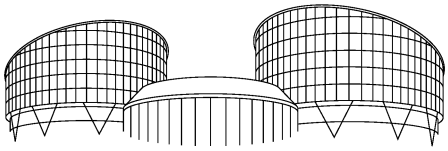

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NYKÄNEN v. FINLAND

(Application no. 11828/11)

JUDGMENT

STRASBOURG

20 May 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nykänen v. Finland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 15 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11828/11) 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 Mikko Tapani Nykänen ("the applicant"), on 17 February 2011.

2. The applicant was represented by Mr Atte Niemi, a lawyer practising in Lahti. 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 tax fraud.

4. On 18 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Espoo.

A. Taxation proceedings

6. The tax inspector conducted a tax inspection in a company in 2005.

7. On 28 November 2005 the tax authorities considered that the applicant had received 33,000 euros (EUR) as disguised dividends from that company during the tax year 2003. An additional tax and a tax surcharge (*veronkorotus, skatteförhöjning*) of EUR 1,700 were imposed.

8. The applicant sought rectification from the local Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden)*.

9. On 25 January 2006 the Tax Rectification Committee rejected the applicant's application. 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. The applicant appealed to the Kuopio Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*).

11. On 29 May 2008 the Kuopio Administrative Court rejected the applicant's appeal on the same grounds as the Tax Rectification Committee.

12. The applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*).

13. On 1 April 2009 the Supreme Administrative Court refused the applicant leave to appeal.

B. Criminal proceedings

14. On 19 August 2008 the public prosecutor brought charges against the applicant of, *inter alia*, tax fraud (*veropetos, skattebedrägeri*) concerning the tax year 2003. According to the charges, the applicant was accused of tax fraud as he had under-declared his income. The undeclared income amounted to EUR 33,000 for the tax year 2003 and, consequently, the tax imposed in 2003 had been EUR 12,420 too low.

15. On 13 February 2009 the Tuusula District Court (*käräjäoikeus, tingsrätten*) convicted the applicant of tax fraud and imposed a suspended prison sentence of 8 months. He was also ordered to pay to the tax authority EUR 9,500 plus interest. The court found that the amount of disguised dividends was EUR 26,882.90 and that the tax due amounted to EUR 9,500.

16. By letter dated 26 April 2010 the applicant appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*), requesting that the charges be dismissed.

17. On 25 March 2010 the Helsinki Appeal Court convicted the applicant as charged and sentenced him to 10 months in prison. It ordered the applicant to pay the tax authorities EUR 12,420 plus interest. The court found that, contrary to the opinion of the District Court, the value-added tax was to be included in the amount of disguised dividends. The correct amount of disguised dividends was thus EUR 33,000 and the tax evaded amounted to EUR 12,420.

18. By letter dated 24 May 2010 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), requesting that the charges and the compensation claim be dismissed without examining the merits or alternatively that they be rejected. He claimed, by referring to Article 4 of Protocol No. 7 to the Convention and to the Court's case-law, that the *ne bis in idem* principle had been violated as tax surcharges had already been imposed for the same acts by a decision which had become final.

19. On 1 September 2010 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Tax Assessment Procedure Act

20. 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

21. 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.

22. 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 Court's case-law

23. 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.

24. 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 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.

25. 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

26. 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.

27. The proposed Act on Tax Surcharges and Customs Duty Surcharges Imposed by a Separate Decision (*laki erillisellä päätöksellä määrättävästä veron- tai tullinkorotuksesta, lagen om skatteförhöjning och tullhöjning som påförs genom ett särskilt 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

28. The applicant complained under Article 4 of Protocol No. 7 to the Convention that the *ne bis in idem* principle had been violated in his case. Charges had been brought about the same acts which had been subject to taxation proceedings in which tax surcharges had been imposed. The taxation proceedings had become final on 1 April 2009 and the criminal proceedings on 1 September 2010.

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

> "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."

30. The Government contested that argument.

A. Admissibility

31. The Court notes that the application 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

32. The applicant maintained that, in the taxation proceedings, the decision of the Administrative Court of 29 May 2008 became final when the Supreme Administrative Court did not grant the applicant leave to appeal. He claimed that the speed with which two parallel sets of proceedings were conducted by the domestic authorities could not be his responsibility as that was not dependent on him. If such interpretation was accepted, it would be possible for the State to prolong artificially the length of the proceedings in order to avoid a violation. The State had the possibility to choose which proceedings to pursue against the applicant. In his opinion the Convention should be interpreted in a manner which prevented two parallel sets of proceedings in the same matter.

33. The applicant noted that tax surcharges had already been imposed on him on 28 November 2005. In the light of the Supreme Court's last case-law (*KKO:2013:59)*, the charges against him concerning tax fraud should not have been examined at all on the merits after 28 November 2005.

(b) The Government

34. In the Government's 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 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.

35. The Government noted that the Court's case-law did not seem to include in the interpretation of the *res judicata* criterion also the *lis pendens* criterion. In the Government's view, the case *Tomasović v. Croatia* (see *Tomasović 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.

36. As to the Supreme Court's 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 in 2010. In the Government's view the Supreme Court's ruling did not imply that the earlier line of interpretation by that court was in contradiction with the Court's case-law.

37. 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 Court's assessment

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

38. 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 *Storbråten v. Norway* (dec.), no. 12277/04, ECHR 2007-... (extracts), with further references). The notion of "penal 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 "criminal charge" and "penalty" 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; *Göktan 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).

39. The Court's established case-law sets out three criteria, commonly known as the "Engel 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 "criminal 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).

40. 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 "criminal" also for the purpose of Article 4 of Protocol No. 7.

41. 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)?

42. 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 "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.

43. 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 failure by the applicant to declare income. Both sets of proceedings also concerned the same period of time and the same amount of evaded taxes.

(c) Whether there was a final decision?

44. 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 Court's 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).

45. 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 "final" 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.

46. In the present case the taxation proceedings became final on 1 April 2009 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 "final", within the autonomous meaning given to the term by the Convention, on 1 April 2009.

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

47. The Court reiterates that Article 4 of Protocol No. 7 prohibits the repetition of criminal proceedings that have been concluded by a "final" 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 "punished" to the word "tried" 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).

48. 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).

49. 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 *Tomasović v. Croatia*, cited above, § 31; and *Muslija v. Bosnia and Herzegovina*, no. 32042/11, § 37, 14 January 2014).

50. 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.

51. 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 applicant's 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 Court's 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.

52. Consequently, the present case concerns two parallel and separate sets of proceedings of which the first set became final on 1 April 2009 while the second set was initiated on 19 August 2008. The two sets of proceedings

were thus pending concurrently until 1 April 2009 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 1 September 2010, the applicant was convicted twice for the same matter in two sets of proceedings which became final on 1 April 2009 and 1 September 2010 respectively.

53. 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 in which 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.

54. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If 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

56. The applicant claimed EUR 5,500 in respect of pecuniary damage as lost income during the imprisonment and EUR 27,000 for suffering caused by his imprisonment. He also claimed EUR 3,000 in respect of non-pecuniary damage caused by the violation.

57. 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 claimed EUR 5,500 and EUR 27,000 should be rejected. As to the non-pecuniary damage, 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 1,000.

58. 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 would 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 5,500 and EUR 27,000. On the other hand, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicant also claimed EUR 2,511 (inclusive of value-added tax) for the costs and expenses incurred before the Court.

60. The Government considered that the applicant's claim for costs and expenses was excessive as to quantum. In the Government's view, the award for costs and expenses should not exceed EUR 1,350 (inclusive of value-added tax).

61. According to the Court's 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 (inclusive of value-added tax) for the proceedings before the Court.

C. Default interest

62. 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 application admissible;

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 2,500 (two thousand five hundred euros), 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 applicant's 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.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President