



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

FOURTH SECTION

CASE OF PIRTTIMÄKI v. FINLAND

(Application no. 35232/11)

JUDGMENT

STRASBOURG

20 May 2014

FINAL

20/08/2014

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

In the case of Pirttimäki 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. 35232/11) 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 Harry Veijo Juhani Pirttimäki (“the applicant”), on 9 June 2011.

2. The applicant was represented by Mr Ossi Taurén, a lawyer practising in Helsinki. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant complained under Article 4 of Protocol No. 7 to the Convention about double jeopardy (*ne bis in idem*) involving taxation proceedings, in which a tax surcharge had been imposed, and criminal proceedings for aggravated tax fraud, and under Article 6 § 1 of the Convention about the excessive length of the proceedings.

4. On 15 March 2013 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1955 and lives in Jyväskylä.

6. The applicant owned shares in a limited liability company. In 2001 and 2002 a tax inspection was conducted in the company for the tax years 1996 to 2001. The tax inspectors found that the company was not owned by

four different English companies but in reality the applicant and three other Finnish persons owned it, with equal shares.

A. Administrative proceedings against the company

7. On 26 February 2003 additional taxes and tax surcharges (*veronkorotus, skatteförhöjning*) were imposed on the company for the tax years 1997 to 1999 and 2001.

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

9. On 16 March 2005 the Tax Rectification Committee partly accepted, partly rejected the company's applications.

10. The applicant, in the name of the company, appealed to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), claiming that he owned the whole company through four English companies.

11. On 28 February 2007 the Helsinki Administrative Court rejected the company's appeal and upheld the taxation decisions. It found that there was no proof that the English companies had in fact been sold to the applicant but, on the contrary, the case documents showed that in reality all four Finnish persons behind the English companies had equally exercised their powers in the company.

12. On 10 August 2009 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) refused the company leave to appeal.

B. Administrative proceedings against the applicant

13. In connection with the company taxation, additional taxes and tax surcharges were also imposed on the applicant as he had received disguised dividends from the company. He was to pay 8,500 Finnish marks (FIM) in tax surcharges for the tax year 1997 (1,429.60 euros, EUR), FIM 5,000 for the tax year 1998 (EUR 1,021.43), FIM 6,000 for the tax year 1999 (EUR 1,211.64) and FIM 10,000 for the tax year 2001 (EUR 1,904.50).

14. The applicant sought rectification from two local Tax Rectification Committees.

15. On 25 April 2005 the Sisä-Suomi Tax Rectification Committee rejected the applicant's applications in respect of the tax years 1998, 1999 and 2001.

16. On 31 May 2005 the Kaakkois-Suomi Tax Rectification Committee rejected the applicant's application in respect of the tax year 1997.

17. The applicant appealed to the Administrative Court, claiming that there was no reason to impose additional taxes and tax surcharges as he was the only shareholder in the company.

18. On 16 April 2007 the Hämeenlinna Administrative Court rejected the applicant's appeal against the decisions concerning the tax years 1998, 1999 and 2001. It found that in reality the company was owned by four Finnish persons with equal shares and therefore the taxation decisions were not incorrect.

19. On 30 December 2008 the Kouvola Administrative Court rejected the applicant's appeal against the decision concerning the tax year 1997. It found, like the other courts, that the applicant could not be regarded as the sole owner of the company.

20. On 10 August 2009 the Supreme Administrative Court refused the applicant leave to appeal against any of the above-mentioned tax decisions.

C. Criminal proceedings against the applicant

21. On 7 March 2002, on the basis of the tax inspection, the tax authorities requested the police to investigate the matter. The applicant was arrested on 4 June 2002 and his office was searched the same day. He was questioned by the police for the first time on 5 June 2002 and was released thereafter. The pre-trial investigation was concluded on 29 December 2006.

22. On 11 July 2008 the public prosecutor pressed charges against the applicant. The applicant was accused, on the company's count, of an accounting offence (*kirjanpitorikos, bokföringsbrott*) for having introduced incorrect and misleading information in the company bookkeeping between 1997 and 2001, and of aggravated tax fraud (*törkeä veropetos, grovt skattebedrägeri*) for having given incorrect information to the tax authorities between 1998 and 2002. As a result, the company had evaded EUR 59,335.69 in taxes.

23. On 30 September 2009 the Kotka District Court (*käräjäoikeus, tingsrätten*) convicted the applicant as charged and sentenced him to a one-year suspended sentence. As to the length of the proceedings, the court noted that the proceedings had lasted by then 7 years and 4 months. The proceedings had been unusually long and the length was not attributable to the applicant. The proper sentence for the applicant would have been imprisonment for one year but due to the excessive length it was turned into a suspended sentence.

24. The applicant appealed to the Appeal Court (*hovioikeus, hovrätten*), requesting that the charges be dropped as he had already been convicted in the matter: tax surcharges had been imposed on him and a final decision delivered.

25. On 2 July 2010 the Kouvola Appeal Court upheld the District Court's judgment. As to *ne bis in idem*, the court found that the decisions containing tax surcharges had become final on 10 August 2009. As the charges had been pressed before that, on 11 July 2008, there was no impediment to the examination of the case as the charges had been brought

before the administrative proceedings became final. As to the merits, the court found that the applicant's true position in the company had been concealed in order to avoid his responsibilities and that in reality he had been as much involved as the other shareholders. He could thus be held responsible for the company's bookkeeping as well as the incorrect information given to the tax authorities.

26. By letter dated 30 August 2010 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Appeal Court and claiming in particular that he had been convicted twice in the same matter. He also pointed out that the proceedings had already lasted for more than 8 years.

27. On 14 December 2010 the Supreme Court refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Tax Assessment Procedure Act

28. 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

29. 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.

30. 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

31. 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.

32. 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 the tax year 2007. In the charge, which became pending on 28 June 2011, the prosecutor demanded that A be sentenced to punishment for aggravated tax fraud on account of the same action. A had paid the taxes and tax surcharges entirely before the charge became pending. The time-limit for seeking rectification in respect of the tax year 2005 had expired on 31 December 2011 without A having sought rectification. A declared that he had no intention of appealing against the decisions concerning the other tax years, either. The Supreme Court held that the charge of aggravated fraud was inadmissible as A had paid the taxes and tax surcharges before the charge became pending.

33. 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

34. 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.

35. 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

36. The applicant complained under Article 4 of Protocol No. 7 to the Convention that he had been tried and convicted twice for the same offences as the taxation decisions had become final on 10 August 2009 and he had been convicted of an accounting offence and aggravated tax fraud thereafter.

37. 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.”

38. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

40. The applicant agreed with the Government that two administrative sets of proceedings had been criminal in nature but disagreed with them that the proceedings concerned separate incidents. The facts had been identical in all three sets of proceedings. The tax surcharges imposed had been based on the same facts as the sentencing in the criminal proceedings. However, the applicant admitted that he had not been charged for tax offence in relation to his personal income and taxation. The company had paid all taxes imposed on it in the taxation proceedings.

41. The applicant claimed that the tax surcharges imposed on the company had had direct impact on him. Moreover, the fact that the criminal proceedings had been started before the taxation proceedings became final had no relevance in the present case. This did not justify punishing the applicant twice for the same offence as had happened in the present case. The Supreme Court's previous line of interpretation had not been correct.

(b) The Government

42. 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. However, the tax surcharges imposed on the applicant and his tax fraud sentence were based on separate incidents. The tax authorities had imposed tax surcharges on the applicant in his personal taxation on the ground that he had received disguised dividends from the company. By contrast, the tax fraud charges pressed against the applicant had been based on his conduct in the company.

43. As the applicant owned 25% of the company shares, the tax surcharges imposed on the company had had an indirect impact on the applicant's financial situation, too. However, a limited liability company was an independent legal subject for whose debts and sanctions the shareholders were not liable. In the Government's view not only did the proceedings concern different matters, they also concerned different objects of protection. Thus the applicant had not been tried or punished twice for the same offence and Article 4 of Protocol No. 7 to the Convention was not applicable to the case.

44. In any event, the Government noted that the first two sets of proceedings concerning the tax surcharges had not yet become final within the meaning of Article 4 of Protocol No. 7 to the Convention when the second set of proceedings concerning the aggravated tax fraud became pending. According to the Supreme Court's previous interpretation, it was not an obstacle that the proceedings took place simultaneously as a final ruling in the first two sets of proceedings did not prevent the completion of the second set of proceedings. As to the Supreme Court's new line of interpretation as expressed by its new case *KKO:2013:59*, the Government noted that 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.

2. The Court's assessment

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

45. 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).

46. 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).

47. 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.

48. Therefore, in the present case, the Court considers that it is clear that all three 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*)?

49. 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.

50. In the present case the parties disagree on whether the three sets of proceedings arose from the same facts. The Court notes that the first two sets of proceedings arose from the fact that the company as well as the applicant, in his personal taxation, had failed to declare some income for the tax years 1997, 1998, 1999 and 2001. In the second set of proceedings the applicant was accused, as a representative of the company, of aggravated tax fraud for having given incorrect information on behalf of the company to the tax authorities between 1998 and 2002. The two sets of proceedings which are relevant in the present case are thus the taxation proceedings against the applicant as well as the criminal proceedings.

51. The Court considers that these two sets of facts are different. First of all, the legal entities involved in these proceedings were not the same: in the first set of proceedings it was the applicant and in the second set of proceedings the company (see *Isaksen v. Norway* (dec.), no. 13596/02, 2 October 2003; and, *mutatis mutandis*, *Pokis v. Latvia* (dec.), no. 528/02, ECHR 2006-XV; and *Agrotexim and Others v. Greece*, 24 October 1995, §§ 66-68, Series A no. 330-A). Even assuming that it had in fact been the applicant who was making the tax declaration in both cases, the circumstances were still not the same: making a tax declaration in personal taxation differs from making a tax declaration for a company as these declarations are made in different forms, they may have been made at a different point of time and, in the case of the company, may also have involved other persons.

52. The Court therefore considers that the two impugned sets of proceedings did not constitute a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same. Accordingly, there has been no violation of Article 4 of Protocol No. 7 to the Convention.

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

53. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the criminal proceedings against him.

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

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

55. The Government contested that argument.

A. Admissibility

56. The Government claimed that the applicant could no longer be regarded as a victim of a violation under Article 6 § 1 of the Convention as the length of the proceedings had been expressly acknowledged and remedied by the District Court judgment of 30 September 2009. Even if the mitigation of sentence did not in principle deprive the applicant of his victim status, there was an exception to this rule when the national authorities had acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and had afforded redress by reducing the sentence in an express and measurable manner.

57. The Government noted that in the present case the District Court had explicitly acknowledged the excessive length and had taken it into account when handing down the applicant's sentence. The mitigation had been substantial as it had related to the whole sentence: imprisonment for one year had been mitigated to a suspended sentence of one year. The Court had on many occasions accepted a suspended sentence instead of imprisonment in mitigation. Contrary what the applicant claimed, the determination of punishment was to be left for the national courts to decide. The applicant had not shown that the District Court would have handed the applicant a suspended sentence had there been no length issue in the present case.

58. In the Government's view the express and quantifiable redress by the District Court was sufficient to make good any violation of the length of the proceedings. This redress also took into account the length of the proceedings after the District Court judgment, which had been swift. This complaint should therefore be declared inadmissible for the lack of victim status.

59. The applicant noted that the District Court judgment had been very severe as in such circumstances a suspended sentence was normally imposed. He had thus not been afforded any redress to make good the violation based on the entire length of the proceedings. The remedy used by the District Court had not been such a remedy as meant in the Convention. After the District Court judgment the proceedings had still continued for

more than fourteen months. The applicant could therefore still claim to be a victim under Article 34 of the Convention.

60. The Court notes that, in the present case, the question is whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of the criminal proceedings against him in view of the fact that the District Court mitigated his sentence. The applicant's sentence was subsequently upheld by the Appeal Court. The Supreme Court did not grant the applicant leave to appeal.

61. The Court reiterates that an individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; for the application of this principle in the context of Article 6, see *Lüdi v. Switzerland*, 15 June 1992, § 34, Series A no. 238; and *Schlader v. Austria* (dec.), no. 31093/96, 7 March 2000). In this regard the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, cited above, § 66; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; and *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-V).

62. In the present case, the District Court stated that it was taking into account the length of the proceedings by turning the applicant's sentence of imprisonment of one year into a suspended sentence of one year. It can therefore be said that the District Court afforded the applicant express and quantifiable redress for the breach of the reasonable time requirement (see *Beck v. Norway*, cited above, §§ 27-29; see also *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X; and *Uoti v. Finland*, no. 61222/00, § 30, 9 January 2007).

63. The Court notes that the question of whether the redress thus afforded is sufficient to make good a violation, if any, based on the entire length of the proceedings, can only be decided after the termination of the proceedings. In the present case, the criminal proceedings have come to an end after having lasted an additional fourteen months before the Appeal Court and the Supreme Court.

64. The Court reiterates that it is the task of the domestic courts to determine the proper punishment in the circumstances of the case. In the present case the applicant was sentenced by the District Court to imprisonment of one year and this sentence was upheld by the higher courts. Due to the excessive length of the proceedings, this sentence was mitigated into a one-year suspended sentence. Viewing the length of the proceedings

as a whole, the Court finds that this redress is substantial and capable of making good the violation expressly acknowledged by the domestic courts.

65. Accordingly, the Court finds that the applicant may no longer claim to be a victim under Article 34 of the Convention. This complaint is thus incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible pursuant to Article 35 § 3 (a) and 4 of the Convention.

III. REMAINDER OF THE APPLICATION

66. The applicant also complained that Articles 6 § 2 and 7 of the Convention had been violated when he had been convicted of an accounting offence and aggravated tax fraud even though he had had nothing to do with the company bookkeeping or tax declarations. He claimed that he had not even been in a position in the company to be able to commit these crimes.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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
Registrar

Ineta Ziemele
President