

Turkish Constitutional Court: Imposing Tax Penalty and Conviction at the end of the Administrative and Judicial Processes to Realize Different Aims and Legal Benefits does not Violate Ne Bis In Idem Principle

8 Aug 2019

The Turkish Constitutional Court ruled that for the periods between 2007-2011 levying both value-added tax including tax loss, income tax and penalizing for tax-loss based upon advance tax, as well as for special irregularity; and following the Applicant's acts of issuing counterfeit invoice, sentencing the Applicant for five times separately on the grounds of violating the Tax Procedural Law ("TPL") number 213 is not a violation of the right not to be tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*) under the right to a fair trial guaranteed by article 36 of the Turkish Constitution.

The applicant was subjected to a tax investigation on the periods between 2007-2011 and at the end of the review, tax technic, tax inspection and tax crime reports were issued on the grounds that the applicant made fake units' sales and issued counterfeit invoices by way of "POS usury".

According to the reports issued, value-added tax including tax loss, income tax, tax-loss penalty based upon advance tax and special irregularity penalty were levied due to the applicant's service on sale without proper documents.

The applicant filed lawsuits against these administrative penalties and during the trial proceedings, then applied to the tax office for debt restructuring within the scope of the Law on the Restructuring of Certain Receivables number 6736 dated 3 August 2016. According to payment plan dated 27 October 2016, the applicant paid its debt in the amount of TRY 65,311.81 in six installments. The applicant also waived the tax court cases within the framework of this restructuring.

The tax crime report was also issued against the applicant, stating that it would be appropriate to file a criminal complaint due to the applicant's acts of using and issuing counterfeit invoices. The Tax Inspection Board, based on this report, filed a criminal complaint against the Applicant on 25 April 2014 to the Office of Şkenderun Chief Public Prosecutor.

On 9 June 2014 Chief Public Prosecutor's Office filed the indictment with the request of the applicant to be punished successively for violating the TPL.

Having decided to accept the indictment, Şkenderun 5th Criminal Court of First Instance decided to penalize the applicant five times in violation of TPL. The penalties imposed on the applicant on the grounds that the same provision had been violated more than once at different times. Accordingly, the sentence was increased in accordance with article 43 of the Turkish Penal Code number 5237. The applicant was sentenced five different times for 3 years, 1 month and 15 days of imprisonment, and the decision was upheld by the Court of Appeal.

In the present case, the Turkish Constitutional Court has brought the opinion that both administrative and criminal proceedings concerning the same person were conducted in respect of the same taxation periods and the applicant's acts causing the administrative and criminal proceedings should be regarded as the same act in a legal sense, as they constituted a unity in their interconnectedness from the aspects of purpose, time and space.

However, the Turkish Constitutional Court ruled that there is no infringement of the *ne bis in idem* principle due to the following reasons:

- Since *ne bis in idem* principle for the same act is only related to criminal cases, filing a civil case or conducting a disciplinary investigation as well as the criminal investigation for the same act is not an infringement of the *ne bis in idem* principle.
- The administrative punishment of the violation of the tax rules and the penalization of such offenses are aimed at achieving different objectives and legal benefits.

Please see this [link](#) for the full text of the decision of the Constitutional Court's decision, dated 27 March 2019, numbered 2018/9115 E., published in the Official Gazette dated 16 May 2019 and numbered 30776 (only available in Turkish).

Related Practices

- [Tax, Fiscal and Public Debts](#)

Related Attorneys

- [DR. E. SEYFİ MOROĞLU, LL.M.](#)
- [NİLÜFER HOTAN](#)