Administrative Sanctioning Power And The Ne Bis In Idem Principle Against Criminal Proceedings

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Abstract
This article examines how the legal systems of Ecuador, Mexico, Argentina, Chile, and Brazil address the overlap between administrative sanctions and criminal proceedings in light of the ne bis in idem principle. The analysis is based on a corpus of 30 documents from 2010 to 2025. Using a combination of normative, jurisprudential, and doctrinal analyses, the article identifies evidence of triple identity, "same facts," and the material qualification of administrative sanctions, as well as closing rules. The results reveal a hybrid model: prohibition when there is factual identity and punitive purpose, or when the administrative sanction is materially criminal, and conditional compatibility when coordination avoids duplicity. Taxation and free competition generate the most friction. In Ecuador, tensions arise between indigenous and ordinary justice, as well as between fiscal control and criminal prosecution, requiring criteria for competence and coordination. As a contribution, we propose a decision-making flowchart for legal professionals that standardizes institutional tests and solutions. Likewise, the article suggests effective reforms regarding priority, preclusion, and payment that reduce uncertainty and guarantee coherent, proportionate responses.
Keywords: *non bis in idem*; administrative sanctioning law; administrative-criminal concurrence; Latin American comparative law; interjurisdictional coordination.

Resumen
Este artículo examina cómo los ordenamientos de Ecuador, México, Argentina, Chile y Brasil resuelven la concurrencia entre potestad sancionadora administrativa y vía penal a la luz del principio *non bis in idem*, a partir de un corpus de 30 documentos (2010–2025). Combinamos análisis normativo, jurisprudencial y doctrinal para identificar pruebas (triple identidad, "mismos hechos" y calificación material de sanciones administrativas) y reglas de cierre. Los resultados muestran un modelo híbrido: prohibición ante identidad fáctica y finalidad punitiva o cuando la sanción administrativa es materialmente penal; compatibilidad condicionada si existe coordinación que evita la duplicidad. Por materias, tributario y libre competencia concentran fricciones; en Ecuador tensiones entre justicia indígena y ordinaria y entre control fiscal y persecución penal exigen criterios de competencia y coordinación. Como aporte, proponemos un flujo decisorio para operadores jurídicos que estandariza pruebas y salidas institucionales, y sugerimos reformas efectivas de prioridad, preclusión y abono que reduzcan incertidumbre y garanticen respuestas coherentes y proporcionadas.
Palabras clave: *non bis in idem*; derecho administrativo sancionador; concurrencia administrativo-penal; derecho comparado latinoamericano; coordinación interjurisdiccional.

INTRODUCTION

The expansion of administrative sanctioning laws in areas such as taxation, competition, financial markets, the environment, and probity has intensified the overlap of administrative and criminal channels in response to the same issues. This dual approach reactivates a classic tension: To what extent can the state impose sanctions without committing punitive duplicity? In Latin America, the answer revolves around the ne bis in idem principle, which limits the State's right to punish and requires substantial evidence of identity between procedures and sanctions (subject, facts, and basis) (García Cavero, 2016; Gómez González, 2017; Cano Campos, 2021).

At the inter-American level, the Inter-American Court of Human Rights has specified that Article 8(4) of the American Convention on Human Rights (ACHR) protects against a new trial for "the same facts" — a broader formula than the reference to "the same crime" used in other instruments — and has stressed that its activation presupposes a final acquittal in the first proceeding (Inter-American Court of Human Rights, 2013, paras. 259–263). In Europe, two milestones guide the Latin American comparative debate. First, the CJEU (C-617/10 Åkerberg Fransson) permitted the existence of administrative and criminal proceedings under rules of coordination and proportionality. Second, the ECtHR (Grande Stevens et al. v. Italy) ruled that ne bis in idem had been violated when administrative sanctions of a criminal nature were combined with criminal proceedings for the same acts (CJEU, 2013; ECtHR, 2014).

Latin American legal systems offer heterogeneous solutions within this framework. Ecuador explicitly enshrines this guarantee in its constitution (Art. 76.7.i), demonstrating particular sensitivity to coordination between ordinary and indigenous jurisdictions. Recent literature emphasizes that the dual involvement of these two systems for the same offense can trigger the non bis in idem principle, underscoring the need for clear competence criteria to prevent duplication (Constitution of Ecuador, 2008, Art. 76.7.i; Lucas Vélez, 2022; Montero Solano & Sánchez Villalva, 2025).

Mexico's Constitution (Political Constitution of the United Mexican States, 2025, art. 23; Ochoa Figueroa, 2020).

In Chile, the Constitutional Court has outlined the procedural and material components of ne bis in idem, emphasizing that the analysis is not limited to factual identity but also considers the underlying reason for punishment (TC de Chile, Sent. Rol 618019INA, 2021).

In Brazil, competition law and dialogue with Europe have fueled the discussion: the CADE-linked doctrine has imported Grande Stevens's standards to address the multiplicity of sanctions in different instances and the requirement of criteria that prevent substantial duplicity (Burnier da Silveira, 2014).

In Argentina, tax law has served as a testing ground for conflicts between administrative fines and criminal prosecution. Doctrine has proposed interpreting the ne bis in idem as a safeguard against dual prosecution for the same acts at the intersection of the Criminal Tax Law and the tax penalty regime (Marconi, 2010). From an inter-American perspective, the Inter-American Court of Human Rights has ruled that the guarantee is applied based on the "same facts" standard and the requirement of final resolutions. This serves as a parameter for evaluating national solutions in cases of concurrence (Inter-American Court, 2013).

Against this backdrop, this article uses comparative law to address the guiding question, "How do legal systems and courts resolve the concurrence of administrative-criminal sanctions?" Based on a corpus of 30 documents, we propose the following:
(i) A normative and jurisprudential cartography by country
(ii) A typology of responses, including criminal prevalence, conditional compatibility, strict prohibition due to triple identity, and coordination with "subscription" rules or equivalents
(iii) Operational criteria for legal professionals to minimize conflicts of jurisdiction and safeguard due process To this end, we articulate the theory of identity of subject, fact, and foundation (García Cavero, 2016); comparative administrative experience (Gómez González, 2017); and inter-American and European standards, as previously mentioned.

METHODOLOGY

This paper employs a qualitative, comparative, and explanatory design to reconstruct and contrast the normative and jurisprudential responses that Ecuador, Mexico, Argentina, Chile, and Brazil gave to the concurrence of criminal administrative sanctions in light of the ne bis in idem principle between 2010 and 2025. This strategy combines a dogmatic and exegetical analysis of normative sources, a jurisprudential analysis of relevant decisions, and a review of specialized doctrine that questions the proof of identity between procedures and sanctions (e.g., subject, facts, and basis), as well as the standards of "same facts" and "criminal nature" of certain administrative sanctions (García Cavero, 2016; Gómez González, 2017; Inter-American Court of Human Rights, 2013; Court of Justice of the European Union, 2013; European Court of Human Rights, 2014).
The study's sample comprises 30 documents that integrate constitutional and legal norms, judgments from constitutional, supreme, and international courts, as well as peer-reviewed articles from academic publishers. The sample is intentional and based on criteria. Pieces were included that are directly relevant to the following: i) the delimitation of non bis in idem in administrative and criminal venues, ii) the resolution of cases involving double prosecution or sanction, and iii) the articulation of compatibility or prohibition tests. The selection acknowledges contrasting frameworks of the Inter-American Court (2013) and the Inter-American Court of Human Rights (2019), as well as the European Court (CJEU, 2013; ECHR, 2014). These frameworks serve as hermeneutical guidelines for interpreting national solutions within the context of regional comparability.
Primary sources by country include the Constitution of the Republic of Ecuador (art. 76.7.i), as well as decisions and studies addressing frictions between criminal and administrative jurisdictions and their interaction with indigenous justice systems (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Montero Solano & Sánchez Villalva, 2025). In Mexico, Article 23 of the constitution serves as a non-double jeopardy clause, with doctrine extending its application to sanctions (Political Constitution of the United Mexican States, 2021; Ochoa Figueroa, 2019). Chile provides constitutional jurisprudence that defines the material and procedural parameters of the prohibition (Constitutional Court of Chile, 2021), and Brazil offers developments in competition law and dialogue with Europe regarding the "criminal" classification of administrative sanctions (Burnier da Silveira, 2014; Dias Júnior & de Lima, 2021).

Argentina is examined in detail with respect to the tension between tax fines and criminal tax offenses (Marconi, 2010).

The collection procedure was based on official sources (constitutions and jurisprudential repertoires) and academic repositories cited in the corpus. Metadata, year, country, and DOI were verified when possible. Each document underwent extraction using a uniform form with fields for the type of source, normative or jurisdictional level, material sector, identity criterion, and proposed solution. Cross-validation was performed with other documents from the same country or from the Inter-American or European bloc when interpreting controversial categories, such as the "criminal nature" of an administrative sanction (Cano Campos, 2021; Cubero Marcos, 2018; ECHR, 2014).

The analytical codification responded to a code book developed from the theory of triple identity — subject, fact, and sanctioning basis — and its contrast with the "same facts" standard of the Inter-American Court. For each country and sector, the following were identified:

The basis of the guarantee (lex superior, legal norm, or jurisprudential doctrine)

The applicable test (triple identity, "same facts," or material classification of administrative sanctions as "criminal")

The institutional exit in the face of competition (criminal prevalence, conditional compatibility with coordination rules, payment of sanctions, or strict prohibition)

The degree of deference to specialized authorities (e.g., competition authorities or comptroller's offices)

(García Cavero, 2016; Inter-American Court of Human Rights, 2013; CJEU, 2013; ECHR, 2014).

Based on this coding, a comparative analysis was carried out in two stages. First, an intra-country synthesis ordered the evolution between 2010 and 2025 in each jurisdiction based on constitutional, legal, jurisprudential, and doctrinal elements. These elements included the Constitution of the Republic of Ecuador (2008), the Political Constitution of the United Mexican States (2021), the Constitutional Court of Chile (2021), Montero Solano & Sánchez Villalva (2025), Ochoa Figueroa (2019), Marconi (2010), and Dias Júnior & de Lima (2021). Second, an inter-country synthesis contrasted the tests and remedies using inter-American and European decisions as "anchors" to identify convergences and divergences in avoiding or allowing the punitive double response (Inter-American Court of Human Rights, 2019; CJEU, 2013; ECHR, 2014).

To ensure validity and reliability, triangulation of sources (norms, jurisprudence, and doctrine) as well as external comparison with the inter-American framework were employed, particularly in matters of tax and competition, where administrative and criminal sanctions tend to accumulate. Contrasting with Jenkins v. Argentina proves the operability of the "same facts" standard in the region. Åkerberg Fransson and Grande Stevens clarify when normative coordination avoids double jeopardy and when the sum of procedures becomes materially punitive (Inter-American Court of Human Rights, 2019; CJEU, 2013; ECHR, 2014).

Finally, the limitations of this approach are acknowledged, including conceptual heterogeneity among jurisdictions regarding what constitutes a "criminal" sanction and the scope of the basis for identity; uneven availability of decisions and DOIs; and sectoral biases due to the prevalence of tax and competition matters in recent litigation. These limitations are addressed by explicitly stating the inclusion and exclusion criteria,

documenting ambiguous decisions, and highlighting areas of doctrinal and jurisprudential disagreement where reasonable uncertainty remains (Cano Campos, 2021; Cubero Marcos, 2018; Constitutional Court of Chile, 2021).

RESULTS

Normative mapping and resolution criteria by country (2010–2025)

Three layers of material emerged from the corpus (N = 30): specialized doctrine (18 items), judicial decisions and/or international and constitutional jurisdictional reports (nine items), and basic norms (three items). This distribution allowed us to contrast national solutions with Inter-American and European standards, particularly the triple identity tests (subject, facts, and foundation) and "same facts," as well as the classification of certain administrative sanctions as "criminal in nature" for the purposes of the guarantee. See García Cavero (2016), Gómez González (2017), the Court of Justice of the European Union (CJEU, 2013), the European Court of Human Rights (ECHR, 2014), and the Inter-American Court of Human Rights (IACHR Court, 2013, 2019) for more information.

In comparative terms, two families of responses emerge: (a) conditional compatibility of administrative and criminal proceedings, subject to coordination and proportionality — a line related to Åkerberg Fransson — and (b) strict prohibition when there is material coincidence of facts and punitive purpose — a line related to Grande Stevens and inter-American parameters (CJEU, 2013; ECHR, 2014; Inter-American Court, 2019; Burnier da Silveira, 2014; Gómez González, 2017).

Table 1. *Country overview: rationale, proof of identity, and resolution trend (2010–2025)*

Country	Normative-jurisprudential basis	Proof of predominant identity	Sectors with typical friction	Resolution trend (2010–2025)	Corpus sources
Ecuador	Constitution, art. 76.7.i (prohibition of double jeopardy); coordination agenda with indigenous jurisdiction and with administrative controls (Comptroller's Office).	Triple identity and emphasis on "same facts" according to dialogue with inter-American standards.	Indigenous/ordinary justice; fiscal-administrative control with criminal derivations.	Caution against duplicity; calls for criteria of competence and coordination to avoid a double punitive response.	Constitution of the Republic of Ecuador (2008); Lucas Vélez (2022); MonteroSolano & SánchezVillalva (2025); Núñez Maisincho (2025); Cali González & Recalde (2024).

Mexico	Constitution, art. 23 (no one may be tried twice for the same crime); Doctrinal debate on projection to the sanctioning field.	Transfer of the criminal principle to the administrative one: identity of facts and sanctioning purpose.	Tax and administrative sanctioning regimes.	Tendency to demand coordination and avoid material punitive accumulations.	Political Constitution of the United Mexican States (2021); Ochoa Figueroa (2019); HaroGoñi (2011).
Argentina	Inter-American Standard (*Jenkins*): prohibition in the event of double prosecution for the same acts; tensions in tax penalties vs. tax fines.	"Same facts" (ACHR art. 8.4) and material reading of duplicity.	Criminal tax and tax penalties.	A Guarantee Rereading of the *Non Bis in Idem* in an Inter-American Key.	Inter-American Court of Human Rights (2019); Marconi (2010).
Chile	Constitutional jurisprudence (Rol 618019INA) and administrative sanctioning doctrine.	Factual identity and the basis (reason for punishment) as a barrier against duplication.	Free competition and administrative sanctioning regimes.	Casuistic delimitation with emphasis on the material basis of the sanction.	Constitutional Court of Chile (2021); Gómez González (2017); García Cavero (2016).
Brazil	Doctrine of competence and dialogue with Europe (*Grande Stevens* case) to qualify administrative sanctions "of a	Material criterion: if the administrative sanction is substantively criminal, the	Defense of competition and markets.	Reception of European standards; tendency to prevent substantial punitive cumulation.	Burnier da Silveira (2014); Junior & Lima Days (2021).

	criminal nature".	prohibition operates.			

In all five countries, the prohibition of punitive duplicity is established when the facts and the punitive purpose are the same, with more complex systems in areas such as tax and competition. Ecuador introduces an additional challenge in the form of interjurisdictional coordination with indigenous justice systems. The literature highlights the risk of double intervention for the same facts (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Núñez Maisincho, 2025; Montero Solano & Sánchez Villalva, 2025). Mexico extends Article 23 of the Constitution to the area of sanctions, while Argentina reorganises tax practice in light of the ACHR article. 8.4, while Chile strengthens the analysis of the basis for sanctions and Brazil incorporates the notion of criminal liability into its legislation (Ochoa Figueroa, 2019; Inter-American Court, 2019; Constitutional Court of Chile, 2021; Burnier da Silveira, 2014; Dias Júnior & de Lima, 2021).

Table 2.*Alignments with Inter-American and European Standards*

Contrast Axis	**Inter-American Standard (ACHR 8.4)**	**European Standard (*Åkerberg Fransson* / *Grande Stevens*)**	**Dominant national reception (sample)**	**Corpus sources**
Protected object of the principle	Prohibition of retrial for the same facts and requirement of a final judgment in the first proceeding.	Conditional compatibility (CJEU) if there is coordination and proportionality; prohibition (ECtHR) when the administrative sanction is of a criminal nature and there is factual identity.	Convergence towards "same facts" and evidence of material identity of the sanctioning basis.	Inter-American Court of Human Rights (2013, 2019); CJEU (2013); ECHR (2014); Cano Campos (2021); Cubero Marcos (2018).
Practical Closing Criteria	If the first pronouncement is final, it vetoes new prosecution for the same facts.	If the administrative sanction is materially criminal and deals with the same facts, it vetoes duplicity; if not, it allows coordination/payment.	Chile and Brazil replicate the material examination; Argentina privileges ACHR; Mexico and Ecuador emphasize coordination to	Constitutional Court of Chile (2021); Burnier da Silveira (2014); Díaz Júnior & de Lima (2021); Marconi (2010); Ochoa

			avoid double persecution.	Figueroa (2019).
Sectors with the highest litigation	Tax and competition as typical two-way fields.	The same: taxation, financial markets and competition.	The sample confirms tax (Argentina, Mexico) and competition (Brazil), as well as fiscal/indigenous control in Ecuador.	Marconi (2010); Ochoa Figueroa (2019); Burnier da Silveira (2014); Núñez Maisincho (2025); Lucas Vélez (2022).

Analytical Development

Ecuador. The constitutional guarantee of Article 76.7.i and the coexistence of jurisdictions have created a distinctive area of conflict. Literature on the subject highlights that if the same incident is addressed by indigenous and ordinary justice systems, the comparison must be made in terms of factual identity and the purpose of punishment. Otherwise, there would be double jeopardy, which is prohibited by the Constitution and inter-American standards (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Silva Andrade et al., 2025). In fiscal control, 'reports with indications of criminal responsibility' exert dual pressure (administrative and criminal), necessitating coordination protocols to avoid duplicating sanctions on the same facts (Núñez Maisincho, 2025). Recent doctrine proposes a material interpretation of the principle and the use of precise identity tests, based on the theory of triple identity and the concept of 'same facts' (Montero Solano & Sánchez Villalva, 2025; García Cavero, 2016).

Mexico. Based on Article 23 of the Constitution, the doctrinal discussion examines how the non-double jeopardy limit is extended to the field of administrative sanctions, particularly when fines or administrative measures coincide with the criminal process in terms of facts and punitive purpose (Ochoa Figueroa, 2019). Debates on the Draft Federal Code of Criminal Procedure (2010) warned of potential conflicts and the necessity of coordination clauses to prevent material duplicity (Haro Goñi, 2011). In this context, the Mexican approach aligns with conditional compatibility solutions similar to those in Åkerberg Fransson (CJEU, 2013).

Argentina. In tax law, cases focus on determining whether there is double prosecution for the same facts when the Criminal Tax Law coexists with fines from the tax administration. The doctrine advocates a guarantist reading to prevent punitive sum (Marconi, 2010). The case of Jenkins v. Argentina, as ruled by the Inter-American Court of Human Rights, establishes a regional precedent: Article 8.4 of the American Convention on Human Rights (ACHR) prevents new criminal prosecutions when a response has already been given for the same facts, thereby reinforcing control over duplicities in tax matters (Inter-American Court of Human Rights, 2019).

In Chile and Brazil, In Chile, the Constitutional Court (Rol 618019INA) provides an analysis that goes beyond factual identity, also examining the reason for the punishment

(the material basis) of each offence, ensuring that the same conduct cannot result in two sanctions based on the same grounds (Constitutional Court of Chile, 2021; Gómez González, 2017). In Brazil, the doctrine of competition and dialogue with Europe has promoted the thesis that certain administrative sanctions are materially criminal. Therefore, their accumulation with criminal proceedings violates the principle (Burnier da Silveira, 2014; Junior & Lima, 2021; ECHR, 2014). This approach favours strict prohibition solutions when the factual identity and criminal nature of the administrative sanction are established.

Regional convergence. The five jurisdictions converge, with nuances, in that the identity of facts and the punitive purpose are the pivots of the analysis. Where the administrative sanction fulfils reparative or preventive, non-punitive functions, the scope for conditional compatibility increases (CJEU, 2013; Gómez González, 2017). Conversely, when the administrative sanction is substantively criminal, prohibition is imposed (ECHR, 2014; Inter-American Court, 2019; Burnier da Silveira, 2014).

Subject tests, closing rules and coordination mechanisms (2010–2025)

A cross-sectional analysis of the corpus reveals that conflicts concerning the concurrent application of administrative and criminal sanctions are concentrated in four areas: taxation, free competition and markets, fiscal control/comptrollership and intercultural issues (indigenous versus ordinary jurisdiction). The resolution of each matter revolves around three pieces of evidence: triple identity (subject–facts–basis); the 'same facts' of the inter-American standard; and the material classification of the administrative sanction as 'criminal' (García Cavero, 2016; Gómez González, 2017; Inter-American Court of Human Rights, 2013, 2019; Court of Justice of the European Union, 2013; European Court of Human Rights, 2014).

Table 3. *Matrix by Subject: Applicable Test, Closing Rule, and Evidence by Jurisdiction*

Matter	**Typical nature of the administrative sanction**	**Predominant test (according to corpus)**	**Most frequent closing rule**	**Jurisdictions with evidence in the sample**	**Corpus references**
Taxation/taxation	Tax administration fines and surcharges; strong deterrent components.	"Same facts" (ACHR 8.4) and triple identity; in dialogue with European coordination/proportionality.	Prohibition when there is factual identity with prior or firm criminal prosecution; conditional compatib	ARG, MEX	Inter-American Court of Human Rights (2019); Marconi (2010); Ochoa Figueroa (2019); CJEU (2013); Gómez

			ility if coordination is accredited without material duplicity.		González (2017).
Free competition and financial markets	Sanctions by competition agencies and supervisors; high fines for punitive purposes.	Material qualification of the sanction as "criminal" + factual identity; support in *Grande Stevens*.	Strict prohibition if the administrative sanction is materially criminal and coincides with criminal proceedings; if not, conditional compatibility.	BRA, CHI	ECHR (2014); Burnier da Silveira (2014); Gómez González (2017); García Cavero (2016); Constitutional Court of Chile (2021).
Fiscal control / reports with indications of criminal responsibility	Administrative responsibility and glosses of comptroller's offices; possible referrals to the Public Prosecutor's Office.	Triple identity and contrast with "same facts" to avoid double response by the same factual core.	Ex ante coordination (avoiding double punitive means) or closure by res judicata if a final decision has already been made on the same facts.	ECU	Núñez Maisincho (2025); MonteroSolano & SánchezVillalva (2025); García Cavero (2016); Constitution of the Republic of Ecuador (2008).

Intercultural: indigenous vs. ordinary jurisdiction	Punitive measures typical of indigenous justice with a punitive and restorative dimension.	"Same facts" (ACHR 8.4) and examination of the sanctioning basis to avoid duplication between forums.	Prohibition of double jeopardy if there is identity of facts; promotion of criteria of competence and coordination.	ECU	Lucas Vélez (2022); Cali González & Recalde (2024); SilvaAndrade et al. (2025); Constitution of the Republic of Ecuador (2008).

In taxation, the Inter-American standard favours prohibiting duplication when the tax administration and the prosecutor's office are pursuing the same facts. The European standard allows for conditional compatibility if there is coordination and proportionality to avoid punitive excess (Inter-American Court, 2019; CJEU, 2013; Gómez González, 2017). In terms of jurisdiction, the focus is on whether the administrative sanction has a criminal nature: if it does and the same facts occur, the prohibition is imposed (ECHR, 2014; Burnier da Silveira, 2014). In fiscal control, Ecuadorian literature calls for coordination protocols to ensure that 'reports with indications' do not result in double punishment (Núñez Maisincho & Montero Solano, 2025; Montero Solano & Sánchez Villalva, 2025). At the intercultural level, constitutional mandates and doctrines emphasise the incompetence of one method when another has already addressed the same facts (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Cali González & Recalde, 2024).

Table 4. *Decision-making mechanisms observed: how legal systems close to competition*

Mechanism	**Operational Description**	**Doctrinal/jurisprudential references of the corpus**	**Comparative Scores (as shown)**
Criminal prevalence	The criminal route absorbs the punitive reaction when the administrative offense expresses the same reason for punishment as the crime.	García Cavero (2016); Gómez González (2017).	Present in CHI and ARG when the foundation matches; It is used as a barrier to material duplications.

Conditional compatibility	Both ways are admitted if there is temporal and material coordination and punitive duplicity is avoided (proportionality, different purpose, distribution of facts).	CJEU (2013); Gómez González (2017).	Useful in MEX and, partially, in tax ARG; it requires clear institutional design.
Material qualification ("criminal nature")	An administrative sanction that is intensely dissuasive is considered to be materially criminal; combined with criminal proceedings for the same facts, violates the principle.	ECHR (2014); Burnier da Silveira (2014); Junior & Lima Days (2021).	Decisive in BRA and in competition debates in CHI.
Res judicata / final judgment	A final decision prevents a new trial for the same facts.	Inter-American Court of Human Rights (2013, 2019).	Inter-American anchor to close duplicity, invoked especially in ARG.
Crediting or compensation	If coordinated procedures are allowed, the sanctioning impact is paid to avoid punitive excess.	Cano Campos (2021); Cubero Marcos (2018).	Exceptional tool; a useful European benchmark to guide regulatory redesigns in the region.
Reservation of law and identity of foundation	Requirement of a clear legal basis and analysis of the basis to distinguish purposes (punitive vs. regulatory/reparative).	Gómez González (2017); Cubero Marcos (2018); Constitutional Court of Chile (2021).	Relevant in CHI; it promotes material analysis before accumulating tracks.

Key findings: Firstly, when the facts and the basis for the sanction are equivalent, the systems tend towards prohibition and closure by res judicata if a final decision has already been made (Inter-American Court of Human Rights, 2013, 2019; Constitutional Court

of Chile, 2021). Secondly, compatibility can only be achieved through strict coordination and clearly differentiated non-punitive objectives, in line with the European approach (CJEU, 2013; Gómez González, 2017). Thirdly, in matters involving high punitive intensity (e.g. competition and markets), classification as 'criminal' results in prohibition (Grande Stevens) and requires regulatory redesign to avoid overlap with criminal proceedings (ECHR, 2014; Burnier da Silveira, 2014; Dias Júnior & de Lima, 2021). Fourthly, in Ecuador, the coexistence of indigenous and ordinary jurisdictions requires prior competence criteria to avoid replicating sanctions for the same acts (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Silva Andrade et al., 2025).

Operational implications: For sanctioning administrations and prosecutors' offices, the corpus suggests a minimum decision-making process: (i) identify whether the administrative sanction is criminal in nature (considering factors such as intensity, purpose and stigmatisation); (ii) apply the "same facts" test (Inter-American Court, 2013, 2019) and/or the triple identity test (García Cavero, 2016); (iii) if there is a risk of duplicity, prioritise criminal proceedings or invoke res judicata; and (iv) enable conditional compatibility only exceptionally, with explicit coordination and payment rules (CJEU, 2013; Cano Campos, 2021; Cubero Marcos, 2018; Gómez González, 2017).

DISCUSSION

The results show that the region is moving towards a hybrid configuration of the ne bis in idem principle in terms of administrative-criminal sanction concurrence. This configuration combines the inter-American standard of 'same acts' with European material evidence on the criminal nature of certain administrative sanctions. In theoretical terms, this convergence is not accidental. While the triple identity (subject–facts–foundation) typical of dogmatic analysis offers a useful initial filter, the parameter of Article 8.4 of the American Convention on Human Rights (ACHR) provides a clearer conclusion to the issue of duplicity. Meanwhile, European case law further clarifies what constitutes a materially criminal sanction (García Cavero, 2016; Gómez González, 2017; Inter-American Court of Human Rights, 2013, 2019; Court of Justice of the European Union, 2013; European Court of Human Rights, 2014).

This theoretical intersection has practical implications. In taxation, where administrative fines are severe and have a deterrent function, there is a high risk of double prosecution if the administrative and criminal files share the same facts. The inter-American parameter of 'same facts' favours prohibition solutions when one of the routes has reached a final judgement, as confirmed by the Inter-American Court of Human Rights' approach to tax matters. Argentinian practice and doctrine are paradigmatic in emphasising the Criminal Tax Law in the face of tax administration sanctions (Inter-American Court, 2019; Marconi, 2010). At the same time, the CJEU's standard allows for conditional compatibility if coordination and proportionality are employed to avoid punitive excess. This approach requires clear rules for payment and the distinction between punitive and regulatory/reparative purposes, to ensure that the sanction is not 'duplicated' (CJEU, 2013; Cano Campos, 2021; Cubero Marcos, 2018; Gómez González, 2017).

In the context of free competition and markets, the Latin American discussion has adopted the concept of a materially criminal sanction as defined by the ECtHR. If an

administrative fine imposed by a court is intensely punitive and relates to the same facts as a criminal proceeding, its accumulation violates the principle of ne bis in idem. Brazilian doctrine has adopted this argument as a basis for criticism and institutional design. Similarly, Chilean constitutional jurisprudence examines the grounds for punishment to prevent double punishment for the same offence (ECHR, 2014; Burnier da Silveira, 2014; Junior & Lima Days, 2021; Constitutional Court of Chile, 2021; Gómez González, 2017).

Ecuador's fiscal control is another area of friction. Reports indicating criminal responsibility suggest a natural transition from administrative to criminal proceedings, but without rules this increases the risk of material duplication. Literature proposes ex ante coordination protocols and strict identity and rationale contrasts to avoid double punishment. This is anchored in both Article 76.7.i of the Constitution and the theory of triple identity and the "same facts" standard (Constitution of the Republic of Ecuador, 2008; Núñez Maisincho, 2025; Montero Solano & Sánchez Villalva, 2025; García Cavero, 2016).

A fourth focus on intercultural issues (indigenous justice versus ordinary justice) reveals further limitations of the system. If both systems of justice act on the same acts for punitive purposes, the principle of ne bis in idem is invoked, which requires clear jurisdictional criteria and prior coordination to avoid overlapping sanctioning sequences. Ecuadorian doctrine insists that respect for indigenous justice is incompatible with double jeopardy, a view reinforced by the inter-American parameter (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Cali González & Recalde, 2024; Silva Andrade et al., 2025; Inter-American Court of Human Rights, 2013).

In Mexico, Article 23 of the constitution conveys a classic criminal guarantee that the doctrine has extended to the sphere of administrative sanctions. However, the transition is not automatic; it requires identifying when the administrative sanction fulfils a punitive function equivalent to the criminal one, and when its regulatory purpose allows for coordinated coexistence. Consequently, Mexican literature advocates coordination from the outset and a material interpretation of the sanction, in line with the CJEU and ECHR (Political Constitution of the United Mexican States, 2021; Ochoa Figueroa, 2019; Haro Goñi, 2011; CJEU, 2013; ECHR, 2014).

From a legal policy perspective, the corpus points to a staggered decision model involving the following steps:

Firstly, verify factual identity.

Secondly, examine the identity of the basis (i.e. is the reason for punishment the same?).

Thirdly, qualify the nature of the administrative sanction (i.e. is it materially criminal?).

Fourthly, verify the existence of a final decision in one of the following ways:

Prohibition (if there is identity and a final decision, or if the administrative sanction is materially criminal and deals with the same facts).

Criminal prevalence (if the basis is the same, and the administrative route does not add a different purpose).

Conditional compatibility with payment (if there are differentiable purposes, coordination, and proportionality).

(Inter-American Court of Human Rights, 2013, 2019; García Cavero, 2016; CJEU, 2013; ECHR, 2014; Cano Campos, 2021; Cubero Marcos, 2018; Gómez González, 2017; Constitutional Court of Chile, 2021).

This framework suggests concrete reforms. In Ecuador, for example, strengthening the protocols for competition between indigenous and ordinary justice systems, as well as between comptroller and prosecutor offices, would reduce the risk of duplication. Additionally, explicitly setting out the criminal criteria in secondary legislation would help avoid overlaps with criminal proceedings (Constitution of the Republic of Ecuador, 2008; Lucas Vélez, 2022; Núñez Maisincho, 2025; Montero Solano & Sánchez Villalva, 2025). In Mexico and Argentina, where tax dominates cases, legal provisions for coordination and payment, when appropriate, together with prioritising closure due to inter-American res judicata, would make responses more predictable (Inter-American Court of Human Rights, 2019; Marconi, 2010; Ochoa Figueroa, 2019; CJEU, 2013; Cano Campos, 2021). In Chile and Brazil, consolidating the examination of criminal basis and nature would reinforce system coherence, but would require administrative guidelines to translate these standards into the agencies' day-to-day work (Constitutional Court of Chile, 2021; Burnier da Silveira, 2014; Dias Júnior & de Lima, 2021).

The analysis also reveals grey areas. The first is conceptual: there is no absolute consensus on when an administrative sanction acquires a 'criminal nature', and the severity of the penalty is not always sufficient. Hence the usefulness of composite indicators that assess purpose, severity, stigmatisation and effects (ECtHR, 2014; Burnier da Silveira, 2014; Gómez González, 2017). The second grey area is institutional: in systems with multiple authorities (e.g. comptroller's offices, superintendencies and prosecutors' offices), coordination is fragile unless an information exchange circuit is designed with preclusion or priority milestones. The third issue is evidential: defining 'the same facts' requires the contextualisation of the factual core to avoid manipulation through the artificial segmentation of conduct (Inter-American Court, 2013; Cubero Marcos, 2018).

Limitations of the study include the fact that the corpus privileges highly litigious matters (tax and competition), which could lead to underrepresentation of other sectors (environmental and consumer), where sanctioning powers have also been expanded. In addition, the availability of DOIs and plenary decisions is not uniform across the region, which affects the relative importance of doctrine and jurisprudence in each country (Cano Campos, 2021; Cubero Marcos, 2018). Nevertheless, triangulation between norms, jurisprudence and doctrine, as well as anchoring in ACHR 8.4 and CJEU/ECHR standards, maintains the validity of the inferences made in a comparative context (Inter-American Court of Human Rights, 2013, 2019; CJEU, 2013; ECHR, 2014).

In short, the region converges on the straightforward idea that it is not permissible to punish someone twice for the same acts when the state's response fulfils the same punitive function. The challenge lies in operationalising this principle through clear rules of coordination, priority, payment and res judicata, thereby reducing uncertainty for both authorities and litigants (García Cavero, 2016; Gómez González, 2017; Cano Campos, 2021; Constitutional Court of Chile, 2021; Inter-American Court, 2019; CJEU, 2013; ECHR, 2014).

CONCLUSIONS

In conclusion, the guiding question is answered by a clear and consistent pattern: comparative legal systems resolve the concurrence of administrative and criminal sanctions through a hybrid model. This model imposes a prohibition of double jeopardy when the same facts and punitive purpose coincide, or when the administrative sanction is criminal in nature. It allows for conditional compatibility only if strict rules of temporal and material coordination are in place to avoid substantive duplication. Where appropriate, it activates criminal precedence as a closure rule if the administrative route does not serve a different purpose.

National particularities do not alter this general conclusion. Ecuador demands that competencies be delimited and that actions be coordinated between indigenous and ordinary justice, as well as between fiscal control and criminal prosecution. Mexico extends criminal guarantees to the administrative sphere and requires explicit coordination rules. Argentina prioritizes firm closures for "same facts" in tax practice. Chile emphasizes analyzing the basis of sanctions to prevent duplicate reproaches. Brazil decisively incorporates the notion of criminal nature in matters of jurisdiction. With nuances, all jurisdictions converge in discouraging punitive sums on the same factual basis.

This has clear operational implications: Authorities must apply a decision-making process that verifies factual identity, contrasts grounds, qualifies the nature of the administrative sanction, and verifies the existence of a final decision. Then, they must choose between prohibition, criminal prevalence, or conditional compatibility with payment. At the regulatory level, it is advisable to codify rules of priority and preclusion, as well as coordination and information exchange protocols. These measures reduce uncertainty, safeguard due process, and provide coherent, proportional responses to the concurrence of sanctions aligned with the objectives outlined in the introduction.

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