October 2019
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Right not to be tried or punished twice (the *non bis in idem* principle)

Article 4 (Right not to be tried or punished twice) **of Protocol No. 7 to the European Convention on Human Rights**[1]:

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

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and 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."

Scope

Article 4 of Protocol No. 7 limits the scope of the guarantees afforded in relation to criminal offences for the purposes of the Convention.

The Court's established case-law sets out three criteria, commonly known as the "*Engel* criteria"[2], to be considered in determining whether or not there was a "criminal charge" (Article 6 (right to a fair trial) of the Convention). 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 exclude 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. The concept of punishment in Article 7 (no punishment without law) of the Convention is identical.

Maszni v. Romania

21 September 2006

Having been disqualified from driving, the applicant was stopped while driving his vehicle in possession of a forged driving licence in June 1997. Tried by a Military Court, he was found guilty of offences including incitement to forgery and making use of forged documents, and was given a suspended sentence of one year and four months' imprisonment. His driving licence was subsequently withdrawn on the ground that he had been convicted with final effect of a road traffic offence. In April 2002 he passed the test entitling him to a new driving licence. The applicant alleged in particular that the

[1] See here for the chart of signatures and ratifications of Protocol No. 7 and the details of reservations and declarations made by the States Parties.
[2] See *Engel and Others v. the Netherlands*, judgment of 8 June 1976.

withdrawal of his driving licence amounted to a second penalty for the same acts that had resulted in his criminal conviction by the military courts for a road traffic offence.
The Court observed in particular that, although under Roman law the withdrawal of a driving licence was classified as an administrative measure, the seriousness of the measure lent it a punitive and deterrent character which made it comparable to a criminal sanction. The close connection between the two penalties imposed on the applicant led the Court to conclude that the revocation of his driving licence appeared to be a penalty accompanying and forming an integral part of the criminal conviction. It therefore held that there had been **no violation of Article 4 of Protocol No. 7**.

Storbråten v. Norway and Mjelde v. Norway

1st February 2007 (decisions on the admissibility)
Both applicants were disqualified for two years from establishing limited liability companies or holding directorships in such companies following the failure of businesses in which they had been involved. The orders were made under bankruptcy legislation on the grounds that they were unfit to act and that there were reasonable grounds for suspecting them of criminal offences in connection with the insolvencies. Both were subsequently convicted of bankruptcy related offences. The applicants stressed that the disqualification order barred under the *non bis in idem* rule their subsequent prosecution in relation to the same matters.
The Court declared the applications **inadmissible** as being manifestly ill-founded, finding that the imposition of disqualification orders did not constitute a "criminal" matter for the purposes of Article 4 of Protocol No. 7 in the applicants' case. The Court noted in particular that the "reasonable ground for suspicion" condition did not deprive the disqualification order of its essentially regulatory character. Furthermore, the primary purpose of a disqualification order was preventive, namely to protect shareholders, creditors and society as a whole against exposure to undue risks of losses and mismanagement of resources if an irresponsible and dishonest person was allowed to continue to operate under the umbrella of a limited liability company. It thus played a supplementary role to criminal prosecution and conviction at a later stage. As to the nature and degree of severity of the measure, a disqualification order entailed a prohibition against establishing or managing a new limited liability company for a limited period, not a general ban on engaging in business activities. The character of the sanction was not, therefore, such as to bring the matter within the "criminal" sphere. The Court noted furher that the two types of measure (disqualification and prosecution) pursued different purposes and differed in their essential elements.

See also: **Haarvig v. Norway**, decision on the admissibility of 11 December 2007.

Paksas v. Lithuania

6 January 2011 (Grand Chamber)
The applicant, a former President of Lithuania, was removed from office by Parliament following impeachment proceedings for committing a gross violation of the Constitution and breaching the constitutional oath. Criminal proceedings were also brought against him on a charge of disclosing information classified as a State secret, but he was eventually acquitted. The applicant alleged, *inter alia*, that the institution of impeachment proceedings followed by criminal proceedings against him had amounted to trying him twice for the same offence.
The Court, pursuant to Article 35 (admissibility criteria) of the Convention, declared this part of the application **inadmissible** as being incompatible *ratione materiae* (in terms of subject matter) with the provisions of the Convention. The Court noted in particular that the first set of proceedings in the Constitutional Court had concerned the compliance with the Constitution and the law of a naturalisation decree issued by the applicant by virtue of his presidential powers, and the second set had sought to ascertain whether he had committed gross violations of the Constitution or breached his constitutional oath. In the Court's view, the proceedings in question had not concerned the "determination of his civil rights and obligations" or of a "criminal charge" against him within the meaning

of Article 6 § 1 (right to a fair trial) of the Convention; nor had he been "convicted" or "tried or punished ... in criminal proceedings" within the meaning of Article 4 § 1 of Protocol No. 7.

Kurdov and Ivanov v. Bulgaria

31 May 2011

In 1995, while they were employed by the Bulgarian national railway company, the applicants had to do some welding on a wagon. While they were doing that, the contents of the wagon caught fire. Administrative proceedings were brought against the first applicant for non-compliance with safety regulations and he had to pay 150 Bulgarian levs. Criminal proceedings were then brought against both applicants for deliberately setting fire to items of value between 1998 and 2004. The first applicant complained in particular of a violation of the *non bis in idem* principle in his respect.

The Court held that there had been **no violation of Article 4 of Protocol No. 7**. In the present case it found in particular that the administrative proceedings culminating in a fine of 150 Bulgarian levs against the first applicant did not satisfy the criteria in order to be classified as a criminal charge. Accordingly, the opening of criminal proceedings against the same applicant after the imposition of that fine had not infringed the principle of *non bis in idem*.

A. and B. v. Norway (applications nos. 24130/11 and 29758/11) (see also below, under "The definition of *idem*")

15 November 2016 (Grand Chamber)

This case concerned two taxpayers who submitted that they had been prosecuted and punished twice – in administrative and criminal proceedings – for the same offence. The applicants alleged more particularly that they had been interviewed by the public prosecutor as persons charged and had then been indicted, had had tax penalties imposed on them by the tax authorities, which they had paid, and had thereafter been convicted and sentenced in criminal proceedings.

In this case, the Grand Chamber held that there had been **no violation of Article 4 of Protocol No. 7** (see below, under "The definition of *idem*"). As a matter of principle, regarding the question whether the first set of proceedings was "criminal", the Grand Chamber noted that the *Sergey Zolotukhin* judgment of 10 February 2009 was not explicit on the matter. It therefore had to be assumed that the Court had made a deliberate choice in that judgment to opt for the *Engel* criteria (see above) as the model test for determining whether the proceedings concerned were "criminal" for the purposes of Article 4 of Protocol No. 7. It did not seem justified for the Grand Chamber to depart from that analysis in the present case, as there were indeed weighty considerations that militated in favour of such a choice. The Grand Chamber observed in this respect that the *non bis in idem* principle is mainly concerned with due process, which is the object of Article 6 (right to a fair trial) of the Convention, and is less concerned with the substance of the criminal law than Article 7 (no punishment without law) of the Convention. It found it more appropriate, for the consistency of interpretation of the Convention taken as a whole, for the applicability of the principle to be governed by the same, more precise criteria as in *Engel*. In the present case, the Grand Chamber examined whether the proceedings relating to the imposition on the applicants of the 30% tax penalty could be considered "criminal" for the purposes of Article 4 of Protocol No. 7, on the basis of the *Engel* criteria. It noted in this respect that, in comparable cases concerning Sweden, the Court had held that the proceedings in question were "criminal", not only for the purposes of Article 6 (right to a fair trial) of the Convention, but also for the purposes of Article 4 of Protocol No. 7. Against this background, the Grand Chamber saw no cause for calling into question the finding made by the Supreme Court of Norway to the effect that the proceedings in which the ordinary tax penalty – at the level of 30% – was imposed on the first applicant concerned a "criminal" matter within the autonomous meaning of Article 4 of Protocol No. 7.

Seražin v. Croatia

9 October 2018 (decision on the admissibility)

This case concerned the measures used in Croatia to fight against hooliganism. The applicant complained more precisely that he had been prosecuted and convicted twice for causing disorder at a football match in 2012, first in minor offence proceedings and then in proceedings banning him from attending sports events.

The Court declared the application **inadmissible**, finding that Article 4 of Protocol No. 7 did not apply in the applicant's case because he had not faced a criminal charge in the second set of proceedings. The measure applied in those proceedings had not involved a fine or his being deprived of his liberty, and had essentially been to prevent him from committing further violence, rather than to punish him a second time for the offence of hooliganism.

Article 4 of Protocol No. 7 is applicable only to courts in the same State

Böheim v. Italy

22 May 2007 (decision on the admissibility)

The applicant contended that he had been tried twice for the same facts, by a German court and an Italian court. He complained of a breach of the *non bis in idem* principle.

The Court declared this part of the application **inadmissible** as being manifestly ill-founded. It reiterated in particular that Article 4 of Protocol No. 7 applied only to courts in the same State. In the present case the criminal proceedings against the applicant had been brought by the authorities of two different countries, namely Italy and Germany.

Trabelsi v. Belgium

4 September 2014

This case concerned the extradition of a Tunisian national from Belgium to the United States, where he was being prosecuted on charges of terrorist offences and was liable to life imprisonment. The applicant alleged, *inter alia*, that his extradition violated Article 4 of Protocol No. 7.

In this judgment the Court reiterated its case-law to the effect that Article 4 of Protocol No. 7 does not secure the *non bis in idem* principle in respect of prosecutions and convictions in different States. It declared the applicant's complaint under Article 4 of Protocol No. 7 **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention.

Krombach v. France

20 February 2018 (decision on the admissibility)

This case concerned the applicant's criminal conviction in France for events in respect of which he submitted that he had previously been acquitted in Germany. The facts concerned the circumstances surrounding the death of his stepdaughter in 1982 at his home in Germany.

The Court declared the applicant's complaint under Article 4 of Protocol No. 7 **inadmissible** (incompatible *ratione materiae*). Pursuant to its constant case-law, it held in particular that Article 4 of Protocol No. 7 did not prevent an individual from being prosecuted or punished by the courts of a State Party to the Convention on the grounds of an offence of which he or she had been acquitted or convicted by a final judgment in another State Party. Since the applicant had been prosecuted by courts in two different States, namely Germany and France, Article 4 of Protocol No. 7 did not apply in the present case.

See also, among others: **Gestra v. Italy**, decision of the European Commission of Human Rights[3] of 16 January 1995; **Amrollahi v. Denmark**, decision on the admissibility of 28 June 2001; **Sarria v. Poland**, judgment of 12 December 2012.

[3]. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999,

The definition of *bis*

A final judgment

Lucky Dev v. Sweden

27 November 2014

In 2004 the tax authorities instituted proceedings against the applicant in respect of her income tax and VAT returns for 2002 and ordered her to pay additional tax and surcharges. The applicant was also prosecuted for bookkeeping and tax offences arising out of the same set of tax returns. Although she was convicted of the bookkeeping offence, she was acquitted of the tax offence. The tax proceedings continued for a further nine and a half months after the date her acquittal became final. The applicant complained that she had been tried and punished twice for the same offence.

The Court held that there had been **a violation of Article 4 of Protocol no. 7**, finding that the applicant had been tried again for a tax offence for which she had already been finally acquitted as the tax proceedings against her had not been terminated and the tax surcharges not quashed, even when criminal proceedings against her for a related tax offence had become final.

Sismanidis and Sitaridis v. Greece

9 June 2016

This case concerned the institution of proceedings against each of the applicants for smuggling despite the fact that the criminal courts had already irrevocably acquitted them of the same offence. Both applicants complained in particular that in not taking into account their acquittal by the criminal courts, the administrative courts had breached the *non bis in idem* principle, by which a person who had been lawfully acquitted could not be tried again for the same offence.

The Court noted that the second applicant had not raised his complaint of a violation of Article 4 of Protocol No. 7 in the domestic courts, at least in substance. As far as he was concerned, this complaint therefore had to be **rejected** for failure to exhaust domestic remedies. As to the first applicant, the Court considered that once his acquittal in the initial criminal proceedings had become final in 1997, he should have been regarded as having "already been finally acquitted" within the meaning of Article 4 of Protocol No. 7. In his case, the Court held that there had been a **violation of Article 4 of Protocol No. 7**, finding that the administrative proceedings in question had concerned a second offence originating in identical acts to those which had given rise to a final acquittal.

Supervisory review

Nikitin v. Russia

20 July 2004

The applicant, a former navy officer, joined an environmental project of a Norwegian NGO to work on a report entitled "The Russian Northern Fleet. Sources of Radioactive Contamination". Criminal proceedings on suspicion of treason were subsequently instituted against him. Tried for treason through espionage and aggravated disclosure of an official secret, he was acquitted .in December 1999. In April 2000 the Supreme Court upheld the acquittal, which became final. In May 2000 the Prosecutor General lodged a request with the Presidium of the Supreme Court to review the case in supervisory proceedings. The Presidium dismissed that request and upheld the acquittal. The applicant alleged in particular that supervisory review proceedings conducted after his final acquittal constituted a violation of his right not to be tried again in criminal proceedings for an offence of which he had been finally acquitted.

supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

The Court noted that, in the event that supervisory review of the acquittal had been granted, a new decision that would have been "final" could have resulted. Nevertheless, given the extraordinary nature of a supervisory review appeal and the problems of legal certainty that a quashing of a judgment in such proceedings could create, the Court assumed that the judgment of the Supreme Court upholding the applicant's acquittal had been the "final decision" for the purposes of this provision. In the present case, the applicant had not been "tried again" in the proceedings before the Presidium, nor had he been "liable to be tried again", as these proceedings were limited to the question whether or not to grant the request for review. As the Presidium was not empowered to make a new determination on the merits, it appeared that the potential for a resumption of the proceedings in this case was too remote or indirect to constitute a "liability" within the meaning of this Article. Moreover, had the request been granted and proceedings resumed, the ultimate effect of supervisory review would have been to annul all previous decisions and to determine a criminal charge in a new decision, which would not have represented a duplication of proceedings. Hence, supervisory review could be regarded as an attempt to reopen proceedings, which was permitted under the second paragraph of Article 4 of Protocol No. 7, and not an attempted "second trial". The Court therefore held that there had been **no violation of Article 4 of Protocol No. 7**.

See also: **Bratyakin v. Russia**, decision on the admissibility of 9 March 2006.

No case to answer

Horciag v. Romania

15 March 2005 (decision on the admissibility)

The applicant confessed to a murder committed with a bladed weapon. The prosecution ruled that there was no case to answer since psychiatric assessments had concluded that the applicant, who suffered from psychological disorders, had committed the murder at a time when his powers of discernment had been destroyed, so that he could not be held criminally responsible and his actions could not be punished under the criminal law. As a security measure, the prosecution ordered his provisional internment until he was cured. That measure was confirmed by a court. Doctors expressed doubts as to the applicant's lack of criminal responsibility. The prosecuting authorities subsequently ordered the resumption of the proceedings with a view to carrying out further investigative measures. Two collective expert assessments concluded that the murder had been committed when the applicant's powers of discernment had merely been impaired and that he was fit to be detained in a prison environment. The criminal law was applied to the applicant and he was found guilty and sentenced to a term of imprisonment. The applicant considered that he had been prosecuted and tried twice for the same offence.

The Court reiterated that the *non bis in idem* principle applied only after a person had been finally acquitted or convicted in accordance with the law and penal procedure of the State concerned. In the applicant's case, it noted that the prosecution had ruled that there was no case to answer, but its ruling could still be set aside by a higher authority and was therefore not final. The court had endorsed the applicant's provisional psychiatric internment without ruling on his criminal responsibility. The provisional measure had not ruled out the resumption of the proceedings. There could consequently not be said to have been an "acquittal" within the meaning of the Article in question, but rather a preventive measure not entailing any examination or finding as to the applicant's guilt. In short, in the absence of a final decision irrevocably terminating the criminal proceedings, their resumption had merely amounted to the continuation of the initial proceedings. The Court therefore held that Article 4 of Protocol No. 7 was not applicable in the applicant's case and declared the application **inadmissible** as being incompatible *ratione materiae* with the Convention.

Amnesties

Marguš v. Croatia

27 may 2014 (Grand chamber)

This case concerned the conviction, in 2007, of a former commander of the Croatian army of war crimes against the civilian population committed in 1991. He complained in particular that the criminal offences of which he had been convicted were the same as those which had been the subject of proceedings against him terminated in 1997 in application of the General Amnesty Act.

The Court held that Article 4 of Protocol No. 7 was **not applicable** in respect of the charges relating to the offences which had been the subject of proceedings against the applicant terminated in 1997 in application of the General Amnesty Act. It noted in particular that there was a growing tendency in international law to see the granting of amnesties in respect of grave breaches of human rights as unacceptable and found that by bringing a new indictment against the applicant and convicting him of war crimes against the civilian population, the Croatian authorities had acted in compliance with the requirements of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention and consistent with the recommendations of various international bodies.

The definition of *idem*

From Gradinger to Zolotukhin

Gradinger v. Austria

23 October 1995

In January 1987, while driving his car, the applicant caused an accident which led to the death of a cyclist. At the hospital where he was taken for treatment a specimen of his blood was taken. This showed that he then had a blood alcohol level of 0.8 grams per litre. The applicant maintained in particular that, by fining him pursuant to the Road Traffic Act, the district authority and the regional government had punished him in respect of facts that were identical with those on the basis of which the Regional Court had decided that he did not have a case to answer under the Criminal Code.

The Court noted in particular that, according to the Regional Court, the aggravating circumstance referred to in Article 81 of the Criminal Code, namely a blood alcohol level of 0.8 grams per litre or higher, was not made out with regard to the applicant. On the other hand, the administrative authorities found, in order to bring the applicant's case within the ambit of section 5 of the Road Traffic Act, that that alcohol level had been attained. The Court was fully aware that the provisions in question differed not only as regards the designation of the offences but also, more importantly, as regards their nature and purpose. It further observed that the offence provided for in section 5 of the Road Traffic Act represented only one aspect of the offence punished under Article 81 of the Criminal Code. Nevertheless, both impugned decisions were based on the same conduct. Accordingly, the Court held that there had been a **violation of Article 4 of Protocol No. 7**.

Oliveira v. Switerland

30 July 1998

The applicant in this case was successively convicted by a police magistrate for failing to control her vehicle and by a District Court for negligently causing physical injury in respect of a road-traffic accident. In her submission, the fact that the same incident had led to her conviction firstly for failing to control her vehicle and subsequently for negligently causing physical injury had constituted a breach of Article 4 of Protocol No. 7.

The Court noted that this was a typical example of a single act constituting various offences (*concours idéal d'infractions*). The characteristic feature of this notion is that a single criminal act is split up into two separate offences, in this case the failure to control

the vehicle and the negligent causing of physical injury. In such cases, the greater penalty will usually absorb the lesser one. In the applicant's case, the Court held that there had been **no violation of Article 4 of Protocol No. 7**, since that provision prohibits people being tried twice for the same offence whereas in cases concerning a single act constituting various offences one criminal act constitutes two separate offences. The Court added that it would admittedly have been more consistent with the principles governing the proper administration of justice for sentence in respect of both offences, which resulted from the same criminal act, to have been passed by the same court in a single set of proceedings. The fact that that procedure was not followed in the applicant's case was, however, irrelevant as regards compliance with Article 4 of Protocol No. 7 since that provision does not preclude separate offences, even if they are all part of a single criminal act, being tried by different courts, especially where, as in the present case, the penalties were not cumulative, the lesser being absorbed by the greater. The instant case was therefore distinguishable from the case of *Gradinger* (see above), in which two different courts came to inconsistent findings on the applicant's blood alcohol level.

Ponsetti and Chesnel v. France

14 September 1999 (decision on the admissibility)

Both applicants failed to fill in their tax returns. Their omission resulted in administrative penalties being imposed upon them by the tax authorities in the form of an increase in the tax payable. The authorities also instituted criminal proceedings against them, at the end of which they were convicted of tax fraud. The criminal court held that they had deliberately evaded paying tax. The applicants maintained in particular that the fact that the tax authorities had imposed tax penalties on them and that they had been convicted by a criminal court amounted to their being punished twice for the same offence.

The Court declared the application **inadmissible** under Article 4 of Protocol No. 7 as being manifestly ill-founded. It noted in particular that the administrative conviction and the criminal one were based on two provisions of the General Tax Code relating to entirely separate offences with different constituent elements. The tax offence was designed to punish only a failure to declare one's tax liability within the time-limit, whereas the criminal offence was designed to punish an intentional failure to do so.

R.T. v. Switzerland (no. 31982/96)

30 May 2000 (decision on the admissibility)

The applicant complained in particular that that he was punished twice in two separate proceedings for drunken driving. Thus he was first convicted and sentenced by a District Court and later his driving licence was withdrawn by the Road Traffic Office.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the Swiss authority merely determined the three different sanctions envisaged by law for the offence of drunken driving, namely a prison sentence, a fine and the withdrawal of the driving licence. The sanctions were issued at the same time by two different authorities, i.e. an administrative and a criminal authority. Therefore, it could not be said that criminal proceedings were being repeated contrary to Article 4 of Protocol No. 7 in the applicant's case.

Franz Fischer v. Austria

29 May 2001

The applicant fatally injured a cyclist while driving under the influence of alcohol. The District Administrative Authority imposed a fine in respect of several road traffic offences, including driving under the influence of alcohol. Subsequently, the Regional Court convicted the applicant of causing death by negligence with the aggravating circumstance of being intoxicated through the consumption of alcohol. It sentenced him to 6 months' imprisonment.

In this case the Court reiterated that the mere fact that a single act constituted more than one offence was not contrary to Article 4 of Protocol No. 7. However, there are cases where one act appears at first sight to constitute more than one offence, but

closer examination shows that only one offence should be prosecuted because it encompasses all the wrongs contained in the others. Thus, where different offences based on one act are prosecuted consecutively, the Court has to examine whether or not such offences have the same essential elements. The question whether or not the non *bis in idem* principle is violated concerns the relationship between the two offences at issue and does not depend on the order in which the respective proceedings are conducted. In the present case, the Court noted that the applicant had been tried and punished twice on the basis of one act, since the administrative offence of drunken driving and the special circumstances applying under the Criminal Code did not differ in their essential elements. Moreover, the Court was not convinced that the case had been resolved by the reduction of the prison sentence by one month, since that reduction could not alter the fact that the applicant had been tried twice for essentially the same offence and the fact that both convictions stood. The Court therefore held that there had been a **violation of Article 4 of Protocol No. 7** in respect of the applicant.

See also, among others: **Manasson v. Sweden**, decision on the admissibility of 8 April 2003; **Bachmaier v. Austria**, decision on the admissibility of 2 September 2004; **Rosenquist v. Sweden**, decision of 14 September 2004; **Aşcı v. Austria**, decision of 19 October 2006; **Hauser-Sporn v. Austria**, judgment of 7 December 2006; **Schutte v. Austria**, judgment of 26 July 2007; **Garretta v. France**, decision on the admissibility of 4 March 2008

Göktan v. France

2 July 2002

The applicant was arrested by police officers and customs officers on the verge of concluding a drugs deal. He was found guilty of drug-trafficking offences under the general criminal law, for which he was sentenced to five years' imprisonment, and also convicted of the customs offence of illegally importing goods, for which a customs fine was imposed. An order was made for his imprisonment for two years in default of payment of the customs fine, that being the statutory term. The applicant served his sentence but remained in custody for a further two years when the order for his imprisonment in default was enforced. He alleged in particular that enforcing the imprisonment in default measure at the same time as a prison sentence had the effect of imposing two successive prison sentences on him for the same offences.

The Court held that there had been **no violation of Article 4 of Protocol No. 7** in the applicant's case. It.considered in particular that the imprisonment of the applicant in default of payment of the customs fine was not an enforcement measure, but a penalty for the purposes of Article 4 of Protocol 7. The Court concluded that the applicant had been punished under the criminal law by the enforcement of the imprisonment in default measure, whereas he had already been punished by the prison sentence for drug trafficking and the customs fine for illegally importing goods. Admittedly, Article 4 of Protocol No. 7 provided that no one should be tried or punished twice for the same offence. However, the Court found that in the present case there was a notional plurality of offences in that the single criminal act could be broken down into two separate offences: a general criminal offence and a customs offence. It expressed reservations, however, concerning the system of imprisonment in default, which it considered to be an outdated custodial sentence that had survived only for the benefit of the Treasury.

Nilsson v. Sweden

13 December 2005 (decision on the admissibility)

The applicant complained that the suspension of his driving licence for 18 months following his conviction for aggravated drunken driving and unlawful driving had constituted double jeopardy in breach of Article 4 of Protocol No. 7.

The Court recalled 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. The Court agreed with the conclusion reached by the Supreme Administrative Court that, although under Swedish law the withdrawal of a driving licence had traditionally been regarded as an

administrative measure designed to protect road safety, the withdrawal on the ground of the criminal conviction, as in the present case, constituted a "criminal" matter for the purpose of Article 4 of Protocol No. 7. Moreover, in the view of the Court, the mere severity of the measure – the suspension of a driving licence for 18 months – regardless of the context of the applicant's criminal conviction, was so significant that it could ordinarily be viewed as a criminal sanction. However, the Court was unable to agree with the applicant that the decision to withdraw his driving licence amounted to new criminal proceedings being brought against him. While the different sanctions were imposed by two different authorities in different proceedings, there was nevertheless a sufficiently close connection between them, in substance and in time, to consider the withdrawal to be part of the sanctions under Swedish law for the offences of aggravated drunken driving and unlawful driving. The withdrawal therefore did not imply that the applicant was tried or punished again for an offence for which he had already been finally convicted. The Court therefore declared the application **inadmissible** as being manifestly ill-founded.

The Sergey Zolotukhin Grand Chamber judgment

Sergey Zolotukhin v. Russia

10 February 2009 (Grand Chamber)

In January 2002 the applicant was arrested for bringing his girlfriend into a military compound without authorisation. A district court found him guilty of "minor disorderly acts" under the Code of Administrative Offences and sentenced him to three days' detention. Subsequently, criminal proceedings were brought against him, under Article 213 § 2 (b) of the Criminal Code, concerning his disorderly conduct before the police report was drawn up and, under Articles 318 and 319 of the Criminal Code, concerning his threatening and insulting behaviour during and after the drafting of that report. In December 2002 the same district court found the applicant guilty of the charges under Article 319 of the Criminal Code. He was, however, acquitted of the charges under Article 213 as the court found that his guilt had not been proven to the standard required in criminal proceedings. The applicant was sentenced to five years and six months' imprisonment in a correctional colony and ordered to follow treatment for alcoholism. He complained that, after having already served three days' detention for disorderly conduct as a result of administrative proceedings against him, he was detained and tried again for the same offence in criminal proceedings.

As to the existence of a "criminal charge" in the applicant's case, the Grand Chamber took the view that although the proceedings instituted against the applicant before the District Court in January 2002 were classified as administrative in national law, they were to be equated with criminal proceedings on account, in particular, of the nature of the offence and the severity of the penalty. Then, as to whether the offences were the same, the Grand Chamber noted that it had adopted a variety of approaches in the past, placing the emphasis either on identity of the facts irrespective of their legal characterisation, on the legal classification, accepting that the same facts could give rise to different offences, or on the existence or otherwise of essential elements common to both offences. Taking the view that the existence of these different approaches was a source of legal uncertainty which was incompatible with the fundamental right guaranteed by Article 4 of Protocol No. 7, the Grand Chamber decided to define in detail what was to be understood by the term "same offence" for the purposes of the Convention. After examining the scope of the right not to be tried and punished twice as set forth in other international instruments, it stated that Article 4 of Protocol No. 7 should be construed as prohibiting the prosecution or trial of an individual for a second offence in so far as it arose from identical facts or facts that were "substantially" the same as those underlying the first offence. This guarantee came into play where a new set of proceedings was instituted after the previous acquittal or conviction had acquired the force of *res judicata*. In the instant case the Grand Chamber considered that the facts underlying the two sets of administrative and criminal proceedings against the

applicant differed in only one element, namely the threat to use violence against a police officer, and should therefore be regarded as substantially the same. Lastly, as to whether there had been a duplication of proceedings, the Grand Chamber found that the judgment in the "administrative" proceedings sentencing the applicant to three days' detention amounted to a final decision, as no ordinary appeal lay against it in domestic law. The Court further stressed that the fact that the applicant had been acquitted in the criminal proceedings had no bearing on his claim that he had been prosecuted twice for the same offence, nor did it deprive him of his victim status, as he had been acquitted not on account of the breach of his rights under Article 4 of Protocol No. 7, but solely on the ground of insufficient evidence against him. In the present case, the Court concluded that the proceedings instituted against the applicant under Article 213 § 2 (b) of the Criminal Code concerned essentially the same offence as that of which he had already been convicted under the Code of Administrative Offences, and that he had therefore been the victim of a **breach of Article 4 of Protocol No. 7**.

Post-Zolotukhin case-law

Ruotsalainen v. Finland

16 June 2009

The applicant was running his van on fuel that was more leniently taxed than the diesel oil he should have been using, without paying the extra tax. He was fined the equivalent of about 120 euros for petty tax fraud, through a summary penal order. In subsequent administrative proceedings he was ordered to pay about 15,000 euros, corresponding to the difference between the tax he actually paid and the tax he should have paid, multiplied by three because he had failed to inform the competent authorities. He appealed against that decision, but to no avail. The applicant complained that he had been punished twice for the same motor vehicle fuel tax offence.

The Court held that had been a **violation of Article 4 of Protocol No. 7**. It firstly noted that both sanctions imposed on the applicant had been criminal in nature: the first set of proceedings having been criminal according to the Finnish legal classification; and, the subsequent set of proceedings, although classified as part of the fiscal regime and therefore administrative, could not just be considered compensatory given that the difference in tax charge had been trebled as a means to punish and deter re-offending, which were characteristic features of a criminal penalty. Furthermore, the facts behind both sets of proceedings against the applicant had essentially been the same: they both concerned the use of more leniently taxed fuel than diesel oil. The only difference had been the notion of intent in the first set of proceedings. In sum, the second sanction had arisen from the same facts as the former and there had therefore been a duplication of proceedings. Nor did the second set of proceedings contain any exceptions, such as new evidence or facts or a fundamental defect in the previous proceedings which could affect the outcome of the case, as envisaged by the second paragraph of Article 4 of Protocol No. 7.

Tsonyo Tsonev v. Bulgaria (no. 2)

14 January 2010

This case concerned in particular the applicant's complaint that the central element of charges brought against him for breaching public order – following an incident in which he broke down the door of a flat and beat up the occupant – were essentially the same as for which he had already been fined in administrative proceedings.

The Court observed that the applicant had been fined in proceedings regarded under domestic law as administrative rather than criminal. However, the offence for which the applicant had been fined fell within the sphere protected by criminal law, given that it had the characteristic features attaching to criminal offences, as it aimed to punish and deter socially unacceptable conduct. The Court further noted that the same facts – breaking into someone's apartment and beating a person up – had been at the centre both of the fine imposed by the mayor and the charges brought by the prosecution. As it

had not been appealed, the fine had become final. The domestic courts had not terminated the subsequent criminal proceedings, given that the Supreme Court had consistently ruled that criminal proceedings could be opened against persons already punished in administrative proceedings. Accordingly, the Court held that there had been a **violation of Article 4 of Protocol No. 7**, finding that the applicant had been convicted – separately in administrative and criminal proceedings – for the same conduct, the same facts and the same offence.

Tomasović v. Croatia

18 October 2011

The applicant complained that she had been tried and convicted twice for possessing heroin, notably as a minor offence in March 2006 and then as a criminal offence in March 2007.

The Court held that had been a **violation of Article 4 of Protocol No. 7**, finding that the applicant had been prosecuted and tried for a second time for an offence of which she had already been convicted. The Court noted in particular that in respect of the minor offence the applicant was found guilty of possessing 0.21 grams of heroin on 15 March 2004 at about 10.35 p.m. As regards the proceedings on indictment, she was found guilty of possessing 0.14 grams of heroin on 15 March 2004 at about 10.35 p.m. The Court could not but conclude that the facts constituting the minor offence of which the applicant was convicted were essentially the same as those constituting the criminal offence of which she was also convicted.

Khmel v. Russia

12 December 2013

Taken to a police station on suspicion of drunk driving, the applicant – a member of a regional parliament – refused to give his name, behaved in an unruly manner and would not leave the building when asked to do so. Administrative proceedings were brought against him and he was found guilty of various offences, including refusing to take an alcohol test and committing minor disorderly acts. He was fined 1,500 Russian roubles (RUB). Later he was also found guilty in criminal proceedings of threatening and insulting a public official on the day he taken to the police station, and fined RUB 7,500. The administrative and criminal judgments against him were upheld on appeal. The applicant complained in particular that the bringing of both the administrative and criminal proceedings against him had amounted to double jeopardy.

The Court held that had been a **violation of Article 4 of Protocol No. 7**. It found that the applicant had been convicted of "persistent refusal to obey police orders" and "minor disorderly acts" in administrative proceedings which were to be assimilated to "penal procedure" within the autonomous Convention meaning of that term. After his conviction had become final, criminal charges relating to the same set of factual circumstances were brought against him and he was convicted again in the proceedings that followed.

Muslija v. Bosnia and Herzegovina

14 January 2014

In August 2004, a Minor Offences Court convicted the applicant of affray, finding that at about 6.40pm on 12 February 2003 he entered the flat of his former wife, slapped her in the face and punched her in the body. He was ordered to pay a fine of 150 convertible marks (BAM). In January 2008 a Municipal Court found the applicant guilty of grievous bodily harm, finding that at about 7pm on 12 February 2003 he entered the flat of his former wife, grabbed her by the throat and hit her several times. He was given a prison sentence, but this was later converted into a fine of BAM 9,000. The applicant unsuccessfully appealed to the Constitutional Court about his two convictions. He complained that he had been tried and punished twice in respect of the same incident.

The Court held that had been a **violation of Article 4 of Protocol No. 7**. It found that the applicant was "convicted" in minor-offences proceedings which were to be assimilated to "criminal proceedings" within the autonomous Convention meaning of this term. After this "conviction" became final, he was found guilty of a criminal offence

which related to the same conduct as that punished in the minor-offences proceedings and encompassed substantially the same facts. The Constitutional Court failed to apply the principles established in the *Sergey Zolotukhin* case (voir ci-dessus) and thus to correct the applicant's situation. The Court therefore considered that the proceedings instituted against the applicant under the 1998 Criminal Code concerned essentially the same offence as that of which he had already been convicted by a final decision under the Public Order Act 2000.

See also: **Milenković v. Serbia**, judgment of 1 March 2016.

Grande Stevens and Others v. Italy

4 March 2014 (Grand chamber)

The applicants were two companies and their chairman, together with the authorised representative of one of the companies, and a lawyer who had advised them. The case concerned their appeal against the administrative penalty imposed on them by the Italian Companies and Stock Exchange Commission ("Consob[4]") and the criminal proceedings to which they were subject after having been accused of market manipulation in the context of a financial operation involving the car manufacturer FIAT. The applicants complained, inter alia, that criminal proceedings had been brought against them in respect of events for which they had already received an administrative penalty. The Italian Government submitted that Italy had made a declaration to the effect that Articles 2 to 4 of Protocol No. 7 applied only to offences, proceedings and decisions classified as criminal under Italian law, which was not the case for the offences proscribed by Consob.

First the Court noted that the reservation made by Italy did not contain "a brief statement of the law concerned", contrary to the requirements of Article 57 of the Convention. A reservation which did not refer to, or mention, those specific provisions of the domestic legal order which exclude offences or procedures from the scope of Article 4 of Protocol No. 7 did not afford to a sufficient degree the guarantee that they did not go beyond the provision expressly excluded by the contracting State. Consequently, the Court found that the reservation relied upon by Italy did not meet the requirements of Article 57 and was accordingly invalid.

As to the merits, the Court concluded, under Article 6 (right to a fair trial) of the Convention, that there were indeed grounds for considering that the procedure before Consob concerned "a criminal charge". Equally, the sentences imposed by Consob and partly reduced by the court of appeal had become final in June 2009, when the Court of Cassation had delivered its judgments. Accordingly, the applicants ought to have been considered as having already been convicted by a final judgment. In spite of that, the new criminal proceedings which had been brought against them in the meantime were maintained, and resulted in judgments at first and second instance. In addition, proceedings before Consob and the criminal courts concerned the same conduct by the same persons on the same date. It followed that the new proceedings concerning a second "offence" originated in identical events to those which had been the subject-matter of the first and final conviction, which in itself amounted to a **violation of Article 4 of Protocol No. 7**. It was therefore for Italy to ensure that the new criminal proceedings brought against the applicants in violation of this provision, and which were still pending, according to the most recent information received, against the third and fifth applicants, were closed as rapidly as possible and without adverse consequences for the applicants.

Glantz v. Finland, Häkkä v. Finland, Nykänen v. Finland and Pirttimäki v. Finland

20 May 2014

The applicants in these four cases complained in particular that they had been charged and convicted of the same acts which had already been subject to taxation proceedings in which tax surcharges had been imposed in final decisions.

[4] "Consob" is a Commission charged, in particular, with protecting investors and ensuring the transparency and development of the stock markets.

The Court held that there had been a **violation of Article 4 of Protocol No. 7** in the cases of *Glantz* and *Nykänen*, finding that the applicants had been convicted twice for the same matter in two separate sets of proceedings. It held, however, that there had been **no violation of Article 4 of Protocol No. 7** in the case of *Pirttimäki*, finding that, in this case, the two impugned sets of proceedings had not constituted a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same. The Court also held that there had been **no violation of Article 4 of Protocol No. 7** in the case of *Häkkä*, where it considered that the applicant had a real possibility to prevent double jeopardy by first seeking rectification and then appealing against the taxation decisions.

Kiiveri v. Finland and Österlund v. Finland

10 February 2015

In both cases the tax authorities carried out inspections of the applicants' companies and found irregularities in the companies' tax returns. In both cases they imposed additional taxes and surcharges against the applicant. In parallel, the police launched criminal investigations into the applicants' financial activities. The first applicant was convicted of accounting offences and aggravated tax fraud. The second one was convicted of aggravated tax fraud. Both were given custodial sentences and fines. Both applicants complained that they had been tried and punished twice on the basis of the same facts.

In both cases the Court held that there had been a **violation of Article 4 of Protocol No. 7**, finding that the applicants had been convicted twice for the same matter in two separate sets of proceedings.

Boman v. Finland

17 February 2015

Early in 2010 the applicant was charged with causing a serious traffic hazard and operating a vehicle without a licence. The prosecutor requested that he be banned from driving based on the charge of causing a serious traffic hazard. The District Court convicted the applicant in April 2010, and duly sentenced him to a fine and a driving ban up until 4 September 2010. In May 2010 the police imposed a new two month driving ban on the applicant, to start on 5 September, for driving a vehicle without a licence. The applicant complained that he had been subjected to two sets of criminal proceedings and two punishments for an offence derived from one set of facts.

The Court considered that the second driving ban issued by the police in the administrative proceedings was to be regarded as criminal for the purposes of Article 4 of Protocol No. 7. It further found that the two impugned sets of proceedings constituted a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same. It also noted that the applicant's conviction had become "final", within the autonomous meaning given to the term by the Convention. Lastly, regarding the question whether there had been a duplication of proceedings, the Court noted in particular that the two proceedings, namely the criminal proceedings against the applicant and the proceedings to impose a driving ban, were intrinsically linked together, in substance and in time, to consider that these measures against the applicant took place within a single set of proceedings for the purpose of Article 4 of Protocol No. 7. The Court therefore held that there had been **no violation of Article 4 of Protocol No. 7**, finding that the applicant had not been convicted twice for the same matter in two separate sets of proceedings.

Kapetanios and Others v.Greece

30 April 2015

Criminal proceedings were brought against each of the three applicants on contraband charges, but they were acquitted on those charges by the Criminal Court and the Court of Appeal. At the same time they were ordered to pay administrative fines for illegal imports, or fiscal fines for contraband. The applicants complained in particular that the administrative courts, failing to take account of their acquittal by the criminal courts, infringed the *non bis in idem* principle.

The Court noted, firstly, that the administrative penalties in question were indeed criminal for the purposes of the Convention, given the severity of the fines imposed on the applicants, which varied between two and three times the amount due in customs duties, and the severity of the maximum fines that could have been imposed, which went up to ten times the amount due in customs duties. In consequence, the Court ruled admissible the complaint under Article 4 of Protocol No. 7[5]. The Court further observed that the acquittal judgments had become final in 1992, 2000 and 1998 respectively, and that the second set of proceedings had nonetheless not been brought to a close. In addition, for each of the applicants the two sets of proceedings, administrative and criminal, referred specifically to the illegal import of the same objects, and thus to the same conduct over the same periods. The Court commented, however, that the principle *non bis in idem* would not have been breached had the two possible forms of penalty, imprisonment and pecuniary, been envisaged as part of a single set of judicial proceedings, or if the criminal court had suspended the trial following the opening of the administrative proceedings and subsequently brought the criminal proceedings to a close once the Supreme Administrative Court had confirmed the fine. As that had not been the case, the Court concluded that there had been a **violation of Article 4 of Protocol No. 7** in respect of the three applicants.

Igor Tarasov v. Ukraine

16 June 2016

This case concerned administrative and criminal proceedings brought against the applicant following an altercation in a bar. The applicant complained in particular about being tried and punished twice for the same offence.

The Court held that there had been a **violation of Article 4 of Protocol No. 7**, finding that both sets of proceedings were criminal and that the Ukrainian authorities had duplicated criminal proceedings, which concerned substantially the same facts, in breach of the principle *non bis in idem*.

Rivard v. Switzerland

4 October 2016

The applicant in this case submitted that the imposition of a fine by the criminal court followed by the withdrawal of his driving licence by an administrative authority for the same offence, that is to say exceeding the motorway speed limit, was contrary to the *non bis in idem* principle.

The Court held that there had been **no violation of Article 4 of Protocol No. 7**. It found in particular that the facts forming the basis of both sets of proceedings against the applicant had been identical, but noted that the licence withdrawal procedure was a kind of additional penalty complementing the criminal conviction (a fine). The Court therefore concluded that there was a sufficiently close material and temporal link between the administrative and criminal proceedings to consider them as two aspects of a single system, and therefore held that there had not been two sets of proceedings. The Court therefore ruled that it could not be inferred that the applicant had been punished or prosecuted for an offence of which he had already been convicted under a final judgment.

Ramda v. France

19 December 2017

The applicant, an Algerian national, was extradited from the United Kingdom to France on charges related to a series of terrorist attacks in 1995 in France. He was first tried and convicted by a criminal court (*tribunal correctionnel*) on charges concerning his participation in a group aimed at preparing terrorist attacks. He was subsequently tried and convicted by an assize court (*cour d'assises*) on charges of complicity to commit a series of particular crimes such as murder and attempted murder. He complained in

[5]. In this connection, the Court noted the convergence between its assessment and that of the Court of Justice of the European Union with regard to the criminal nature of a penalty (see paragraph 73 of the judgment).

particular about a violation of the *ne bis in idem* principle owing to his criminal conviction despite his previous final conviction by the ordinary criminal courts.
The Court held that there had been **no violation of Article 4 of Protocol No. 7**, finding that the applicant had not been prosecuted or convicted in the framework of the criminal proceedings for facts which had been substantially the same as those of which he had been finally convicted under the prior summary proceedings. The Court also reiterated that it was legitimate for the Contracting States to take a firm stance against persons involved in terrorist acts, which it could in no way condone, and that the crimes of complicity in murder and attempted murder of which the applicant had been convicted amounted to serious violations of the fundamental rights under Article 2 (right to life) of the Convention, in respect of which States are required to pursue and punish the perpetrators, subject to compliance with the procedural guarantees of the persons concerned, as was the situation for the applicant in the present case.

Mihalache v. Romania

8 July 2019 (Grand Chamber)
The applicant in this case submitted that he had been prosecuted twice for having refused to undergo a blood test in the framework of a police control with a view to determining his alcohol blood level and that the reopening of the proceedings against him had been inconsistent with the criteria set out in Article 4 of Protocol No. 7.
The Court held that there had been a **violation of Article 4 of Protocol No. 7**, finding that the applicant had been prosecuted twice for the same offence and that the reopening of the proceedings had not been justified. It noted in particular that the applicant had been the subject of an initial set of criminal proceedings, during which the public prosecutor's office had imposed an administrative fine on him, which became final on expiry of the time-limit set out in Article 2491 of the Code of Criminal Procedure. Subsequently, the higher-ranking prosecutor's office set aside the lower prosecutor's decision and committed the applicant for trial. He was sentenced to one year's imprisonment, suspended.

Korneyeva v. Russia

8 October 2019[6]
This case concerned the applicant being convicted of two separate offences originating in the similar circumstances of an unauthorised rally.
The Court held that there had been a **violation of Article 4 § 1 of Protocol No. 7** in the applicant's case. It rejected in particular the Russian Government's argument that the duplication of the proceedings against the applicant had been justified by the distinct areas covered by two different charges. It further found there was an overlap of the facts which were at the basis of each prosecution. Taking account of its own case-law and a ruling of the Plenary of the Supreme Court of Russia in similar circumstances, the Court found that the applicant had been tried and convicted twice for the same offence. Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, noting that it had more than 100 applications dealing with issues that were similar to those in the applicant's case, the Court found that it remained for Russia, together with the Council of Europe Committee of Ministers, to consider what measures could be appropriate to facilitate the rapid and effective suppression of the malfunction in the national system of human-rights protection, for instance, by way of further clarifying the scope of the *ne bis in idem* principle in CAO (Code of Administrative Offences) cases in a manner compatible with the Court's approach in this case and ensuring its practical application within the applicable domestic remedies.

See also, recently:

Šimkus v. Lithuania

13 June 2017

[6]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Dual proceedings

A. and B. v. Norway (nos. 24130/11 and 29758/11) (see also above, under "Scope")

15 November 2016 (Grand Chamber)

This case concerned two taxpayers who submitted that they had been prosecuted and punished twice – in administrative and criminal proceedings – for the same offence. The applicants alleged more particularly that they had been interviewed by the public prosecutor as persons charged and had then been indicted, had had tax penalties imposed on them by the tax authorities, which they had paid, and had thereafter been convicted and sentenced in criminal proceedings.

In this case the Grand Chamber noted in particular that, whilst a particular duty of care to protect the specific interests of the individual sought to be safeguarded by Article 4 of Protocol No. 7 is incumbent on the Contracting States, there is also a need to leave the national authorities a choice as to the means used to that end. In cases raising an issue under Article 4 of Protocol No. 7, it is the task of the Court to determine whether the specific national measure complained of entails, in substance or in effect, double jeopardy to the detriment of the individual or whether, in contrast, it is the product of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable and proportionate manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice. It cannot be the effect of Article 4 of Protocol No. 7 that the Contracting States are prohibited from organising their legal systems so as to provide for the imposition of a standard administrative penalty on wrongfully unpaid tax (albeit a penalty qualifying as "criminal" for the purposes of the Convention's fair-trial guarantees) also in those more serious cases where it may be appropriate to prosecute. The object of Article 4 of Protocol No. 7 is to prevent the injustice of a person's being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an "integrated" approach to the social wrongdoing in question, and in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes.

In the present case, the Grand Chamber held that there had been **no violation of Article 4 of Protocol No. 7**. It first noted that it had no cause to cast doubt on the reasons why the Norwegian legislature had opted to regulate the socially harmful conduct of non-payment of taxes by means of an integrated dual (administrative/criminal) process. Nor did it call into question the reasons why the Norwegian authorities had chosen to deal separately with the more serious and socially reprehensible aspect of fraud in the context of criminal proceedings rather than an ordinary administrative procedure. The Court then found that the conduct of dual proceedings, with the possibility of a combination of different penalties, had been foreseeable for the applicants, who must have known from the outset that criminal prosecution as well as the imposition of tax penalties was possible, or even likely, on the facts of their cases. The Grand Chamber also observed that the administrative and criminal proceedings had been conducted in parallel and were interconnected. The facts established in one of the sets of proceedings had been relied on in the other set and, as regards the proportionality of the overall punishment, the sentence imposed in the criminal trial had taken account of the tax penalty. The Grand Chamber was therefore satisfied that, while different penalties had been imposed by two different authorities in the context of different procedures, there had nevertheless been a sufficiently close connection between them, both in substance and in time, for them to be regarded as forming part of an overall scheme of sanctions under Norwegian law.

Johannesson and Others v. Iceland

18 May 2017

The applicants, two individuals and one company, complained that they had been tried twice for the same conduct of failing to make accurate declarations for tax assessments:

first through the imposition of tax surcharges, and second through a subsequent criminal trial and conviction for aggravated tax offences.
The Court held that had been a **violation of Article 4 of Protocol No. 7** in respect of the two individual applicants, finding that they had been tried and punished twice for the same conduct. In particular, this was because the two sets of proceedings had both been "criminal" in nature; they had been based on substantially the same facts; and they had not been sufficiently interlinked for it to be considered that the authorities had avoided a duplication of proceedings. In this respect, the Court recalled that, though Article 4 of Protocol No.7 does not exclude the carrying out of parallel administrative and criminal proceedings in relation to the same offending conduct, the two sets of proceedings must have a sufficiently close connection in substance and in time to avoid duplication. In the present case, the Court found that there was not a sufficiently close connection in substance and in time between the two sets of proceedings for them to avoid duplication. This was for two reasons in particular. First, there had been only a limited overlap in the timing of the two sets of proceedings. Their combined overall length had been about nine years and three months – yet they had only been conducted in parallel for a little more than a year. The two applicants had been indicted in the criminal proceedings in December 2008, 15 and 16 months after the Internal Revenue Board had issued its decisions upon their tax appeals. Second, there had been a separate collection and assessment of the evidence in the two sets of proceedings, because the police had conducted their own independent investigation. The applicants' liability had therefore been assessed by different authorities and courts in proceedings that were largely independent of each other. As further regards the applicant company's complaint, the Court declared it **inadmissible**, because the company had failed to show that it wished to continue its application before the Court.

Nodet v. France

6 June 2019

The applicant, a financial analyst, was fined by the financial markets regulator, the AMF, for manipulation of a share price, and subsequently by criminal courts for the offence of obstructing the proper operation of the stock market by the same action. He complained that he had been punished twice for the same offence.
The Court held that had been a **violation of Article 4 of Protocol No. 7** in respect of the applicant. It observed, first, that there was no sufficiently close connection in substance between the two sets of proceedings, of the AMF and of the criminal courts, in view of the purposes pursued and given, to some extent, the repetition in the gathering of evidence by various investigators; secondly, and above all, there was no sufficiently close connection in time for the proceedings to be considered part of an integrated mechanism of sanctions prescribed by French law. The Court therefore concluded that the applicant had sustained disproportionate damage on account of his double prosecution and the double conviction, by the AMF and the criminal courts, for the same facts.

See also, recently:

Bjarni Ármannsson v. Iceland

16 April 2019 (Committee judgment)

Texts and documents

See in particular:

- **Guide on Article 4 of Protocol No. 7 to the European Convention on Human Rights – Right not to be tried or punished twice**, Directorate of the Court's Jurisconsult

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