

Competition Law Sanctions: A Limit with respect to Fundamental Human Rights under the ECHR

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Abstract: *The analysis of the legal regime governing competition law sanctions through the lens of the fundamental rights guaranteed by the European Convention on Human Rights demonstrates that repressive mechanisms — record-high fines, leniency programmes, interim measures, and actions for damages — generate significant economic and reputational effects for undertakings. Although sanctions pursue effectiveness, proportionality, and deterrence, they consistently intersect with the guarantees enshrined in Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1, while the case law of the European Court of Human Rights imposes clear procedural limits on competition authorities, particularly regarding searches, evidence-gathering, and the right to effective judicial review.*

Nevertheless, despite finding violations of the Convention, the Court has not established a causal link between such violations and either the substantive validity of administrative sanctions or the calibration of those sanctions. This may encourage authorities to “push” certain procedural boundaries, knowing that the actual risk is limited to the payment of just-satisfaction awards for moral damages, which are often largely symbolic. In this context, I argue that a genuine economic analysis of law is indispensable for assessing the impact of sanctions, interim measures, and damages, as well as for calibrating the balance between market protection and respect for the fundamental rights of undertakings.

Keywords: *sanctions; competition law; fundamental rights; ECHR; investigations; proportionality; deterrence effect; economic analysis of law; damages / compensation; interim measures.*

Sanțiunile în domeniul dreptului concurenței: o limitare a drepturilor fundamentale ale omului în temeiul CEDO

Rezumat: *Analiza regimului juridic al sancțiunilor din dreptul concurenței prin prisma drepturilor fundamentale garantate de Convenția Europeană a Drepturilor Omului ne demonstrează că mecanismele represive — amenzi record, programe de clemență, măsuri interimare, acțiuni în despăgubiri — produc efecte economice și reputaționale majore asupra întreprinderilor. Deși sancțiunile urmăresc eficiența, proporționalitatea și descurajarea, ele intersectează constant garanțiile din articolele 6 și 8 CEDO și din articolul 1 al Protocolului nr. 1, iar jurisprudența Curții Europene a Drepturilor Omului impune limite procedurale clare autorităților de concurență, în special privind perchezițiile, colectarea probelor și dreptul la un control jurisdicțional efectiv.*

Totuși, în pofida constatării unor încălcări ale Convenției, Curtea nu a stabilit un raport de cauzalitate între aceste încălcări și validitatea substanțială a sancțiunilor administrative și nici cu dozarea sancțiunii, ceea ce poate încuraja autoritățile să „forțeze” anumite limite

procedurale, știind că riscul real se rezumă la plata unor sume cu titlu de satisfacții echitabile, pentru prejudicii morale, de cele mai multe pur simbolice. În acest context, argumentez că o veritabilă analiză economică a dreptului este indispensabilă pentru a evalua impactul sancțiunilor, al măsurilor interimare și al despăgubirilor, precum și pentru a calibra echilibrul dintre protecția pieței și respectarea drepturilor fundamentale ale întreprinderilor.

Cuvinte cheie: *sancțiuni; dreptul concurenței; drepturi fundamentale; CEDO; investigații; proporționalitate; deterrence / efect disuasiv; analiză economică a dreptului; daune / despăgubiri; măsuri interimare.*

PRELIMINARY CLARIFICATIONS

The following preliminary clarifications are necessary to situate the present study within the general theme of our postdoctoral research¹. Although certain sections rely on concepts drawn from the economic analysis of law and competition law, the study remains fundamentally oriented toward human-rights methodology.

Accordingly, embedding the analysis within the broader framework of human rights was necessary, and for this reason the present text avoids achieving a high degree of technicality from the standpoint of the economic analysis of damages and sanctions. Our intention was to engage with the case law of the European Court of Human Rights primarily through the lens of its deterrent effect.

We note that, more recently—specifically in 2025, after the topic of our postdoctoral research had already been selected—several works have been published that focus exclusively on the methodology for calculating fines and the criteria to be considered when individualizing them, from the perspective of law and economics. Some of these are cited in the present study, while others were not accessible to us prior to publication (for instance, Ciprian Paun, *Analiza economică a dreptului afacerilor. Contract, concurență, GDPR, achiziții publice, comerț internațional și evaziune fiscală. Cum calculăm prejudiciul?*, Universul Juridic, 2026).

Yet such work would have constituted a competition-law or civil-law article rather than one situated within the field of human rights; in that context, a more technical analysis would likely have been more appropriately framed.

INTRODUCTION

The proper functioning of the internal market depends overwhelmingly on compliance with competition law. Integrated into the Treaty on the Functioning of the European Union in Articles 101–102, competition law is structured around three main pillars: the prohibition of unlawful agreements and cartels (Article 101 TFEU), the prohibition of abuse of a dominant position (Article 102 TFEU), and the prohibition of State aid (Articles 107–109 TFEU).

The dual purpose of competition law — to protect both economic operators and, ultimately, consumers — places its legal norms within the category of public-order rules of direction.

¹ *Id est*, Economic analysis of law in and between eco-ethics and human rights.

Sanctions in this field have distinguished themselves through their record-high levels. Some **fin**es imposed by reference to the consolidated turnover of corporate groups involved in infringements of EU competition law have reached an aggregate amount of EUR 3.8 billion for all undertakings involved (the so-called “truck cartel”), with fines varying significantly among participants: approximately EUR 1 billion for Daimler, but also a complete exemption of more than EUR 1 billion for MAN, which benefited from the leniency programme as the first entity to report the infringement, thereby being fully exonerated from sanctions. Intel, the American IT component manufacturer, was fined EUR 1.06 billion for abuse of a dominant position. Google received three successive decisions from the European Commission, totalling EUR 8.25 billion, for infringements related to Google Shopping, Android, AdSense and, more recently, Google Search and Google Play.

All these sanctions were determined through a complex reasoning process, which involved, among other elements, the need to ensure the „effectiveness, proportionality and deterrent” nature of the fine, as well as its calibration according to the principle of “skimming of excess profit”, meaning the removal of illicit gains obtained through the infringement². In addition, the sanctions were imposed by the Commission and by national authorities through the application of an economic assessment aimed at determining the actual impact of the interventions on the market, including by identifying the savings generated for consumers and by analysing the deterrence effects at both the micro- and macroeconomic levels.³

A recent investigation carried out on the domestic market and targeting ten banks resulted in the imposition of a total fine of 3.73 billion lei (approximately EUR 710 million). In the decision issued, the Competition Council found the existence of a concerted practice (an alignment of conduct) among the ten banks — a notion distinct from a cartel (an explicit agreement) — consisting in the exchange of confidential and strategic information regarding quotation levels, the coordination of behaviour during the 10:30–11:00 interval, when firm quotations should be independent, as well as the influencing of the ROBOR level by reference to competitors’ quotations⁴.

The judicial competence to review these sanctions lies with the Court of Justice of the European Union in cases involving infringements that fall under the intervention of the European Commission. When anticompetitive conduct — whether a cartel, an abuse of a dominant position or an economic concentration — has the objective capacity to affect the internal market, meaning that it exceeds the borders of a single Member State and influences cross-border trade flows, both the investigation of the infringement and the adoption of the sanctioning decision fall within the competence of the European Commission. Conversely, when such infringements do not have this cross-border dimension, the competence to investigate and impose sanctions belongs to the national competition authority (e.g., the Competition Council), while judicial review lies with the administrative courts, specifically the specialised panels of the Bucharest Court of Appeal.

² A. Tokić, Optimal fines in EU competition law—an economic analysis, *Journal of European Competition Law & Practice*, Volume 16, Issue 3, April 2025, p. 196–207, <https://doi.org/10.1093/jeclap/lpaf042>

³ V. Verouden, A. Bovin, F. Ilzkovitz, A. Giacalone, T. Deisenhofer în Competition Policy Brief - Estimating customer savings generated by competition enforcement in the EU available at <https://competition-policy.ec.europa.eu>

⁴ The press release of the Competition Council is available here: <https://www.consiliulconcurentei.ro/wp-content/uploads/2026/02/Banci-final-Iunie-2026-1.pdf>. See also A. Ardeleanu, Consiliul Concurenței a sancționat 10 bănci cu amenzi în valoare totală de 3,73 miliarde lei, pentru coordonarea comportamentului în cadrul procedurii de stabilire a ROBOR, available at www.financialintelligence.ro

From the perspective of the economic analysis of law,⁵ sanctions in the field of competition law have far deeper implications for economic activity and for the reputation of an undertaking involved in an infringement. These implications also **extend to the sphere of judicial review**, which may entail, on the one hand, postponing the actual enforcement of the sanction imposed or of existing remedies (the enforceable nature of the decision may be suspended, and the damages owed to individuals or undertakings affected by the anticompetitive conduct may be deferred until the court delivers a final ruling), and, on the other hand, the costs generated by the judicial proceedings initiated to challenge the decision issued by the competition authority or by the European Commission, as well as the costs incurred in preparing defenses in damages actions brought by persons harmed through such infringements.

Beyond the fines themselves, whose amounts and underlying mechanisms will be analysed, we have already referred to the damages mechanism that may be invoked by individuals or by undertakings harmed by the financial losses generated by these serious infringements, established through administrative decisions of the Competition Council. This mechanism was implemented for the first time through Directive 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

These financial losses, aggregated at the level of all affected undertakings, may equal or even exceed the amount of the fines. In the aforementioned case (the “truck cartel”), the damages obtained by purchasers ranged between 7% and 8% of the purchase price, amounting to an average of EUR 13,000 per truck⁶, in judicial proceedings that were conducted, as a rule, through the mechanism of active joinder of parties⁷. In Spain alone, it is estimated that the overcharge affected approximately 170,000 trucks sold during the reference period⁸.

Following the recent decision issued by the Romanian Competition Council, concerning ten banks sanctioned for aligning their conduct on the market for setting the ROBOR index, as mentioned above, extensive debates and analyses followed, published by legal professionals with substantial experience in the banking sector, who denounced the economic impact generated by this decision on the market⁹ and emphasised that it is imperative for any steps

⁵ A. Tokić, Optimal fines ..., cit. supra.

⁶ For a reference in this respect, see the first decision delivered by the Milan Tribunal in a case opposing an Italian haulier to a truck manufacturer, in February 2026 — for details, www.untrr.ro.

⁷ In Germany, the Federal Court of Justice (FCJ) delivered a landmark judgment on 12 May 2026, confirming this method of seizing the court, as well as the admissibility of active joinder of claims through the assignment of litigated rights to entities specialised in this field. The entity involved in the aforementioned litigation is Financialright Claims GmbH, which had acquired claims amounting to approximately EUR 500 million from 3,266 assignors across 21 jurisdictions, who had purchased around 70,000 trucks from Daimler, MAN and other members of the cartel. For details, see <https://gpcpetitionlawblog.com/2026/05/28/group-actions-get-final-blessing-in-germany-assignments-valid-for-cartel-claims-except-if/>.

⁸ S.C. Ruiz, D. Pérez-Troncoso, J. M. Martín Martín, R. Puertas Medina (2026). Truck manufacturers in Europe: collusive businesses and markets, and an approach to estimating economic impact. ESIC Market. Economics and Business Journal, 57(1), e453. DOI: 10.7200/esicm.57.453, p. 4.

⁹ M. Avram, Cazul ROBOR – excesul de putere și paradoxul juridic care transferă asupra instituțiilor de credit costurile contradicției statului, publicat la 15.07.2026 pe www.juridice.ro. The issue was the subject of a roundtable held on 3 August 2026, entitled *Piața (inter)banară: forțe, acțiuni, interacțiuni*, organizată de Facultățile de Drept din București și Timișoara.

aimed at compensating consumers under national legislation (Government Emergency Ordinance no. 170/2020), which transposes a European directive (Directive 2014/104/EU on actions for damages for infringements of competition law), to be postponed until the sanctioning decision becomes final.

These debates are particularly important in the broader context we aim to analyse. The damages owed to consumers must be carefully examined also from the perspective of the economic analysis of law, even though neither the directive nor the national legislation (Government Emergency Ordinance no. 170/2020) operates such distinctions. These distinctions, which for the moment seem to generate only an equitable-application rationale, were not employed in the proceedings initiated by purchasers in relation to the “truck cartel”.

Moreover, in the “truck cartel” cases, the European courts¹⁰ called upon to rule on the damages owed to undertakings carried out a reasoning based on a replicable econometric methodology (“econometric evidence”) and, when such a methodology was not available, on conservative estimates of the harm (“prudential estimate”)¹¹.

The harm generated by unlawful agreements — cartels or the alignment of conduct among economic operators — which produced downstream overcharges on the relevant market, was established within **a range between 18% and 37%**, following a compilation of centralised information from more than 600 cartel cases¹². This conclusion was subsequently confirmed by several studies, with European courts relying on these findings when assessing the magnitude of overcharges in cartel cases¹³.

Another atypical “sanction” in this field is the **reputational harm and the damage to the image of the undertaking**, aspects that arise incontestably following an investigation confirmed through the issuance of a decision sanctioning anticompetitive conduct by undertakings. The undertakings targeted by sanctions will incur a cost solely by virtue of the public exposure of these sanctions, while the “presumption of innocence”, which should also operate in this context in favour of those subject to sanctions, will implicitly be relegated to the background — even though the European Court of Human Rights stated as early as 2007 (judgment of 4 October 2007 in *Anghel v. Romania*) that administrative sanctions of a certain gravity must be assimilated to criminal matters from the perspective of the guarantees the state is required to provide.

From another perspective, the same economic cost exists for undertakings that opt for the **leniency** programme: once the denunciation of anticompetitive conduct becomes public, the undertaking making the disclosure is transformed into a pariah which, through the act of denunciation, effectively excludes itself from business relations, and the admission of the

¹⁰ With regard to the “trucks cartel”, a recent decision of the specialised UK Competition Appeal Tribunal held, in *Royal Mail Group Ltd and BT Group Plc v DAF Trucks Ltd* (2023), that a 5% overcharge applied to the claimants Royal Mail and BT (a finding upheld on appeal in 2023).

¹¹ For these two methods of determining the harm caused by a cartel, see S.C. Ruiz, D. Pérez-Troncoso, J. M. Martin Martin, R. Puertas Medina (2026). Truck manufacturers in Europe: collusive businesses and markets, and an approach to estimating economic impact. *ESIC Market. Economics and Business Journal*, 57(1), e453. DOI: 10.7200/esicm.57.453 pct. 5.2, p. 15-16.

¹² J.M. Connor, R.H. Lande (2006). The Size of Cartel Overcharges: Implications for U.S. and E.U. Fining Policies. *SSRN Electronic Journal*. <http://dx.doi.org/10.2139/ssrn.988722>.

¹³ Oxera and Komninos (2009), Connor (2011 2014), Boyer and Kotchoni (2015) and Smuda (2014), quantifying the damage within that range (Padilla et al., 2024) — toate acestea sunt citate de S.C. Ruiz, D. Pérez-Troncoso, J. M. Martin Martin, R. Puertas Medina (2026), *loc. cit. supra*.

imputable facts¹⁴, although it may lead to a substantial reduction of fines, requires the undertaking to explicitly and irrevocably acknowledge conduct that further aggravates reputational harm. Moreover, the undertaking admitting the imputable facts will inevitably find itself exposed to damages actions and eliminates any possibility of subsequently contesting the infringement.

All these coordinates of economic cost indicate both the timeliness and the indispensable nature of an economic analysis of law — in the phase of behavioral compliance by undertakings, in the phase of sanctioning by authorities or by the Commission, and equally in the phase of awarding damages by judicial courts to those harmed by anticompetitive practices.

Our study aims to examine, in succession, the specific **sanctions and remedial mechanisms in competition law**, as they are regulated at a principled level and applied through the rules established at EU and national level, **including through an incursion into the relevant case law of the European Court of Human Rights (I.)**, before proceeding to an **economic analysis of these sanctions from the perspective of the rationale underlying their establishment (II.)**.

I. THE INFLUENCE EXERTED BY THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE SANCTIONING REGIME AND THE REMEDIAL MECHANISMS APPLIED IN COMPETITION LAW

1. The sanctioning regime and the remedial mechanisms applicable in the field of competition — legal framework

From the perspective of the sanctioning regime specific to competition law, its regulation consists, on the one hand of substantive rules, belonging to material law, and, on the other hand, of procedural rules.

The main substantive rules are included in the Treaty on the Functioning of the European Union (TFEU), in Articles 101 and 102, and in Law No. 21/1996, in Articles 5 and 6, which define the fundamental prohibitions in competition law (monopolistic agreements, such as illicit cartels, practices concerted between undertakings, or abuses of dominant position), thereby establishing the core legal framework governing anticompetitive conduct¹⁵: the agreements, the decisions of associations of undertakings, and concerted practices; abuse of a dominant position) and constitute the legal basis for the sanctions imposed by the Commission. These provisions are complemented by Articles 107–109 TFEU.

These principled texts, consistently invoked in the case law of the CJEU, are applied through the procedural rules laid down in Regulation (EC) No 1/2003, which establishes the Commission's competences, its powers to investigate, to impose fines and periodic penalty payments, as well as the framework for cooperation with national authorities.

To this is added Regulation (EC) No 773/2004, which governs the Commission's investigative procedures, including requests for information, unannounced inspections, and the procedural rights of undertakings.

¹⁴ A. Decocq, G. Decocq, *Droit de la concurrence. Droit interne et droit de l'Union Européenne*, 5eme edition, ed. LGDJ, p. 477, para 359.

¹⁵ For details, see A. Almășan, *Dreptul concurenței*, ed. a 2-a revizuită și adăugită, ed. CH Beck, București, 2021, p. 77.

Although the Treaty and the Regulations are of high relevance from the perspective of sanctions applicable for serious infringements of competition law, the fine-tuning effect is found in other acts issued by the Commission, which set out the method for calibrating these fines according to specific criteria. Likewise, other acts issued by the Commission clarify the form and conditions under which the leniency policy may be applied.

The Commission's 2006 Guidelines on the method of setting fines constitute a fundamental instrument for determining the amount of sanctions, based on gravity, duration, market effects, and the overall turnover of the undertaking. These Guidelines, also referred to as the 2006 Guidelines, are essential to the analytical structure of the present study.

The Communication on the leniency programme (Leniency Notice) sets out the conditions under which undertakings participating in cartels may obtain a reduction or even exemption from sanctions through cooperation.

Regulation (EC) No 139/2004 on the control of concentrations between undertakings establishes specific sanctions for gun-jumping, incomplete or misleading notifications, and the premature implementation of a concentration.

The Guidelines on ancillary restraints in concentrations clarify the circumstances in which certain contractual obligations are permissible or sanctionable in the context of merger operations.

From another perspective, that of damages owed to individuals for infringements of competition law, Directive 2014/104/EU on actions for damages introduces a civil regime complementary to administrative sanctions, allowing victims of competition infringements to obtain full compensation.

This Directive was transposed into national law through Government Emergency Ordinance No 39/2017 on actions for damages in cases of infringements of competition law, which was declared unconstitutional on procedural grounds — likely explained by the haste in adopting the act, generated by the need to avoid a pecuniary sanction for the delayed transposition of the Directive¹⁶. Subsequently, Government Emergency Ordinance No. 170/2020 was enacted, concerning actions for damages in cases of infringement of competition law provisions, as well as for the amendment and completion of Competition Law No. 21/1996.

2. ... Under the influence of the case law of the European Court of Human Rights?

In order to impose a sanction, the Competition Council / the European Commission is entitled to gather evidence. Council Regulation (EC) No 1/2003 grants the European Commission and the national competition authorities (e.g., the Competition Council) extensive investigative powers and powers to collect evidence for the application of Articles 101 and 102 TFEU. Among other things, the Commission and the national competition authorities may request information, conduct hearings (statements and depositions) and, most importantly, carry out unannounced inspections or inspections in other premises (pursuant to Articles 20–21 of the Regulation).

Separate from the legal framework referred to under point 1, it should be noted that Regulation No 1/2003 specifically sanctions — independently from the substantive sanctions applicable “on the merits” in competition matters — the concealment, refusal or destruction

¹⁶ For details, see A.Ș. Rățoi, op. cit.

of evidence (obstruction of the investigation). These acts are sanctioned by the Regulation with a fine that may range between 0.1% and 1% of the turnover achieved by the undertaking in the financial year preceding the investigation, pursuant to Article 23 of the Regulation¹⁷. In addition, in the process of setting the fine, point 28 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (2006/C 210/02) lists, among the aggravating circumstances, “refusal to cooperate or obstruction during the investigation”.

The Regulation and domestic legislation allow the adoption of interim measures until the restoration of the previous situation, namely the prohibition of anticompetitive practices until the completion of the investigation¹⁸. These interim measures may be imposed when urgency exists and when it is necessary to remove a serious and irreparable threat to competition¹⁹.

Such interim measures cannot be neutral from the perspective of an economic analysis of law. On the contrary, they may seriously affect the economic activity of the “suspected” undertaking. For this reason, we consider that ordering such a measure must be approached with great caution and with careful consideration of the fundamental rights of the undertaking, including Article 1 of Protocol No. 1 to the ECHR.

The sanctioning regime specific to competition law, including in the phase preceding the imposition of an actual sanction, presents numerous points of intersection with fundamental rights enshrined in the European Convention on Human Rights. The Court’s case law has been confronted with diverse situations, analysing the sanctioning framework of competition law from the perspective of the guarantees conferred by Article 6 (“Right to a fair trial”) and Article 8 (“Right to respect for private and family life”) of the Convention, as well as Article 1 of Protocol No. 1 (“Protection of property”).

Regarding the way sanctions are applied, the Court held that, for the imposition of a fine, the European Commission or the national authority is entitled to identify and collect evidence (the case *Société Colas Est et autres v. France*, 16 April 2002). Nevertheless, the right to respect for private life is applicable also to commercial companies, a point the Court expressly acknowledged and sanctioned, finding a **violation of Article 8 ECHR**.

In its judgment, the Court held that the searches and seizures of documents carried out by the French authorities in the premises of Colas Est, Colas Sud-Ouest and Sacer, in the context of an administrative investigation into anticompetitive practices, constituted a disproportionate interference with the companies’ right to respect for their professional “domicile”²⁰.

The Court embraced an evolutive interpretation of the notion of “domicile”, extending it to the premises and offices of legal persons. Although the interference pursued a legitimate aim (the protection of economic order), the applicable legislation in France did not provide

¹⁷ For a recent case, see the 2025 decision in which the European Commission imposed, for the first time, a fine under Article 18(3) of Regulation 1/2003 for an incomplete response to a request for information issued by the Commission. -<https://www.algoodbody.com/insights-publications/european-commission-fines-business-172000-for-incomplete-reply-to-a-commission-request-for-information>

¹⁸ A. Almășan, op. cit., p. 194.

¹⁹ Idem.

²⁰ M. Emberland, Protection Against Unwarranted Searches and Seizures of Corporate Premises Under Article 8 of the European Convention on Human Rights: The Colas Est SA v. France Approach, 25 Mich. J. Int'l L. 77 (2003). Available at: <https://repository.law.umich.edu/mjil/vol25/iss1/2>.

sufficient safeguards against abuse, as it allowed judicially unauthorised, unlimited and unsupervised searches. Consequently, the Court held that the measures were not “necessary in a democratic society”, and were therefore contrary to Article 8 ECHR. The companies obtained compensation for non-pecuniary damage, but the Court **refused to rule on any potential causal link between the violation of Article 8 and the administrative fines** imposed by the competition authority, considering that it could not speculate on the outcome of domestic proceedings had they been conducted in compliance with the Convention.

In another case, the European Court of Human Rights found a violation of Article 6 §1 ECHR, holding that the administrative procedure through which Stenuit was fined for anticompetitive practices did not offer the guarantees of a “fair trial” (*Société Stenuit v. France*, 27 February 1992).

The decision was grounded in the fact that, at the time, the French Minister of the Economy combined investigative, prosecutorial and sanctioning functions, while the company did not benefit from an effective right to be heard or to genuinely challenge the evidence and conclusions of the Competition Commission (the competent authority at that time). The Court emphasised that **the sanction had a “criminal” nature** in the autonomous sense of the Convention, which required enhanced guarantees — guarantees absent from the applicable procedural framework. Consequently, the interference by the French state with the company’s procedural rights was deemed incompatible with the requirements of a fair trial.

This case formed the basis for a subsequent decision in which the Court held that, when an administrative fine is imposed, a judge must have the independent and impartial ability to review it (*A. Menarini Diagnostics S.R.L. v. Italy*, 27 September 2011).

Administrative fines in competition matters have a criminal nature in the autonomous sense of the Convention, a conclusion the Court reiterated at the outset of its analysis. On the merits, the Court found that the Italian procedure complied with Article 6 ECHR because, although the *Autorità Garante della Concorrenza e del Mercato* is not a “tribunal”, its decision was subject to full judicial review by administrative courts, capable of examining both the legality and the merits of the sanction, including the economic and technical aspects of the case. The Court underlined that, in competition matters, it is acceptable for the initial decision to be taken by an administrative authority, provided that an effective appeal before a court with full jurisdiction subsequently exists. Accordingly, no violation of Article 6 §1 was found.

In a recent decision, the Court held Article 8 ECHR applicable and found a violation in the case of an informational search and seizure of computers belonging to the Romanian Bank for Development (BRD – Groupe Société Générale) by DIICOT, without any subsequent possibility for these measures — ordered by the prosecutor — to be challenged (*BRD v. Romania*, 18 March 2025). By contrast, in the context of a competition investigation, the Court held that Article 8 had not been violated because the measure had a legal basis, pursued a legitimate aim, and was accompanied by sufficient procedural safeguards, including the possibility of subsequent judicial review, which rendered it proportionate under the Convention.

In conclusion, although the European Court has avoided indicating, in its case law, a causal link between the violation of a Convention right through measures adopted by authorities during a competition investigation and the sanctions imposed on the merits — in the sense that such sanctions have not been revisited, reduced or offset through an award of just satisfaction equal to the fines imposed — we consider that these violations remain relevant from the perspective of the economic analysis of law. This is because national

authorities and the Commission may be encouraged to conduct investigations “at the limit” of procedural legality, potentially with procedural infringements, knowing that the “stakes” of such violations do not include the invalidation of the substantive sanction, but only the obligation to bear moral damages.

II. THE RATIONALE OF THE SANCTIONS SPECIFIC TO COMPETITION LAW — AN ECONOMIC ANALYSIS OF THE REPRESSIVE FRAMEWORK OF COMPETITION LAW

1. Economic analysis — a criterion in assessing the amount of the sanction

The amount of fines is determined concretely by the Commission or by the national competition authority, within the limits laid down by the regulation or by statute, namely up to the maximum threshold of 10% of the aggregate turnover, at group level, of the infringing undertaking.

Regarding the imposition of sanctions, the approach must be dynamic rather than static, the principle being firmly established that sanctions in competition matters have a preventive purpose and must be dynamically adapted in order to ensure the effectiveness of EU rules. As held by the judgment of the Court of Justice of the European Communities (CJCE) of 7 June 1983 in *SA Musique Diffusion française and others v. Commission*²¹, the setting of fines at a certain level for particular types of infringements does not automatically imply that the authority or the Commission is prevented from modifying that level by establishing higher thresholds, within the limits laid down by the regulation, „if this is necessary to ensure the effective application of the EU competition policy. On the contrary, the proper application of the EU competition rules requires that the Commission be able, at any time, to adjust the level of fines according to the needs of that policy”. In this judgment, the CJCE held that “the effectiveness of competition policy requires a flexible sanctioning instrument, capable of deterring anticompetitive behaviour in light of market developments and the seriousness of the practices”²².

This attribute of the Commission or of the national competition authority — namely the ability to “revisit” the levels of fines previously applied for the same types of infringements and, potentially, in similar circumstances — also reflects an economic analysis of these sanctions, which the Commission or the national authority is entitled to exercise.

The principal criterion for determining the fine refers to the value-based indicator of “the sales of goods or services made by the undertaking that are directly or indirectly related to the infringement, in the relevant geographic sector within the EEA” (point 13 of the Guidelines). This criterion, frequently used by the Commission and by national authorities, has been criticised because it places in the background another essential criterion, namely the benefit obtained and the harm caused by infringements of competition law²³.

The gravity, duration and repetitiveness of the infringement, as well as the turnover achieved in direct connection with the infringement, are equally criteria expressly provided by the Guidelines (points 20, 24, 28).

²¹ The joined cases 100 and 103/80.

²² Paragraph 15 of the aforementioned decision.

²³ A. Tokić, *Optimal fines...*, cit. supra, p. 196.

The nature of the conduct and the severity of the sanction are sufficient criteria to qualify administrative sanctions such as fines imposed for infringements of competition law as “criminal charges” in the autonomous sense of the Convention, thereby triggering the protective guarantees associated with such charges. Among these procedural guarantees must be included an in concreto economic assessment of the sanction imposed by the Commission or the national authority, and a corresponding calibration of the fine in relation to that assessment.

The purpose of a sanction in competition matters is to be “effective, proportionate and dissuasive”²⁴.

The criteria laid down in the 2006 Guidelines, as well as in the case law of the ECtHR, may be relevant in confirming, once again, the importance of the economic analysis of law in the field of competition. The classification of competition-law fines as “criminal charges” in the autonomous sense of the Convention justifies, moreover, a proper calibration of such sanctions to respect the principle of proportionality while still achieving a deterrent effect without overwhelming the ability of the undertaking concerned to pay the fine.

A **combined criterion** proposed by the author of a study²⁵ recently published on the subject we propose to analyse — places at the forefront the protection of consumers’ interests, economically affected by anticompetitive practices²⁶. The new rule proposed by the author — a combined rule — represents “the most effective method for setting fines”. According to this rule, “antitrust fines must be determined on the basis of the gain obtained by undertakings from the infringement of competition law or the harm caused by it, taking into account **whichever value is higher**”.

2. ... To be found in the Guidelines²⁸ and in the case law of the CJEU/ECtHR

The Court of Justice of the European Union has been called upon to examine the adaptation of the sanctions imposed by the Commission to the economic reality of the infringement, and to the importance and size of the undertaking concerned. This obligation follows from the criteria that the Commission or the competition authority must observe when imposing a sanction, as laid down in the Guidelines adopted by the Commission in 2006.

More interestingly, among the criteria for adjusting the basic amount of the fine, the Guidelines provide, in point 35, that “in exceptional circumstances, the Commission may, upon request, take account of the inability to pay of an undertaking in a particular social and economic context”. Nevertheless, a difficult or unfavourable financial situation is not sufficient to justify a reduction of the basic amount of the fine. Only objective evidence, provided by the applicant, which leads to the conclusion that the fine would “irretrievably jeopardise the

²⁴ A. Tokić, Optimal fines..., cit. supra, p. 196.

²⁵ A. Tokić, Optimal fines..., cit. supra, p. 207.

²⁶ This is a thesis that I have defended, moreover, since 2015. The “reply” delivered to my intervention at the 2015 Business Law Conference — *Insolvency on Wings of Wind*, held in the Aula Magna of the Faculty of Law, University of Bucharest — supported the opposite view; however, we allow ourselves to contest the thesis according to which consumers’ interests have a subordinate character. We consider, as emphasised during our intervention later published in *Curierul Judiciar* no. 8/2015, that the prevention of over-indebtedness through competition-law mechanisms represents a realistic priority.

economic viability of the undertaking concerned and lead to the complete loss of its assets”, may give rise to a decision adjusting the amount of the fine.

With regard to the **other criteria** laid down in the Guidelines, as previously noted, there is an economic rationale underlying the sanctions applicable to serious infringements of competition law. These sanctions are grounded in the requirement to eliminate the economic attractiveness of infringements through a **deterrence mechanism that exceeds the anticipated gain**, combined with the likelihood that such conduct will be detected, investigated and subsequently sanctioned.

The Guidelines adopted by the Commission reflect this logic in the method for determining the amount of sanctions. The fine is linked to the value of the relevant sales, so as to capture the real economic impact of the conduct²⁷, and gravity is assessed through economic criteria such as the nature of the practice, the market share and the geographic scope.

The duration of the infringement multiplies the sanction so as to reflect the persistence of illicit gains, while deterrence coefficients allow the adjustment of the sanction to the economic size of the undertaking, avoiding situations in which large companies perceive the fine as a marginal cost. In addition, adjustments based on the individual role in the cartel and the possibility of exceeding the illicit gains ensure that the sanction not only penalises but also neutralises the economic advantage obtained, contributing to the economic destabilisation of cartels.

The European Court of Human Rights does not have the competence to calibrate, to economic reality, the compensation awarded by a national authority or by the European Commission in competition matters; however, it cannot be excluded that, in the future, the Court may be seised with applications seeking a finding of a violation of fundamental rights in relation to an excessive or disproportionate amount of the fine imposed, or in relation to compensation that does not reflect, for persons harmed by anticompetitive practices, the entirety of the loss suffered (“the principle of full compensation” is expressly provided both by Government Emergency Ordinance No. 170/2020 and by the 2014 Directive, although neither normative act develops the manner in which such compensation may be obtained).

The limits of the Court’s material competence are imposed by the European Convention on Human Rights, which contains no rules on competition, and the ECtHR has no power to review the legality of administrative economic sanctions, but only the respect of procedural rights guaranteed by the Convention, namely a material or procedural violation in the process of determining a sanction. Consequently, the Court may examine only aspects such as access to a court, the length of proceedings, the impartiality of the tribunal or the proportionality of the interference with the right to property, but it cannot “reduce” a fine imposed by a national or European body on the ground that it was set in breach of domestic law or that it is excessive or economically inappropriate.

On the other hand, autonomous violations — already mentioned above — of Article 6, Article 8 or Article 1 of Protocol No. 1 to the Convention may be examined and sanctioned accordingly by the Court.

In *A. Menarini Diagnostics v. Italy* (cited above), the ECtHR held that administrative fines with a deterrent character and high amounts, such as those imposed in competition matters, have a criminal nature in the autonomous sense of Article 6 of the Convention, even

²⁷ Ibidem.

if domestic law classifies them as administrative sanctions. This conclusion derives from the Court's finding that Article 6 of the Convention, in its criminal limb, was applicable. The minimum procedural standard imposed by this decision requires the existence, within the national legal landscape, of the possibility of full judicial review — a requirement that was met in that case.

In other cases, such as *Société Colas Est et autres v. France* and *BRD v. Romania*, the issue concerned violations of Article 8 of the Convention, with compensation awarded for moral damage, but the Court refused to establish a causal link between the violation of procedural rights and the material outcome of the investigation. Although it found a disproportionate interference through the search of the companies' premises, contrary to Article 8 ECHR, the Court emphasised that it could not speculate on the effect that compliance with the Convention would have had on the domestic procedure and, in particular, on the sanctions imposed. The ECtHR awards compensation only for moral damage resulting from the violation of the fundamental right, not for the economic consequences of the investigation or for any fines considered unlawful. This approach confirms that, in competition matters, the Court does not analyse the economic substance of the sanction and does not establish causal links between procedural defects and the final outcome, limiting itself to the protection of Convention rights without interfering with the assessment of competition authorities or its material effects.

According to the above-mentioned decision in *Société Colas Est*, "the Court notes that the applicant companies' claim for pecuniary damage **corresponds to the amount of the fines they were ordered to pay** following the domestic courts' judgments. It is true that the Court cannot speculate on the outcome of the inspectors' operations if the procedure had complied with Article 8 of the Convention. However, **the Court emphasises that it found a violation of Article 8 on the ground that the investigation procedure did not meet the requirements imposed by that provision. It therefore concludes that the applicant companies undoubtedly suffered non-pecuniary damage and, making its own assessment based on the criterion of equity**, as required by Article 41, awards each of the applicant companies EUR 5,000 under this head." (our emphasis).

It is important to underline once again that, in this case, the **Court refused to create a causal link between procedural defects and the outcome that the investigation would have had** in their absence.

In other words, even if the procedure was flawed — a point expressly acknowledged by the Court — **the violation does not entail the conclusion that the fine should not have been imposed** or that the applicant is entitled to just satisfaction or compensation for material damage equal to the fine imposed.

In *Colas*, the Court found only a violation of Article 8 ECHR (from the perspective of the investigations and searches carried out), but explicitly refused to establish any connection between that violation and the outcome of the administrative competition procedure or the fine imposed.

Another more recent but equally relevant case for the issue under analysis is *Delta Pekárny a.s. v. the Czech Republic*, 2 October 2014. In that judgment, too, the Court found (by a majority and with a dissenting opinion) a violation of Article 8 of the Convention due to an unjustified inspection at the premises of a company investigated for cartel conduct. However, the Court did not award any compensation:

“The applicant company claims CZK 300,000, approximately **EUR 11,000, in respect of pecuniary damage, corresponding to the amount of the fine imposed following the inspection.** It makes no claim for non-pecuniary damage. The Government considers that the answer to the question whether there is a causal link between the pecuniary damage claimed and the violation of the Convention will depend on the Court’s conclusions regarding the various heads of claim. The Government also notes that, in the event of a finding of a violation, Article 119 §1 of Act No. 182/1993 on the Constitutional Court allows the applicant to request the reopening of the proceedings before the Constitutional Court. **The Court identifies no causal link between the violation found and the pecuniary damage claimed,** corresponding to the amount of the fine imposed on the applicant company due to the inadequate cooperation of its employees with the inspectors. It therefore rejects this claim.”

A clear conclusion emerges: although the Court may find violations of Article 6 or Article 8 in the context of administrative or economic procedures, including competition investigations, its case law shows that it refuses to establish a causal link between procedural defects and the material outcome of domestic proceedings.

The **Court therefore does not intervene in the economic assessment carried out** by the Commission or the national authority and avoids “attenuating” it through compensation awarded to the applicant in proceedings before the Court. This competence lies instead with national administrative courts or with the CJEU, in proceedings reviewing the legality of the sanctions imposed.

CONCLUSIONS

French legal scholarship clearly demonstrates, beyond any doubt, the “profound convergences” between consumers and competition, the consumer being characterized as “the engine of competition” and “the ultimate beneficiary” of competitive markets²⁸.

In line with this thesis, we consider that the sanctions imposed or the compensation awarded for anticompetitive practices must be properly calibrated so that the ultimate beneficiary of competition receives compensation commensurate with the harm suffered — a harm often extremely difficult to quantify, yet capable of being characterized as a legitimate expectation, assimilated to a “possession” within the autonomous meaning given to this notion under Article 1 of Protocol No. 1 to the Convention.

This paper aims to demonstrate that the sanctioning and remedial mechanisms of competition law cannot be meaningfully understood without situating them within the broader normative framework of the European Convention on Human Rights. Although competition law operates through a highly technical regulatory architecture — structured around substantive prohibitions, procedural instruments, and complex economic assessments — the imposition of sanctions and the award of damages inevitably intersect with fundamental rights protected under the Convention. The case law of the European Court of Human Rights confirms that administrative fines in competition matters possess a criminal nature in the autonomous sense of Article 6, thereby requiring procedural guarantees commensurate with the gravity of the sanction. At the same time, the Court’s jurisprudence reveals a consistent

²⁸ C. Lucas de Leyssac, G. Parleani, Ed. Presses Universitaires de France – PUF, Paris, 2002, p. 108-151 apud A. Răţoi, Prevenţia supraîndatorării prin mecanismele dreptului concurenţei, Curierul Judiciar no. 8/2015.

reluctance to establish a causal link between procedural violations committed during investigations and the material outcome of domestic proceedings, limiting its intervention to the protection of Convention rights **without** recalibrating the economic substance of sanctions or the compensation awarded.

This structural limitation of the Court's competence underscores the importance of a rigorous economic analysis of law within the domestic and European frameworks responsible for enforcing competition rules. The deterrent function of sanctions, central to both EU competition policy and the Convention's logic of proportionality, requires a calibration that neutralizes illicit gains, reflects the real economic impact of the infringement, and ensures that fines do not become a marginal cost for large undertakings. The Guidelines adopted by the European Commission in 2006, as well as the emerging scholarship in law and economics, confirm that the effectiveness of competition enforcement depends on a dynamic sanctioning model capable of adapting to market realities and of protecting consumers, who remain the ultimate beneficiaries of competitive markets. The economic methodologies employed in damages actions, including econometric evidence and prudential estimates, further illustrate the need for coherent and replicable tools capable of quantifying harm in a manner consistent with the principle of full compensation.

From the perspective of Article 1 of Protocol No. 1, the legitimate expectation of persons harmed by anticompetitive practices to obtain full reparation for the losses suffered may, in certain circumstances, be assimilated to a "possession" within the autonomous meaning of the Convention. Domestic decisions that disregard this expectation risk generating new avenues of litigation before the European Court of Human Rights, particularly in cases where compensation awarded at national level fails to reflect the entirety of the harm. Although the Court has thus far refrained from intervening in the economic calibration of sanctions or damages, the increasing complexity of competition enforcement and the growing reliance on economic methodologies may prompt future applicants to challenge the proportionality of sanctions or the adequacy of compensation through the lens of fundamental rights.

Ultimately, the convergences between competition law and human rights, already highlighted in French legal scholarship and confirmed through the Court's case law, demonstrate that the economic analysis of sanctions and damages is not merely a technical exercise, but a normative requirement. Ensuring that sanctions are **effective, proportionate and dissuasive**, while safeguarding procedural guarantees and the legitimate expectations of those harmed, represents a delicate balance that lies at the core of both competition policy and the Convention system.

The present study has sought to illuminate this **intersection**, arguing that a coherent integration of economic reasoning and human-rights methodology is indispensable for a sanctioning framework that aspires to be both legally sound and economically meaningful.