



Court of Justice of the European Union

PRESS RELEASE No 34/18

Luxembourg, 20 March 2018

Judgments in Joined Cases C-524/15 Luca Menci, C-537/16 Garlsson Real Estate SA and Others v Commissione Nazionale per le Società e la Borsa (Consob) and Joined Cases C-596/16 Enzo Di Puma v Consob and C-597/16 Consob v Antonio Zecca

Press and Information

The *ne bis in idem* principle may be limited for the purpose of protecting the financial interests of the EU and the financial markets thereof

However, such a limitation must not exceed what is strictly necessary to achieve those objectives. The Italian legislation on market manipulation could infringe EU law

The *ne bis in idem* principle provides that a person cannot be criminally prosecuted or punished twice for the same offence.¹ That fundamental right is recognised both by the Charter of Fundamental Rights of the European Union (Charter)² and by the European Convention on Human Rights (ECHR).³ In four Italian cases, the Court is requested to interpret that principle in the context of the VAT directive⁴ and of the directive concerning financial markets.⁵

Case C-524/15, Menci – The Italian tax authorities imposed on Mr Luca Menci an administrative penalty for having failed to pay VAT for the year 2011. Criminal proceedings were then brought against Mr Menci with respect to the same acts before the Tribunale di Bergamo (District Court, Bergamo, Italy).

Case C-537/16, Garlsson Real Estate and Others – In 2007, the Italian National Companies and Stock Exchange Commission (Commissione Nazionale per le Società e la Borsa) ('Consob') imposed an administrative penalty on Mr Stefano Ricucci for market manipulation. Mr Ricucci contested that decision before the Italian courts. In the context of his appeals on a point of law before the Corte suprema di cassazione (Court of Cassation, Italy), he claimed that he had already been finally convicted and sentenced in 2008, with respect to the same acts, to a criminal penalty extinguished as a result of a pardon.

By their requests for a preliminary ruling, the Tribunale di Bergamo and the Corte suprema di cassazione in particular question the Court concerning the compatibility of the duplication of proceedings and penalties with the *ne bis in idem* principle.

In today's judgments, the Court considers that, in the situations referred to, there could be a duplication of 'criminal proceedings/penalties' and 'administrative proceedings/penalties of a criminal nature' against the same person with respect to the same acts. Such a duplication of proceedings and penalties constitutes a limitation of the *ne bis in idem* principle.

The Court holds that such limitations require a justification, the latter being subject to requirements under EU law.⁶ In that regard, it states that national legislation authorising a duplication of proceedings and penalties of a criminal nature must:

¹ Case: [C-617/10 Åkerberg Fransson](#), see press release No [19/13](#).

² Article 50 of the Charter.

³ Protocol No 7 (Article 4) to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

⁵ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

⁶ In accordance with Article 52(1) of the Charter, according to which 'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and

- pursue an **objective of general interest** which is such as to justify a duplication of proceedings and penalties, it being necessary for those proceedings and penalties to pursue **additional objectives**;

establish **clear and precise rules** allowing individuals to predict which acts or omissions are liable to be subject to such a duplication of proceedings and penalties;

ensure that the **proceedings are coordinated** in order to limit to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings, and

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 concerned.

It is for the national court to determine whether those conditions are satisfied in the present case and to ensure also that the disadvantages actually resulting from such a duplication for the person concerned are not excessive in relation to the seriousness of the offence committed. The Court considers finally that the conditions to which EU law subjects a possible duplication of proceedings and penalties of a criminal nature guarantee a level of protection of the *ne bis in idem* principle which does not infringe that guaranteed by the ECHR. On the basis of those considerations, the Court holds, in its **Menci** judgment, that the objective of ensuring the collection of all the VAT due in the territories of Member States is capable of justifying a duplication of proceedings and penalties of a criminal nature. As regards the national legislation allowing criminal proceedings to be brought even after the imposition of a final administrative penalty of a criminal nature, the Court notes, subject to verification by the national court, that that legislation makes it possible in particular to ensure that the duplication of proceedings and penalties which it authorises does not exceed what is strictly necessary in order to achieve the objective.

In its judgment, **Garlsson Real Estate and Others**, the Court states that the objective of guaranteeing the integrity of the financial markets of the EU and public confidence in financial instruments is capable of justifying a duplication of proceedings and penalties of a criminal nature. Nevertheless, it notes, subject to verification by the national court, that **the Italian legislation penalising market manipulation does not appear to respect the principle of proportionality**. That national legislation authorises administrative proceedings of a criminal nature to be brought with respect to the same acts which have already been subject to a criminal conviction. The criminal penalty appears to be such as to itself punish the offence in an effective, proportionate and dissuasive manner. In those circumstances, the act of bringing administrative proceedings of a criminal nature with respect to the same acts which have already been subject to such a criminal conviction exceeds what is strictly necessary in order to achieve the objective of protecting markets. Moreover, that legislation does not appear to guarantee that all of the penalties are proportionate to the seriousness of the offence.

Joined Cases C-596/16 and C-597/16, Di Puma and Zecca – In 2012, Consob imposed administrative penalties on Mr Enzo Di Puma and Mr Antonio Zecca with respect to insider dealing. In the actions before the Corte suprema di cassazione, they claimed that, in the criminal proceedings with respect to the same acts brought in parallel to the administrative proceedings, the criminal court had held that the insider dealing was not established. The *res judicata* effect of that final criminal judgment of acquittal prohibits, according to national procedural law, the act of bringing administrative proceedings with respect to the same acts. In that context, the Corte suprema di cassazione asks the Court whether, in the light of the '*ne bis in idem*' principle, the directive concerning financial markets precludes such national legislation. That directive obliges Member States to provide for effective, proportionate and dissuasive penalties for infringements of the prohibition of insider dealing.

freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others'.

In its judgment today, the Court holds that such national legislation does not infringe EU law, in the light of **the principle of res judicata**, which is very important both in the EU legal order and in the national legal orders. Moreover, where **there exists a final criminal judgment of acquittal finding that there is no offence**, the act of bringing proceedings for an administrative fine of a criminal nature infringes the *ne bis in idem* principle. In such a situation, the act of bringing those proceedings **clearly exceeds what is necessary** in order to achieve the objective of guaranteeing the integrity of the financial markets of the EU and public confidence in financial instruments.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The full text [C-524/15](#), [C-537/16](#) and [C-596/16 & C-597/16](#) of the judgments are published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106