

AUT-2018-1-002

a) Austria / b) [Constitutional Court](#) / c) / d) 14-03-2018 / e) E 507/2017 / f) / g) / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

[05.03.14](#) Fundamental Rights - Civil and political rights - *Ne bis in idem*.

Keywords of the alphabetical index:

Criminal prosecution / Double jeopardy / Offences, elements.

Headnotes:

Criminal and administrative authorities may prosecute offences based on one and the same conduct if the offences at issue differ in nature and aim; this does not violate the right not to be tried and punished twice for the same conduct.

Summary:

I. Under § 182.2 of the Criminal Code, conduct which could place flora and fauna in significant danger constitutes a criminal offence, punishable with up to three years' imprisonment or with a fine of up to 360 daily rates.

The Nature Conservation Act of the *Land* of Tyrol provides that certain projects affecting nature may only be carried out with an official permit. It is an administrative offence, which attracts a maximum fine of – 30.000, for any person to carry out such a project without official approval.

II. The applicant, the owner of a farm in Tyrol, had, in the spring of 2013, reshaped part of his land by removing hedges and trees and by digging and backfilling the site without having applied for official approval under the Nature Conservation Act.

In June 2013 the Kufstein District Authority asked the Innsbruck Public Prosecutor to clarify whether the applicant had committed a criminal offence. At the same time, the District Authority issued a «request for justification» which accused the applicant of having infringed the Nature Conservation Act.

In July 2014 the applicant was acquitted by the Innsbruck Regional Court of the criminal charge of exposing animals and plants to significant danger. However, the Kufstein District Authority issued an administrative decision imposing on the applicant fines amounting to – 12.000 in total for violating the Nature Conservation Act. The Regional Administrative Court of the *Land* of Tyrol upheld this decision.

The applicant filed a constitutional complaint with the Constitutional Court, alleging that, in breach of [Article 4 Protocol 7 ECHR](#), he had been prosecuted twice: in respect of the same

facts; he had been charged, indicted (and then acquitted) by the public prosecutor. Then, an administrative penalty was imposed on him by an administrative authority.

III. The Constitutional Court noted that it did not contravene [Article 4 Protocol 7 ECHR](#) if a single act constitutes more than one offence. However, it is accepted in criminal law doctrine that a single act might sometimes appear to constitute more than one offence, but subsequent interpretation will reveal that one offence completely covers the wrong contained in the other offences. In that case, there is no need for further sanction. [Article 4 Protocol 7 ECHR](#) prohibits somebody being tried and punished for different offences if interpretation shows that one excludes the application of the other. There will be a breach of this Article if an essential aspect of an offence, which has already been tried by the courts, is tried subsequently by the administrative authorities.

In this particular case, the Constitutional Court observed that unlike the Nature Conservation Act the Criminal Code did not address single species, but local or regional flora and fauna as a whole. Moreover, the applicant had been fined for violating provisions which in effect aim to protect environmental elements such as water and soil from unauthorised interference.

The Court therefore concluded that as both offences under scrutiny differed in their essential elements, there was no violation of the right not to be tried or punished twice.

Cross-references:

European Court of Human Rights:

- *Zolotukhin v. Russia* (GC), no. 14939/03, 10.02.2009, *Reports of Judgments and Decisions* 2009.

Languages:

German.