

Ne bis in idem in Finland

- highly concentrated on economic crime (like probably everywhere else as well I assume. One case of a driving ban at least, 17 February 2015 *Boman v. Finland* 41604/11. Voted six votes to one: no violation)
- for long, well into this decade, administrative procedure including a penalty such as a punitive tax increase, was preventing criminal proceedings only after the administrative decision having gained legal force (prejudicated by the Supreme Court of Finland KKO:2010:45, KKO:2010:46).
- based on decisions above, the Supreme Administrative Court in Finland even stated that even with a judgment in a criminal process already having become final, ne bis in idem principle would not prevent rendering a decision in an administrative procedure, as long as such procedure was pending before the judgment in penal case became final (KHO:2011:41).
- the criminal and the administrative sanctions were imposed by different authorities without the proceedings being in any way connected. Both sets of proceedings followed their own separate course and became final independently from each other. Neither of the sanctions was taken into consideration by the other court or authority in determining the severity of the sanction, nor was there any other interaction between the relevant authorities. The tax surcharges were under the Finnish system imposed following an examination of an applicant's conduct and his or her liability under the relevant tax legislation which was independent from the assessments made in the criminal proceedings.
- at the European Court of Human Rights, such interpretation of the principle was in several judgments considered as far too narrow one (e.g. on 20 May 2014 *Glantz v. Finland* 37394/11 and *Nykänen v.*

Finland 11828/11, on the execution of which there is the action plan in the material included)

- as can be found from the action plan, the Act on Tax Surcharges and Customs Duty Surcharges Imposed by a Separate Decision, 8.11.2013/781, entered into force on 1 December 2013 and obliged the tax authorities to choose between a tax surcharge or reporting the matter to the police. After having imposed tax surcharges, reporting the same matter to the police shall be possible only if, after imposing the tax surcharges, they had received evidence of new or recently revealed such facts that with the knowledge of these facts would a tax surcharge never have been imposed but the matter would have been assigned to criminal proceedings in the first place.
- After the criminal investigation has ended with no result or the prosecutor has decided not to proceed, during a time limit of 90 days from notification a punitive increase imposable by a separate decision can be imposed regardless of its otherwise set period.
- with the prejudicate KKO:2013:59, The Supreme Court reversed its earlier line of interpretation, finding that charges for tax fraud could no longer be brought if there was already a decision to order or not to order tax surcharges in the same matter. If the taxation authorities had exercised their decision-making powers regarding tax surcharges, a criminal charge could no longer be brought for a tax fraud offence based on the same facts, or if such a charge was already pending, it could no longer be pursued.
- even in the Supreme Court of Administration a similar change in interpretation was performed through decision KHO:2014:145
- at least from the view of the Government of Finland, this ruling did apply the ne bis in idem effect more strictly than suggested by the wording of Article 4 Protocol No. 7.
- however, The Act 8.11.2013/781 does not contain any transitional provisions extending its scope retroactively.

- accordingly, the Supreme Court did release a separate bulletin on 12 December 2014 reporting that it won't be annulling nor reversing judgments, having gained legal force before the precedent KKO:2013:59, through extraordinary channels of appeal.
- prior to the bulletin there were already three such decisions given (KKO:2014:93, KKO:2014:94 and KKO:2014:95)
- out of those, the KKO:2014:94 was about a case in which the ECHR had already given its judgment holding that there did have a violation of Article 4 of Protocol No. 7 to the Convention.
- the consistence of such decisions and course of conduct with the Convention is now under several supervision processes in the ECHR, out of one is the action plan included

Source material:

- attorney Jussi Ikonen, International Law Office: Application of ne bis in idem principle in Finnish courts, September 06 2011

<http://www.internationallawoffice.com/Newsletters/Litigation/Finland/Merilampi-Attorneys-Ltd/Application-of-ne-bis-in-idem-principle-in-Finnish-courts>

- Attorney at Law – Partner Gunnar Egill Egilsson, Nordik lögfræðipjónusta: Ne bis in idem - Changes necessary? 17.6.2014

<http://www.nordik.is/english/professional-content/article/nr/142#>

- Spartax Attorneys At Law: Ne bis in idem and its lis pendens -effect, KKO 2013:59, 2013

<http://www.spartax.fi/en/news/170-ne-bis-in-idem-and-its-lis-pendens-effect-kko-2013-59>

- Spartax Attorneys At Law: Government bill on punitive tax or customs increase (HE 191/2012), 2013

<http://www.spartax.fi/en/news/159-government-bill-on-punitive-tax-or-customs-increase-he-191-2012>

- Professor emeritus Raimo Immonen (University of Turku), Professor Juha Lindgren (University of Vaasa): Surcharges and Penalties In Tax Law – Finland, 2015

<http://www.eatlp.org/uploads/public/2015/National%20report%20Finland.pdf>