



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

FOURTH SECTION

CASE OF HUHTAMÄKI v. FINLAND

(Application no. 54468/09)

JUDGMENT

STRASBOURG

6 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Huhtamäki v. Finland,

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 14 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 54468/09) 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 Ari-Matti Antero Huhtamäki (“the applicant”), on 25 September 2009.

2. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged under Articles 6 and 7 of the Convention that, in particular, he had not had a fair trial as he had been convicted for an ancillary offence when the perpetrator of the principal offence had been acquitted.

4. On 27 September 2010 the President of the Fourth Section decided to communicate the above-mentioned complaints under Articles 6 and 7 of the Convention to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Helsinki.

6. On 6 August 1993 a company controlled by Mr A. purchased real estate. In summer 1997 Mr A. transferred the control over the company to another person who, on 24 September 1997, met the applicant for the first

time. On 13 October 1997 the applicant sold the real estate, in accordance with this other person's instructions, on behalf of the company to another company. On 14 October 1997 Mr A. was declared personally bankrupt while he was at the same time charged with dishonesty by a debtor (*velallisen epärehellisyys, oredlighet som gäldenär*). On 7 November 1997, when the first swearing of the inventory of the bankruptcy estate was held, Mr A. refused to swear the inventory. The inventory did not include the real estate. On 17 December 1997, when the second swearing of the inventory of the bankruptcy estate was held, Mr A. swore the inventory.

7. On 23 June 2005 the public prosecutor brought charges against the applicant for having concealed and obliterated, between 18 December 1997 and 12 February 1998 by, *inter alia*, drafting contracts and transferring moneys, the true nature and origin of the real estate, in reality owned by Mr A., knowing that this property was obtained by a criminal act.

8. On 16 June 2006 the Helsinki District Court (*käräjäoikeus, tingsrätten*) convicted the applicant in the context of money laundering, *inter alia*, of an aggravated receiving offence (*törkeä kätkemisrikos, grovt häleri*) and sentenced him to a term of imprisonment of one year and ten months and to removal from office as a professor of commercial law. The conviction was based on a principal offence committed by Mr A. He was convicted on the same date by the District Court of aggravated debtor's fraud (*törkeä velallisen petos, grovt gäldenärsbedrägeri*) and sentenced to imprisonment. The court found that Mr A. had not declared all his assets when swearing the inventory of his personal bankruptcy estate in 1997.

9. By letter dated 29 September 2006 the applicant appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*) requesting, *inter alia*, that he be acquitted.

10. On 14 December 2007 the Helsinki Appeal Court upheld the judgment of the District Court, except for the fact that the applicant's prison sentence was converted into a conditional one.

11. By letter dated 8 February 2008 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*).

12. On 17 April 2009 the Supreme Court granted leave to appeal to Mr A. The applicant was granted leave to appeal only in respect of the removal from office and the obligation to pay costs and expenses to Mr A.'s bankruptcy estate. As to the merits, the court upheld the District Court's judgment. The court found that the information Mr A. had declined to give in 1997 was not such that it would in all probability have provided a basis for his conviction. Mr A. had thus not had any right to decline to give this information and he was thus guilty of aggravated debtor's fraud. As concerns the applicant, the court acquitted him of the obligation to pay costs and expenses to Mr A.'s bankruptcy estate. As to his removal from office, the court did not change the earlier judgments. The judgment included several dissenting opinions.

13. Four days later, on 21 April 2009, the Court delivered its judgment in the case *Marttinen v. Finland* (no. 19235/03, 21 April 2009) in which it found that there had been a violation of the applicant's right to silence and his right not to incriminate himself guaranteed by Article 6 § 1 of the Convention. In that case the applicant was charged with for having previously given false accounts of his assets at the time when coercion was used to obtain information from him. The circumstances of that case were identical to that of Mr A. with the only exception that Mr Marttinen had been subject to enforcement while Mr A. was subject to personal bankruptcy proceedings. They were both under threat of a similar default fine and even imprisonment if they did not agree to declare all their assets. This information could have been used against them in other pending criminal proceedings.

14. On an unspecified date Mr A. filed an extraordinary appeal with the Supreme Court requesting re-opening of his case on the basis of the Court's judgment in the *Marttinen* case.

15. On 12 May 2009 the applicant also filed a re-opening request with the Supreme Court as his conviction was ancillary to that of Mr A. He also requested that the execution of his sentence be stayed as far as the removal from office was concerned.

16. On 22 May 2009 the Supreme Court refused the request to stay the execution due to the fact that the removal from office had taken effect on the date of the judgment, namely, on 17 April 2009, and that there was thus no execution measure to be stayed.

17. On 20 October 2009 the Supreme Court, sitting in *plenum*, re-opened Mr A.'s case, dismissed all the charges against him and freed him from the sentence imposed. The court found that Mr A. had had a right to remain silent as he could not rule out that the information given could be used against him in criminal proceedings. Mr A had thus been entitled to decline to declare, *inter alia*, the real estate.

18. On 22 June 2010 the Supreme Court, sitting in *plenum*, rejected the applicant's request for re-opening. The court found that even though Mr A. had had a right to remain silent, this did not mean that the applicant's acts to conceal assets, namely the real estate, from A.'s creditors were justified. The effects of the right not to incriminate oneself were limited only to the person who was asked to submit information. A person could be convicted of a receiving offence even if the perpetrator of the principal offence was freed from criminal liability. The applicant's right to a fair trial had not been violated as no information received in violation of the right not to incriminate oneself had been used as evidence *vis-à-vis* the applicant.

19. The referendary and three justices gave a joint dissenting opinion. According to them, there was no domestic law or jurisprudence on whether the right not to incriminate oneself could have effects on other persons connected to the crime in question. The Supreme Court had already found

that Mr A. had not committed the debtor's fraud of which he was accused. Therefore the applicant could not have been guilty of receiving the assets that Mr A. had acquired through debtor's fraud, as indicated in the charges. There were no other charges against him. Consequently, the applicant's case should be re-opened, all charges against him dismissed and he should be freed from all sanctions imposed on him.

II. RELEVANT DOMESTIC LAW

1. Criminal Code

20. Chapter 39, sections 2 and 3, of the Criminal Code (*rikoslaki; strafflagen*, Act no. 769/1990, as in force at the relevant time) provide the following:

"Fraud by a debtor

A debtor who, in order to obtain unlawful financial benefit for himself or herself or another in bankruptcy, enforcement, debt adjustment or restructuring proceedings

- (1) conceals his or her property,
- (2) reports a liability that is false in full or in part, or based on a sham transaction,
- (3) gives other false or misleading information on a circumstance that is significant from the point of view of the creditors, or
- (4) fails to report a liability,

shall be sentenced for *fraud by a debtor* to a fine or to imprisonment for at most two years.

If the debtor rectifies the misleading information or otherwise prevents the effect of his or her act on the proceedings before he or she attests to the correctness of the estate inventory or before the misleading information otherwise affects the proceedings, the act is not deemed fraud by a debtor.

Aggravated fraud by a debtor

If in the fraud by a debtor

- (1) considerable benefit is sought or
- (2) the debtor attests in court to the correctness of the false or misleading information

and the fraud by the debtor is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated fraud by a debtor* to imprisonment for at least four months and at most four years."

21. Chapter 32, section 1, of the Criminal Code (Act no. 769/1990, as in force at the relevant time) provides the following:

“Receiving offence

A person who hides, procures, takes into his or her possession or conveys property obtained from another through theft, embezzlement, robbery, extortion, fraud, usury or means of payment fraud or through fraud by a debtor, aggravated fraud by a debtor or intentional deceitfulness by a debtor, or otherwise handles such property although he or she knows that the property was thus obtained shall be sentenced for a receiving offence to a fine or to imprisonment for at most one year and six months.

A person shall also be sentenced for a receiving offence if he or she

1) receives, converts, conveys or transfers funds or other property although he or she knows that they were acquired through an offence or replace funds or property acquired through an offence, in order to conceal or obliterate their illegal origin or to assist the offender in evading the legal consequences of the offence, or

2) conceals or obliterates the true nature, origin, location or disposition of or rights to property referred to in paragraph 1, or conceals information about such a circumstance which he or she is obliged to disclose under law.”

22. According to Chapter 32, section 2, of the same Code:

“Aggravated receiving offence

If the object of the receiving offence is very valuable property and the receiving offence is aggravated also when assessed as a whole, the offender shall be sentenced for an aggravated receiving offence to imprisonment for at least four months and at most four years.”

23. According to Chapter 5, section 7, of the Criminal Code (Act no. 15/2003, as in force at the relevant time),

“[w]here a special circumstance vindicates, mitigates or aggravates an act, it applies only to the perpetrator, inciter or abettor to whom the circumstance pertains.

An inciter or abettor is not exempted from penal liability by the fact that he or she is not affected by a special circumstance related to the person and said circumstance is a basis for the punishability of the act by the perpetrator.”

2. Code of Judicial Proceedings

24. Chapter 31, section 14, subsection 1, of the Code of Judicial Proceedings (*oikeudenkäymiskaari, rättegångs balk*, Act no. 109/1960) provides the following:

“If the request for the reversal of a final judgment is upheld and it is deemed necessary to retry the case, the Supreme Court shall order the deadline, the court and the manner in which the case is to be brought for a retrial. However, the Supreme Court shall have the right to immediately rectify the judgment, if the case is found to be clear and the request does not concern the reversal of a judgment in a criminal case to the detriment of the defendant.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained under Article 6 § 1 of the Convention that he had not had a fair trial as he had been convicted of an ancillary offence when the perpetrator of the principal offence had been acquitted.

26. Article 6 § 1 of the Convention reads, in the relevant parts, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

27. The Government contested that argument.

Admissibility

28. The Government pointed out that, according to the Court’s case-law, Article 6 of the Convention did not apply to extraordinary appeal proceedings. This part of the complaint was thus incompatible *ratione materiae* with the provisions of the Convention.

29. The applicant acknowledged that the Government had correctly cited the Court’s case-law. However, in the present case, the extraordinary proceedings were a continuation of the main proceedings. The Supreme Court decided, as the first and only instance, a central argument regarding the basis for the applicant’s criminal liability. The charges against the perpetrator of the principal offence, Mr A., had been dismissed in other extraordinary proceedings to which the applicant was never a party. The Supreme Court should have reopened the case and referred it back to the Appeal Court for ordinary proceedings. What the Supreme Court did in the present case was to decide, as the first and only instance, on the applicant’s guilt, on the basis of facts that had changed and without holding an oral hearing. It decided that the changed facts did not have an influence on the outcome of the matter. Article 6 should apply to the present case because the Supreme Court in fact determined a criminal charge against the applicant.

30. The Court notes that the applicant is complaining under Article 6 of the Convention that he did not have a fair trial as he remained convicted of an ancillary offence when the perpetrator of the principal offence was acquitted. When the ordinary proceedings ended on 17 April 2009, both the applicant and Mr A. were convicted. It was only on 20 October 2009 when the Supreme Court re-opened Mr A.’s case, dismissed all the charges against him and freed him from the sentence imposed, that the situation changed. The applicant is thus in fact complaining about the fairness of the

extraordinary appeal proceedings which took place after the ordinary proceedings had already finished. The applicant was not convicted for the first time in these proceedings but his guilt had already been established in 2006 and 2007 during the ordinary proceedings and his conviction was only maintained in the extraordinary appeal proceedings.

31. The Court notes that, according to the domestic law, the Supreme Court has the competence, under Chapter 31, section 14, subsection 1, of the Code of Judicial Proceedings, to retry the case immediately after having reopened it. In the present case, however, the Supreme Court rejected the applicant's request for re-opening on 22 June 2010 and there was no retrial. These proceedings thus did not concern any issue other than whether to reopen the ordinary proceedings or not. As Article 6 of the Convention is not applicable to extraordinary appeal proceedings, the Court considers that this complaint is incompatible *ratione materiae* with the provisions of the Convention. This complaint must therefore be declared inadmissible within the meaning of Article 35 § 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

32. The applicant complained under Article 7 of the Convention that, according to the Finnish Criminal Code, an individual could not be convicted of an ancillary offence without convicting the perpetrator of the principal offence.

33. Article 7 of the Convention reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

34. The Government contested that argument.

A. Admissibility

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

B. Merits

1. *The parties' submissions*

36. The Government maintained that the wording of the Criminal Code in respect of a receiving offence showed that punishment of a principal offence was not a prerequisite for the punishability of an ancillary offence. The principal offence could go unpunished for example when the perpetrator was unaccountable or immune from jurisdiction. The principal offence might also be statute-barred even if the receiving offence was not. Convicting a person of a receiving offence did not necessitate either that the perpetrator of the principal offence be known or that it be known from where the property concealed had, for example, been stolen. In this sense a receiving offence was treated as an independent act.

37. The Government pointed out that the Supreme Court had confirmed in its judgment of 22 October 2009 that attributing the aggravated receiving offence to the applicant did not violate the legality principle laid down in Article 7 of the Convention. It was clear that, after a person was declared bankrupt, that person could no longer possess any property lawfully. The applicant must have considered it possible that, at the material time, concealing and obliterating the origin of property possessed by a bankrupt person could lead to prosecution and conviction.

38. The Government stressed that, according to Chapter 5, section 7, of the Criminal Code, where a special circumstance vindicated, mitigated or aggravated an act, it applied only to the perpetrator, inciter or abettor to whom the circumstance pertained. The principal offence preceding a receiving offence did not need to be punishable *in concreto* in order for the receiver to be sentenced but an offence *in abstracto* was a sufficient precondition. This principle had been very clear since the end of the 19th century. The fact that the Supreme Court, when dismissing the charges, also dismissed the compensation claims, did not as such allow a conclusion that the right not to incriminate oneself was a ground of justification. The court might have simply not paid any attention to the compensation claims, and thus its decision did not influence the applicant's case. The legality principle had not been breached in the present case as the Supreme Court had only fulfilled its task of interpreting domestic law.

39. The applicant pointed out that there had been a violation of Article 7 of the Convention as the essential elements of the crime in the present case had not been fulfilled. The applicant had been charged with having concealed property which Mr A. had obtained by a criminal act, namely property which Mr A. had failed to declare. In Finland only a failure to declare property was criminalised, not the failure to surrender property to a bankruptcy estate. From the legality point of view, it was difficult to interpret the term "not to declare property" in a way that would lead to

“acquiring property”. If Mr A. was no longer under a duty to declare property, to what property illegally acquired did the applicant’s indictment refer? Mr A did not acquire any property as the real estate concerned was already in his possession. The essential elements of the crime with which the applicant was charged were thus not fulfilled.

40. The applicant further pointed out that even if there existed a legal basis in Finnish law for the applicant’s conviction, the quality of that law was not in accordance with Article 7 of the Convention. In the Finnish system, the dismissal of a charge did not automatically mean that claims for damages arising from the same facts should also be dismissed. In the present case the Supreme Court, when dismissing the charges against Mr A., also dismissed the compensation claims. This meant that the Supreme Court itself regarded Mr A.’s right not to incriminate himself as a ground of justification and not a ground of excuse. This highlighted the poor quality of the law: this law was at the time, and still is today, very much unforeseeable as regards situations like the applicant’s.

2. The Court’s assessment

41. The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *S.W. v. the United Kingdom*, 22 November 1995, § 35, Series A no. 335-B; and *C.R. v. the United Kingdom*, 22 November 1995, § 33, Series A no. 335-C).

42. Accordingly, it embodies, in general terms, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) (see *Kokkinakis v. Greece*, 25 May 1993, § 52, Series A no. 260-A). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused’s detriment, for instance by analogy (see *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145, ECHR 2000-VII; *Achour v. France* [GC], no. 67335/01, § 41, ECHR 2006-IV; and *Kononov v. Latvia* [GC], no. 36376/04, § 185, ECHR 2010).

43. When speaking of “law” Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law (see, *mutatis mutandis*, *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 47, Series A no. 30; *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A; and *Casado Coca v. Spain*, 24 February 1994, § 43, Series A

no. 285-A). In this connection, the Court has always understood the term “law” in its “substantive” sense, not its “formal” one. It has thus included both enactments of lower rank than statutes and unwritten law (see, in particular, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 93, Series A no. 12). In sum, the “law” is the provision in force as the competent courts have interpreted it (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 88, ECHR 2005-XI).

44. Furthermore, the term “law” implies qualitative requirements, including those of accessibility and foreseeability (see, among other authorities, *Cantoni v. France*, 15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V; *Coëme and Others v. Belgium*, cited above, § 145; and *E.K. v. Turkey*, no. 28496/95, § 51, 7 February 2002). These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence in question carries (see *Achour v. France* [GC], cited above, § 41). An individual must know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him criminally liable and what penalty will be imposed for the act and/or omission committed (see, among other authorities, *Cantoni v. France*, cited above, § 29). Furthermore, a law may still satisfy the requirement of “foreseeability” where the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among other authorities, *Cantoni v. France*, cited above, § 35; and *Achour v. France* [GC], cited above, § 54).

45. The Court has acknowledged in its case-law that however clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, *mutatis mutandis*, *The Sunday Times v. the United Kingdom (no. 1)*, cited above, § 49; and *Kokkinakis v. Greece*, cited above, § 40). The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (see, *mutatis mutandis*, *Cantoni v. France*, cited above).

46. Turning to the present case, the Court notes that the applicant was convicted of an aggravated receiving offence in accordance with Chapter 32, sections 1 and 2, of the Criminal Code, as in force at the relevant time. The applicant claims that, under these provisions, one could not be convicted of an ancillary receiving offence without convicting the perpetrator of the principal offence. The Court must thus examine whether

these provisions and their application were in accordance with Article 7 of the Convention.

47. The Court notes at the outset that, according to Chapter 32, section 1, of the Criminal Code, a person who hides, procures, takes into his or her possession or conveys property obtained from another through, *inter alia*, aggravated debtor's fraud, or otherwise handles such property although he or she knows that the property was thus obtained shall be convicted of a receiving offence (see paragraphs 21 and 22 above). The Court finds that the provision in question does not give rise to any ambiguity or lack of clarity as to its content. The provision was thus foreseeable at the time when the applicant committed the offence of which he was initially convicted. Furthermore, the Court notes that, at the same time when the applicant was convicted of an independent but related receiving offence (see paragraphs 7 and 8 above), Mr A. was convicted of aggravated debtor's fraud and sentenced to imprisonment. The Court therefore finds that, at the time of the applicant's initial conviction in 2006 and 2007, all the elements required by Chapter 32, section 1, of the Criminal Code were in place, and that the situation was in full compliance with the requirements of Article 7 of the Convention.

48. The Court notes that this state of affairs may have changed on 20 October 2009 when the Supreme Court re-opened Mr A.'s case, dismissed all the charges against him and freed him from the sentence imposed. The Court notes that the Supreme Court found in its decision of 22 June 2010 that the effects of the right not to incriminate oneself were limited only to the person who had been asked to submit information. A person could be convicted of a receiving offence even if the perpetrator of the principal offence was freed from criminal liability. Similarly, the Government argued in their observations that the principal offence preceding a receiving offence did not need to be punishable *in concreto* in order for the receiver to be sentenced but an offence *in abstracto* was a sufficient precondition.

49. The Court notes that, at the time when the impugned acts were committed by the applicant on 18 December 1997 and onwards, the Criminal Code required that the received property had to be property which was acquired by an offence. In the present case, the offence took place on 17 December 1997 when Mr A fraudulently did not declare the property, including the real estate, to the bankruptcy estate. However, when the Supreme Court later found that Mr A had had a right not to declare this property and when he was consequently acquitted, there existed no longer a crime *in concreto*. The Supreme Court was divided as to whether a crime *in abstracto* was a sufficient element to maintain the applicant's conviction, the majority of the justices finding that it was.

50. The Court observes that the Supreme Court was facing in the present case a new situation in which it had to take a stand for the first time on the

issue of whether the right not to incriminate oneself could have effects on other persons connected to the crime in question. Both domestic law and jurisprudence were silent on this point.

51. The Court reiterates that Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see *S.W. v. the United Kingdom*, cited above, § 36; and *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 50, ECHR 2001-II). Even when a point is ruled upon for the first time in an applicant's case, a violation of Article 7 of the Convention will not arise if the meaning given is both foreseeable and consistent with the essence of the offence (see *Jorgic v. Germany*, no. 74613/01, § 114, ECHR 2007-III; and *Custers and Others v. Denmark*, nos. 11843/03, 11847/03 and 11849/03, 3 May 2007). In the present case, the Court finds that both alternative interpretations were foreseeable and consistent with the essence of the offence in question.

52. Moreover, according to the Court's general approach, it does not question the interpretation and application of national law by national courts unless there has been a flagrant non-observance or arbitrariness in the application of that law (see, *inter alia*, *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III and, *mutatis mutandis*, *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002). The Court is unable to find such non-observance or arbitrariness in the present case.

53. Having regard to all these considerations, the Court concludes that the Supreme Court could, acting within its margin of appreciation, maintain the applicant's conviction also in the changed circumstances.

54. Accordingly, there has been no violation of Article 7 of the Convention.

III. REMAINDER OF THE APPLICATION

55. Lastly, the applicant complained that the decision of 8 June 2009 by the Supreme Court not to stay the execution of the removal from office was contrary to Article 7 of the Convention. It would be against the legality principle if, after a possible final acquittal of charges, he were still subject to the removal from office which had taken effect already on 17 April 2009. In his letter dated 16 August 2010 the applicant also complained under Article 6 of the Convention that the extraordinary appeal proceedings in the Supreme Court were not fair.

56. Having regard to the case file, the Court finds that the matters complained of do not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the

application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 7 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 7 of the Convention.

Done in English, and notified in writing on 6 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge De Gaetano is annexed to this judgment.

L.G.
F.A.

CONCURRING OPINION OF JUDGE DE GAETANO

1. This judgment reaffirms the principle – enshrined in many penal codes, as well as in national case-law and in doctrinal writings – that a person may be found guilty of receiving stolen property (or property obtained by fraud, misapplied or obtained by means of any offence) even though the thief is not prosecuted or punished – indeed, he may even be unknown – provided the actual commission of the theft or other predicate offence is proved. In the same vein, an accomplice may be found guilty of an offence even though the principal offender is never prosecuted or punished, and a co-conspirator may be found guilty of conspiracy to commit an offence even though none of the other co-conspirators are brought to justice (or, having been brought before the courts, are acquitted). Nothing in all this suggests, even minimally, a violation of Article 7 of the Convention.

2. What appears to have been problematic in this case is the fusion (or confusion) at the domestic level of two separate issues – the question of the autonomy of the applicant’s trial, in line with the principle mentioned above (see § 49, last sentence), and the entirely separate and independent question of the extent to which the privilege against self-incrimination affected third parties involved in an offence (§ 50, first sentence). To compound matters further, unhelpful arguments have been advanced (see § 38) based on the communicability or otherwise (as between principal and accomplice) of personal and/or real circumstances involved in the commission of an offence.

3. In the instant case, in view of the principle mentioned in para. 1, *supra*, it would appear that it was unnecessary to invoke the margin of appreciation in § 53.