based on the rule of law, ensuring that the same person cannot be held accountable or punished more than once for the same act. However, in addition to criminal proceedings for budget fraud, tax administration proceedings are often conducted in parallel, which may result in tax penalties and other financial consequences. This practice raises the question of whether the parallel application of criminal and administrative punitive sanctions results in an accumulation of liability that violates the ne bis in idem principle. The problem is particularly significant in the above area, where authorities often use a range of legal instruments to protect the state's fiscal interests. At the same time, the parallelism of sanction systems raises sensitive issues regarding legal certainty and the protection of fundamental rights, especially when tax administration sanctions can be considered punitive. This study aims to examine how tax administration and criminal proceedings related to tax law violations relate to the ne bis in idem principle. The starting point for the examination is the Hungarian Constitutional Court's relevant decisions, which provide an interpretative framework for domestic law enforcement. In addition, the study presents the leading decisions of the ECHR and ECJ, which examine the conditions under which parallel sanctions and the connection between proceedings are permissible. The article aims to explore the criteria developed by international and European courts for assessing double sanctions and how these are applied in Hungarian legal practice. Finally, the study seeks to systematize the dogmatic and practical issues arising from the constitutional assessment of parallel proceedings and sanctions in cases of budget fraud.

Keywords: *Ne bis in idem-accumulation of responsibilities-multiple sanctioning systems*

1. INTRODUCTION

In Hungary, the vast majority of criminal proceedings initiated for budget fraud are preceded by tax administration proceedings, during which the tax authority files a complaint based on evidence obtained in accordance with the provisions of Act CLI of 2017 on Tax Administration (Air.). Subsequently, the two procedures run in parallel: the tax administration procedure, which in most cases ends with the imposition of a tax penalty, and the criminal proceedings, in which the court applies criminal sanctions.

Considering that the disposition of the crime of budget fraud is a framework provision in the Criminal Code¹, which is fleshed out by the tax law norms in force, the violation of tax laws also constitutes a criminal offense if the elements of the offense defined by the Criminal Code are present. Criminal Code, a violation of tax law also constitutes a criminal offense.

The taxpayer's main procedural obligations - tax return and tax payment obligations, as well as the rules governing the allocation of tax and budgetary subsidies – are set out in the Act on the Rules of Taxation (Art.). In contrast, specific tax obligations are set out in separate provisions of tax law². Violation of the obligations set out in this Act shall result in tax administration proceedings and the imposition of tax penalties. If the violation causes financial damage to the budget through the commission of the acts described in Section 396 of the Btk, criminal liability shall also be established.

The study aims to present the areas of law governing sanctions applied in cases of violation of tax law norms, where double liability arises, to analyze the practice developed in applying the law regarding the accumulation of liability, and to present solutions aimed at eliminating this. To this end, I will use qualitative document analysis to examine the Fundamental Law, procedural laws, specific sectoral laws governing administrative sanctions, and EU legislation relevant to the issue. I intend to explore the decisions of the ECtHR, the CJEU, and the Constitutional Court in areas affected by parallel liability.

In addition, examining secondary empirical sources – relevant documents based on existing empirical research, reports by legal defense organizations, ombudsman reports, and investigations by international human rights organizations – provides

¹ The Criminal Code 2012./C. Official Gazette of Hungary 181/2012., Section 396 (hereinafter: Btk.)

² Act on the Rules of Taxation 2017./CL. Official Gazette of Hungary 192/2017., Sections 49, 58-63, 64-65 (hereinafter: Art.)

an opportunity to identify potential tensions between the normative theoretical framework and actual legal practice.

Based on all this, the ultimate goal of this paper is to formulate a legislative and law-enforcement solution to enforce the prohibition on double jeopardy.

2. THE PRINCIPLE OF *NE BIS IN IDEM* AND THE ISSUE OF CUMULATIVE LIABILITY

The principle of *ne bis in idem*, or the prohibition of double jeopardy, based on Roman law, is a cornerstone of criminal law in a state governed by the rule of law, as declared in Article XXVIII(6) of the Fundamental Law of Hungary. According to this, "Except in extraordinary cases specified by law, no one may be prosecuted or convicted for a criminal offense for which they have already been acquitted or convicted in Hungary or, within the scope specified by an international treaty or a legal act of the European Union, in another state in accordance with the law." The provision of the Fundamental Law, therefore, based on its terminology, is limited exclusively to judgments handed down by the courts, which have the sole monopoly over decisions on acquittal or conviction³. In this regard, the Supreme Court emphasizes in its decision No. Bfv.III. 1068/2021/12, that, pursuant to the above-mentioned provision of the Fundamental Law, a final judgment can only be rendered by a court decision, and an administrative decision cannot have *res judicata* effect.⁴

It is therefore clear that the principles of double jeopardy and *res judicata* are interlinked and complementary. *Res judicata* has substantive binding force, while the principle of *ne bis in idem* is linked to formal *res judicata*⁵. According to the Supreme Court's decision No. Bpkf.III. 465/2022/14, substantive *res judicata* means a decision that definitively and finally decides on the merits of the charge or the conclusion of the proceedings based on the charge⁶. Formal *res judicata*, on the other hand, is a simple binding force that only precludes the given decision from being challenged by ordinary legal remedies. In terms of their combined effect, "When a decision on the merits becomes final, it has substantive legal force, which naturally also means formal legal force and unchallengeability, and

³ Steiner, G., Budget fraud and VAT fraud in practice, Orac, Budapest 2023, p. 318.

⁴ Supreme Court Bfv.III.1068/2021/12

⁵ Szabó, J., Administrative Law Dispute versus Criminal Law, JURA, year 27, 1/2021. p. 68.

⁶ Supreme Court Bpkf.III.465/2022/14.

consequently represents a final decision on the question of guilt and on the criminal law consequences, sanctions or lack thereof."⁷

Based on the above, it appears that the *ne bis in idem* principle applies to the determination of criminal liability in the event of overlapping criminal proceedings, and disregards sanctions imposed by other branches of law – determining liability and applying legal consequences – against the same person based on the same facts.⁸ It does so even though, in Hungary, as in other Member States of the European Union, we are witnessing a spectacular rise in administrative criminal law, i.e., punitive criminal law sanctions that are not criminal, being applied more and more widely. One of the driving forces behind this trend is the goal of reducing the burden on the criminal justice system to ensure effective and timely adjudication, which is achieved by decriminalizing certain acts, i.e., removing them from the scope of criminal law. Another reason for this expansion is that legislators are seeking to ensure compliance with norms outside criminal law – mainly administrative norms, given their scope – by creating a system of sanctions characteristic of substantive and procedural criminal law, primarily in the area of investigation. The latter category also includes action against acts that damage the budget, in which case the sanctions imposed may be more severe than those applied in criminal proceedings.

However, despite or in addition to the above legislative intent, criminal proceedings may also be initiated if the violation of tax law also fulfills the elements of a criminal offense under substantive law. In such cases, therefore, the act does not remain within the territory of criminal law, but crosses over into the territory of another branch of law.⁹

In addition to the above, Section 7(5) of the Criminal Procedure Act in force states, at a fundamental level, that in the question of whether the accused has committed a criminal offense, the court, the public prosecutor's office, and the investigating authority are not bound by decisions made in civil, administrative, misdemeanor, disciplinary, or other proceedings, or by the facts established therein.¹⁰

In connection with this procedural provision, the Supreme Court explained in its aforementioned decision No. Bfv.III. 1068/2021/12, that, in determining whether

⁷ Supreme Court Decision No. 2/2015 BJE

⁸ Kis, N., Supranational sanctions in: Ferenc Kondorosi-Katalin Ligeti: Handbook of European Criminal Law, Magyar Közlöny Kiadó, Budapest 2009, p. 385.

⁹ Szabó, op. cit. note 5. p. 70.

¹⁰ Criminal Procedure Act 2017/XC. Official Gazette of Hungary 90/2017. Section 7(5) (hereinafter: Be.)

the defendant committed a criminal offense, the court is not bound by the decision made in the administrative proceedings or the facts established therein. Thus, it is legally settled that when different proceedings coincide, there should not be two other findings of fact based on the same conduct. In contrast, in the context of sentencing and sanctions, the legal consequences established for the same person for the same conduct must be taken into account.¹¹

Accordingly, other proceedings must give way to criminal proceedings to avoid differing findings of fact. Still, double sanctions are permissible under the above Supreme Court decision, and the legal consequences applied in other proceedings may only be "taken into account, considered..." The above position is consistent with the position expressed in the Supreme Court's earlier decision published under number EBD 2019.09.B16. According to the decision in the proceedings initiated for the crime of budget fraud "the tax penalty imposed in the tax proceedings does not preclude the initiation of criminal proceedings and the application of criminal sanctions for the act on which the tax penalty is based; this does not violate the prohibition of double jeopardy, but the tax penalty imposed may be relevant in the criminal proceedings."

The other side of the coin – i.e., the binding nature of the facts determined by administrative law – is that the court is not bound by the decisions of other authorities or disciplinary decisions or the facts established therein, unless the consequences of a criminal offense that has been finally adjudicated must be determined in administrative proceedings, the court cannot find that the convicted person did not commit the offense with which he or she was charged.¹² In established judicial practice, a final judgment in a criminal case is binding only on the court that adjudicates guilt in administrative proceedings, as the law expressly prohibits any other use of such judgments. However, there is no legal obstacle to the court establishing a different set of facts in an administrative case based on the evidence presented there, including other details.¹³

Thus, the court hearing the administrative case is bound by the decision of the criminal court only to the extent that it cannot establish the defendant's lack of criminal liability in the criminal proceedings, nor can it hold the acquitted person liable. At the same time, the administrative court may decide differently on other

¹¹ Supreme Court Bfv.III.1068/2021/12.

¹² Act on Administrative Procedure I /2017 Official Gazette of Hungary 13/2017. Section 85(6)(7)

¹³ Supreme Court Kfv. 35155/2004. EBH.2005.1257.

facts of the case, such as the place and time of the offense, the amount of financial loss or damage, and may establish a different set of facts.¹⁴

Comparing the regulations of the two branches of law, it can be concluded that avoiding the establishment of different facts is reduced solely to the point of liability. However, about other details of the facts, both courts may form and express their own position based on the results of the evidentiary proceedings conducted in accordance with the rules of procedure determined by their own jurisdiction, according to which they may apply sanctions in accordance with their own standards. This possibility of diversion is generally acceptable, but, for example, financial loss or damage caused by it is a crucial issue in criminal proceedings that may determine the legal classification of the offense, with implications for the severity of the sanction. At the same time, the time of commission, especially in view of frequently changing tax laws, may influence both the question of guilt and the legal consequences applied.

3. EU REGULATIONS

The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and promulgated by Hungary in Act XXXI of 1993¹⁵ (ECHR), declares the prohibition of double jeopardy, stipulating that "if a person has been finally acquitted or convicted by a court of a state in accordance with its criminal law and criminal procedure law in respect of a criminal offense, the judicial authorities of that State may not prosecute or punish that person for the same offense." The Convention thus enshrined the principle of double jeopardy at the international level, but limited its application to the jurisdiction of a given state.¹⁶

Article 54 of the Convention implementing the Schengen Agreement¹⁷ (CISA) regulates the principle of *ne bis in idem* in relations between Member States. According to this EU rule, "a person whose conduct has been finally judged in one of the Contracting Parties shall not be prosecuted in the territory of another

¹⁴ Szabó, J.; Molnár, D., At the intersection of constitutional law and EU law: the principle of "ne bis in idem" European Law, year 23, 4/2023, p. 14.

¹⁵ The Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950, and promulgated by Hungary in Act XXXI of 1993 (ECHR), Official Gazette of Hungary 70/1993.

¹⁶ Elek, B., The emptying of the prohibition of double jeopardy – The changing case law of the European Court of Human Rights and the Court of Justice of the European Union in relation to the *ne bis in idem* principle, Criminal Law Review year 11, 2/2022, p. 19.

¹⁷ Convention implementing the Schengen Agreement promulgated by Hungary in Act LXXXIX. of 2007 (CISA), Official Gazette of Hungary 87/2007.

Contracting Party for the same acts if the penalty has already been enforced, is currently being enforced, or can no longer be enforced under the law of *the* Contracting Party where the judgment was delivered."

According to Article 50 of the Charter of Fundamental Rights of the European Union (2007/C 303/01)¹⁸, no one shall be liable to be tried or punished again in criminal proceedings for an offense for which he or she has already been finally acquitted or convicted in accordance with the law in the Union.

In the context of the principle of *ne bis in idem*, we can see that all of the above-mentioned basic documents refer to criminal proceedings based on the same facts, brought against the same defendant, and concluded with a final decision. At the same time, both the ECtHR and the CJEU have examined punitive sanctions imposed in administrative proceedings in several cases and have found that, in the same set of facts, the parallel application of criminal and administrative sanctions may violate the prohibition of double jeopardy.¹⁹

3.1. The practice of the European Court of Human Rights

In this regard, the set of criteria used as a benchmark for determining the punitive nature of individual (administrative) sanctions was developed by the ECtHR in the case of *Engel and Others v. the Netherlands* (Engel criteria).²⁰ According to these criteria, the following aspects must be taken into account:

- the classification of the offense by the Member State concerned,
- the nature of the offense,
- the severity and nature of the penalty imposed.

According to the first criterion, if the national legislature classifies an act as a criminal offense, it is also a criminal offense under Article 6. However, if the conduct in question is not punishable under criminal law, the other two criteria must be examined. If these criteria are met, infringements that do not fall within the scope of criminal law must also be considered criminal matters under national law if they concern a violation of rules for which the state imposes legal

¹⁸ Charter of Fundamental Rights of the European Union (2007/C 303/01) Official Gazette of the European Union 30.3.2010.

¹⁹ Figula I.; - Elek, B., Thoughts on the judgment of the Court of Justice of the European Union in Case C-524/15 from an administrative and criminal law perspective. <http://ejszh.justice.hu/blog/20180503/figula-ildiko-elek-balazs-gondolatok-az-europai-unio-birosaga-c-52415-szamu-ugyben>, 19 September 2024.

²⁰ *Engel and Others v. the Netherlands* (No.5100/71, 5101/71, 5102/71, 5354/72, 5370/72, June 8, 1976)

consequences in 'criminal' proceedings due to their nature and/or the sanctions involved.²¹ (This corresponds to the system of administrative criminal law.)

The second condition is the nature of the infringing act. When examining this, several additional circumstances must be taken into account, as the ECtHR has identified in subsequent judgments. Thus, the fundamental question is whether the legal norm referred to is of general application or applies only to a limited group.²² Is the procedure carried out by an organ of the state vested with public authority?²³ The purpose of the legal provision referred to must be to impose a general obligation that has a deterrent effect.²⁴ In addition, it must be taken into account whether the legal consequences are based on fault or objective liability, and how the issue in question is regulated in the other member states. Thus, based on this criterion, only proceedings initiated under rules binding on everyone and providing for punitive sanctions for their violation are considered criminal cases. (Such are the legal consequences applied in tax administration proceedings in the event of a breach of tax law norms.)

The third condition is the severity and nature of the punishment imposed. If the legal consequences have a profound impact on the person concerned (such as deprivation of liberty, prohibition from engaging in certain activities, or a hefty fine), the case must be treated as a criminal matter even if the regulation in question only applies to a specific group and therefore does not meet the criteria set out in the second criterion.²⁵ Thus, the combined effect of the last two conditions must also be examined. According to the ECtHR's practice, therefore, in each case the circumstances must be assessed individually to determine whether the subject matter of the proceedings is a criminal matter within the meaning of the Convention.

Following the initial judgments, which contained guarantees ensuring the strict protection of fundamental rights, both the ECtHR and the CJEU have gradually softened their practice and shown tolerance toward parallel proceedings (conducted by separate jurisdictions) in their decisions.

In the case of *Franz Fischer v. Austria*, the ECtHR ruled on parallel proceedings for traffic offenses and administrative offenses.²⁶ The applicant was sentenced to

²¹ Dudás, D., Human Rights in the Practice of the ECtHR II. – The Right to a Fair Trial <https://jogaszvilag.hu/szakma/emberi-jogok-az-ejeb-gyakorlatban-ii-a-tiztesseges-eljarashoz-valo-jog/6> February 2026.

²² Bendenoun v. France (No.12547/86, February 24, 1994)

²³ Benham v. United Kingdom (No.19380/92, June 10, 1996)

²⁴ Öztürk v. Germany, (No. 8544/79, February 21, 1984)

²⁵ Kapetanios and Others v. Greece, (No. 3453/12, 42941/12 and 9028/13, April 30, 2015)

²⁶ Franz Fischer v. Austria (No. 38275/97, May 30, 2002)

imprisonment for hit-and-run under the Austrian Criminal Code, while under the Traffic Act, he was also fined for causing a fatal accident while driving under the influence of alcohol. In its decision, the ECtHR found Austria violated Article 4 of Protocol No. 7 to the ECHR. The core of the judgment is that, according to the correct interpretation of the article, double jeopardy for the same criminal conduct is prohibited.²⁷

In the case of *Sergey Zolotukhin v. Russia*, the ECtHR also found a violation of Article 4 of Protocol No. 7 to the ECHR, noting that sanctions had been imposed on the applicant in two proceedings based on the same facts. (According to the facts underlying the proceedings, measures were taken against the intoxicated applicant, during which he insulted and made life-threatening threats against the members of the authority conducting the proceedings against him and attempted to escape. Because of his behavior, he was detained in administrative proceedings and then convicted in criminal proceedings.²⁸

In the case of *Dungeveckis v. Lithuania*,²⁹ the ECtHR summarized its practice to date and found that there is a violation of Article 4 of Protocol No. 7 to the ECHR if the applicant's responsibility has been previously decided by a final decision (whether a conviction or acquittal), two proceedings were conducted against him, both of which were criminal in nature and both of which were based on the same facts.

In *Grande Stevens and Others v. Italy*,³⁰ the ECtHR examined the criminal nature of market surveillance sanctions imposed by the Italian Securities and Exchange Commission. In this case, the administrative authority took action against three natural persons and two companies, imposing fines, and subsequently filed a complaint, which led to criminal charges being brought on the same facts. The national court did not accept the applicants' reference to the violation of the *ne bis in idem* principle, so they turned to the ECtHR, referring to Article 4 of Protocol No. 7 to the Convention, which, referring to the Engel criteria, found that although the administrative proceedings under national law were not criminal, the legal disadvantage applied (a fine close to the maximum amount) was of such a magnitude that it satisfied the criteria set out in the Engel judgment about sanctions. Neither the procedure applied nor the fine was intended as a reparation,

²⁷ Ambrus, I., The *ne bis in idem* principle in recent European case law, with an overview of the application of the principle in cases where different areas of law intersect. *European Mirror*, year 22, 3/2019. p. 127.

²⁸ *Sergey Zolotukhin v. Russia* (No. 14939/03, February 10, 2009)

²⁹ *Dungeveckis v. Lithuania* (No. 32106/08, April 12, 2016)

³⁰ *Grande Stevens and Others v. Italy* (No. 18.640/10, 18.647/10, 18.663/10, March 4, 2014)

but served a specific preventive purpose. The Court therefore also condemned the Italian State for violating the principles of fair trial and *ne bis in idem*.

In its judgments in *Västberga Taxi Aktiebolag and Vulic v. Sweden*³¹ and *Janosevic v. Sweden*, the ECtHR applied the Engel criteria relating to sanctions to the imposition of tax penalties based on the above reasoning and found that such legal consequences comply with the conditions for "criminal" sanctions under Articles 6 and 7 of the ECHR and Article 4 of Protocol No. 7.

However, the Court took a contrary position in *A and B v. Norway*.³² According to the above judgment of the ECtHR, in the case of "pro forma" administrative sanctions that meet the Engel criteria, the parallel conduct of criminal and administrative proceedings and the application of legal consequences do not violate the *ne bis in idem* principle if there is a sufficiently close connection between the proceedings governed by the two branches of law in terms of subject matter and time, and if they do not repeat but complement each other. Therefore, if the parallel proceedings form a coherent whole and appear to be part of a single proceeding in that they examine different aspects of it, the *ne bis in idem* principle is not violated.³³ The ECtHR has also developed a set of conditions for this, according to which:

- The complementary function of the proceedings should not be merely theoretical, but should specifically concern different segments of the act in question.
- The consequences should be foreseeable.
- Duplication should be avoided when gathering and evaluating evidence
- The sanction imposed in the previous proceedings must be taken into account in subsequent proceedings (requirement of proportionality).

In the above case, the ECtHR adopts a solution contrary to its previous practice, grounded in the theoretical basis that different proceedings and the sanctions imposed in them may serve various purposes, which may complement each other (the "integrated whole" of the proceedings). If these conditions are met, no violation of the *ne bis in idem* principle can be established. According to Lárís Liliána, with whom I agree, "this decision of the ECtHR is debatable, as it has expanded the concept of the *ne bis in idem* principle with an element that leaves the requirement of proportionality as the only limitation on multiple proceedings."³⁴

³¹ *Västberga Taxi Aktiebolag and Vulic v. Sweden* (No. 36985/97. July 23, 2002)

³² *A and B v. Norway* (No. 24130/11, 29758/11. November 15, 2016)

³³ Elek. op. cit. note 16, p. 20.

³⁴ Lárís, L., New directions in the interpretation of the prohibition of double assessment. *Prosecutors' Journal*, year 25, 6/2018. p.110.

3.2. The practice of the Court of Justice of the European Union

The violation of the prohibition on double assessment in the CJEU's practice, compared with that of the ECtHR, arose later. Still, at that time the Court of Justice of the European Union ruled in favor of the cumulative nature of the proceedings, referring to the ECtHR's "newly established practice."³⁵ In connection with Article 50 of the Charter of Fundamental Rights, it was necessary to define the concept of "criminal offense," which the CJEU provided in Case C-489/10 Bonda³⁶. In its judgment, the Court referred to the Engel criteria as a benchmark and considered the classification under domestic law, the nature of the infringement, and the nature and severity of the penalty that could be imposed on the person concerned to be fundamental considerations.

In Case C-617/10 Fransson³⁷, which concerned the examination of tax and criminal proceedings in connection with a failure to comply with value added tax return obligations, the CJEU ruled that it is possible to conduct both criminal and administrative proceedings based on the same facts and, depending on the outcome of those proceedings, to impose both types of penalty, provided that the administrative penalty is not of a criminal nature. Based on the interpretation of Article 50 of the Charter, the sanction provided for by administrative law cannot be applied concurrently with the sanction applicable in criminal proceedings if the latter is criminal and has already become final.

In Case C-524/15 Menci³⁸, the CJEU ruled that the *ne bis in idem* principle applies to national legislation under which criminal proceedings may be brought against a person who has already been definitively imposed a criminal administrative penalty within the meaning of Article 50. However, the CJEU laid down conditions for this, namely that such legislation must serve an objective that justifies the accumulation of proceedings and penalties (in this case, the fight against VAT infringements) it must contain rules ensuring that the accumulation of procedures is limited to what is strictly necessary to avoid imposing an additional burden on the person concerned, and the total weight of the penalties imposed must be limited to what is strictly necessary in relation to the seriousness of the infringement committed.

³⁵ Opinion of Advocate General Manuel Campos Sánchez-Bordona <https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:62015CC0524&from=HU>,
Date of presentation: September 12, 2017. 24 October, 2024.

³⁶ Case C-489/10 Bonda (June 5, 2012, paras 27-28, 36, 46)

³⁷ Case C-617/10 Fransson (February 26, 2013, paras 24-25, 34-37)

³⁸ Case C-524/15 Menci (March 20, 2018, paras 9, 26, 30-31, 63-64)

In the *Garlsson Real Estate SA*³⁹ and *Enzo di Puma*⁴⁰ cases, the Court continues to follow the line of reasoning established in the *Menci* case. Elaborating on the interpretation of the principle of proportionality, it found that national legislation that allows the imposition of a criminal fine following a conviction is contrary to Article 50 of the Charter if the sentence alone is sufficient to constitute an effective, proportionate, and dissuasive punishment for the offense committed. In other words, administrative proceedings before criminal proceedings may be conducted lawfully in all cases, while the reverse – although it constitutes a restriction of the *ne bis in idem* principle – may be examined by means of a proportionality test. In other words, about double proceedings, national courts need only ensure that the additional burden actually imposed on the defendant/client as a result of the accumulation of sanctions is not excessive in relation to the seriousness of the offense committed.⁴¹

After this, it is not surprising how the European Parliament and the Council rule on the accumulation of forms of liability (Directive 2017/1371 of July 5, 2017, on the fight against fraud affecting the Union's financial interests by means of criminal law)⁴². The preamble settles the issue as follows: "Member States may, in principle, continue to apply administrative measures and sanctions in parallel in the area covered by this Directive. However, when applying the national legislation transposing this Directive, Member States shall ensure that the imposition of criminal sanctions in accordance with this Directive and the application of administrative measures and sanctions do not lead to a breach of the provisions of the Charter."

The Directive, therefore, allows for the parallel application of administrative and criminal sanctions in the area it regulates. However, Member States are required to ensure that the appropriate and practical application of "administrative measures, sanctions and fines not equivalent to criminal proceedings" laid down in EU law or in national implementing provisions is not unduly affected by criminal proceedings conducted in accordance with national law.⁴³

³⁹ Case C-537/16, *Garlsson Real Estate SA* (March 20, 2018, paras 28-29, 48)

⁴⁰ Cases C-596/16 and C-597/16. *Enzo di Puma Joined* (March 20, 2018, paras 18, 42-46)

⁴¹ Szabó, op. cit. note 5. p. 76.

⁴² The European Parliament and the Council rule on the accumulation of forms of liability (Directive 2017/1371 of July 5, 2017, on the fight against fraud affecting the Union's financial interests by means of criminal law) Official Gazette of the European Union 198, 2017.7.28. (hereinafter: PIF Directive)

⁴³ Art 14 of PIF Directive

4. HUNGARIAN LEGAL PRACTICE

Regarding the parallelism between tax administration and criminal proceedings, both the Constitutional Court's decisions and the Supreme Court's practice align with the new approach of the ECtHR and the CJEU. The Constitutional Court has addressed the nature of administrative sanctions in several of its decisions. It reviewed the system of administrative sanctions in Decision 17/2019. (V. 30.) AB.⁴⁴ According to this, their common feature is that they are based on statutory regulations and are therefore sector-specific. However, depending on the purpose of the sanction, we can distinguish between reparative and repressive sanctions, or between mixed sanctions. The former aims to restore the violated legal order, while the latter seeks to prevent it. In addition, sanctions can also be classified in objective and subjective terms. The former are those that can be imposed regardless of culpability, while the latter are linked to the state of mind, i.e., intentional or negligent. Regarding administrative sanctions, the decision states that, in most cases, they are objective in nature, referring to sewerage fines⁴⁵ and non-tax late payment⁴⁶ penalties. In contrast, the two penalties applied in the tax penalty system – tax penalties and default penalties – were classified as penalties serving both subjective and repressive purposes in accordance with the above general principles.

In interpreting the *ne bis in idem* principle, the Constitutional Court analyzed the difference between the absolute and relative purposes of administrative sanctions. In its decision No. 8/2017. (IV. 18.) It explained that administrative substantive law carries the conduct expected by the state, thus administrative sanctions are the legal consequences of an objective violation of this obligation. This is the absolute purpose of administrative sanctions, which distinguishes them from criminal sanctions based on guilt.⁴⁷

The Constitutional Court – exhaustively examining the factual elements of the offense of illegal fishing and analyzing the issue of double jeopardy for conduct also sanctioned by Act CII of 2013 on fish management and protection – ruled in Decision 18/2022. (VIII. 1.) AB found that the previous regulation violated the principles of legal certainty and *ne bis in idem*. It found that the fish protection administrative procedure and the fish protection fines and disqualifications applicable therein are punitive in nature, as they are not primarily aimed at providing financial compensation for the unlawful conduct committed or at

⁴⁴ Decision 17/2019.(V.30.) [88]– [94]

⁴⁵ Decision 5/2017 (III. 10.) AB

⁴⁶ Decision 3353/2017 (XII. 22.) AB

⁴⁷ Decision 8/2017 (IV. 18.) AB [82]

encouraging lawful conduct, but instead represent retribution for the infringement already committed, i.e. a repressive sanction that imposes a financial burden on the perpetrator of the unlawful act for preventive purposes.⁴⁸ Furthermore, neither the provisions of the Criminal Code nor those of the Hhvtv. contain any rule that would provide a guarantee against the doubling of criminal sanctions. [109]

In its decision 8/2017. (IV. 18.) AB, the Constitutional Court ruled that if criminal liability is established for the offense or crime of animal cruelty, or if a final conviction has already been handed down in the matter of criminal liability, then in animal protection proceedings initiated based on the same facts, an animal protection fine may not be imposed on the same person for the same unlawful act. At the same time, the decision also states that the provisions of the Fundamental Law do not generally preclude the legislator from attaching legal consequences belonging to other branches of law to punishable acts, in addition to criminal sanctions. In accordance with the principle of legal certainty, however, the Constitutional Court imposes on the legislator the requirement that, if an unlawful act punishable under criminal law is also subject to legal consequences under other branches of law, the relationship between the various procedures must be regulated in sufficient detail and with enough clarity. This expectation is fundamental in criminal law and procedures involving punitive sanctions, as the possibility of double punishment may arise in such contexts.⁴⁹

Animal protection fines are a regular topic of discussion for the body. Decision 13/2024. (V. 30.) AB, which divided the constitutional judges somewhat, found that the legislative omission in connection with Section 44(2) of Act XXVIII of 1998 on the protection and welfare of animals was unconstitutional, declaring that the legislature had failed to regulate the legal conditions for civil proceedings for violations of animal welfare and protection laws in accordance with the *ne bis in idem* principle in cases where criminal proceedings or animal protection proceedings by the authorities are also appropriate. The reasoning is practically parallel to that contained in Decision 18/2022. (VIII. 1.) AB.

If we analyze the provisions of Section 170(1), according to which the tax penalty is 200% of the tax shortfall if the tax shortfall is related to the concealment of income, the falsification or destruction of documents, books, or records, we can see that this sanction is by no means based on objective liability. This legal consequence is subjective and based on culpability. It applies precisely to conduct that is also punishable under criminal law. At the same time, in relation to tax and

⁴⁸ Decision 18/2022 (VIII. 1.) AB [85]

⁴⁹ Decision 8/2017 (IV. 18.) AB [49]

criminal proceedings, the Constitutional Court does not impose a prohibition, unlike in cases involving animal protection fines or illegal fishing.

Point III/9 of Opinion 56 BK of the Supreme Court states that, when imposing a sentence, it should be taken into account that the offender may suffer other actual disadvantages in addition to the criminal law disadvantages resulting from the offense. If these can have a deterrent effect in addition to the punishment, they constitute mitigating circumstances.⁵⁰

This line of reasoning is further developed in the decisions of the Supreme Court, which consistently follow the practice of the ECtHR and the CJEU of allowing the accumulation of liability, with the only limitation being proportionality from the perspective of the *ne bis in idem* principle. "It follows from all this that in criminal proceedings initiated for budget fraud, the facts established by the court must necessarily refer to the data of the proceedings that can be assessed in the context of the identity of the act in the administrative proceedings, so that if the administrative authority has imposed a sanction on the defendant in administrative proceedings for the same act, these facts must necessarily be recorded, and if there is data available, the amounts paid as a result of the administrative sanction in the administrative proceedings must also be recorded."

According to the decision of the highest judicial forum in the matter of insider trading, when imposing penalties, it is possible to eliminate the disadvantages that would otherwise be imposed on the defendant due to the accumulation of proceedings and the imposition of administrative sanctions on the defendant, while ensuring that the sanctions imposed are commensurate with the seriousness of the offense committed.⁵¹ Therefore, it is the task of the courts hearing criminal cases to impose a proportionate penalty, taking into account the range of penalties provided for in the Criminal Code and other factors affecting penalty imposition, while also considering the administrative sanctions imposed on the defendant for the same facts.

5. CONCLUSION

Nowadays, we can observe the spread of administrative criminal law in Hungary. One of the driving forces behind this is the goal of reducing the burden on the criminal justice system through legislation and court action to establish and

⁵⁰ Supreme Court EBD 2019.09.B16

⁵¹ Supreme Court Bfv.III.1068/2021/12.

maintain effective, timely adjudication, while also creating a faster, simpler system of sanctions for violations of administrative norms.

However, the concept of administrative sanctions has not been precisely defined either in Hungary or in the European Union, and individual states apply this system to varying degrees. Some countries reject the legitimacy of administrative criminal law altogether, while others regulate it in a uniform substantive and procedural law. Countries that take an intermediate approach, such as Hungary, lack a uniform legal basis or sanctions system.

Administrative criminal law raises constitutional concerns regarding cumulative liability when applied in parallel with criminal proceedings in cases involving liability for conduct prohibited by substantive criminal law.

Both international courts and, accordingly, Hungarian case law have developed over the past decade at the expense of the prohibition of double assessment. The initial strict standards of the ECtHR have now been completely relaxed, and only the overall proportionality of legal consequences remains as a limitation on parallel proceedings.

In these cases, the fundamental rights of individuals are weighed against public interests such as the enforcement of the state's criminal power, financial interests related to tax revenues, the possibility and need for effective action against crimes affecting budgets, often across national borders, and the preventive factor. In my opinion, the relationship between tax administration proceedings and criminal proceedings – as is genuine for all proceedings in the field of administrative criminal law – should be regulated at the legislative level. A choice should be made between the different regulatory approaches in accordance with the state's legal policy interests: whether to exclude the possibility of double jeopardy, thereby extending the *ne bis in idem* principle beyond criminal law to identical facts, or to allow for parallel proceedings, but in this case, it provides legal guarantees to the individual and does not rely solely on "contingent" judicial discretion to provide legal protection.

A dual system of proceedings can be observed in many European countries. Still, several states, recognizing the constitutional concerns, have introduced appropriate regulations to ensure the application of proportionate legal consequences. Thus, according to the French solution, the two penalties together may not exceed the more severe penalty applicable to individual infringements. German case law applies a proportionality criterion in each case to avoid excessive accumulation of sanctions, while in Sweden, the severity of the sanction imposed

in criminal proceedings may be reduced by the legal consequences imposed in an administrative decision. However, there are also regulatory solutions, such as the Spanish model, under which, if criminal proceedings are initiated, the authority conducting the administrative proceedings must suspend the case until the criminal court issues a final decision.⁵²

The legal definition of the crime of budget fraud in Section 396(8) allows⁵³ for unlimited mitigation if the defendant compensates for the financial loss caused by the budget fraud before the indictment. However, this provision applies to the payment of financial losses established in criminal proceedings; the Criminal Code does not mention tax penalties imposed in tax administration proceedings and their enforcement. In addition, in many cases, tax administration proceedings initiated before criminal proceedings are concluded later, due to the exhaustion of legal remedies, so the outcome is not yet known when applying the criminal law consequences. At the same time, neither the suspended nor the enforceable prison sentence imposed in the criminal case, nor the imposition of a tax penalty of up to 200%, deters the authority conducting the tax administration proceedings. Thus, in my opinion, the criterion of proportionality, i.e., the examination of whether the legal consequences applied jointly and severally are proportionate, is lost.

Although the Supreme Court's above-mentioned decisions clearly require criminal courts to consider the outcome of tax administration proceedings, this is often not possible due to the specific nature of those proceedings. Furthermore, I think it is questionable to assess whether a set of sanctions is proportionate in a given case, as this is a matter of subjective judgment, as differences in individual assessments may yield different outcomes for the same case.

In view of the changing practices of the ECtHR, the CJEU, and the Constitutional Court, as well as the uncertainty inherent in decisions based on subjective considerations, and in agreement with the ideas expressed by Professor Norbert Kis nearly ten years ago, "legislation must put the drafting of a framework law on administrative penalties on the agenda. The code must regulate the general substantive and procedural principles of repressive sanctions falling within the

⁵² Elek, op cit. note 16. p. 21.

⁵³ Btk. Section 396(8) The penalty may be mitigated without limitation if the person who caused the financial loss specified in paragraphs (1) to (6) by means of budget fraud compensates for the loss before the indictment is filed. This provision shall not apply if the offense is committed in a criminal conspiracy, criminal organization, or as a repeat offender.

competence of administrative authorities.”⁵⁴ (Although the Sanctions Act⁵⁵ has since been enacted, it does not have general validity.) In addition to the demands made on the legislator, the relationship between administrative criminal law and criminal law, the hierarchy of the two procedural systems, the combined and absolute legal consequences applied in each procedure, and, last but not least, the consistency of the dual sanctioning system with fundamental legal principles should also be formulated at the legislative level, as this would best serve the requirements of the rule of law and legal certainty.

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⁵⁴ Kis, N., *The dilemmas of administrative criminal power in terms of effectiveness and legal certainty*. Belügyi Szemle, year 63, 12/ 2015, p. 66.

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