

In the Case of Glantz Vs. Finland

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Court : European Court of Human Rights

Decided On : May-20-2014

Judge : Ineta Ziemele, President, Pēteris Hirvelāis, George Nicolaou, Nona Tsotsoria, Zdravka Kalaydjieva, Krzysztof Wojtyczek, Faris Vehabović, judges & Françoise Elens-Passos, Section Registrar

Appeal No. : Case Of Glantz Versus Finland Application No. 37394 of 11

Appellant : In the Case of Glantz

Respondent : Finland

Judgement :

1. The case originated in an application (no. 37394/11) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) by a Finnish national, Mr Kaj-Erik Torsten Glantz (the applicant), on 13 June 2011.
2. The applicant was represented by Mr Pekka Pinomaa, a lawyer practising in Helsinki. The Finnish Government (the Government) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.
3. The applicant complained under Article 4 of Protocol No. 7 to the Convention about double jeopardy (ne bis in idem) involving taxation proceedings, in which a tax surcharge had been imposed, and criminal proceedings for aggravated tax fraud.

4. On 26 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Klaukkala.

A. Taxation proceedings

6. The tax inspector conducted a tax inspection of the applicants attorneys office in 2006.

7. On 18 and 19 December 2006 the tax authorities considered that the applicant had received disguised dividends from his company during the tax years 2000 to 2004. The amounts of the disguised dividends were the following: 107,152 euros (EUR), EUR 1,673, EUR 48,711, EUR 32,759, and EUR 18,842. Additional taxes and tax surcharges (veronkorotus, skattefrhjning) were imposed in the amount of EUR 5,300, EUR 84.09, EUR 2,400, EUR 1,600 and EUR 900 respectively.

8. By letter dated 9 March 2007 the applicant sought rectification from the local Tax Rectification Committee (verotuksen oikaisulautakunta, prvningsnmden i beskattningsrenden).

9. On 30 May 2007 the Tax Rectification Committee rejected the applicants requests. It found that the applicant had given incomplete information to taxation authorities and tax had therefore been incompletely or partially levied. Therefore the additional tax and the tax surcharges imposed on him were not considered to be too high.

10. By letter dated 11 June 2007 the applicant appealed to the Helsinki Administrative Court (hallinto-oikeus, frvaltningsdomstolen).

11. On 22 December 2008 the Helsinki Administrative Court rejected the applicants appeal on the same grounds as the Tax Rectification Committee.

12. By letter dated 27 February 2009 the applicant appealed to the Supreme Administrative Court (korkein hallinto-oikeus, hgsta frvaltningsdomstolen).

13. On 11 January 2010 the Supreme Administrative Court refused the applicant leave to appeal.

B. Criminal proceedings

14. On 15 December 2008 the public prosecutor brought charges against the applicant on, inter alia, five counts of embezzlement and two counts of aggravated tax fraud (trke veropetos, grovt skattebedrgeri) concerning the tax years 1997 to 2003. According to the charges, the applicant was accused of aggravated tax fraud as, in his personal capacity, he had under-declared his income. The undeclared income amounted in total to EUR 500,895 and, consequently, the tax imposed had been EUR 263,711.68 too low.

15. On 6 November 2009 the Helsinki District Court (krjoikeus, tingsrtten) convicted the applicant, inter alia, on four counts of embezzlement and two counts of aggravated tax fraud and sentenced him to a prison sentence of 2 years and 8 months. He was also ordered to pay the taxation authority EUR 214,168.38 plus interest.

16. By letter dated 25 January 2010 the applicant appealed to the Helsinki Appeal Court (hovioikeus, hovrtten), requesting that the charges be dismissed. He claimed, inter alia, that one of the embezzlement charges was statute-barred.

17. On 23 December 2010 the Helsinki Appeal Court, after having held an oral hearing on 28 and 29 October 2010, convicted the applicant as charged and sentenced him to 2 years and 8 months in prison. It upheld the District Courts judgment in respect of the compensation award. The court found that one of the embezzlement charges was not statute-barred. As concerned the aggravated tax fraud in the applicants personal taxation, the court noted that tax surcharges had been imposed on the applicant and that the taxation proceedings had become final on 11 January 2010. As the charges had been brought on 20 August 2009, that was, before the taxation proceedings had become final, there were no obstacles to

examining the charge concerning aggravated tax fraud.

18. By letter dated 21 February 2011 the applicant appealed to the Supreme Court (korkein oikeus, hgsta domstolen), requesting that the charges be dismissed. He claimed that there had been a lack of a fair trial and a violation of the legality principle in respect of the embezzlement charges as he had been convicted of something other than the charges against him and the conviction had been based on a wrong Penal Code provision. Also one of the charges had been statute-barred. As concerned the tax fraud charges, he claimed that the ne bis in idem principle had been violated when he was convicted of aggravated tax fraud in respect of his personal taxation. That principle and the legality principle had also been violated when he was convicted of aggravated tax fraud and bookkeeping crime as a representative of the company as the undeclared income was the same as in his personal taxation. He also claimed that there had been a lack of a fair trial before the Appeal Court as he was not allowed to obtain detailed information about the charges and to put questions to one of the witnesses.

19. On 18 May 2011 the Supreme Court refused the applicant leave to appeal.

C. Extraordinary proceedings

20. By letter dated 6 June 2011 the applicant lodged an application for an extraordinary appeal with the Supreme Court, requesting, inter alia, that the execution of the prison sentence be stayed. He repeated this request on 10 July 2011, and on 24 and 29 August 2011.

21. On 15 June, and 17, 25 and 30 August 2011 the Supreme Court refused to grant a stay of execution.

22. On 31 August 2011 the applicant started serving his sentence.

23. On 12 December 2011 the Supreme Court refused the applicants request for the reopening of the case.

24. By letter dated 16 December 2011 the applicant lodged a new extraordinary appeal with the Supreme Court concerning its decision of 12 December 2011. He

referred, inter alia, to Article 6 of the Convention and the lack of a fair trial.

25. It is not known whether the case is still pending before the Supreme Court.

D. Complaints to the Chancellor of Justice

26. By letters dated 24 and 29 August 2011 and 7 February 2012 the applicant lodged a complaint with the Chancellor of Justice (oikeuskansleri, justitiekanslern), asking him to examine whether the Supreme Court justices had acted in accordance with the law and their duties when rendering the decision of 12 December 2011.

27. On 20 March 2012 the Chancellor of Justice informed the applicant that he was not going to investigate the matter as it was still pending before the Supreme Court. However, he indicated that the general interpretation was that the duty to give reasons did not apply to decisions concerning leave to appeal or extraordinary remedies.

28. By letter dated 14 May 2012 the applicant asked the Chancellor of Justice to re-examine the matter and to take action in order to have the Supreme Court decision of 12 December 2011 re-opened.

29. It is not known whether the case is still pending before the Chancellor of Justice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Tax Assessment Procedure Act

30. Section 57, subsection 1, of the Tax Assessment Procedure Act (laki verotusmenettelystä, lagen om beskattningsförfarande, Act no. 1558/1995, as amended by Act no. 1079/2005) provides that if a person has failed to make the required tax returns or has given incomplete, misleading or false information to taxation authorities and tax has therefore been incompletely or partially levied, the taxpayer shall be ordered to pay unpaid taxes together with an additional tax and a tax surcharge.

B. Penal Code

31. According to Chapter 29, sections 1 and 2, of the Penal Code (rikoslaki, strafflagen; as amended by Acts no. 1228/1997 and no. 769/1990), a person who (1) gives a taxation authority false information on a fact that influences the assessment of tax, (2) files a tax return concealing a fact that influences the assessment of tax, (3) for the purpose of avoiding tax, fails to observe a duty pertaining to taxation, influencing the assessment of tax, or (4) acts otherwise fraudulently and thereby causes or attempts to cause a tax not to be assessed, or too low a tax to be assessed or a tax to be unduly refunded, shall be sentenced for tax fraud to a fine or to imprisonment for a period of up to two years.

32. If by the tax fraud (1) considerable financial benefit is sought or (2) the offence is committed in a particularly methodical manner and the tax fraud is aggravated when assessed as a whole, the offender shall be sentenced for aggravated tax fraud to imprisonment for a period between four months and four years.

C. Supreme Courts case-law

33. The Supreme Court has taken a stand on the ne bis in idem principle in its case KKO 2010:46 which concerned tax surcharges and aggravated tax fraud. In that case it found, inter alia, that even though a final judgment in a taxation case, in which tax surcharges had been imposed, prevented criminal charges being brought about the same matter, such preventive effect could not be accorded to pending cases (lis pendens) crossing from administrative proceedings to criminal proceedings or vice versa.

34. On 20 September 2012 the Supreme Court issued another judgment (KKO:2012:79) concerning ne bis in idem. It stated that in some cases a tax surcharge decision could be considered final even before the time-limit for ordinary appeal against the decision had expired. However, it was required that an objective assessment of such a case permitted the conclusion that the taxpayer, by his or her own conduct, had intended to settle the tax surcharge matter with final effect. The assessment had to concern the situation as a whole, and it could give significance to such questions as to how logically the taxpayer had acted in

order to settle the taxes and tax surcharges, to what extent he or she had paid taxes and tax surcharges, and at which stage of the criminal proceedings the payments had been made. In the case at issue taxes and tax surcharges had been imposed on A on account of action related to disguised dividends, by decisions of 2 March 2009 for tax years 2005 and 2006, and 7 September 2009 for tax year 2007. In the charge, which became pending on 28 June 2011, the prosecutor demanded that A be sentenced to punishment for aggravated tax fraud on account of the same action. A had paid the taxes and tax surcharges entirely before the charge became pending. The time-limit for seeking rectification in respect of the tax year 2005 had expired on 31 December 2011 without A having sought rectification. A declared that he had no intention of appealing against the decisions concerning the other tax years, either. The Supreme Court held that the charge of aggravated fraud was inadmissible as A had paid the taxes and tax surcharges before the charge became pending.

35. In its newest case-law (KKO:2013:59 of 5 July 2013), the Supreme Court reversed its earlier line of interpretation, finding that charges for tax fraud could no longer be brought if there was already a decision to order or not to order tax surcharges in the same matter. If the taxation authorities had exercised their decision-making powers regarding tax surcharges, a criminal charge could no longer be brought for a tax fraud offence based on the same facts, or if such a charge was already pending, it could no longer be pursued. The court assessed whether the preventive effect of the first set of proceedings had to be attributed to the fact that 1) tax surcharge proceedings were pending, 2) a tax surcharge issue was decided, or 3) to the finality of such a tax surcharge decision, and found the second option the most justifiable.

D. Legislative amendments

36. In December 2012 the Government submitted to Parliament a proposal for an Act on Tax Surcharges and Customs Duty Surcharges Imposed by a Separate Decision and for certain related Acts (HE 191/2012 vp). After the entry into force of the Act, the tax authorities could, when making a tax decision, assess whether to impose a tax surcharge or to report the matter to the police. The tax authorities

could decide not to impose a tax surcharge. If they had not reported the matter to the police, a tax surcharge could be imposed by a separate decision by the end of the calendar year following the actual tax decision. If the tax authorities had imposed tax surcharges, they could no longer report the same matter to the police unless, after imposing the tax surcharges, they had received evidence of new or recently revealed facts. If the tax authorities had reported the matter to the police, tax surcharges could, as a rule, no longer be imposed. The purpose of the proposed Act is thus to ensure that a tax or a customs duty matter is processed and possibly punished in only one set of proceedings.

37. The proposed Act on Tax Surcharges and Customs Duty Surcharges Imposed by a Separate Decision (laki erillisell ptksell mrttvst veron- tai tullinkorotuksesta, lagen om skattefrhjning och tullhjning som pfrs genom ett srskilt beslut, Act no. 781/2013) has already been passed by Parliament and it entered into force on 1 December 2013. The Act does not, however, contain any transitional provisions extending its scope retroactively.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

38. The applicant complained under Article 4 of Protocol No. 7 to the Convention that the ne bis in idem principle had been violated when he had been convicted in his personal capacity of aggravated tax fraud. He had been charged and convicted of the same acts which had already been subject to taxation proceedings in which tax surcharges had been imposed. The taxation proceedings became final on 11 January 2010 and the criminal proceedings on 18 May 2011.

39. Article 4 of Protocol No. 7 to the Convention reads as follows:

œ1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

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

3. No derogation from this Article shall be made under Article 15 of the Convention.?

40. The Government contested that argument.

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties submissions

(a) The applicant

42. The applicant pointed out that the taxation proceedings had become final on 11 January 2010 when the Supreme Administrative Court had refused the applicant leave to appeal. Thereafter the criminal proceedings still continued in the Appeal Court even though the applicant had invoked the ne bis in idem principle. The Appeal Court convicted the applicant for the second time for the non-declaration of the same funds as in the taxation proceedings.

43. The applicant noted that the present case was similar to the Supreme Courts last case-law (KKO:2013:59).

(b) The Government

44. In the Governments view it was undisputed that the Finnish administrative proceedings on tax surcharges fell within the domain of criminal law and thus

under the ne bis in idem principle. Furthermore, it was clear that the second offence arose from the same facts as the first offence. In the present case, however, the first set of proceedings concerning the tax surcharges had not yet become final within the meaning of Article 4 of Protocol No. 7 to the Convention when the second set of proceedings concerning the aggravated tax fraud became pending. Since the proceedings took place simultaneously, the present case did not fulfil the res judicata criterion set for the applicability of the ne bis in idem principle.

45. The Government noted that the Courts case-law did not seem to include in the interpretation of the res judicata criterion also the lis pendens criterion. In the Governments view, the case *Tomasovič v. Croatia* (see *Tomasovič v. Croatia*, no. 53785/09, 18 October 2011), in which the Court applied the ne bis in idem principle although no res judicata effect existed, could be seen as an isolated exception as the case seemed to involve rather clearly two sets of proceedings concerning one act which could both be characterised as criminal proceedings. Furthermore, it did not appear from that judgment that the Court intended to provide a ne bis in idem effect also in lis pendens situations as no such express statement was made by the Court.

46. As to the Supreme Courts new line of interpretation as expressed by its case KKO:2013:59, the Government noted that, by this decision, the Supreme Court had extended the ne bis in idem prohibition beyond the requirements deriving from human rights obligations. However, they noted that this line of interpretation was not applicable to criminal matters adjudicated finally before 5 July 2013. It had thus no effect on the assessment of the present case as the relevant domestic decisions had become final already in 2011. In the Governments view the Supreme Courts ruling did not imply that the earlier line of interpretation by that court was in contradiction with the Courts case-law.

47. The Government therefore considered that the tax surcharges imposed on the applicant did not prevent the examination of the charges for tax fraud. The applicant was thus not punished twice for the same act within the meaning of Article 4 of Protocol No. 7 to the Convention as the tax surcharges had not yet

become final when the charges were pressed.

2. The Courts assessment

(a) Whether the first sanction was criminal in nature?

48. The Court reiterates that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of ne bis in idem under Article 4 1 of Protocol No. 7. Otherwise, the application of this provision would be left to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of the Convention (see for example *Storbrten v. Norway* (dec.), no. 12277/04, ECHR 2007-... (extracts), with further references). The notion of œpenal procedure? in the text of Article 4 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words œcriminal charge? and œpenalty? in Articles 6 and 7 of the Convention respectively (see *Haarvig v. Norway* (dec.), no. 11187/05, 11 December 2007; *Rosenquist v. Sweden* (dec.), no. 60619/00, 14 September 2004; *Manasson v. Sweden* (dec.), no. 41265/98, 8 April 2003; *Gktan v. France*, no. 33402/96, 48, ECHR 2002-V; *Malige v. France*, 23 September 1998, 35, Reports of Judgments and Decisions 1998-VII; and *Nilsson v. Sweden* (dec.), no. 73661/01, ECHR 2005-XIII).

49. The Courts established case-law sets out three criteria, commonly known as the œEngel criteria? (see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22), to be considered in determining whether or not there was a œcriminal charge?. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not rule out a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Jussila v. Finland* [GC], no. 73053/01, 30-31, ECHR 2006-XIV; and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, 82-86, ECHR 2003-X).

50. The Court has taken stand on the criminal nature of tax surcharges, in the context of Article 6 of the Convention, in the case *Jussila v. Finland* (cited above). In that case the Court found that, regarding the first criterion, it was apparent that the tax surcharges were not classified as criminal but as part of the fiscal regime. This was, however, not decisive but the second criterion, the nature of the offence, was more important. The Court observed that the tax surcharges were imposed by general legal provisions applying to taxpayers generally. Further, under Finnish law, the tax surcharges were not intended as pecuniary compensation for damage but as a punishment to deter re-offending. The surcharges were thus imposed by a rule the purpose of which was deterrent and punitive. The Court considered that this established the criminal nature of the offence. Regarding the third Engel criterion, the minor nature of the penalty did not remove the matter from the scope of Article 6. Hence, Article 6 applied under its criminal head notwithstanding the minor nature of the tax surcharge (see *Jussila v. Finland* [GC], cited above, 37-38). Consequently, proceedings involving tax surcharges are *œ*criminal? also for the purpose of Article 4 of Protocol No. 7.

51. Therefore, in the present case, the Court considers that it is clear that both sets of proceedings are to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention. The parties also find this to be undisputed.

(b) Whether the offences for which the applicant was prosecuted were the same (*idem*)?

52. The Court acknowledged in the case of *Sergey Zolotukhin v. Russia* (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, 81-84, ECHR 2009) the existence of several approaches to the question whether the offences for which an applicant was prosecuted were the same. The Court presented an overview of the existing three different approaches to this question. It found that the existence of a variety of approaches engendered legal uncertainty incompatible with the fundamental right not to be prosecuted twice for the same offence. It was against this background that the Court provided in that case a harmonised interpretation of the notion of the *œ*same offence? for the purposes of Article 4 of Protocol No. 7. In the *Zolotukhin* case the Court thus found that an approach which emphasised the

legal characterisation of the two offences was too restrictive on the rights of the individual. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention. Accordingly, the Court took the view that Article 4 of Protocol No. 7 had to be understood as prohibiting the prosecution or trial of a second offence? in so far as it arose from identical facts or facts which were substantially the same. It was therefore important to focus on those facts which constituted a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which had to be demonstrated in order to secure a conviction or institute criminal proceedings.

53. In the present case the parties agree that both sets of proceedings arose from the same facts. The Court agrees with the parties: both sets of proceedings arose from the same applicants failure to declare income. Both sets of proceedings also concerned, at least partly, the same period of time and also approximately the same amount of evaded taxes.

(c) Whether there was a final decision?

54. The Court reiterates that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final? decision (see *Franz Fischer v. Austria*, no. 37950/97, 22, 29 May 2001; *Gradinger v. Austria*, 23 October 1995, 53, Series A no. 328-C; and *Sergey Zolotukhin v. Russia* [GC], cited above, 107). According to the Explanatory Report to Protocol No. 7, which itself refers back to the European Convention on the International Validity of Criminal Judgments, a decision is final if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them?. This approach is well entrenched in the Courts case-law (see, for example, *Nikitin v. Russia*, no. 50178/99, 37, ECHR 2004-VIII; and *Horciag v. Romania* (dec.), no. 70982/01, 15 March 2005).

55. Decisions against which an ordinary appeal lies are excluded from the scope of the guarantee contained in Article 4 of Protocol No. 7 as long as the time-limit for lodging such an appeal has not expired. On the other hand, extraordinary remedies such as a request for reopening of the proceedings or an application for extension of the expired time-limit are not taken into account for the purposes of determining whether the proceedings have reached a final conclusion (see *Nikitin v. Russia*, cited above, 39). Although these remedies represent a continuation of the first set of proceedings, the æfinal? nature of the decision does not depend on their being used. It is important to point out that Article 4 of Protocol No. 7 does not preclude the reopening of the proceedings, as stated clearly by the second paragraph of Article 4.

56. In the present case the taxation proceedings became final on 11 January 2010 when the Supreme Administrative Court refused the applicant leave to appeal. No further ordinary remedies were available to the parties. The taxation decision imposing tax surcharges was therefore æfinal?, within the autonomous meaning given to the term by the Convention, on 11 January 2010.

(d) Whether there was a duplication of proceedings (bis)?

57. The Court reiterates that Article 4 of Protocol No. 7 prohibits the repetition of criminal proceedings that have been concluded by a æfinal? decision. Article 4 of Protocol No. 7 is not only confined to the right not to be punished twice but extends also to the right not to be prosecuted or tried twice (see *Franz Fischer v. Austria*, cited above, 29). Were this not the case, it would not have been necessary to add the word æpunished? to the word ætried? since this would be mere duplication. Article 4 of Protocol No. 7 applies even where the individual has merely been prosecuted in proceedings that have not resulted in a conviction. The Court reiterates that Article 4 of Protocol No. 7 contains three distinct guarantees and provides that no one shall be (i) liable to be tried, (ii) tried or (iii) punished for the same offence (see *Nikitin v. Russia*, cited above, 36).

58. The Court notes that Article 4 of Protocol No. 7 clearly prohibits consecutive proceedings if the first set of proceedings has already become final at the moment when the second set of proceedings is initiated (see for example *Sergey*

Zolotukhin v. Russia [GC], cited above).

59. As concerns parallel proceedings, Article 4 of Protocol No. 7 does not prohibit several concurrent sets of proceedings. In such a situation it cannot be said that an applicant is prosecuted several times for an offence for which he has already been finally acquitted or convicted? (see *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX (extracts)). There is no problem from the Convention point of view either when, in a situation of two parallel sets of proceedings, the second set of proceedings is discontinued after the first set of proceedings has become final (see *Zigarella v. Italy* (dec.), no. 48154/99, ECHR 2002-IX (extracts)). However, when no such discontinuation occurs, the Court has found a violation (see *Tomasovič v. Croatia*, cited above, 31; and *Muslija v. Bosnia and Herzegovina*, no. 32042/11, 37, 14 January 2014).

60. However, the Court has also found in its previous case-law (see *R.T. v. Switzerland* (dec.), no. 31982/96, 30 May 2000; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005) that although different sanctions (suspended prison sentences and withdrawal of driving licences) concerning the same matter (drunken driving) have been imposed by different authorities in different proceedings, there has been a sufficiently close connection between them, in substance and in time. In those cases the Court found that the applicants were not tried or punished again for an offence for which they had already been finally convicted in breach of Article 4 1 of Protocol No. 7 to the Convention and that there was thus no repetition of the proceedings.

61. Turning to the present case and regarding whether there was repetition in breach of Article 4 1 of Protocol No. 7 to the Convention, the Court notes that it is true that both the applicant's conviction and the tax surcharges imposed on him form a part of the sanctions under Finnish law for the failure to provide information about income in a tax declaration with a result that too low tax assessment is made. However, under the Finnish system the criminal and the administrative sanctions are imposed by different authorities without the proceedings being in any way connected: both sets of proceedings follow their own separate course and become final independently from each other. Moreover, neither of the sanctions is

taken into consideration by the other court or authority in determining the severity of the sanction, nor is there any other interaction between the relevant authorities. More importantly, the tax surcharges are under the Finnish system imposed following an examination of an applicants conduct and his or her liability under the relevant tax legislation which is independent from the assessments made in the criminal proceedings. This contrasts with the Courts earlier cases R.T. and Nilsson relating to driving licences, where the decision on withdrawal of the licence was directly based on an expected or final conviction for a traffic offence and thus did not contain a separate examination of the offence or conduct at issue. Therefore, it cannot be said that, under the Finnish system, there is a close connection, in substance and in time, between the criminal and the taxation proceedings.

62. Consequently, the present case concerns two parallel and separate sets of proceedings of which the first set proceedings became final on 11 January 2010 while the second set of proceedings was initiated on 15 December 2008. The two sets of proceedings were thus pending concurrently until 11 January 2010 when the first set became final. As the second set of proceedings was not discontinued after the first set of proceedings became final but was continued until a final decision on 18 May 2011, the applicant was convicted twice for the same matter in two sets of proceedings which became final on 11 January 2010 and 18 May 2011 respectively.

63. The Court would acknowledge in this connection that it might sometimes be coincidental which of the parallel proceedings first becomes final, thereby possibly creating a concern about unequal treatment. However, in view of the margin of appreciation left to High Contracting Parties, it falls within their power to determine their own criminal policy and the manner how their legal system is organised. The High Contracting Parties are free to develop their criminal policy and legal system in accordance with their applicable international obligations, in particular the Convention and its Protocols (see *mutatis mutandis* *Achour v. France* [GC], no. 67335/01, 44, ECHR 2006-IV). It appears that in Finland the case-law and the legislation have already been modified accordingly.

64. In conclusion, the Court finds that there has been a violation of Article 4 of Protocol No. 7 to the Convention since the applicant was convicted twice for the same matter in two separate sets of proceedings.

II. THE REMAINDER OF THE APPLICATION

65. The applicant also complained under Articles 6 1 and 3 and 7 of the Convention about a lack of a fair trial and a violation of the legality principle in respect of the embezzlement charges. He complained that, as far as he was convicted of aggravated tax fraud and bookkeeping crime as a representative of the company, Article 7 and Article 4 of Protocol No. 7 had been violated. Finally, he complained about the proceedings before the Appeal Court during which there had been a failure to provide detailed information about the charges, an impossibility to question one of the witnesses, a failure to record his statement correctly, and a failure to reason the judgment adequately. In his letter dated 16 January 2012 the applicant further complained under Article 6 of the Convention about the lack of reasoning in the Supreme Courts decision of 12 December 2011 concerning the extraordinary appeal.

66. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

œIf the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.?

A. Damage

68. The applicant claimed EUR 60,000 in respect of pecuniary damage as lost income during imprisonment and EUR 1,100,000 as reimbursement of the compensation he was ordered to pay by the judgment of 23 December 2010. He also claimed EUR 73,500 in respect of non-pecuniary damage for suffering caused by his imprisonment and, without indicating any sums, for suffering caused by the judgment.

69. The Government noted that the applicant had a possibility to ask for compensation for imprisonment, including loss of income, if the domestic judgment was revoked. Therefore his claims in respect of the EUR 60,000 and EUR 73,500 claimed should be rejected. In any event, the applicant had failed to produce any documents in support of his claims for pecuniary damage and they should therefore be rejected. As to the non-pecuniary damage caused by the judgment, the Government considered that the applicant should be awarded reasonable compensation if the Court were to find a violation under Article 4 of Protocol No. 7 to the Convention. In their view, in the present circumstances, the award should not exceed EUR 1,500.

70. The Court notes that the charges brought against the applicant contained several different counts. For the Court it is not possible to speculate whether the violation found will lead to the annulment of the entire judgment convicting the applicant or not. As the domestic system provides a possibility to obtain pecuniary and non-pecuniary compensation in such situations, the Court rejects the claims of EUR 60,000 and EUR 73,500. The Court also rejects the pecuniary damage claim of EUR 1,100,000 as most of it does not relate to the current proceedings. As far as it does relate to the current proceedings, the applicant has failed to produce evidence of the actual payment of these sums. On the other hand, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant also claimed EUR 15,443.41 in total for the costs and expenses incurred before the Court. This amount consisted of fees for legal services (EUR 12,300), fees for expert statements (EUR 2,200) and translation fees (EUR 943.41).

72. The Government noted that the fees for expert statements amounting to EUR 2,200 did not relate to the present case and should therefore not be compensated. The claimed amount of EUR 12,300 for legal fees was not itemised, nor had the applicant provided any documents supporting his claims. This claim should therefore be rejected in accordance with Rule 60 2 of the Rules of Court. Moreover, the translation fees were already included in counsels fee and should therefore be rejected. At any rate, the applicants claims for costs and expenses were excessive as to quantum. In the Governments view, the award for costs and expenses should not exceed EUR 2,500 (inclusive of value-added tax).

73. According to the Courts case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that, in the present case, the expert statements do not relate to the communicated complaint. Moreover, no documentary evidence supporting the claim for legal fees has been submitted to the Court, as required by Rule 60 2 of the Rules of Court. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 943.41 (inclusive of value-added tax) for costs and expenses in the proceedings before the Court.

C. Default interest

74. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the complaint concerning ne bis in idem in the applicants personal capacity admissible and the remainder of the application inadmissible;
2. Holds that there has been a violation of Article 4 of Protocol No. 7 to the Convention;
3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 943.41 (nine hundred and forty-three euros and forty-one cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses the remainder of the applicants claim for just satisfaction.

Done in English, and notified in writing on 20 May 2014, pursuant to Rule 77 2 and 3 of the Rules of Court.

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