

## Sweden, Scania and Blekinge Court of Appeal, B985-12, decision 11 April 2013

### Deciding bodies and decisions

Scania and Blekinge Court of Appeal, (Hovrätten över Skåne och Blekinge) B985-12, decision 11 April 2013

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### Area of law

Criminal Law

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### Subject matter

Tax crime – Sanctions – *Ne bis in idem* rule

A prosecution for grave tax crime in respect of value added tax was rejected as a tax surcharge had already been imposed for the same crime.

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### Summary Facts Of The Case

A private party was prosecuted for grave tax crime in respect of incorrect information, wilfully submitted in tax revenues, on value added tax charged by that party. However, a tax surcharge had already been imposed for the same act. The legal issue was whether the prosecution should be dismissed by reason of the tax surcharge imposed.

The Court of Appeal recognised that Article 4 of the 7<sup>th</sup> Amendment ECHR and Article 50 Charter prohibit double trials and punishments for the same act. The Court of Appeal also noted that, under Article 51 Charter, the Charter applies when Member States apply Union law but does not extend the scope of application of Union Law. The Court also noted Article 52(3) Charter according to which Charter rights having an equivalent in the ECHR shall have the same meaning and scope as those in the ECHR.

The Court of Appeal cited national case law according to which the Swedish system of penalising incorrect tax information with both a tax surcharge and criminal liability was considered compatible with the ECHR. However, the Court continued, more recent ECtHR case law would support no other conclusion than to consider the two proceedings as relating to the same crime. By reason of Article 52(3) Charter, the Court held that the ECJ would likely interpret the law in the same way. The Court of Appeal thus concluded that the imposition of a tax surcharge and the prosecution for tax crime were double proceedings relating to the same act.

The Court of Appeal continued to cite case C-617/10 *Åkerberg Fransson* and to consider the reasoning of the ECJ in that case. The Court of Appeal held that the Swedish system with both a tax surcharge and criminal liability for the same incorrect information was called into question by that ECJ judgment. In that regard, the Court of Appeal recognised that the prosecution brought before it related to value added tax rules derived from Directive 2006/112/EC. Thus the case was within the scope of Union law, and Article 50 Charter was applicable in parallel with Article 4 7<sup>th</sup> Amendment ECHR.

Citing relevant ECtHR case law, the Court of Appeal came to conclude that the tax surcharge imposed on the defendant was a criminal penalty within the meaning of the ECHR. In light of that case law, and in light of the judgment of the ECJ in case C-617/10 *Åkerberg Fransson*, the Court of Appeal held that the imposition of the tax surcharge barred any subsequent prosecution for tax crime in respect of the same act. Therefore, the Court of Appeal dismissed the prosecution.

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### Relation to the scope of the Charter

Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)

The case is within the scope of application of the Charter, as it concerned value added tax rules derived from Directive 2006/112/EC. In the judgment, reference to the Charter was made by the defendant and by the Court of Appeal. No reference was made to the Explanations.

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### Relation between the Charter and EHCR

Article 6 ECHR

Article 4 7<sup>th</sup> Amendment ECHR

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### Sources - EU and national law

National Law

- NJA 2010 s 168 (national case law)
- RÅ 2000 ref 66 (national case law)

EU Law

- Article 4(3) TEU
- Article 325 TFEU
- Articles 50-52 Charter
- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

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## Sources - CJEU Case Law

This case is a follow-up of Case C-617/10 *Åkerberg Fransson*

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## Sources - ECtHR Case Law

ECtHR case 34619/97 *Janosevic v Sweden*

ECtHR case 36985/97 *Västberga Taxi AB v Sweden*

ECtHR case 60619/00 *Rosenquist v Sweden*

ECtHR case 9631/04 *Carlberg v Sweden*

ECtHR case 14939/03 *Zolotukhin v Russia*

ECtHR case 13079/03 *Ruotsalainen v Finland*

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