



Withdrawing a driving licence from a motorist who had already been fined for speeding did not violate the *non bis in idem* principle

In today's **Chamber** judgment¹ in the case of **Rivard v. Switzerland** (application no. 21563/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice) of the European Convention on Human Rights.

The case concerned the fact that Mr Rivard had been penalised twice (payment of a fine and withdrawal of licence) for the same facts (exceeding the motorway speed limit) by two different Swiss authorities.

The Court found in particular that the facts forming the basis of both sets of proceedings against Mr Rivard 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 Mr Rivard had been punished or prosecuted for an offence of which he had already been convicted under a final judgment, in breach of Article 4 § 1 of Protocol No. 7 to the Convention (*non bis in idem* principle).

Principal facts

The applicant, Joseph Paul Francois Rivard, is a Canadian national who was born in 1950 and lives in Duillier, Switzerland).

In 2010 Mr Rivard was caught speeding in his motor vehicle. Consequently, in July 2010 the Traffic Violations Department of the Canton of Geneva fined him 600 Swiss francs for driving in excess of the speed limit. In September 2010 the Road Traffic Department of the Canton of Vaud ordered the withdrawal of his driving licence for one month for the same offence. Mr Rivard appealed against the decision to withdraw his licence, but his appeal was finally dismissed by the Vaud Cantonal Court in January 2011. He appealed to the Federal Court against that judgment, submitting that that administrative penalty violated the *non bis in idem* principle since he had already been fined for the same offence, but his appeal was dismissed in September 2011.

Complaints, procedure and composition of the Court

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), Mr Rivard 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.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The application was lodged with the European Court of Human Rights on 5 April 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

[Article 4 of Protocol No. 7 \(right not to be tried or punished twice\)](#)

As regards whether the licence withdrawal procedure could be considered as a “criminal sanction” for the purposes of Article 4 of Protocol No. 7 to the Convention, the Court noted that the Federal Court had recognised the criminal nature of such withdrawal. The Court also reiterated that it had already held, in similar cases, that the withdrawal of a driving licence was criminal in nature for the purposes of Article 4 of Protocol No. 7 where the licence was withdrawn because of a criminal conviction, even if it was classified as an administrative measure under domestic law.

As to whether Mr Rivard had been prosecuted twice for the same offence, the Court observed that Mr Rivard had been fined for exceeding the speed limit and that he had then had his licence withdrawn because of the same speeding offence. Therefore, the same facts had given rise to both procedures.

As regards whether the applicant had been prosecuted twice, the Court noted that the criminal court had no jurisdiction to order administrative penalties, and that similarly, the administrative authority had no jurisdiction to impose penalties of a criminal nature. Each authority could therefore impose a separate set of penalties, which did not overlap. Furthermore, the administrative authority could only depart from the criminal judgment under certain limiting conditions, such as unknown findings of fact by the criminal court, which did not apply in the instant case. The Court therefore takes the view that there was a material link between the two procedures which meant that the conclusions reached in one procedure had direct consequences for the possible outcome of the other, such that the licence withdrawal in question was more like an additional penalty complementing the criminal conviction. Moreover, the Court noted the existence of a close temporal link between both procedures, as Mr Rivard’s driving licence had been withdrawn by the administrative authority very soon after his speeding conviction had become enforceable.

Consequently, the Court held that the administrative (withdrawal of licence) and criminal (fine) procedures were bound by a sufficiently close material and temporal link to be considered as two aspects of a single system, and that there had not been two separate procedures or sets of proceedings. It therefore considered that it could not be inferred from the impugned withdrawal of a driving licence that Mr. Rivard had been punished or prosecuted for an offence of which he had already been convicted under a final judgment in breach of Article 4 § 1 of Protocol No. 7 to the Convention (*non bis in idem* principle). The Court therefore found no violation.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.