



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

FIFTH SECTION

CASE OF ANTIA AND KHUPENIA v. GEORGIA

(Application no. 7523/10)

JUDGMENT

Art 7 • Nullum crimen sine lege • Conviction despite expiration of the statute of limitations for the offence concerned • Acts no longer punishable and lack of explanation by the domestic courts for taking such an approach

STRASBOURG

18 June 2020

FINAL

18/09/2020

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

In the case of Antia and Khupenia v. Georgia,

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

Síofra O’Leary, *President*,

Ganna Yudkivska,

André Potocki,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia,

Anja Seibert-Fohr, *judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having regard to:

the application against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Georgian nationals, Ms Marina Antia (“the first applicant”) and Ms Nana Khupenia (“the second applicant”), on 9 November 2009;

the decision to give notice to the Georgian Government (“the Government”) of the complaint under Article 7 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 19 and 26 May 2020,

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

INTRODUCTION

The case concerns the applicants’ complaint that their conviction for neglect of official duties had breached their rights under Article 7 of the Convention.

THE FACTS

1. The first and second applicants were born in 1964 and 1960 respectively. They were represented before the Court by Mr G. Pipia, a lawyer practising in Zugdidi.

2. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. Between 1994 and 2006 the applicants were employed as inspectors at a regional office of the Unified State Social Insurance Fund (“the Fund”). As is apparent from the material in the case file, they were responsible for identifying pension recipients who were simultaneously employed and in receipt of remuneration despite receiving social benefits disbursed by the

Fund. After identification of such individuals, the applicants were required to ensure the recovery of the unlawfully received pensions from their recipients and the return of the sums to the Fund's bank account.

5. On 10 August 2006 an investigation was opened into an alleged offence of neglect of official duties under Article 342 § 1 of the Criminal Code (see paragraph 18 below) in respect of several employees of the Fund.

6. On 19 October 2006 the applicants were charged with neglect of official duties in relation to their employment as inspectors in the period between 1995 and 2004, which had allegedly resulted in several employed persons who were beneficiaries of the Fund unlawfully receiving pensions. The alleged resulting damage to the State was 4,532 Georgian laris (GEL – approximately 1,800 euros (EUR)) and GEL 2,839 (approximately EUR 1,135) with respect to the first and the second applicants respectively. The applicants were released on bail pending trial.

7. On 26 October 2006 the applicants' contracts were terminated on account of the criminal proceedings pending against them.

8. On 16 January 2008 a colleague of the applicants received a letter from the Parliament's Legal Affairs Committee offering, in reply to a query she had previously submitted, an interpretation of the personal scope of the crime of official misconduct provided for in Chapter XXXIX of the Criminal Code, and an opinion as to whether the applicants' colleague had fallen within the personal scope of that crime between the years 2002 and 2005. The letter, signed by the Chairperson of the Legal Affairs Committee, stated that as an employee of the Fund, the applicants' colleague had not fallen within the personal scope of the crime of official misconduct until the adoption of the amendment of 25 July 2006 relating to the general note appended to Article 332 (see paragraph 19 below). The document in question contained a note at the end specifying that the interpretation offered by it did not have binding legal force.

9. On 3 July 2008 the Zugdidi District Court convicted the applicants of neglect of official duties. The court did not impose a custodial sentence despite the prosecutor's application to that end and sentenced each of the applicants to a fine in the amount of GEL 500 (approximately EUR 220).

10. On 31 July 2008 the applicants lodged an appeal. They argued, among other things, that their conviction had not been foreseeable. It was only since 2006, as a result of legislative amendments to the Criminal Code (see paragraph 19 below), that staff members of the Fund had fallen within the personal scope of the offence of neglect of official duties. Furthermore, their duties, as set out in the relevant regulations, had not been clearly defined. As a result, they could not have anticipated that their negligence, if indeed there had been any, could have constituted a crime committed by an official or a person of equivalent status. Moreover, neglect of official duties under Article 342 § 1 of the Criminal Code was a minor offence with a two-year statute of limitations that had already expired on 19 October 2006

when the charges had been brought in respect of offences allegedly committed before 1 January 2004. In the applicants' submission, at the time the Zugdidi District Court delivered its judgment, "no legal ground had existed to justify the imposition of criminal responsibility". Therefore, the applicants submitted that they should have been acquitted or, "even accepting that they had committed the offence imputed to them, they should [have been] released from serving the sentence, in accordance with Article 71 of the Criminal Code and Article 28 §§ 1 (e) and 6 of the Code of Criminal Procedure" (see paragraphs 18 and 20 below).

11. On 19 November 2008 the Kutaisi Court of Appeal dismissed the appeal and upheld the lower court's judgment. In the descriptive part of the judgment the appellate court noted the applicants' positions at the Fund, stating that they were "regarded as officials" ("ითვლება მოხელედ"). The Kutaisi Court of Appeal reasoned that the applicants' duties (see paragraph 4 above) had been clearly established under various regulations concerning the Fund. It noted that as of 7 May 2000 the Fund had been classified as a public-law legal entity (see paragraph 23 below) and concluded that "an inspector [of the Fund was] covered by the crime of official misconduct as [he or she] carried out public functions as part of the [relevant] public-law legal entity." As regards the applicants' request to be released from the sentence on account of the expiry of the statute of limitations, the court found that a fifteen-year time-limit for prosecution, as had been in force at the time of the trial (rather than at the time of the alleged commission of the offences imputed to the applicants), should have been applied to the situation in question.

12. On an unspecified date the applicants lodged an appeal with the Supreme Court. Among other things, the applicants submitted that at the material time they had been neither "officials" nor persons of equivalent status within the meaning of Article 342 § 1 of the Criminal Code. It was only following the legislative amendments of 25 July 2006 that the provision in question had started to apply to persons in a similar position, as had also been confirmed by the Parliament's Legal Affairs Committee (see paragraph 8 above). Alternatively, in the event that the Supreme Court had decided not to "terminate the proceedings on account of the absence of a crime ... they should [have been] released from serving the sentence, in accordance with Article 71 of the Criminal Code and Article 28 §§ 1 (e) and 6 of the Code of Criminal Procedure" because prosecution of the offence in question had been time-barred (see paragraphs 18 and 20 below).

13. On 28 May 2009 the Supreme Court adopted a reasoned decision following an oral hearing. The descriptive part of the decision noted that the applicants had been employed by the Fund and "had been regarded as officials" ("ითვლებოდა მოხელედ"). As far as the first applicant was concerned, it was noted that she had been negligent in her duties in respect of three beneficiaries of the Fund between 1995 and 2004, 1990 and 2004,

and 1997 and 2004 respectively. As concerns the second applicant, her negligence had been revealed in respect of three beneficiaries between 1998 and 2004, 2001 and 2004, and 1998 and 2001 respectively. The second applicant had also failed to stop issuing pensions in respect of three individuals since 2002.

14. The Supreme Court reproduced in its decision the applicants' arguments that they had been neither public servants nor persons of equivalent status, and that the personal scope of Chapter XXXIX of the Criminal Code had not included employees of the Fund until the general note appended to Article 332 of the Code had been amended in 2006, that point having been confirmed, according to the applicants, by the Parliament's Legal Affairs Committee. In response, the Supreme Court noted that the applicants had been tasked with revealing beneficiaries of the Fund who had been in gainful employment and ensuring the return of the pensions paid to such individuals back to the Fund's account. In that connection, the Supreme Court noted that as of 7 May 2000 the Fund had been classified as a public-law legal entity (see paragraph 23 below) and concluded that "an inspector [of the Fund was] covered by the offence of official misconduct as [he or she] carried out public functions as part of the [relevant] public-law legal entity." The Supreme Court therefore upheld the appellate court's judgment in respect of the applicants' conviction.

15. As regards the question of the statute of limitations, the Supreme Court agreed with the applicants that at the material time, the legislation had provided for a period of two years. The offences imputed to the applicants having been committed before 1 January 2004, the two-year statute of limitations had already expired by the time the charges had been brought against them. Therefore, the Supreme Court granted the applicants' request to be "released from serving the sentence" (see paragraphs 10 and 12 above) amending the appellate court's judgment only in respect of the applicants' exemption from the relevant sentences (fines in the amount of GEL 500 (approximately EUR 220) in respect of each applicant) with the further effect of no criminal record existing in respect of the relevant offence (see paragraph 18 below).

16. On an unspecified date the applicants instituted proceedings against the Social Services Agency (the legal successor of the Fund), seeking damages on account of the termination of their employment contracts. On 26 October 2009 the Zugdidi District Court dismissed the application. Noting the criminal proceedings instituted against the applicants and their subsequent convictions, the court reasoned that the termination of the applicants' contracts had had a valid legal basis. That decision was upheld by the appellate court on 29 January 2010 and by the Supreme Court on 10 May 2010.

17. On 31 August 2009 the applicants gave their representative a power of attorney authorising him, unconditionally, to represent their interests

before all domestic courts and before the European Court of Human Rights by submitting all necessary applications on their behalf. On 9 November 2009, relying on the document in question, the applicants' representative submitted the present application to the Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. The Criminal Code (1999), as it stood at the material time, provided as follows:

Article 71 § 1 (a) (Exemption from criminal liability on account of the expiry of the statute of limitations)

“An individual shall be exempted from criminal liability if ... two years have elapsed since the commission of an offence for which the sentence prescribed by [this Code] does not exceed two years.”

Article 79 § 2 (Criminal record)

“A person whose sentence is annulled is regarded as having no criminal record.”

Article 342 § 1 (Neglect of official duties)

“Neglect of official duties, that is, the non-performance or improper performance of official duties by an official (‘მთხელე’) or a person of equivalent status, owing to a careless attitude towards such duties, which has resulted in a substantial breach of the rights of an individual [or] a legal entity, [or] of the lawful interests of the public or the State, shall be punished by a fine, limitation of freedom for up to six months, or imprisonment for up to two years.”

19. On 14 August 2003 the Criminal Code was amended and a note was added to Article 332 (abuse of official authority) specifying that “the crime of official misconduct specified in Articles 332, 333, 334, 335, 336, 338, 339, 341 and 342 of the present Chapter [XXXIX] also covers crimes committed by representatives of the International Criminal Court”. On 16 December 2005 the note in question was amended as follows: “The crime of official misconduct specified in Articles 332, 333, 334, 335, 336, 338, 339, 341 and 342 of the present Chapter also covers crimes committed by representatives of the International Criminal Court and position-holders (‘თანამდებობის პირი’) who perform administrative acts (including members of a collegial body) under the General Administrative Code of Georgia.” On 25 July 2006 the note was amended again to read as follows: “The crime of official misconduct contemplated in this Chapter also covers [crimes committed by] representatives of the International Criminal Court and [by] position-holders who perform administrative acts under the General Administrative Code of Georgia [or by] staff of agencies exercising public authority.”

20. The Code of Criminal Procedure (1998), as it stood at the material time, provided as follows:

Article 28: Grounds for terminating [criminal proceedings]

“1. [Criminal proceedings] shall not be initiated, and if initiated, shall be terminated:
...

(e) if the statute of limitations provided for by the Criminal Code of Georgia has expired; ...

6. It is not permissible to terminate [criminal proceedings] under sub-paragraphs c, e, f, k, n and o of this Article if the accused is against such a termination (თუ ბრალდებული ამის წინააღმდეგია). In such cases, [criminal proceedings] shall continue under the ordinary procedure and shall be terminated either by an acquittal, or by a conviction and the exemption of the convicted person from serving the sentence.”

21. Chapter XXVIII of the CCP provided for a right to be rehabilitated in respect of persons prosecuted as a result of “unlawful or groundless” prosecutions. In particular, Article 219 § 2 provided that a judgment of acquittal was one of the grounds for rehabilitation, while Article 219 § 3 provided that rehabilitation also applied to any person who had been prosecuted before the domestic courts but the prosecution was terminated on any grounds referred to in Article 28 of the CCP. Under Article 223 § 2 (a) rehabilitated persons who had been dismissed from their employment owing to the criminal proceedings against them, were entitled to compensation in respect of the lost income; and to a right to be restored to previous employment or a comparable position (Article 226 § 1).

22. The Act on Public-Law Legal Entities (1999), as it stood at the material time, provided as follows:

Section 2: Definition of a public-law legal entity

“A public-law legal entity is an organisation separate from State government bodies, established under a presidential decree (ბრძანებულება) or an administrative act of a State government body based on law, which carries out political, State, social, educational, cultural or other public activities independently, subject to State control.”

23. Under Presidential Decree no. 181 dated 7 May 2000, the Unified State Social Security Fund – the legal predecessor of the Fund, which had existed since 1991 under the auspices of the Ministry of Health and Social Security – was designated as a public-law legal entity (see paragraph 22 above). Presidential Decree no. 558 dated 31 December 2002 (on the establishment of the Unified State Social Insurance Fund as a public-law legal entity) merged the previously separately functioning State Medical Insurance Company with the Fund. These two documents listed the Fund’s functions as follows: creation, review and implementation of State programmes in the sphere of social insurance and security, medical aid,

employment and other fields. It was operating under the authority of the Ministry of Labour, Health and Social Affairs.

24. The Government provided the Court with, among other material, a copy of a Supreme Court decision (Chamber of Criminal Cases, case no. 23-96კლ.-02, 15 January 2001) according to which the Supreme Court endorsed the lower courts' reasoning that security officers at a metro station who had been employed by the Ministry of the Interior and had effectively been police officers fell within the personal scope of Article 332 of the Criminal Code as persons with equivalent status to that of an official "owing to their position" ("სამსახურებრივი მდგომარეობიდან გამომდინარე").

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

25. The applicants complained that their criminal conviction for neglect of official duties had been time-barred, and that it had not been foreseeable in view of the limited personal scope of the domestic criminal provision on the basis of which they had been prosecuted. They relied in that regard on Article 7 of the Convention, which 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."

A. Admissibility

1. *Submissions by the parties*

(a) The Government

26. The Government submitted that the application had not been submitted in accordance with the Rules of Court as the applicants had failed to use the template of the authority form available at the Court's website at the time. The domestic-law-based power of attorney submitted by the applicants' representative could not, in the Government's submission, serve as a substitute for the necessary form authorising the applicants' representative to submit the application on their behalf. The application was therefore inadmissible owing to the applicants' failure to comply with the six-month time-limit.

27. Alternatively, even assuming that Article 7 of the Convention had been violated, the applicants had suffered no significant disadvantage as the

Supreme Court had annulled their respective sentences and erased their criminal records.

(b) The applicants

28. The applicants submitted that their application form had been accompanied by a duly completed power of attorney with the applicants' original signatures, and that the relevant submissions had therefore been filed in time and by a duly authorised representative.

29. Furthermore, although their sentence had been annulled and their criminal record expunged, the applicants submitted that they had suffered a significant disadvantage on account of the criminal proceedings against them given the damage to their reputation as well as their loss of employment as a consequence of those proceedings.

2. The Court's assessment

30. As concerns the Government's objection that the Court's template for a power of attorney had not been used, according to Rule 45 § 3 of Rules of Court, as it stood at the material time, "[w]here applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives". No further requirement as to the form of the power of attorney exists. Therefore, noting that the application, which was introduced within six months of the final domestic decision, was accompanied by a power of attorney duly signed by the applicants and their representative (see paragraph 17 above), the Court finds that it was submitted to the Court by an authorised representative and therefore in time (contrast and compare *N.Z. v. Croatia* (dec.) [Committee], no. 2140/13, §§ 23-24, 2 June 2015, with further references).

31. As to the parties' arguments concerning the question of whether the applicants had suffered a significant disadvantage in view of the fact that their sentence had been set aside and their criminal record had been expunged, the Court notes that the admissibility criterion set forth in Article 35 § 3 (b) of the Convention is applicable only in the event that the applicant has suffered no significant disadvantage and provided that the two safeguard clauses contained in the same provision are respected (see *Giuran v. Romania*, no. 24360/04, § 24, ECHR 2011 (extracts)). However, the Court need not address the safeguard clauses in the present case as, in any event, the applicants cannot be considered to have suffered no significant disadvantage. In particular, the applicants were dismissed from their employment as a result of the impugned criminal proceedings against them (see paragraphs 7, 16 and 21 above). Furthermore, although the sentence imposed upon them was annulled, the publicly pronounced judgment convicting them was not set aside (contrast *Kerman v. Turkey* (dec.), no. 35132/05, §§ 100-06, 22 November 2016).

32. Finally, the Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

33. The applicants submitted that the criminal proceedings should have been discontinued on account of having been time-barred. Furthermore, the applicants maintained that Article 342, on the basis of which they had been convicted, was part of a chapter of the Criminal Code which concerned crimes relating to officials' misconduct. In that connection, the applicants maintained that at the material time they had been neither "public servants" nor persons of equivalent status. Furthermore, Article 332 of the Code had contained a general note specifying the circle of persons covered by that chapter, which had gradually been expanded. In 2006 that provision had been amended to include "position-holders who perform administrative acts under the General Administrative Code of Georgia or staff of agencies exercising public authority." In the applicants' submission, it was only from that moment, that is after the period in respect of which they had been convicted, that anyone in their position could have foreseen potential criminal liability under Article 342 of the Criminal Code.

34. The Government did not comment on the question of the statute of limitations. As for the personal scope of the crime of neglect of official duties, they submitted that the wording of the impugned legal provision of the Criminal Code, as it had stood at the material time, had allowed any person exercising public functions to foresee its applicability. As the applicants had been employed by a public-law legal entity, they had exercised public functions. Referring to Recommendation Rec(2000)10 of the Council of Europe Committee of Ministers on codes of conduct for public officials, the Government noted that "public official" meant a person employed by a public authority, and the applicants having been such officials, their conviction under Chapter XXXIX of the Criminal Code relating to crimes of official misconduct had been reasonably foreseeable.

2. The Court's assessment

(a) General principles

35. 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 *Del Río Prada v. Spain* [GC], no. 42750/09, § 77, ECHR 2013).

36. The Court reiterates that Article 7 is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage: it also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. It follows from these principles that an offence must be clearly defined in the law, be it national or international. This requirement is satisfied where the individual can know from the wording of the relevant provision – and, if need be, with the assistance of the courts' interpretation of it and with informed legal advice – what acts and omissions will make him or her criminally liable (see, among other authorities, *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 154, ECHR 2015, with further references).

37. The Court points out that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is thus confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 51, ECHR 2015). However, the Court's powers of review must be greater when the Convention right itself, Article 7 in the present case, requires that there was a legal basis for a conviction and sentence. Article 7 § 1 requires the Court to examine whether there was a contemporaneous legal basis for the applicant's conviction and, in particular, it must satisfy itself that the result reached by the relevant domestic courts was compatible with Article 7 of the Convention. To accord a lesser power of review to this Court would render Article 7 devoid of purpose (*ibid.*, § 52).

(b) Application of these principles to the circumstances of the present case

38. The Court observes at the outset that the applicants' complaint before it concerns two issues: their conviction despite the fact that the prosecution was time-barred, and the foreseeability of criminal law in relation to the personal scope of Article 342 § 1 of the Criminal Code (offence of neglect of official duties, see paragraph 18 above).

39. Limitation may be defined as the statutory right of an offender not to be prosecuted or tried after the lapse of a certain period of time since the offence was committed. Limitation periods are a common feature of the domestic legal systems of the Contracting States and serve several purposes, including that of ensuring legal certainty (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 146, ECHR 2000-VII). In this context, the main question before the Court, subject to its power of review under Article 7 of the Convention (see paragraph 36 above), is whether

there was a valid legal basis for the applicants' conviction in view of the expiry of the statute of limitations in respect of the relevant offence.

40. In this context, the expiry of the statute of limitations in the applicants' case was explicitly established by the Supreme Court (see paragraph 15 above) and is not in dispute in the proceedings before the Court. As to the legal impact of such a finding, the Court observes that the relevant domestic law – namely Article 28 § 1 (e) of the Code of Criminal Procedure – provided that criminal proceedings were to be terminated if the statute of limitations in respect of the relevant offence had expired (see paragraph 20 above). However, if the accused was “against such a termination”, the criminal proceedings would continue under the ordinary procedure, and be terminated with the accused being either acquitted or convicted and exempted from serving the sentence (*ibid.*). The Court will therefore assess whether the applicants had made an explicit request not to have the proceedings terminated to justify the domestic courts' decision to proceed with the conviction in respect of the relevant time-barred offence.

41. In this connection, the Court does not lose sight of the fact that the applicants had made various submissions before the domestic courts. Among other arguments, they had referred to Article 28 §§ 1 (e) and 6 of the Code of Criminal Procedure (see paragraph 20 above), and had requested, in what appears to have been an alternative submission, that the appellate court and the Supreme Court “release them from serving the sentence” (see paragraphs 10 and 12 above). However, it is not for the Court to speculate on the reasons why the applicants formulated the relevant applications in such a manner, save for noting that these submissions can hardly be taken as an explicit waiver (being “against the termination”, as required by Article 28 § 6 – see paragraph 20 above) of the important domestic law safeguard against being convicted of a time-barred offence.

42. Furthermore, the Court notes that the Supreme Court proceeded with the applicants' conviction without addressing at all the question of a waiver, if indeed there had been one (see, *mutatis mutandis*, *Bozkaya v. Turkey*, no. 46661/09, § 53, 5 September 2017). Given the Supreme Court's silence on the matter and the importance of the right at stake, the Court will not speculate as to whether the domestic courts treated the applicants' above-mentioned submissions as an implicit waiver of their right – guaranteed under the domestic law – not to be convicted of a time-barred offence. It is therefore apparent that the applicants were convicted for acts which were no longer punishable owing to the lapse of the statute of limitations under the relevant domestic law (see paragraph 39 above), and the domestic courts offered no explanation for taking such an approach to their case (contrast and compare *Coëme and Others*, cited above, § 150). Furthermore, the Court notes that despite the fact that the applicants were exempted by the Supreme Court from serving the sentence with the further effect of no criminal record existing in respect of the relevant offence (see paragraph 15

above), in the subsequent proceedings against the Social Services Agency for the award of the damages, the domestic courts, up to and including the Supreme Court, treated the applicants as having been convicted in the previous proceedings (see paragraph 16 above).

43. The foregoing considerations are sufficient for the Court to proceed with finding a violation of Article 7 without addressing the second limb of the applicants' complaint concerning the personal scope of Article 342 § 1 of the Criminal Code at the material time.

There has therefore been a violation of Article 7 of the Convention in the particular circumstances of the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicants claimed EUR 3,571 each in respect of pecuniary damage on account of their loss of employment, and EUR 3,968 in respect of non-pecuniary damage.

46. The Government submitted that the applicants' claim in respect of pecuniary damage was unsubstantiated, lacking any evidence as to their salary at the time. It was also speculative as it had assumed that the applicants would have remained in gainful employment for the period of three years. As regards the question of pecuniary damage, the Government submitted that the applicants' claims were unsubstantiated and/or excessive. The Government submitted that the finding of a violation, if established by the Court, would constitute sufficient just satisfaction for any pecuniary and/or non-pecuniary damage.

47. The Court cannot establish, on the basis of the information submitted to it, the extent of the causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As regards non-pecuniary damage, having regard to all the circumstances of the case, the Court considers that a finding of a violation of Article 7 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants.

C. Costs and expenses

48. The applicants did not submit any claims for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum under that head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 7 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Deputy Registrar

Síofra O'Leary
President