

Relationship between criminal and tax proceedings from the perspective of the ne bis in idem principle

Abstract

The thesis reflects upon the current case law of the European and national courts, which enables the possibility of both tax and criminal proceedings for the same act of the same person running simultaneously. The aim of the author is to compare both types of proceedings, analyse the relevant case law, and evaluate the consequences of its conclusions on the Czech legal order in the view of the ne bis in idem principle.

The opening describes the criminal and tax proceedings, their main features, and principles governing them. Features common to both types of proceedings are noted (the ability to substantially infringe the human rights of individuals), as well as the most significant difference between them (particularly when the rules of evidence are concerned). The next part of the thesis is devoted to tax delicts, both those governed by the tax law (so called delicts against the remittance discipline and administrative delicts) and the criminal law. Tax criminal law is briefly described as well.

Examination of the aim, purpose, and implementation of sanctions and the characteristics of the tax penalty, whose punitive nature deduced by the case law is crucial to the issues discussed, is given in the subsequent parts of the thesis. Commentary on the ne bis in idem principle, on its legal basis, effects and significance follows. A brief historical excursion is included as well.

The thesis thereafter continues with the analysis of the relevant case law of the Court of Justice of the European Union, European Court of Human Rights and the national courts (in particular the Supreme Court of the Czech Republic). These chapters map the evolution of the decision-making practice regarding the meaning of the same act concept, the legal characteristics of tax sanctions and of the scope of the application of the ne bis in idem principle and the possible exceptions from it. The concluding passages are devoted to the critical evaluation of the conclusions derived from the case law, summary of the assembled findings, and de lege ferenda propositions of the author.

Key words: criminal proceedings – punishment – tax proceedings – tax penalty – ne bis in idem