

NE BIS IN IDEM AS LEX SPECIALIS: FAIR-TRIAL VALUES AND ADMINISTRATIVE SANCTIONS

ZSUZSANNA ÁRVA¹

Abstract: This article examines the interaction between the *ne bis in idem* guarantee (Article 4 of Protocol No. 7 to the European Convention on Human Rights and Article 50 of the Charter of Fundamental Rights of the European Union) and the right to a fair trial (Article 6 ECHR / Article 47 Charter), with a focus on administrative sanctions. It argues that, while Article 4 of Protocol No. 7 is formally autonomous, its interpretation is functionally embedded in the fair-trial framework of Article 6: *ne bis in idem* operates as a *lex specialis* constrained by Article 6 values (foreseeability, proportionality, presumption of innocence and effective judicial protection). Drawing on ECtHR and CJEU case law (notably *Engel*, *Zolotukhin*, *A and B v. Norway*, *Åkerberg Fransson*, *Menci* and *bpost/Nordzucker*), the article (i) explains the doctrinal scope of “criminal matters”; (ii) analyses Strasbourg’s treatment of administrative sanctions as criminal in character; (iii) compares the ECtHR approach with CJEU/Charter jurisprudence; and (iv) assesses practical implications for domestic dual-track enforcement, proportionality review and effective judicial protection. The analysis finds partial convergence between the courts but differing EU policy priorities, with important consequences for predictability and administrative-enforcement efficiency.

Keywords: *Ne bis in idem* principle, Fair trial, Administrative sanctions, Concept of a criminal matter, Proportionality.

Summary: 1. INTRODUCTION. 2. THE *NE BIS IN IDEM* PRINCIPLE IN INTERNATIONAL TREATIES. 2.1. Historical and treaty bases. 2.2. Administrative sanctions: moving towards the concept of a criminal matter. 3. THE EXTENT OF THE RELATIONSHIP BETWEEN THE *NE BIS IN IDEM* PRINCIPLE AND FAIR TRIAL. 3.1. Defining the scope of the relationship. 3.2. The ECtHR’s autonomous test for determining criminal matters (the *Engel* criteria). 3.3. The significance of the *idem factum*: the *Zolotukhin* case. 3.4. From a single-tier argument to a multi-tier argument: *A and B v. Norway* and the complementary proceedings test. 3.5. Ad hoc application and persistent ambiguities. 3.6. Summary: implications for administrative sanctions. 4. PRACTICE UNDER EU LAW: CONVERGENCE OR DIVERGENCE? 4.1. Starting points and theoretical similarities. 4.2. The CJEU’s adoption and adaptation of the *Engel* criteria. 4.3. *bpost*, *Nordzucker* and the legal controversies. 4.4. Emerging trends in the CJEU: gradual convergence and internal priorities. 4.5. Proportionality, effective judicial protection and systemic compromises. 5. CONCLUSIONS: THE INTERPLAY BETWEEN FAIR TRIAL AND THE *NE BIS IN IDEM* PRINCIPLE. REFERENCES. CASE LAW.

1. INTRODUCTION

The *ne bis in idem* principle, which states that no one can be tried or punished twice for the same offence, is enshrined in several international conventions. Notably, this includes Protocol No. 7 to the European Convention on Human Rights (hereinafter: Protocol No. 7; the Convention is hereinafter: ECHR) and Article 50 of the Charter of

¹ Head of Department and Professor, Faculty of Law and Political Science, University of Debrecen, Department of Administrative Law. E-mail: arva.zsuzsanna@law.unideb.hu. ORCID: <https://orcid.org/0000-0003-2966-3505>

Fundamental Rights of the European Union (hereinafter: Charter). Just as with the right to a fair trial as defined in Article 6 of the ECHR, the central element of the principle is the concept of criminal matters. These two principles — the right to a fair trial and the *ne bis in idem* principle — have significant constitutional implications (Groussot and Ericsson, 2016, pp. 77-79) for the enforcement of criminal and administrative law within individual states. This relationship is particularly important where administrative sanctions overlap with criminal law enforcement.

This study begins with the premise that the *ne bis in idem* principle is formally and structurally independent, with its own interpretative framework. In terms of its function and interpretative practice, however, the principle is closely linked to the guarantees of Article 6 of ECHR and derives from them in part. In this respect, Article 6 of the ECHR functions as a kind of *lex generalis*. The study outlines the process by which the two bodies of law are becoming increasingly linked in the case law of both the European Court of Human Rights (hereinafter: ECtHR) and the Court of Justice of the European Union (hereinafter: CJEU). In the context of administrative sanctions, the overall effect may be to undermine the effectiveness of administrative law enforcement. It is important to note, however, that this study primarily focuses on matters beyond criminal law.

The article's main claim is as follows. Article 4 of Protocol No. 7 formally stands alone and contains distinct elements (the same offence, a final judgment and limited exceptions). In substance, however, its interpretation is closely linked to the legal guarantees of the right to a fair trial under Article 6 of the ECHR in the broader sense. The ECtHR regularly applies the distinct criminal matters test and the proportionality logic of Article 6 to the adjudication of *ne bis in idem* legal issues. Conversely, the *ne bis in idem* principle may increasingly hinder the reopening of cases and efficiency in relation to administrative sanctions. I substantiate these claims in four steps: First, I outline the normative and treaty framework of *ne bis in idem*, explaining why administrative sanctions pose a doctrinal challenge. Second, I analyse the ECtHR's case law on administrative sanctions as criminal matters, as well as its application of the *ne bis in idem* principle. Third, I compare this with the CJEU's case law on the Charter, identifying areas of convergence and divergence. Finally, I draw out the doctrinal and practical implications for domestic administrative sanctions, with a focus on harmonising procedures and safeguards.

In terms of methodology, the study is based on legal research. I have supplemented a systematic analysis of primary sources, such as the most important judgments of the ECtHR and the CJEU, and the relevant legal instruments, with a review of relevant secondary literature. The cases were selected based on their theoretical significance in defining criminal matters, the scope of the *ne bis in idem* principle, and the interaction between the Charter and the ECtHR. The aim of the comparison is to examine how these guarantees are applied in the case law of the ECtHR and the CJEU, and the effect of judicial practice on administrative sanctioning systems, including its normative consequences. The study utilises doctrinal analysis of primary case law and targeted secondary literature to identify points of convergence and divergence between the ECtHR and EU systems and to evaluate their normative implications for administrative sanctioning systems.

I consider it important to emphasize that, within the scope of this study, it was not possible to analyse all cases, and examining the interplay between the various rights falling within the scope of fair trial—with regard to the principle of proportionality—represents a direction for further research.

2. THE *NE BIS IN IDEM* PRINCIPLE IN INTERNATIONAL TREATIES

2.1. Historical and treaty bases

The prohibition of double jeopardy is one of the oldest and most fundamental principles of criminal law. Legal scholars trace the *ne bis in idem* principle back to the writings of Demosthenes in ancient Greece and to Justinian's *Corpus Iuris Civilis* in Roman law. It is important to note that, in ancient times, this principle was associated with *res judicata*. The principle later resurfaced in the common law system following the dispute between Bishop Thomas Becket and Henry II. According to Anglo-Saxon interpretations, *res iudicata* is linked to the substantive element of irrevocability, while *ne bis in idem* is linked to the procedural element of immutability (Coffey, 2022, pp. 253–278). From the 18th century onwards, the principle appeared in several constitutions, first in the French Constitution of 1791 and simultaneously in the Fifth Amendment to the US Constitution, and it developed into a distinct individual right offering protection against repeated criminal proceedings and the political abuse of prosecutorial power (see, for example, the early common law case of *Commonwealth v. Olds* (Ky. Ct. App. 1824)). It was subsequently incorporated into several European constitutions, including Article 103(3) of the German Basic Law and Article 31 of the Slovenian Constitution. While the constitutional significance of the principle and its function as a general legal principle emerged early on, its aspects relating to criminal law, criminal procedure, and criminal offences primarily came to the fore in constitutions (Rudstein, 2005, pp. 198–226). Other authors, however, regarded the principle as part of the common constitutional tradition (Bernardini, 2024, p. 316; Repetto, 2013, pp. 2–20). Judge Pinto de Albuquerque also referred to it in a similar vein in the case of *A and B v. Norway* (2016) (dissenting opinion Judge Pinto de Albuquerque, par. 79).

At an international level, this principle is enshrined in several legal instruments, including:

- Article 14(7) of the International Covenant on Civil and Political Rights.
- Article 4 of Protocol No. 7 to the European Convention on Human Rights (ECHR).
- Article 50 of the Charter of Fundamental Rights of the European Union.
- Article 54 of the Convention implementing the Schengen Agreement (hereinafter: CISA).
- Article 8 of the American Convention on Human Rights (Organization of American States, 2026). This principle is generally distinguished from the right to a fair trial, which is regulated by Article 6 of the ECHR and Article 47 of the

EU Charter of Fundamental Rights (the right to an effective remedy and to a fair trial), neither of which expressly refers to the *ne bis in idem* principle.

From a historical perspective, it is important to note that the ECHR did not originally contain such a provision (Bernardini, 2024, p. 324), and in 1970, the European Commission of Human Rights did not consider the principle to be included in the principle of a fair trial, but neither did it completely rule out a connection between the two principles (Vervaele, 2005, p. 107). However, the issue was not yet settled at this point (Bernardini, 2024, p. 324, Coffey, 2023, p. 347), because in 1981, in the case of *X. v. The Netherlands* (1981), the idea of linking the two principles arose again (p. 233), but this was rejected in the case of *K. S. v. Federal Republic of Germany* (1983).

The provision was eventually incorporated into the ECHR system via Article 4 of Protocol No. 7 to the ECHR. However, this has not been ratified by all Council of Europe member states, several of which have made reservations or declarations. According to Council of Europe data, forty-four of the Council of Europe's forty-seven member states signed and subsequently ratified Protocol No. 7 on 22 November 1984. It was not ratified by Germany, the Netherlands or the United Kingdom; the latter did not even sign it. In relation to criminal proceedings specifically, Germany, Austria, Portugal, Italy and France originally entered reservations or made declarations stating that they could apply it only to offences and criminal offences within the jurisdiction of criminal courts (Council of Europe, 2026). Some of these declarations were subsequently challenged or declared invalid under Article 57(2) of the ECHR or found to be incompatible with Convention case law. Currently, only the reservations of Portugal and Germany remain in force.

The ECtHR itself has addressed the relationship between the two principles on several occasions. In *Mihalache v. Romania* (2019), for example, the ECtHR expressly reaffirmed the principle as part of a fair trial in the broader sense (par. 48). However, in the context of the Convention on the Elimination of All Forms of Discrimination against Women, the ECtHR treats *ne bis in idem* as a separate principle (*Blokker v. the Netherlands*, 2000).

Meanwhile, within the EU regulatory framework, the principle first appeared in Article 54 of the CISA, even prior to the Charter. However, the provisions differ in terms of scope (transnational or domestic), ratifying states, the definition of an identical offence, finality of criminal proceedings and the threshold for a final acquittal or conviction. It should also be noted that Article 47 of the Charter makes no reference to criminal cases in the context of a fair trial.

This brief historical introduction clearly illustrates that tensions have arisen between national systems and the autonomous conceptual framework and tests of the ECtHR, particularly regarding the application of administrative sanctions and the concept of criminal matters. In fact, the ECtHR has developed its own autonomous concept of criminal matters, as outlined below. The scope of this concept has directly affected the regulations and legal doctrine of individual European states concerning administrative sanctions (Jansen, 2013). This concept is applied primarily in the context of fair trial and *ne bis in idem* principles regarding administrative sanctions.

While the *ne bis in idem* principle originally arose in the context of criminal law, primarily in connection with the *res judicata* principle, the differentiation of social relations means that it is increasingly being invoked in relation to administrative sanctions, which require ever-greater numbers of decisions to be made. The following section examines why administrative sanctions pose a particular problem.

2.2. Administrative sanctions: moving towards the concept of a criminal matter

Law enforcement varies from state to state: alongside the application of criminal law as a last resort, administrative measures are typically employed in areas where criminal law is not the primary instrument, i. e. where the area in question does not fall within the core scope of criminal law. These solutions, which typically fall within the scope of administrative sanctions, are diverse in nature and individual states offer different approaches to addressing them. This diversity of administrative sanction systems has resulted in differing national responses (Paliero, 2013, pp. 30–33; Jansen, 2013) and has raised complex cross-border and comparative issues.

In Germany, the field of administrative law sanctions has developed into a form of minor criminal law based on quantitative principles and is typically governed by the *Ordnungswidrigkeitengesetz* (Dannecker, 2013, pp. 213–216), albeit with a logic like that of criminal law due to its derivation from it. In Italy, the administrative sanction is a distinctly ambiguous and complex concept that intersects with both administrative and criminal law, thus constituting a category that straddles legal branches (Bernardi et al., 2013, pp. 289–292). Portugal exhibits a similar duality, as confirmed by a Constitutional Court ruling in 1991 (Caeiro & Lemos, 2013, pp. 468–470). France has no uniform statutory regulation of administrative sanctions; judicial practice has instead shaped certain areas in accordance with constitutional principles (Breen, 2013, pp. 195–201). Consequently, no common doctrine exists for the field, only for specific segments (e. g. tax sanctions). However, due to its repressive nature, the criminal law aspect has also arisen here (Girondeau, 2021, pp. 31–40).

By contrast, in the UK (McElldowney, 2013, pp. 585–587), the doctrine of administrative sanctions only began to take shape explicitly at the instigation of the EU. This was based on the principles of civil and criminal sanctions, meaning the question did not arise for a long time. In Hungary, however, the idea of joining the Council of Europe only emerged after the 1990 regime change, by which time the *Engel v. The Netherlands* (1976) case had already established a well-known practice (Taubner, 1991; Bán, 1991). This had the most direct impact on legislation in administrative offences, the nature of which is comparable to the German OWIG. Regarding objective-based sanctions, which constitute another area of administrative sanctions, no issues arose initially; however, due to the repressive nature of the field, criminal law implications also arise.

Based on the above, it is evident that in continental European countries, the legal classification of administrative sanctions is vague and overlaps with criminal law (Baillex, 2014, pp. 137–145). This inherently meant that it fell within the scope of the

concept of criminal proceedings, which also has similarly blurred boundaries and raises recurring questions in relevant areas such as the *ne bis in idem* principle and the right to a fair trial. The diversity of this area is also illustrated by the fact that the Guide prepared by the ECtHR (ECtHR, 2026, pp. 9–12) addresses these issues across several categories.

3. THE EXTENT OF THE RELATIONSHIP BETWEEN THE *NE BIS IN IDEM* PRINCIPLE AND FAIR TRIAL

3.1. Defining the scope of the relationship

This section examines the article's central thesis: While Article 4 of Protocol No. 7 is formally independent, in practice it is functionally embedded within the framework of the ECHR on fair trial (Article 6). To this end, three analytical questions are identified and answered with the aid of leading case law: (1) How does the ECtHR define the concept of criminal matters? (2) How do these definitions translate the logic of Article 6 into the application of the *ne bis in idem* principle? (3) Does the CJEU follow, adapt or deviate from the ECtHR approach in cases concerning the Charter? Each subsequent sub-chapter links a key judgment to one of the aforementioned sub-questions, explaining its legal significance in the context of administrative sanctions.

3.2. The ECtHR's autonomous test for determining criminal matters (the Engel criteria)

To reconcile different national practices with the guarantees of the ECHR, the ECtHR developed the autonomous concept of criminal matters in the *Engel* case, which was brought under Article 6, and in subsequent cases. This concept is determined by three factors: (1) the domestic classification of the offence; (2) the nature of the act; and (3) the nature and severity of the penalty. Consequently, the autonomous concept of criminal matters established in the *Engel v. The Netherlands* (1976) case extends beyond national classifications to encompass a broad spectrum of administrative sanctions. This includes administrative sanctions of a repressive or deterrent nature, such as deprivation of liberty, substantial fines, severe stigmatisation, and punitive measures.

This autonomy is crucial because it enables the application of both Article 6 and Article 4(1) of Protocol No. 7, provided the proceedings and sanction have functional characteristics that confer a criminal law nature upon them (*Bendenoun v. France*, 1994; *Jussila v. Finland*, 2006). Theoretically, this means that the *ne bis in idem* analysis necessarily overlaps with the theory of Article 6. When examining whether proceedings are of a criminal nature, the ECHR relies on the same substantive and procedural considerations developed under Article 6 (e. g. procedural guarantees, proportionality and the presumption of innocence). Therefore, the formal autonomy of *ne bis in idem* is immediately constrained by the ECHR's common conceptual framework. Case law establishes a clear and close link between the two elements in relation to the ECtHR. However, as noted above, this is fraught with problems and contradictions, and the individual elements change over time.

Thus, whilst the ECtHR applied a so-called cumulative approach in the case of *Bendenoun v. France*, deciding on the criminal nature of the sanction based on the totality of the conditions, in other cases (e. g. *Janosevic v. Sweden*, 2002) it applied an alternative approach based on the same criteria. While the cumulative method led to a narrower interpretation of criminal law, classifying the severity of the sanction as supplementary to its criminal law character, the alternative method broadens it. Notable subsequent cases, such as *Jussila v. Finland* (2006), have also highlighted that the alternative or cumulative nature is determined on a case-by-case basis. For example, in the *Jussila v. Finland* case, the second criterion — namely, the nature of the offence — was sufficient to classify the charge as criminal, since the criminal nature was established in such cases due to the deterrent purpose, even where the penalty was minor. Similar decisions were reached in the cases of *Mihalache v. Romania* (2019) and *Matijašić v. Croatia* (2021) (par. 23). All of this has served to further blur the dividing line between administrative and criminal offences. However, the *Jussila* case also indicates that, at that time, the ECtHR was already inclined to consider the facts, since it did not apply the guarantees of Article 6 as strictly in this less significant case as it would later do in *A and B v. Norway* (2016).

3.3. The significance of the *idem factum*: the *Zolotukhin* case

The next stage in the development of the concept of a criminal case was marked by the *Zolotukhin v. Russia* case (2009), which showed that the ECtHR does not simply alternate between different approaches. In this case, the ECtHR summarised its case law on the *ne bis in idem* principle to date and clarified when separate proceedings constitute double jeopardy. The ECtHR emphasised the principle of “*idem factum*” (identical conduct) and reiterated the elements established in the *Engel* case, while outlining the doctrinal variants that had previously been applied (e. g. “*idem factum*” versus “*idem jus*”). Thus, the *Zolotukhin v. Russia* case harmonised the assessment criteria and clarified when an administrative sanction and subsequent criminal proceedings fall under the protection of Article 4 of Protocol No. 7.

Legally, the *Zolotukhin v. Russia* case is also noteworthy in relation to administrative sanctions, as it showed the ECtHR’s integrative approach. According to this approach, although Article 4 of Protocol No. 7 is a standalone right, its interpretation is strongly influenced by the reasoning in Article 6 concerning the nature and consequences of proceedings. This includes the effects of evidence transfer on the presumption of innocence.

3.4. From a single-tier argument to a multi-tier argument: *A and B v. Norway* and the complementary proceedings test

However, the judgment in *A and B v. Norway* (2016) marked a clear turning point in the ECtHR’s case law, signalling the recognition of a two-tier system of enforcement provided that four cumulative conditions are met.

- the various proceedings must serve complementary purposes not only *in abstracto* but also *in concreto*;

- the duality of related proceedings is a foreseeable consequence of the same contested conduct, both from a legal and practical point of view (*‘in idem’*);
- the relevant proceedings are conducted in such a way as to avoid duplication as far as possible in the gathering and assessment of evidence;
- whether the penalty imposed in the proceedings that become final first is taken into account in the proceedings that become final last, in order to avoid imposing an excessive burden on the person concerned (*A and B v. Norway*, 2016, par. 132).

This test shifts the emphasis from absolute protection against double proceedings to a context-dependent balancing test incorporating the proportionality and effective judicial protection aspects of Article 6.

The case implies that, while the *ne bis in idem* principle remains distinct, its application depends on the values (Andrusyshyn et al., 2023, pp. 3–5) enshrined in Article 6, namely the right to a fair trial (foreseeability, proportionality and integrity of proceedings). This simultaneously reinforces the principle of a fair trial as *lex generalis* and the *ne bis in idem* principle as *lex specialis*, affording the ECtHR greater flexibility in decision-making but also entailing greater unpredictability and uncertainty, particularly when assessing complementary nature and proportionality in an administrative context.

3.5. Ad hoc application and persistent ambiguities

Subsequent case law demonstrates the inconsistent application of the subsidiarity test and the unequal treatment of factors such as chronological order, the transfer of evidence, and proportionality. For example, see the case of *Matthildur Ingvarsdottir v. Iceland* (2019), or in criminal cases, *Galović v. Croatia* (2021, par. 113–124). In contrast, the case of *Nodet v. France* (2019) did not apply this criterion. The ECtHR has considered chronological order to be irrelevant from the defence's perspective in some cases (*Matthildur Ingvarsdottir v. Iceland*, 2019), while in other contexts, the presumption of innocence and the practical implications of the right to a fair trial have been deemed more important (*Mihalache v. Romania*, 2019, par. 97–98; *Smoković v. Croatia*, 2019, par. 43–45).

These tensions reinforce the article's thesis: the *ne bis in idem* principle is formally distinct yet embedded in its interpretation. Article 6 provides the necessary normative content to fill these gaps, such as defining what constitutes a final judgment, determining how the sharing of evidence affects the presumption of innocence and establishing how proportionality should be weighed. In practice, the overlap is functional and ubiquitous, whilst the ECtHR also takes factual elements into account to a significant extent in most cases.

3.6. Summary: implications for administrative sanctions

Therefore, based on the above processes, the two provisions do not operate as separate, independent systems, but rather form a common criminal law framework. This implies that the ECtHR increasingly treats national administrative systems as criminal

matters and examines Articles 4 and 6 simultaneously. This acts as an incentive to ensure more robust coordination mechanisms, predictability and proportionality within the sanctions system, so that the supplementary nature of the sanctions does not undermine the fundamental right to a fair trial. These requirements compel domestic law to establish clearer statutory rules on coordination and strict judicial review in cases of parallel proceedings. In theory, these could take the form of 'una via' systems (Vervaele, 2005, p. 103) instead of cumulative sanctions. However, this is hardly feasible in practice precisely because of the diverse nature of administrative sanctions (Šugman Stubbs and Jäger, 2014, pp. 160–167). Furthermore, Bernardini (2024, p. 327) demonstrates that, in relation to the emergence of new evidence, linking the two principles may also act as a barrier to the reopening of cases, even to the benefit of the accused (Bernardini, 2024, p. 327).

This connection ties in well with the ECtHR's integrated approach (Wagner and Nowak, 2010, pp. 175–202). The ECtHR consistently maintains that the Convention must be interpreted as a whole, in which rights interact with and define one another. The conceptually independent characterisation of *ne bis in idem* would contradict this. Consequently, this supports the view that Article 4 of Protocol No. 7 is a specific expression of the broader guarantees of a fair trial and the rule of law, rather than an isolated provision.

4. PRACTICE UNDER EU LAW: CONVERGENCE OR DIVERGENCE?

This section compares the Strasbourg model with CJEU case law on the Charter to assess whether Luxembourg is reproducing Strasbourg's incorporation of the *ne bis in idem* principle within the fair trial framework, or developing a separate doctrine based on the Charter with different priorities. It is important to note that, regarding the starting points, Article 6(2) TEU requires the EU to accede to the ECHR, creating a common ground between the two legal orders (Bockel, 2009, pp. 205–209). Furthermore, pursuant to Article 52(3) of the Charter, the ECHR's requirements are considered to be the minimum requirements only (Tomkin, 2021, 1402). However, the harmonisation process has stalled (Callewaert, 2018, pp. 1685–1716), and this divergence is also evident in administrative matters. It is also important to note that the commentary on the Charter points out several times that Article 57 guarantees the same fair trial rights as Article 6 of the ECHR (Aalto et al., 2014, 1197–1275; Kenner, 2014, 814 or Vedsted-Hansen, 2014, p. 180).

4.1. Starting points and theoretical similarities

The starting points of the case law of the ECtHR and the CJEU differ significantly. The ECtHR rules on alleged violations committed by contracting states, typically within a national context. By contrast, the CJEU operates within the framework of the EU legal order, dealing with transnational issues such as the enforcement of EU market law and the protection of the Union's financial interests. Despite these differences, both courts share fundamental principles such as legal certainty, the rule of law, and proportionality. Both courts have also emphasised the functional concept of criminal nature, which plays a central role in assessing *ne bis in idem* cases.

Even in terms of the starting points, there are significant differences between the practices of the ECtHR and the CJEU. Thus, while the ECtHR examines offences committed 'within the same state', the EU's jurisdiction is transnational in nature. However, due to the aforementioned common principles, the doctrinal foundations are similar, and the main objective of both courts is to ensure legal certainty and protection against multiple criminal proceedings. This shared rationale treats the *ne bis in idem* principle as a constitutional rule linked to the rule of law rather than as a mere substantive or procedural rule.

4.2. The CJEU's adoption and adaptation of the Engel criteria

Initially, the CJEU applied reasoning derived from the Engel case and related ECtHR case law, favouring a functional approach to determining whether a sanction is of a criminal nature (see *Åkerberg Fransson*, C-617/10; *Toshiba*, C-17/10, and subsequent cases). However, this process was by no means self-evident. In the *Boehringer Mannheim* case (C-7/72), for example, Advocate General Mayras expressly voiced his doubts as to whether a criminal law principle could be applied to competition law without being adapted to its specific features (*Boehringer Mannheim*, C-7/72, Advocate General Mayras, par. 3). Furthermore, the application of the principle to administrative matters has been noted as problematic in several other cases (Rosano, 2017, pp. 44–46). Following the initial difficulties, however, the reasoning applied in the *A and B v. Norway* (2016) case was virtually applied in cases such as *Åkerberg Fransson* (C-617/10), *Menci* (C-524/15, joined with the *Baldetti* case, C-217/15).

At the same time, while the elements of the argument often met the ECtHR's criteria, the CJEU has referred to its own case law on several occasions in matters concerning administrative sanctions. Specifically, it has referred to the *Bonda* case (C-489/10), but that the latter also relied on the Engel criteria. The three criteria examined by the EU are as follows: The first is the legal classification of the infringement under domestic law; the second is the nature of the infringement; and the third is the severity of the sanction that may be imposed on the person concerned (*Bonda*, C-489/10, par. 37). This was subsequently reiterated in several other judgments, such as the *bpost* judgment (C-117/20, par. 25).

However, the so-called 'Menci test', which was applied in the *Menci* case and is named after it, already took the following considerations into account: "*In the light of all of the above considerations, the answer to the question referred is that Article 50 of the Charter must be interpreted as not precluding national legislation in accordance with which criminal proceedings may be brought against a person for failing to pay VAT due within the time limits stipulated by law, although that person has already been made subject, in relation to the same acts, to a final administrative penalty of a criminal nature for the purposes of Article 50 of the Charter, on condition that that legislation:*

- *pursues an objective of general interest which is such as to justify such a duplication of proceedings and penalties, namely combating VAT offences,*

- it being necessary for those proceedings and penalties to pursue additional objectives,*
- *contains rules ensuring coordination which limits to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings, and*
 - *provides for rules making it possible to ensure that the severity of all of the penalties imposed is limited to what is strictly necessary in relation to the seriousness of the offence concerne” (Menci, C-524/15, par. 63).*

Thus, whilst echoing the *Engel* case, the *Menci* test also sought to take account of the EU’s specific policy requirements. The test recognises that national legislation may permit both administrative sanctions and criminal proceedings in respect of the same acts, provided that: (i) the additional proceedings serve a public interest objective that justifies them; (ii) the coordination rules limit any additional disadvantages to what is strictly necessary; and (iii) the severity of the sanctions is limited to what is strictly necessary in relation to the seriousness of the offence (*Menci*, C-524/15).

4.3. *bpost*, Nordzucker and the legal controversies

Judgments handed down on the same day in the *bpost* (C-117/20) and *Nordzucker* (C-151/20) cases complicated matters further. In both cases, the application of administrative sanctions was called into question. In the *bpost* case, the core issue was that the company had been sanctioned by two Belgian authorities. First, the national sectoral regulator for postal services imposed a penalty on *bpost* for the discriminatory nature of its discount scheme; then, the national competition authority imposed a further penalty for abuse of a dominant position, also relating to the discount scheme. In the *Toshiba* judgment (C-17/10), Advocate General Bobek proposed applying the aforementioned *Menci* test. He argued that the level of protection guaranteed by Article 50 of the Charter cannot be lower than that guaranteed by Article 4 of Protocol No. 7 to the ECHR (Callewaert, 2018). The general standard under Article 50 of the Charter must operate not only within a single Member State, but throughout the Union in both horizontal (between Member States) and vertical (between Member States and the European Union) contexts. According to this argument, as a fundamental principle of EU law concerning fundamental rights, the substance of the principle should not differ substantially depending on the relevant area of law. However, this does not preclude the existence of specific systems within EU law that provide a higher level of protection (Advocate General Bobek, *bpost*, C-117/20).

Contrary to the Advocate General’s opinion, the court ultimately ruled that the EU’s priorities (market integrity and consistent enforcement) had shaped the outcome. The CJEU concluded that Article 50 of the Charter, read in conjunction with Article 52(1), does not preclude the imposition of a fine on a legal person for infringing EU competition law. This is provided that a final decision has already been taken against that entity based on the same facts in proceedings concerning an infringement of sector-specific rules aimed at liberalising the relevant market. There must also be clear and precise rules that make it possible to foresee which acts and omissions may result in the accumulation

of proceedings and sanctions. These rules must also allow for coordination between the two competent authorities. Furthermore, the two proceedings must be conducted in a sufficiently coordinated manner within a sufficiently short period of time. The totality of the penalties imposed must also be proportionate to the gravity of the infringements committed (*bpost*, C-117/20).

In doing so, the CJEU accepted the cumulative imposition of administrative and competition law fines by different national authorities, subject to certain conditions. These conditions include foreseeability, coordination and proportionality. However, this reasoning largely depends on the specific facts of the case and, in certain respects, diverges from the trends towards greater protection observed in Strasbourg case law.

The decision has also been criticised in academic literature, primarily due to a lack of coherence, and because the CJEU's findings are highly dependent on the specific facts of the case (Wahl, 2022, pp. 116–118). Some have even concluded that the purpose of the *ne bis in idem* principle is to prevent the repeated prosecution and punishment of undertakings, but this must not result in certain conduct going unpunished. Some have highlighted that the protection that was previously *ex ante* has become *ex post* in nature (Ne bis in idem and the DMA, 2022), while others have pointed out that the decision distinguishes between acts related to VAT and unlawful conduct constituting market manipulation (Geller, 2018, p. 1379). Nevertheless, it is fair to say that the application of the principle in the EU has never been more confusing (Rossi and Marciano, 2021, pp. 270–271).

4.4. Emerging trends in the CJEU: gradual convergence and internal priorities

The CJEU's most recent case law (e. g. *Dual Prod*, *MV-98*, *Mitliv Exim* or *BB Construct*) shows convergence with the ECtHR in the application of the functional test. However, there is also divergence in terms of emphasis. While the CJEU increasingly accepts that a wide range of administrative sanctions may be of a criminal nature, it remains willing to permit dual proceedings where EU interests (e. g. tax safeguards and market regulation) and institutional coordination warrant it. The fact-based approach, which considers the specifics of individual cases, is equally problematic as it reduces legal certainty and increases the risk of protection being fragmented across EU Member States.

The criteria for assessing whether an act is repressive in nature when classifying it as a criminal offence are also unclear. One characteristic criterion is the general nature of the rule, which the CJEU typically applies in tax law (see, for example, the *Dual Prod* case). However, in the same case, the Advocate General also pointed out that the practice is unclear and inconsistent in other areas. In the field of agricultural policy, for example, the punitive nature of exclusion was not established. Nor was exclusion following a false declaration in public procurement cases classified as such (*Flying Holding*, T-91/12 and T-280/12, par. 60), nor was a disqualification decision by a financial supervisory authority. The same opinion also emphasised that neither a systematic interpretation nor the nature of the provision provides clear guidance (Opinion of the Advocate General *Dual Prod*,

C-412/21, footnote 20; opinion of Advocate General Bot *UBS Europe and Others*, C-358/16, par. 60–71).

The criterion that examines the repressive or punitive nature of the provision is equally vague. In this regard, the EU increasingly proceeds on the basis that any measure with a demonstrable punitive nature is regarded as such (*Beach and Bar* C-733/23; *Ati-19*, C-605/23; *Dranken Van Eetvelde*, C-331/23; *Legafact*, C-122/23; *Dual Prod*; C-412/21, '*Vinal*' AD, C-820/21; *MV-98*, C-97/21; *BV*, C-570/20), whereas prior to 2020, the punitive nature was subject to much stricter scrutiny (*Mitliv Exim*, C-81/20; *BB Construct*, C-534/16). Today, the CJEU generally avoids declaring the criminal nature of compensation for damage caused by the infringement in question (see *Latvijas Republikas Saeima [Penalty points]*, C-439/19; *Dual Prod*, C-412/21; *MV-98*, C-97/21). However, there was a case in which the CJEU described interest as a penalty (*EMS-Bulgaria Transport*, C-284/11).

However, emphasising the punitive nature of the measure promotes financial stability and encourages compliance with the rules (Opinion of Advocate General *Mauro Scialdone*, C-574/15, par. 128). However, the consequences are not limited to practical considerations. As can be seen from the multitude of principles invoked, the criminal nature of the law has an impact on other principles, such as the right to a fair trial and the principle of proportionality. The enforcement of these principles already has far-reaching implications for the legal systems of the Member States.

4.5. Proportionality, effective judicial protection and systemic compromises

The above cases also demonstrate that the CJEU has incorporated proportionality arguments and considerations regarding effective judicial protection into its *ne bis in idem* analysis. However, these arguments already touch upon the guarantees of a fair trial. Within the EU, the CJEU occasionally balances these rights against the Union's specific objectives. In certain policy areas, such as tax collection and the EU's financial interests, this may result in stricter admissibility requirements for dual proceedings. In other areas, such as the enforcement of competition law, a more lenient stance is adopted provided that safeguards regarding coordination and proportionality are in place.

Meanwhile, the third element — the severity of the sanction — is primarily linked to proportionality (Ahmed, 2025, pp. 1–4), a matter of criminal law (*Beach and Bar*, C-733/23; *Ati-19*, C-605/23; *Dranken Van Eetvelde*, C-331/23; *Legafact*, C-122/23; *Dual Prod*, C-412/21; '*Vinal*' AD, C-820/21; *MV-98*, C-97/21). This was particularly evident in the *MV-98* case, in which Johann Callewaert (2023) drew attention to subsequent decisions that linked criminal law character to proportionality, making it a combined issue. However, alongside proportionality and *ne bis in idem*, another principle — originally falling within the scope of a fair trial — has also emerged. This is particularly the case in recent case law, where the principle of effective judicial protection (*Ati-19*, C-605/23; *Legafact*, C-122/23) has emerged. However, this principle may conflict with the efficient and mass adjudication of tax cases. In cases concerning the *ne bis in idem* principle, such as *Ferriere Nord* (C-31/23) and *Caronte&Tourist* (C-511/23), the CJEU examined fair trial elements such

as reasonable time limits, the right to be heard, and the right to a defence. In *Ati-19* (C-605/23), however, the principle of judicial protection was explicitly raised.

5. CONCLUSIONS: THE INTERPLAY BETWEEN FAIR TRIAL AND THE *NE BIS IN IDEM* PRINCIPLE

The above analysis confirms that the *ne bis in idem* principle formally stands alone as a separate treaty provision with specific elements: the same offence, a final judgement and limited exceptions. In practice, however, its interpretation is closely intertwined with the fair trial framework.

Although the two judicial systems share common ground and strive for harmonisation — a goal undoubtedly reinforced by Article 52(3) of the Charter — they are consistent in some respects, but diverge in others. In *ne bis in idem* cases, the ECtHR clearly relies on the autonomous concept of criminal matters developed under Article 6. The ECtHR invokes the values of Article 6 — such as proportionality, the presumption of innocence, and the right to an effective remedy — to fill the gaps in the interpretation of Article 4 of Protocol No. 7. This may result in national systems enforcing clearer legislative rules and judicial practice regarding administrative sanctions, in order to regulate dual proceedings. Member States must ensure predictability by establishing clear rules on when administrative sanctions can be combined with criminal proceedings, coordinating between authorities to minimise the parallel use of evidence and overlap in prosecutorial activities, and conducting strict proportionality tests to avoid placing excessive burdens on individuals and businesses. In practice, however, these principles can complicate the enforcement of the law and may hinder the reopening of cases in favour of the accused (Bernardini, 2024).

In the case of the EU, the CJEU's case law shows partial methodological convergence with that of the ECtHR but reflects different outcomes-based priorities. The CJEU's fact-based approach and its willingness to reconcile the *ne bis in idem* protection with the Union's enforcement objectives highlight the need for greater harmonisation, whether legislative or interpretative, to prevent the *ne bis in idem* protection from becoming fragmented between Member States and between the EU and the ECtHR forums. The question is to what extent this can be achieved within the current fragmented system governing administrative sanctions and whether it is possible to apply uniform principles to administrative sanctions when the conceptual framework of these sanctions is unclear. A far more serious problem in this regard is the uncertain legal-philosophical assessment of criminal matters, which is increasingly intertwined with the application of fair trial principles. This means that as the scope of criminal matters expands, principles of criminal procedure will increasingly be applied in administrative proceedings. Overall, this works against efficiency since the essence of administrative matters lies in different safeguards and the swift, efficient adjudication of large numbers of cases. Bas van Bockel illustrated this process through the Council Regulation (EU) No 1024/2013 of 15 October 2013 (SSMR), demonstrating the safeguarding deficit that the *ne bis in idem* principle can cause, particularly in the case of milder administrative sanctions (Bockel, 2017, pp. 213–216).

It is important to note this because the application of the *ne bis in idem* principle in conjunction with the values of due process fundamentally transforms the system of administrative enforcement. The safeguards for administrative sanctions differ from those under criminal law in every European country. If we disregard these differences and examine administrative sanctions according to uniform standards, this will inevitably result in a situation where enforcement appears to increase, but in reality, it leads to a short-term decline in the effectiveness of administrative sanctions and, in the long term, their inability to function. Administrative sanctions vary so much that it is not possible to identify a common conceptual framework for them. This is because they are based on the rapid, effective and typically out-of-court enforcement of the law. Currently, it seems that the *ne bis in idem* principle covers more administrative sanctions than the fair trial principle originally did.

Overall, however, regarding the relationship between the two principles, it can be concluded that, although the *ne bis in idem* principle is independent, it is not conceptually isolated. Rather, it functions as a *lex specialis* within the broader framework of the guarantees of a fair trial. In the case of the courts, there is a clear endeavour to apply the principle in accordance with the values of Article 6. However, it is questionable how much attention is paid to the specific characteristics of administrative sanctions and the political decisions of national and EU authorities. While the courts expect clearer national rules, better coordination of procedures and strict proportionality, as well as effective judicial review in cases of parallel enforcement — particularly in the EU context — interpreted in conjunction with the principle of fair procedure, this could significantly reduce the efficiency of administrative enforcement.

REFERENCES

- AALTO, P. et al. (2014). *Article 47 -Right to an Effective Remedy and to a Fair Trial*. In: Peers, S., Hervey, T., Kenner, J. and Ward, A. (Eds.), *The EU Charter of Fundamental Rights: A Commentary*. Oxford: Hart Publishing, pp. 1197–1275.
- AHMED, S. (2025). Proportionality analysis and Non-refoulement Jurisprudence in India: a Comparative Approach, *The Age of Human Rights Journal*, 24(6), pp. 1–29, e8728 ISSN: 2340-9592. <https://doi.org/10.17561/tahrj.v23.8728>
- ANDRUSYSHYN, B. I., BILOZOROV, Y. V., OPOLSKA, N. M., KUPINA, L. F. and TOKARCHUK, O. V. (2023). Right to a Fair Trial in Extraordinary Conditions, *The Age of Human Rights Journal*, 20(6), pp. 1–23, e7539. ISSN: 2340-9592. <https://doi.org/10.17561/tahrj.v20.7539>
- BAILLEUX, A. (2014). The fiftieth shade of grey Competition law, “criministrative law” and “fairly fair trials”. In: Galli, F. and Weyembergh, A. (Eds.), *Do labels still matter? Blurring boundaries between administrative and criminal law. The influence of the EU. Bruxelles*. Editions de l'Université de Bruxelles, pp. 137–152.
- BÁN, T. (1991). *Manuscript*. Ministry of the Interior, Budapest.
- BERNARDI, A. et al. (2013). Country Analysis - Italy. In: Jansen, O. (Ed.), *Administrative Sanctions in the European Union*. Cambridge, Intersentia, pp. 289–316.

- BERNARDINI, L. (2024). Reopening Criminal Proceedings and Ne Bis in Idem: Towards a Weaker Res Iudicata in Europe? *European Papers*, 9(1), pp. 311–335. <https://doi.org/10.15166/2499-8249/759>
- BOCKEL, W. B. VAN. (2009, June 16). *The ne bis in idem principle in EU law: a conceptual and jurisprudential analysis*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/13844>
- BOCKEL, W. B. VAN. (2017). The Single Supervisory Mechanism Regulation: Questions of ne bis in idem and implications for the further integration of the system of fundamental rights protection in the EU, *Maastricht Journal of European and Comparative Law*, 24(2), pp. 194–216. <https://doi.org/10.1177/1023263X17709748>
- BREEN, E. (2013). Country Analysis- France. In: Jansen, O. (Ed.), *Administrative Sanctions in the European Union*, Cambridge, Intersentia, pp. 195–211.
- CAEIRO, P and LEMOS, M. A. (2013). Country Analysis- Portugal, In: Jansen, O. (Ed.), *Administrative Sanctions in the European Union*. Cambridge, Intersentia, pp. 467–496.
- CALLEWAERT, J. (2018). Do we still need Article 6(2) TEU? Considerations on the Absence of EU Accession to the ECHR and its Consequences, *Common Market Law Review*- 55(6), pp. 1685–1716.
- CALLEWAERT, J. (2023). *More confusion about «ne bis in idem»: judgment of the CJEU in the case of MV – 98*. Available at: <https://johan-callewaert.eu/more-confusion-about-ne-bis-in-idem-judgment-of-the-cjeu-in-the-case-of-mv-98/> (Accessed: 25 October 2025).
- COFFEY, G. A (2022). History of the Common Law Double Jeopardy Principle: From Classical Antiquity to Modern Era, *Athens Journal of Law*, 8(3), pp. 253–278.
- COFFEY, G. (2023). An interpretative analysis of the European ne bis in idem principle through the lens of ECHR, CFR and CISA provisions: Are three streams flowing in the same channel? *New Journal of European Criminal Law*, 14(3), pp. 345–373.
- COUNCIL OF EUROPE (2026). *Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117) – Signatures and Ratifications* [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=117> (Accessed: 22 January 2026).
- DANNECKER, G. (2013). *Country Analysis-Germany*. In: Jansen, O. (Ed.), *Administrative Sanctions in the European Union*. Cambridge, Intersentia, pp. 213–254.
- ECTHR (2026). *Guide on Article 4 of Protocol No. 7 to the European Convention on Human Rights Right not to be tried or punished twice*. Strasbourg: European Court of Human Rights.
- GELLÉR, B. (2018). Conflict between jurisdictions and branches of law in light of the European interpretation of the ne bis in idem principle. In: Menyhárd, A. and Varga,

- I. (Eds.), *The Faculty of Law and Political Sciences of Eötvös Loránd University is 350 years old. Studies from the anniversary year conference series*. Volume II. ELTE, Budapest, pp. 1353–1379.
- GIRONDEAU, L. (2021). *Contribution à l'étude de la pénalisation du droit fiscal*, L'Hartmann.
- GROUSSOT, X. and ERICSSON, A. (2016). Ne Bis in Idem in the EU and ECHR Legal Orders: A Matter of Uniform Interpretation? In: Bockel, W. B. van (Ed.), *Ne Bis in Idem in EU Law*, Cambridge University Press, pp. 53–102.
- JANSEN, O. (ed.) (2013). *Administrative Sanctions in the European Union*. Cambridge, Intersentia.
- KENNER, J. (2014). Article 30-Protection in the Event of Unjustified Dismissal. In: Peers, S., Hervey, T., Kenner, J. and Ward, A. (Eds.), *The EU Charter of Fundamental Rights: A Commentary*. Nomos, C. H. Beck, Hart Publishing, pp. 805–832.
- MCELLDOWNEY, J. (2013). *Country Analysis- United Kingdom*. In: Jansen, O. (ed.) *Administrative Sanctions in the European Union*, Cambridge, Intersentia, pp. 585-606.
- NE BIS IN IDEM AND THE DMA: THE CJEU'S JUDGMENTS IN BPOST AND NORDZUCKER – PART II (2022). Available at: <https://theplatformlaw.blog/2022/03/29/ne-bis-in-idem-and-the-dma-the-cjeus-judgments-in-bpost-and-nordzucker-part-ii/> (Accessed: 28 November 2025).
- ORGANISATION OF AMERICAN STATES (2026). *American Convention on Human Rights* [Online]. Available at: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (Accessed: 25 January 2026)
- PALIERO, C. E. (2013). *The Definition of Administrative Sanctions - General Report*. In: Jansen, O. (Ed.), *Administrative Sanctions in the European Union*. Cambridge, Intersentia, pp. 1–34.
- REPETTO, G. (2013). Introduction. The ECHR and the European Constitutional Landscape: Reassessing Paradigms. In: Repetto, G. (Ed.) *The Constitutional Relevance of the ECHR in Domestic and European Law. An Italian Perspective*. Cambridge, Intersentia, pp. 1–20.
- ROSANO, A. (2017). Ne Bis Interpretatio In Idem? The Two Faces of the Ne Bis In Idem Principle in the Case Law of the European Court of Justice, *German Law Journal*, 18(1), pp. 39–58. <https://doi.org/10.1017/S2071832200021866>
- ROSSI, P. and MARCIANO, A. (2021). Reasoned Approach to Prohibiting the Bis in Idem, *Eu crim*, 15(4). pp. 270–271.
- RUDSTEIN, D. S. (2005). A Brief History of the Fifth Amendment Guarantee Against Double Jeopardy, *William & Mary Bill of Rights Journal*, 14(1), pp. 193-242.
- ŠUGMAN STUBBS, K. and JAGER, M. (2014). The organization of administrative and criminal law in national legal systems: exclusion, organized or non-organized co-

existence. In: Galli, F. and Weyembergh, A. (Eds.), *Do labels still matter? Blurring boundaries between administrative and criminal law. The influence of the EU. Bruxelles*. Editions de l'Université de Bruxelles, pp. 155-169.

TAUBNER, Z. (1991). *Manuscript*. Ministry of the Interior, Budapest.

VEDSTED-HANSEN, J. (2014). Article 7 – Respect for Private and Family Life. In: Peers, S., Hervey, T., Kenner, J. and Ward, A. (Eds.), *The EU Charter of Fundamental Rights: A Commentary*. Oxford/Munich/Baden-Baden: Hart Publishing, C.H. Beck and Nomos, pp. 153–182.

TOMKIN, J. (2021). “Commentary on Article 50 – Right not to be tried or punished twice”. In: Peers, S., Hervey, T., Kenner, J. and Ward, A. (Eds.), *The EU Charter of Fundamental Rights: A Commentary*, para 50.74. Oxford: Hart Publishing.

VERVAELE, J. A. E. (2005). The transnational ne bis in idem principle in the EU Mutual recognition and equivalent protection of human rights, *Utrecht Law Review*, 1(2), pp. 100–118.

WAGNER, V. and NOWAK, M. (2010). ‘Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools’. In: De Schutter, O. and Moreno, L. V. (Eds.), *Human Rights in the Web of Governance*, pp. 101-204.

WAHL, T. (2022). CJEU Clarified Duplication of Punitive Administrative Proceedings in Competition Law, *Eucrim*, 16(2), pp. 116–118.

CASE LAW

CJEU Judgment in Case C-117/20, *bpost SA*, ECLI:EU:C:2022:202.

CJEU Judgment in Case C-122/23, *Legafact*, ECLI:EU:C:2024:293.

CJEU Judgment in Case C-151/20, *Nordzucker*, ECLI:EU:C:2022:203.

CJEU Judgment in Case C-17/10, *Toshiba*, ECLI:EU:C:2012:72.

CJEU Judgment in Case C-217/15, *Baldetti*, ECLI:EU:C:2017:264.

CJEU Judgment in Case C-284/11, *EMS-Bulgaria Transport*, ECLI:EU:C:2012:458.

CJEU Judgment in Case C-31/23, *Ferriere Nord*, ECLI:EU:C:2024:851.

CJEU Judgment in Case C-331/23, *Dranken Van Eetvelde*, ECLI:EU:C:2024:1027.

CJEU Judgment in Case C-412/21, *Dual Prod*, ECLI:EU:C:2023:234.

CJEU Judgment in Case C-439/19, *Latvijas Republikas Saeima [Penalty points]*, ECLI:EU:C:2021:504.

CJEU Judgment in Case C-511/23, *Caronte&Tourist*, ECLI:EU:C:2025:42.

CJEU Judgment in Case C-524/15, *Luca Menci*, ECLI:EU:C:2018:197.

CJEU Judgment in Case C-534/16, *BB construct*, ECLI:EU:C:2017:820.

- CJEU Judgment in Case C-570/20, *BV*, ECLI:EU:C:2022:348.
- CJEU Judgment in Case C-605/23, *Ati-19*, ECLI:EU:C:2025:513.
- CJEU Judgment in Case C-617/10, *Åkerberg Fransson*, ECLI:EU:C:2013:105.
- CJEU Judgment in Case C-7/72, *Boehringer Mannheim*, ECLI:EU:C:1972:125.
- CJEU Judgment in Case C-733/23, *Beach and Bar*, ECLI:EU:C:2025:515.
- CJEU Judgment in Case C-81/20, *Mitliv Exim*, ECLI:EU:C:2021:510.
- CJEU Judgment in Case C-820/21, *Vinal AD*, ECLI:EU:C:2023:667.
- CJEU Judgment in Case C-97/21, *MV-98*, ECLI:EU:C:2023:371.
- CJEU Judgment in Case T-91/12 and T-280/12, *Flying Holding*, ECLI:EU:T:2014:832.
- ECtHR Case of *A and B v. Norway*, judgment of 15 November 2016 (App. nos. 24130/11; 29758/11).
- ECtHR Case of *Bendenoun v. France*, judgment of 24 February 1994 (App. No. 12547/86).
- ECtHR Case of *Blokker v. the Netherlands*, judgement of 7 November 2000 (App. No. 45282/99).
- ECtHR Case of *Engel and Others v. the Netherlands*, judgment of 8 June 1976 (App. nos. 5100/7; 5101/71; 5102/71; 5354/72; 5370/72).
- ECtHR Case of *Galović v. Croatia*, judgement of 31 August 2021 (final 30/11/2021) (App. No. 45512/11).
- ECtHR Case of *Janosevic v. Sweden*, judgment of 23 July 2002 (App. No. 34619/97).
- ECtHR Case of *Jussila v. Finland*, judgment of 23 November 2006 (App. No. 73053/01).
- ECtHR Case of *K. S. v. the Federal Republic of Germany*, judgement of 16 December 1983 (App. No. 10431/83).
- ECtHR Case of *Matijašić v. Croatia*, judgment of 1 July 2021 (App. No. 38771/15).
- ECtHR Case of *Matthildur Ingvarsdottir v. Iceland*, judgment of 17 January 2019 (App. No. 22779/14).
- ECtHR Case of *Mihalache v. Romania*, judgement of 8 July 2019 (App. No. 54012/10).
- ECtHR Case of *Nodet v. France*, judgment of 6 June 2019 (App. No. 47342/14).
- ECtHR Case of *Smoković v. Croatia*, judgement of 12 November 2019 (App. No. 57849/12).
- ECtHR Case of *X. v. The Netherlands*, judgement of 11 December 1981 (App. No. 9433/81).

ECtHR Case of *Zolotukhin v. Russia*, judgment of 10 February 2009 (App. No. 14939/03).

Opinion of Advocate General Bobek in Case C-574/15, *Mauro Scialdone*, ECLI:EU:C:2017:553.

Opinion of Advocate General Bot in Case C-358/16, *UBS Europe and Others*, ECLI:EU:C:2017:606.

Opinion of Advocate General Collins in Case C-412/21, *Dual Prod*, ECLI:EU:C:2022:821.

Opinion of Advocate General Kokott in Case C-17/10, *Toshiba Corporation and Others*, ECLI:EU:C:2011:552.

Received: 10th February 2026

Accepted: 17th May 2026

