Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

20 March 2018 (*)

(References for a preliminary ruling — Directive 2003/6/EC — Insider dealing — Penalties — National legislation which provides for an administrative penalty and a criminal penalty for the same acts — Res judicata attached to a final criminal judgment relating to administrative proceedings — Final criminal judgment ordering acquittal in respect of insider dealing — Effectiveness of the penalties — Charter of Fundamental Rights of the European Union — Article 50 — Ne bis in idem principle — Criminal nature of the administrative sanction — Existence of the same offence — Article 52(1) — Limitations to the ne bis in idem principle — Conditions)

In Joined Cases C−596/16 and C−597/16,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Court of Cassation, Italy), made by decisions of 27 May 2016, received at the Court on 23 November 2016, in the proceedings

Enzo Di Puma

v

Commissione Nazionale per le Società e la Borsa (Consob) (C−596/16),

and

Commissione Nazionale per le Società e la Borsa (Consob)

v

Antonio Zecca (C−597/16),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, T. von Danwitz (Rapporteur), A. Rosas and E. Levits, Presidents of Chambers, E. Juhász, J.-C. Bonichot, A. Arabadjiev, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos and E. Regan, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 30 May 2017,

after considering the observations submitted on behalf of:

– Mr Di Puma, by A. Frangini, F. Belloni and L. Vozza, avvocati,

– Mr Zecca, by M. Gariboldi and A. Cabras avvocati,

– the Commissione Nazionale per le Società e la Borsa (Consob), by S. Providenti, R. Vampa and P. Palmisano, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Galluzzo and de P. Gentili, avvocati dello Stato,

– the German Government, by T. Henze and D. Klebs, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and F. Costa Pinto, acting as Agents,

– the European Commission, by V. Di Bucci, R. Troosters and T. Scharf, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2017,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 50 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ 2014 L 173, p. 179).

2 The requests have been made in the context of two disputes, the first between Mr Enzo Di Puma and the Commissione Nazionale per le Società e la Borsa (National Companies and Stock Exchange Commission, Italy) ('Consob'), the second between Consob and Mr Antonio Zecca, concerning the legality of administrative fines imposed in relation to insider dealing.

Legal context

The ECHR

3 Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR'), entitled 'Right not to be tried or punished twice', provides:

'(1) No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

(2) The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

(3) No derogation from this Article shall be made under Article 15 of the Convention.'

EU law

4 Article 2(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16), is worded as follows:

‘Member States shall prohibit any person referred to in the second subparagraph who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

The first subparagraph shall apply to any person who possesses that information:

…

(c) by virtue of his having access to the information through the exercise of his employment, profession or duties; or

(d) by virtue of his criminal activities.’

5 Article 3 of that directive provides:

‘Member States shall prohibit any person subject to the prohibition laid down in Article 2 from:

(a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

(b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.’

6 Article 14(1) of Directive 2003/6 provides:

‘Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.’

Italian law

7 Article 184 of the Decreto legislativo n. 58 — Testo unico delle disposizioni in materia di intermediazione finanziaria, ai sensi degli articoli 8 e 21 della legge 6 febbraio 1996, n. 52 (Legislative Decree No 58, consolidating all provisions in the field of financial intermediation, within the meaning of Articles 8 and 21 of Law No 52 of 6 February 1996), of 24 February 1998 (ordinary supplement to GURI No 71, of 26 March 1998), as amended by the legge n. 62 — Disposizioni per l’adempimento di obblighi derivanti dall’appartenenza dell’Italia alle Comunità europee. Legge comunitaria 2004 (Law No 62 laying down provisions to implement obligations resulting from Italy’s membership of the European Communities. Community Law 2004), of 18 April 2005 (ordinary supplement to GURI No 76, of 27 April 2005) (‘the TUF’), entitled ‘Misuses of inside information’, provides:

‘(1) A term of imprisonment of between one and six years and a fine of between EUR 20 000 and EUR 3 million shall be imposed on any person who, being in possession of inside information by virtue of his membership of the administrative, management or supervisory bodies of an issuer, his holding in the capital of an issuer or the exercise of his employment, profession or duties, including public duties, or his position:

(a) buys, sells or carries out other transactions involving, directly or indirectly, for his own account or on behalf of a third party, financial instruments using such information;

(b) discloses such information to others outside the normal exercise of his employment, profession, duties or position;

(c) recommends or induces others, on the basis of such information, to carry out any of the transactions referred to in subparagraph (a).

(2) The sanction referred to in paragraph 1 shall apply to any person who, being in possession of inside information by virtue of the preparation or carrying out of criminal activities, carries out any of the actions referred to in paragraph 1.

(3) A court may increase the fine by up to three times its amount or up to an amount 10 times greater than the proceeds or profit obtained from the offence, where the fine is insufficient, even if the maximum amount has been applied, having regard to the seriousness of the unlawful conduct, the personal qualities of the offender and the size of the proceeds or profit obtained.

…'

8 Article 187a of the TUF, inserted into that law by the Law of 18 April 2005 referred to in the above paragraph, is entitled 'Misuses of insider information'. It is worded as follows:

'(1) Without prejudice to the criminal penalties which apply where the action constitutes a criminal offence, an administrative fine of between EUR 20 000 and EUR 3 million shall be imposed on any person who, being in possession of inside information by virtue of his membership of the administrative, management or supervisory bodies of an issuer, his holding in the capital of an issuer or the exercise of his employment, profession or duties, including public duties, or his position:

(a) buys, sells or carries out other transactions involving, directly or indirectly, for his own account or on behalf of a third party, financial instruments using such information;

(b) discloses such information to others outside the normal exercise of his employment, profession, duties or position;

(c) recommends or induces others, on the basis of such information, to carry out any of the transactions referred to in subparagraph (a).

(2) The penalty referred to in paragraph 1 shall apply to any person who, being in possession of inside information by virtue of the preparation or carrying out of criminal activities, carries out any of the actions referred to in paragraph 1.

…

(4) The penalty referred to in paragraph 1 shall also apply to any person who, being in possession of inside information and being aware of, or able, through the exercise of ordinary diligence, to learn of the privileged nature of that information, carries out any of the actions referred to therein.

(5) The administrative fines provided for in paragraphs 1, 2 and 4 shall be increased by up to three times its amount or up to an amount 10 times greater than the proceeds or profit obtained from the offence, where the fine is insufficient, even if the maximum amount has been applied, having regard to the seriousness of the offence, the qualities of the offender and the size of the proceeds or profit obtained.

…'

9 The connections between criminal proceedings and administrative and opposition proceedings are governed by Articles 187i to 187l of the TUF. Article 187i, entitled 'Relations with the judiciary', states:

'(1) Where it has information concerning one of the infringements provided for in Chapter II, the prosecution service shall inform the president of [Consob] without delay.

(2) The president of [Consob] shall send to the prosecution service, by means of a reasoned report, the documents collected during the monitoring activity where elements are discovered allowing the existence of an offence to be presumed. The transfer of files to the prosecution service shall take place at the latest at the end of the activity leading to the establishment of the infringements referred to in the provisions provided for in Chapter III of the present Title.

(3) [Consob] and the judicial authority shall cooperate with each other, including by means of information exchange, in order to facilitate establishing the existence of the infringements referred to in the present Title, including where those infringements do not constitute offences. …'

10 Under Article 187j of the TUF, entitled 'Powers of [Consob] in criminal proceedings':

'(1) In proceedings relating to the offences referred to in Articles 184 and 185, [Consob] shall exercise the rights and powers conferred by the Criminal Code on entities and associations representing interests adversely affected by the offence.

(2) [Consob] may participate as a civil party and request, in the form of compensation for damage caused by violations to the integrity of the market, an amount fixed by the court, fairly, taking into account however the actual commission of the offence, the personal qualities of the offender and the size of the proceeds or profit generated by the offence.'

11 Article 187k(1) of the TUF provides:

'Administrative investigation proceedings and proceedings to have a decision set aside may not be stayed during the criminal proceedings covering the same facts or facts on the determination of which the outcome of the case depends.'

12 Article 654 of the Codice di procedura penale (Code of Criminal Procedure) ('the CPP') provides:

'With regard to any accused person and to any party in civil proceedings or party liable under civil law who has entered an appearance or has intervened in criminal proceedings, a final judgment in criminal proceedings of conviction or acquittal shall have the force of *res judicata* in civil or administrative proceedings, where the latter relates to a legitimate right or interest recognition of which depends on establishing the same material facts as those which were the subject of the criminal proceedings, in so far as the facts established were considered to be relevant for the purposes of the criminal decision and in so far as civil law does not impose limitations on the proof of the contested subjective situation.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

13 By decision of 7 November 2012, Consob imposed administrative fines on Mr Di Puma and Mr Zecca in accordance with Article 187a(1) and (4) of the TUF.

14 According to that decision, Mr Di Puma and Mr Zecca participated, during 2008, in several cases of insider dealing. In particular, they acquired, on 14 and 17 October 2008, 2 375 shares in Permasteelisa SpA using insider information relating to the plan to take control of that company, information about which Mr Zecca was aware as a result of his employment and responsibilities within Deloitte Financial Advisory Services SpA and in respect of which Mr Di Puma could not have been unaware of its insider character.

15 Mr Di Puma and Mr Zecca contested that decision before the Corte d'appello di Milano (Court of Appeal, Milan, Italy). By judgments of 4 April and 23 August 2013, that court, respectively, dismissed the action brought by Mr Di Puma and upheld that brought by Mr Zecca.

16 Mr Di Puma and Consob brought an appeal in cassation against, respectively, the first and the second of those judgments before the Corte suprema di cassazione (Court of Cassation, Italy). Mr Di Puma claimed that he had been subject to criminal proceedings before the Tribunale di Milano (District Court, Milan,

Italy) in respect of the same acts as those alleged against him by Consob and that that court, by a final judgment delivered after the judgments of the Corte d'appello di Milano (Court of Appeal, Milan), acquitted him, on the ground that the acts constituting the offence were not established. As regards Mr Zecca, who was the defendant in the proceedings relating to the appeal in cassation brought by Consob, he also relied on that judgment of acquittal.

17 After observing that that judgment of acquittal indeed related to the same acts as those in respect of which Consob imposed, by decision of 7 November 2012, the administrative fines at issue in the main proceedings, the referring court notes that, under Article 654 of the CPP, the findings contained in that judgment of acquittal as regards the lack of an offence have *res judicata* effect with regard to administrative proceedings. It considers however that the disputes before it cannot be resolved solely on the basis of national legislation, in view of the primacy of Article 4 of Protocol No 7 to the ECHR and of Article 50 of the Charter over that legislation.

18 As regards Article 4 of Protocol No 7 to the ECHR, the referring court considers that the fact that that insider dealing is subject, under Articles 184 and 187a of the TUF, both to criminal penalties and to administrative fines could lead to an infringement of the *ne bis in idem* principle guaranteed by Article 4 of Protocol No 7 to the ECHR, as interpreted by the European Court of Human Rights, in particular in its judgment of 4 March 2014, *Grande Stevens and Othersv.Italy* (ECLI:CE:ECHR:2014:0304JUD001864010). Such administrative fines are, in view of their legal classification under national law, their nature and their seriousness, criminal in nature. Moreover, the duplication of the criminal and administrative proceedings and penalties at issue in the main proceedings relates to the same offence, understood as referring to identical acts.

19 The referring court is unsure whether Article 50 of the Charter precludes also such a duplication of proceedings and penalties. Under Article 14(1) of Directive 2003/6, Member States are required to punish insider dealing with effective, proportionate and dissuasive administrative penalties. Therefore, according to that provision, the competent national authorities should assess the effectiveness, proportionality and dissuasiveness of an administrative penalty together with a criminal penalty.

20 In its judgment of 26 February 2013, *Åkerberg Fransson* (C−617/10, EU:C:2013:105, paragraphs 34 and 36), the Court held, first, that Article 50 of the Charter precludes that, after the imposition of a final administrative penalty having a criminal nature for the purposes of that article, criminal proceedings in relation to the same acts be brought against the same person, but, secondly, that it is for a national court to determine whether the remaining penalties are effective, proportionate and dissuasive. In view of that case-law, the referring court asks whether Article 50 of the Charter must be interpreted as authorising proceedings for an administrative fine following a final criminal judgment, which has *res judicata* effect, holding that there was no offence, where those proceedings may appear necessary in order to comply with the obligation to provide for effective, proportionate and dissuasive penalties.

21 According to that court, although the effectiveness, primacy and unity of EU law are capable of justifying a duplication of proceedings and penalties, there is no such justification where the competent criminal court has finally held that the facts on which the existence of the two criminal and administrative offences at issue are based are not established. Moreover, the fact, in such a case, of bringing proceedings for an administrative fine involves the risk of a conflict of judgments and would, thus, be liable to call into question the *res judicata* effect of the final criminal judgment. However, the rules for the implementation of the principle of *res judicata* should respect the principle of effectiveness.

22 In those circumstances, the Corte suprema di cassazione (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 50 of the Charter … to be interpreted as meaning that, where a court has delivered a final judgment finding a defendant not to have committed the criminal offence alleged, it precludes the initiation or prosecution of further proceedings based on the same facts with a view to the imposition

of penalties which, on account of their nature and severity, may be regarded as criminal penalties, without it being necessary for the national court to make any further assessment?

(2) In assessing the effectiveness, proportionality and dissuasiveness of penalties, in the context of determining whether there has been a breach of the *ne bis in idem* principle referred to in Article 50 of the Charter …, must a national court take into account the thresholds for sanctions laid down in Directive 2015/57 … ?'

23 By order of the President of the Court of 23 December 2016, Cases C−596/16 and C−597/16 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

The first question

24 First of all, it should be noted that, although the first question concerns the interpretation of Article 50 of the Charter, the referring court asks, in particular, about the compatibility of Article 654 of the CPP with Article 14(1) of Directive 2003/6 and the fundamental right guaranteed by Article 50 of the Charter. According to that court, an interpretation according to which Article 14(1) of that directive requires, irrespective of the *ne bis in idem* principle, proceedings for an administrative fine to be brought even following a final criminal conviction which has *res judicata* effect, would be liable to call into question the principle of *res judicata*, contrary to what is provided for by Article 654 of the CPP.

25 In those circumstances, it is necessary to understand that, by its first question, the referring court asks, in essence, whether Article 14(1) of Directive 2003/6, read in the light of Article 50 of the Charter, must be interpreted as precluding national legislation in accordance with which proceedings for an administrative fine of a criminal nature may not be brought following a final criminal judgment of acquittal ruling that the acts capable of constituting a violation of the legislation relating to insider dealing, on the basis of which those proceedings had also been initiated, were not established.

26 In that regard, it must be noted that Article 14(1) of Directive 2003/6, read in conjunction with Articles 2 and 3 thereof, requires Member States to have rules on effective, proportionate and dissuasive penalties for violations of the prohibition on insider dealing. Although the Court has held that Article 14(1) of that directive merely requires Member States to provide administrative penalties presenting those characteristics, without requiring Member States also to lay down criminal sanctions against authors of insider dealing (see, to that effect, judgment of 23 December 2009, *Spector Photo Group and Van Raemdonck*, C−45/08, EU:C:2009:806, paragraph 42), the fact remains that Member States are also entitled to provide for a duplication of criminal and administrative sanctions, complying, however, with the limits imposed by EU law and, in particular, those resulting from the *ne bis in idem* principle guaranteed by Article 50 of the Charter, the latter applying, in accordance with Article 51(1) thereof, when implementing that law.

27 However, the application of effective, proportionate and dissuasive penalties provided for by Article 14(1) of Directive 2003/6 in the event of violations of the prohibition on insider dealing, assumes that the competent national authorities identify the facts establishing the existence, in the case concerned, of such dealing capable of justifying the imposition of an administrative penalty.

28 As is apparent from the order for reference, in the context of the disputes in the main proceedings, it was held, following adversarial criminal proceedings, by a final criminal judgment which has *res judicata* effect, that the factors constituting insider dealing were not established.

29 The question therefore arises, in that context, whether Article 14(1) of Directive 2003/6 precludes national legislation, such as Article 654 of the CPP, which extends to the proceedings for an administrative fine the *res judicata* effects of those factual conclusions, made in the context of the criminal proceedings.

30 In that regard, it should be noted that neither Article 14(1) nor any other provision of Directive 2003/6 states the effects of a final criminal judgment on proceedings for an administrative fine.

31 Moreover, in light of the importance of the principle of *res judicata* both in the legal order of the EU and in national legal orders, the Court has held that EU law does not preclude the application of national procedural rules conferring *res judicata* effects on a judicial decision (see, to that effect, as regards the principle of effectiveness, judgments of 10 July 2014, *Impresa Pizzarotti*, C−213/13, EU:C:2014:2067, paragraphs 58 and 59, and of 6 October 2015, *Târşia*, C−69/14, EU:C:2015:662, paragraphs 28 and 29).

32 In this case, no particular circumstances of the cases in the main proceedings, as described in the case file before the Court, justify an approach different from that taken by the case-law referred to in the previous paragraph. In that regard, it should be noted that, although Article 654 of the CPP extends *res judicata* effects of criminal proceedings to proceedings for an administrative fine, it is apparent from the wording of that provision, as set out in the order for reference, that *res judicata* effects are limited to the factual conclusions reached by a criminal judgment delivered following adversarial proceedings.

33 According to Article 187j of the TUF, Consob is free to participate in criminal proceedings, in particular as a civil party, and is moreover required, under Article 187i of the TUF, to send to the judicial authorities the documents collected during the exercise of its supervision. In light of those rules, it appears that Consob can effectively ensure that a criminal conviction or, as in the case in the main proceedings, an acquittal is delivered taking into account all of the evidence at the disposal of those authorities for the purposes of imposing an administrative fine under Article 187a of the TUF.

34 Therefore, the *res judicata* effects which a national provision confers on the factual conclusions of such a criminal judgment in relation to proceedings for an administrative fine do not prevent the finding of violations of the legislation on insider dealing and that they be effectively punished, where, according to the terms of that judgment, the facts at issue are established.

35 Otherwise, the obligation, imposed on Member States by Article 14(1) of Directive 2003/6, to provide for effective, proportionate and dissuasive penalties cannot, in view of what was noted in paragraph 31 of the present judgment, result in disregarding the force of *res judicata* which a final criminal judgment of acquittal has, in accordance with a national provision such as Article 654 of the CPP, in relation to proceedings for an administrative penalty relating to the same facts as those which were held by the judgment not to be established. Such an assessment is without prejudice to the possibility, provided for in Article 4(2) of Protocol No 7 to the ECHR, to reopen, where appropriate, criminal proceedings where there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the criminal judgment.

36 In those circumstances, Article 14(1) of Directive 2003/6 does not preclude national legislation, such as that at issue in the main proceedings.

37 That interpretation is confirmed by Article 50 of the Charter.

38 In that regard, it is apparent from the order for reference that the acts of which Mr Di Puma and Mr Zecca are accused in the context of the proceedings for an administrative fine at issue in the main proceedings are the same as those on the basis of which criminal proceedings were brought against them before the Tribunale di Milano (District Court, Milan). Moreover, the administrative fines at issue in the main proceedings can, according to the information in the case file before the Court, reach, in accordance with Article 187a of the TUF, an amount 10 times greater than the proceeds or profit derived from the offence. It thus appears that they are punitive in character and present a high degree of severity and, therefore, are criminal in nature for the purposes of Article 50 of the Charter (see, to that effect, judgment of 20 March 2018, *Garlsson Real Estate*, C−537/16, EU:C:2018:0000, paragraphs 34 and 35), which it is however for the referring court to determine.

39 It must be added that, according to the wording itself of Article 50 of the Charter, the protection conferred by the *ne bis in idem* principle is not limited to situations in which the person concerned has been subject to a criminal conviction, but extends also to those in which that person is finally acquitted.

40 It appears therefore that the bringing of proceedings for an administrative fine of a criminal nature, based on the same facts, constitutes a limitation of the fundamental right guaranteed by Article 50 of the Charter (see, by analogy, judgments of 20 March 2018, *Menci*, C−524/15, EU:C:2018:0000, paragraph 39, and of 20 March 2018, *Garlsson Real Estate*, C−537/16, EU:C:2018:0000, paragraph 41).

41 Such a limitation of the *ne bis in idem* principle may however be justified on the basis of Article 52(1) of the Charter (see, to that effect, judgments of 27 May 2014, *Spasic*, C−129/14 PPU, EU:C:2014:586, paragraphs 55 and 56; of 20 March 2018, *Menci*, C−524/15, EU:C:2018:0000, paragraph 40, and of 20 March 2018, *Garlsson Real Estate*, C−537/16, EU:C:2018:0000, paragraph 42).

42 In that regard, it should be pointed out that the objective of protecting the integrity of financial markets and public confidence in financial instruments is such as to justify a duplication of proceedings and penalties of a criminal nature such as that provided for by the national legislation at issue in the main proceedings, where those proceedings and penalties have, for the purpose of achieving such an objective, additional complementary objectives covering, as the case may be, different aspects of the same unlawful conduct at issue (see, to that effect, judgment of 20 March 2018, *Garlsson Real Estate*, C−537/16, EU:C:2018:0000, paragraph 46).

43 However, the bringing of proceedings for an administrative fine of a criminal nature, such as those at issue in the main proceedings, following the final conclusion of criminal proceedings, is subject to strict compliance with the principle of proportionality (see, to that effect, judgment of 20 March 2018, *Garlsson Real Estate*, C−537/16, EU:C:2018:0000, paragraph 48). In that regard, it should be noted that, unlike the situation leading to the judgment of 26 February 2013, *Åkerberg Fransson* (C−617/10, EU:C:2013:105), in which the criminal proceedings had been brought after the imposition of a tax penalty, the cases in the main proceedings raise the question whether proceedings for an administrative fine of a criminal nature may be brought where a final criminal judgment of acquittal has concluded that the acts capable of constituting a violation of the legislation on insider dealing, on the basis of which those proceedings had also been initiated, were not established.

44 In a situation such as that at issue in the main proceedings, the bringing of proceedings for an administrative fine of a criminal nature clearly exceeds what is necessary in order to achieve the objective referred to in paragraph 42 of the present judgment, since there exists a judgment of acquittal holding that there are no factors constituting an offence which Article 14(1) of Directive 2003/6 seeks to punish.

45 In light of such a conclusion, which has *res judicata* effect also in relation to such proceedings, the bringing of those proceedings seems to be devoid of any basis. Article 50 of the Charter thus precludes, in such a situation, the bringing of proceedings for an administrative fine of a criminal nature, such as that at issue in the main proceedings, without prejudice to the possibility, referred to in paragraph 35 of the present judgment, of reopening, where appropriate, criminal proceedings where there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the criminal judgment.

46 In view the foregoing considerations, the answer to the first question is that Article 14(1) of Directive 2003/6, read in the light of Article 50 of the Charter, must be interpreted as not precluding national legislation in accordance with which proceedings for an administrative fine of a criminal nature may not be brought following a final criminal judgment of acquittal ruling that the acts capable of constituting a violation of the legislation relating to insider dealing, on the basis of which those proceedings had also been initiated, were not established.

The second question

47 In the light of the answer to the first question, there is no need to answer the second question.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 14(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation in accordance with which proceedings for an administrative fine of a criminal nature may not be brought following a final criminal judgment of acquittal ruling that the acts capable of constituting a violation of the legislation relating to insider dealing, on the basis of which those proceedings had also been initiated, were not established.

[Signatures]

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* Language of the case: Italian.