

## Sweden, Supreme Court, Nytt Juridiskt Arkiv Avdelning, INJA 2013 s 502, Decision of 11 June 2013

### Deciding bodies and decisions

Supreme Court of Sweden (Högsta domstolen) Nytt Juridiskt Arkiv Avdelning, INJA 2013 s 502, Decision of 11 June 2013

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### Area of law

Criminal Law

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### Subject matter

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

Issue of whether the Swedish system with regard to incorrect information in tax proceedings, entailing double sanctions (tax surcharge and criminal sanction) in two different proceedings against one and the same person was compatible with the right not to be tried or punished twice for the same crime under Article 4 7th Amendment ECHR and Article 50 Charter.

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### Summary Facts Of The Case

The defendant was prosecuted for grave tax crime and grave accountancy crime in respect of three separate transactions, each obscuring the distinction between his own incomes and tax liabilities and those of a company controlled by the defendant. In connection to these transactions, the defendant had also wilfully submitted incorrect information in tax revenues. The defendant personally and the company had both been subjected to tax surcharges in November 2009. In June 2010, the defendant was prosecuted. The legal issue was whether and, if so, to what extent the decisions on tax surcharges barred the prosecution.

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### Relation to the scope of the Charter

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

The case was within the scope of application of the Charter insofar as it concerned value added tax rules derived from Directive 2006/112/EC, but in relation to other rules of national law it was outside the scope of the Charter..

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## Impact on Jurisprudence

By adapting to the views expressed by the European Court of Justice in Case C-617/10 *Åkerberg Fransson*, this case marked the end of the so-called “lower court rebellion” with regard to the Swedish Supreme Court’s interpretation of the *ne bis in idem* rule. Following this case, the Supreme Court and Supreme Administrative Court have created a new body of case law on *ne bis in idem*. The shift has also prompted the legislator to repeal the system of double sanctions and reform the system of sanctions for tax offences.

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## Sources - EU and national law

### National Law

- 49 kap 4-6 §§, 51 kap 1 §, 59 kap 11-21 §§ skatteförfarandelagen (Tax Proceedings Act chapter 49 sections 4-6, chapter 51 s 1, chapter 59 sections 11-21)
- 5 kap 1 § taxeringslagen (Taxation Act (repealed) chapter 5 s 1)
- 11 kap 5 § brottsbalken (Penal Code chapter 11 s 5)
- 25 kap aktiebolagslagen (Companies Act chapter 25)
- 11 kap 2 § lagen om ekonomiska föreningar (Economic Associations Act chapter 11 s 2)
- 2 kap 20 § lagen om handelsbolag och enkla bolag (Partnerships Act chapter 2 s 20)
- 30 kap 9 §, 45 kap 1 § rättegångsbalken (Code of Judicial Procedure chapter 30 s 9, chapter 45 s 1)
- Prop 1971:10 p 196 et seq, 201, 209 et seq, 236, 240 (legislative travaux préparatoires)
- Prop 1993/94:117 p 37 et seq (legislative travaux préparatoires)
- Prop 2002/03:106 p 102 et seq (legislative travaux préparatoires)
- Prop 2004/05:69 p 31 et seq (legislative travaux préparatoires)
- Prop 2010/11:165 p 445, 965 (legislative travaux préparatoires)
- Bet 1993/94:KU24 p 18 et seq (legislative travaux préparatoires)
- Bet 2002/03:SkU16 p 11 et seq (legislative travaux préparatoires)
- NJA 2004 s 510 I and II (national case law)

### EU Law

- Articles 4(3), 6 TEU
- Article 325 TFEU
- Articles 50-53 Charter
- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

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## Sources - ECHR

Article 4(1) 7<sup>th</sup> Amendment ECHR

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## Sources - CJEU Case Law

Case C-489/10 *Bonda*, paras 37, 39

Case C-617/10 *Åkerberg Fransson*, paras 33, 36

Case C-399/11 *Melloni*, para 60

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## Sources - ECtHR Case Law

ECtHR case 60619/00 *Rosenquist v Sweden*

ECtHR case 14939/03 *Zolotukhin v Russia*, paras 52-53, 78, 80-84

ECtHR case 13079/03 *Ruotsalainen v Finland*, paras 48-57

ECtHR case 2376/03 *Tsonev v Bulgaria*, para 51

ECtHR case 4455/10 *Marguš v Croatia*

ECtHR joined cases 3653/05, 14729/05, 20908/05, 26242/05, 36083/05, 16519/06 *Asadbeyli and others v Azerbajdzjan*

ECtHR joined cases 5100/71, 5101/71, 5102/71, 5354/72, 5370/72 *Engel and others v Netherlands*

ECtHR case 16137/04 *Kurdov and Ivanov v Bulgaria*

ECtHR case 41265/98 *Manasson v Sweden*

ECtHR case 9631/04 *Carlberg v Sweden*, para 69

ECtHR case 31982/96 *RT v Switzerland*

ECtHR case 73661/01 *Nilsson v Sweden*

ECtHR case 53785/09 *Tomasovic v Croatia*

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