



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

FIRST SECTION

CASE OF BAJČIĆ v. CROATIA

(Application no. 67334/13)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Minor-offence proceedings and criminal proceedings on indictment concerning a road accident • Speeding central to the applicant's conviction in the minor-offence proceedings and an important part of his criminal charge and conviction in criminal proceedings • Partial overlap between facts which were the subject of both proceedings and risk of "double counting" of punishment and vexatious re-prosecution • Two sets of proceedings pursuing complementary purposes in addressing different aspects of the failure to respect road-traffic safety regulations, criminal proceedings being limited to particularly serious offences • Dual proceedings and penalty foreseeable consequence of the applicant's conduct • Adequate interaction between the two courts and two sets of proceedings forming a coherent whole • Disadvantage suffered by the applicant from the duplication of proceedings not beyond what was strictly necessary • Taken together, penalties imposed not exceeding what was strictly necessary in relation to the seriousness of the offences concerned • Effective, proportionate and dissuasive punishment for conduct • Two complementary sets of proceedings sufficiently connected in substance and in time • Proceedings and penalties forming a coherent and proportionate whole

STRASBOURG

8 October 2020

FINAL

08/01/2021

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

In the case of Bajčić v. Croatia,

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

Krzysztof Wojtyczek, *President*,
Ksenija Turković,
Linos-Alexandre Sicilianos,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Raffaele Sabato, *judges*,

and Abel Campos, *Section Registrar*,

Having regard to:

the above application against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Sanjin Bajčić (“the applicant”), on 13 October 2013,

the decision of 27 January 2014 to give notice to the Croatian Government of the complaint concerning the right not to be tried or punished twice and to declare the remainder of the application inadmissible pursuant to Rule 54 § 3 of the Rules of Court,

Having deliberated in private on 8 September 2020,

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

INTRODUCTION

1. The case concerns the applicant’s allegations that he had been punished twice for the same offence in violation of Article 4 of Protocol No. 7 to the Convention. The applicant was first fined in minor-offence proceedings for speeding, driving a defective vehicle and failing to remain at the scene of an accident. In subsequent criminal proceedings, the applicant was sentenced to a prison term for causing a road-traffic accident in which another person died.

THE FACTS

2. The applicant was born in 1966. He was represented before the Court by Mr G. Marjanović, a lawyer practising in Rijeka.

3. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

4. At around 11.20 a.m. on 13 October 2004 the applicant, who was driving over the speed limit, caused a road accident in Rijeka in which a person died.

5. On 25 November 2004 the Rijeka police requested that minor-offence proceedings be brought against the applicant in the Rijeka Minor Offences Court (*Prekršajni sud u Rijeci*). On 31 July 2006 the court issued a penalty

notice (*prekršajni nalog*) finding the applicant guilty. In so far as relevant, the court stated as follows.

“[O]n 13 October 2004 at 11.20 a.m. [the applicant] was driving a vehicle ... in the settlement of Draga Brig from the direction of Sv. Kuzan towards Rijeka.

[The applicant] reached house no. 73/9 on a section of the road with no pavement, where the road is narrow and visibility reduced owing to the high walls and hedges of the courtyards of the houses alongside and speed is limited to 40 kph by a road sign. The length of the skid marks, which measured 29 metres, helped establish that the speed [reached] had been at least 80 kph. This amounted to exceeding the speed limit by 40 kph at the moment when he spotted a pedestrian, S.M., stepping out onto the road from the courtyard of house no. 73/9. [The applicant] lost control of the vehicle and with its front right side hit the pedestrian and continued to move uncontrollably. After a further 12.5 metres the front right side of the vehicle hit a stone wall by the right edge of the road, after which [the applicant] left the scene of the accident without stopping, or coming to the aid of the victim, or informing the police of the accident or waiting for the arrival of the police. A later inspection of the vehicle showed that it was technically defective in that the tread on the front tyres was worn to below the .TWI [tread wear indicator] recommended by the manufacturer. Thus:

1. by driving [a vehicle] in a settlement while exceeding the speed limit by 40 kph, which is contrary to section 53(1) of the Road Traffic Safety Act,

[the applicant] committed a minor offence punishable under section 53(5) of the same Act;

2. by driving a vehicle [some of] whose equipment was faulty and as a driver in [road] traffic who was acting contrary to section 239(1) of the Road Traffic Safety Act,

[the applicant] committed a minor offence punishable under section 239(9) of the same Act;

3. by acting contrary to section 176(1)(3) of the Road Traffic Safety Act because he did not stay at the scene of the accident or inform the nearest police station or wait for the arrival of a person authorised to carry out an on-site inspection,

[the applicant] committed a minor offence punishable under section 176(3) of the above-mentioned Act.”

The applicant was fined 700 Croatian kunas (HRK – approximately 95 euros (EUR)) for exceeding the speed limit, HRK 400 (approximately EUR 55) for driving a defective car and HRK 3,000 (approximately EUR 400) for leaving the scene without informing the police. A six-month driving ban was imposed on him and he had five points added to his driving licence.

6. No appeal having been lodged against the Rijeka Minor Offences Court’s penalty notice, that decision became final on 31 July 2006.

7. In the meantime, having questioned the applicant and several other witnesses, on 9 June 2005 the Rijeka State Attorney’s Office indicted the applicant on charges under Article 272 of the Criminal Code of causing a fatal road accident on 13 October 2004. The relevant part of the bill of indictment (*optužnica*) reads as follows:

“[O]n 13 October 2004 at 11.20 a.m. in the settlement of Draga Brig at house no. 73/9 [the applicant] drove a vehicle ... from the direction of Sveti Kuzma towards Rijeka, ...

agreeing to jeopardise the safety of other road users, contrary to section 53(1) of the Road Traffic Safety Act, at a speed of at least 72 kph despite the speed limit being set at 40 kph... lost control of the vehicle and with its front right side hit a pedestrian... S.M., causing her injuries... [and ultimately] death;

so that, by violating the regulations on road-traffic safety, he jeopardised traffic causing a car accident in which one person died,

by which he committed a criminal offence against the general safety of persons and property and road-traffic safety by causing a road accident under Article 272 §§ 1 and 3 of the Criminal Code...”

8. On 21 March 2011 the Rijeka Municipal Court (*Općinski sud u Rijeci*) found the applicant guilty as charged and sentenced him to one year and six months’ imprisonment. The relevant part of the court judgment reads as follows.

“[O]n 13 October 2004 at about 11.20 a.m. in the settlement of Draga Brig at house no. 73/9 [the applicant] drove a vehicle ... from the direction of Sveti Kuzma towards Rijeka, at a speed of 69.6 kph, contrary to section 53(1) of the Road Traffic Safety Act, despite the speed limit being set at 40 kph as indicated by a road sign, recklessly thinking that such driving would not put at risk the safety of other road users. It was because of this that, on reaching house no. 73/9 on a section of the road without a pavement, and while braking, he lost control of the vehicle and with its front right side hit a pedestrian, S.M., who had stepped out onto the road from a courtyard ... Owing to this S.M. sustained numerous bodily injuries ... which were classified as particularly serious and resulted in [S.M.’s] death. Thus his reckless conduct, which violated the regulations on road-traffic safety, put [road users] at such a risk that he caused a road accident in which a person died, by which he committed a criminal offence against the general safety of persons and property and road-traffic safety by causing a road accident under Article 272 §§ 1, 2 and 4 of the Criminal Code....

Furthermore, [the court] inspected documents in the case file... It also inspected the case file of the Rijeka Minor Offences Court in case no. P-678/05...”

9. On 5 September 2012 the Rijeka County Court (*Županijski sud u Rijeci*) upheld the judgment at first instance. In reply to the applicant’s *ne bis in idem* complaint, the second-instance court held as follows:

“[The applicant] challenges the judgment at first instance, claiming that ... the case at hand has been previously adjudicated, since the penalty imposed for the criminal act stems from a judgment of the Minor Offences Court ... However, the breach of traffic regulations in question, which resulted in causing danger in traffic and ultimately a person’s death, is not classified as a minor offence, so [the applicant] could not have been charged in substance with the same facts. The case concerns a different subject of protection from an offence and a different degree of seriousness of a violation, so the [applicant’s] argument that the matter has already been adjudicated cannot be accepted ...”

10. On 29 January 2013 the Supreme Court (*Vrhovni sud Republike Hrvatske*) rejected the applicant’s request for extraordinary review of a final judgment (*zahtjev za izvanredno preispitivanje pravomocne presude*). In so far as relevant, the Supreme Court held as follows:

“[S]ince the matter concerns a different subject of protection from an offence and a different degree of seriousness of the violation, it should be emphasised that the case in question does not concern a matter which has already been adjudicated ...”

11. On 29 May 2013 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared a constitutional complaint brought by the applicant inadmissible as manifestly ill-founded. The Constitutional Court’s decision was served on the applicant’s representative on 13 June 2013.

RELEVANT LEGAL FRAMEWORK

A. Relevant domestic law

1. Road Traffic Safety Act

12. The relevant parts of the Road Traffic Safety Act (*Zakon o sigurnosti prometa na cestama*, Official Gazette nos. 56/1990, 135/1997, 113/2000, 28/2001 and 76/2010) provide as follows.

Section 53(1) provides that on roads in populated areas, the speed limit is 50 kph or whichever limit is displayed on a road sign. Section 53(2) provides that the penalty for driving between 30 and 50 kph above the speed limit is a fine of HRK 700 and an endorsement with two points on the person’s driving licence.

Section 176(1) and (3) requires that anyone involved in a road accident in which a person has been injured must stay at the scene of the accident, come to the aid of victims, do everything in his or her power to remove any other hazards so as to allow traffic to keep moving, preserve evidence, inform the nearest police station of the accident and wait for the arrival of a person authorised to carry out an on-site inspection. Failure to comply carries a fine of at least HRK 3,000.

Section 239(1) and (8) requires that vehicles in road traffic satisfy certain conditions as regards their dimensions, maximum weight, axle load and environmental considerations and that they are fitted with appropriate devices and equipment. Failure to comply carries a fine of HRK 400.

2. Criminal Code

13. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997 with subsequent amendments), as in force at the material time, read as follows:

Article 63

“2. A prison sentence, a fine or a fine imposed in minor-offence proceedings shall count towards the penalty for a criminal offence if the description of that criminal offence corresponds to the minor offence for which the penalty has been imposed.”

Article 272

“1. Any person who, by violating road-traffic safety regulations, endangers traffic such that he causes an accident in which another person suffers serious bodily injury or extensive pecuniary damage shall be liable to a term of imprisonment of six months to five years.

2. If the criminal offence referred to in paragraph 1 of this Article has been committed recklessly, the perpetrator shall be punished by a fine or a term of imprisonment of up to three years. ...

4. If the criminal offence referred to in paragraph 2 of this Article results in the death of one or more persons, the perpetrator shall be punished by a term of imprisonment of six months to five years.”

B. European Union case-law

14. In its judgments in case C-525/15 *Luca Menci*, adopted on 20 March 2018, the Court of Justice of the European Union (CJEU) examined whether there had been a violation of the *ne bis in idem* principle in a case where both criminal and administrative sanctions had been imposed for failure to pay VAT. The CJEU concluded that such duplication of proceedings and penalties constituted a limitation of the *ne bis in idem* principle requiring justification. In particular, national legislation authorising a duplication of proceedings and penalties of a criminal nature had to pursue an objective of general interest, such as to justify a duplication of proceedings and penalties, it being necessary for those proceedings and penalties to pursue additional objectives; establish clear and precise rules allowing individuals to predict which acts or omissions were liable to be subject to such duplication of proceedings and penalties; ensure that the proceedings were coordinated in order to limit to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings; and limit the severity of all of the penalties imposed to what is strictly necessary in relation to the seriousness of the offence concerned.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7 TO THE CONVENTION

15. The applicant complained that he had been tried and punished twice for the same offence. He relied on Article 4 § 1 of Protocol No. 7 to the Convention, which reads as follows:

“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.”

A. Admissibility

16. The Court notes that this complaint 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. The parties' submissions

17. The applicant argued that in both the minor-offence proceedings and the proceedings on indictment, he had been tried and punished in respect of the same event of 13 October 2004.

18. The applicant pointed out that, since the Rijeka Minor Offences Court had expressly found him guilty of, *inter alia*, hitting a pedestrian while driving, his conviction for a minor offence encompassed the consequences of his failure to comply with traffic regulations. This showed that both sets of proceedings had been conducted with the same purpose, namely ensuring road-traffic safety, including for road users and pedestrians alike. Moreover, when the authorities competent for bringing charges had included the consequences of the applicant's behaviour in the factual description of the minor offence with which he had been charged, it could not have been foreseen that the applicant would be subject to both sets of proceedings.

19. Furthermore, the taking of evidence had indicated that the same decisive facts – such as whether the applicant had violated road-traffic regulations and whether the speeding had caused the pedestrian's fatal injuries – had been established in both proceedings. In the applicant's view, the criminal court had failed to take into consideration the penalty that had been imposed on him in the minor-offence proceedings.

20. Finally, the applicant pointed out that the temporal connection between the two sets of proceedings had not been sufficiently strong, as there had been an excessive delay in the conduct of the criminal proceedings.

21. The Government argued that the minor offence for which the applicant had been punished referred to speeding, operating a defective vehicle and not going to the aid of the victim of a road accident; however, the offence for which he had been punished in the proceedings on indictment referred to reckless driving which had resulted in a road accident and another person's death.

22. The Government further submitted that the minor-offence and criminal proceedings in the present case had been sufficiently closely connected in substance and in time to form a coherent whole. Firstly, as emphasised by both the Rijeka County Court and the Supreme Court, the purpose of the two sets of proceedings had differed: the nature of the former was to act as a general deterrent with the principal aim of ensuring that traffic rules were obeyed by everyone bearing in mind the potential danger, whereas

the latter proceedings had been conducted owing to the serious consequences of the applicant's failure to comply with the traffic rules.

23. Moreover, the Government submitted that in cases of traffic accidents resulting in a fatality, neither the domestic law nor the relevant case-law left any room for doubt that the perpetrator might, and as a general rule would, be subject to both minor-offence and criminal proceedings. The foreseeability requirement had therefore been fulfilled. The Government further pointed out that the collection and assessment of evidence had not been duplicated to the extent possible, considering the inherent differences between the two sets of proceedings. For instance, the record of the on-site inspection and the applicant's blood analysis had first been used in the minor-offence proceedings and then in the criminal proceedings. The criminal court had also inspected the minor-offence proceedings case file. Finally, in the minor-offence proceedings the applicant had only been fined, whereas in the criminal proceedings he had been sentenced to imprisonment.

24. As regards the connection in time, the Government pointed out that the criminal proceedings had been instituted less than six months after the minor-offence proceedings and had been conducted concurrently until 31 July 2006. The period that had elapsed thereafter was a necessary and natural consequence of the greater complexity of criminal proceedings.

2. *The Court's assessment*

(a) **General principles**

25. Article 4 of Protocol No. 7 to the Convention is 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 (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 82, ECHR 2009; *Marguš v. Croatia* [GC], no. 4455/10, § 114, ECHR 2014; and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 108, 15 November 2016).

26. In cases raising an issue under Article 4 of Protocol No. 7, it should be determined whether the specific national measure complained of entails, in substance or in effect, double jeopardy to the detriment of the individual or whether, in contrast, it is the product of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable and proportionate manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice (see *A and B v. Norway*, cited above, § 122). The object of Article 4 of Protocol No. 7 is to prevent the injustice of a person's being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an "integrated" approach to the social wrongdoing in question, in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes (*ibid.*, § 123).

(b) Application of the principles in the present case

(i) Whether both sets of proceedings were criminal in nature

27. In comparable cases against Croatia involving minor offences, the Court has held, on the basis of the “*Engel* criteria” (see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22), that minor-offence proceedings were “criminal” in nature for the purposes of Article 4 of Protocol No. 7 (see *Maresti v. Croatia*, no. 55759/07, § 61, 25 June 2009; *Tomasović v. Croatia*, no. 53785/09, § 25, 18 October 2011; and, in the context of an Article 6 complaint, *Marčan v. Croatia*, no. 40820/12, § 33, 10 July 2014).

28. Noting that the parties did not dispute this, the Court sees no reason to depart from the conclusion reached in those previous cases and holds that both sets of proceedings in the present case concerned a “criminal” matter within the autonomous meaning of Article 4 of Protocol No. 7.

(ii) Whether the offences were the same in nature (idem)

29. The notion of the “same offence” – the *idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – was clarified in *Sergey Zolotukhin* (cited above, §§ 78-84). Following the approach adopted in that judgment, it is clear that the determination as to whether the offences in question were the same (*idem*) depends on a facts-based assessment (*ibid.*, § 84), rather than, for example, a formal assessment consisting in comparing the “essential elements” of the offences. The prohibition in Article 4 of Protocol No. 7 to the Convention concerns the prosecution or trial of a second “offence” in so far as the latter arises from identical facts or facts which are substantially the same (*ibid.*, § 82). In the Court’s view, statements of fact concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused are an appropriate starting-point for its determination of the issue whether the facts in both proceedings were identical or substantially the same (see, in this connection, *Sergey Zolotukhin*, cited above, § 83). The Court’s inquiry should therefore focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings (*ibid.*, § 84).

30. In the present case, there is no doubt that both the minor-offence proceedings and the criminal proceedings on indictment concerned a road accident in Draga Brig which took place at about 11.20 a.m. on 13 October 2004 (see paragraphs 5 and 8 above).

31. In the minor-offence proceedings the applicant was punished for various offences under the Road Traffic Safety Act, namely speeding contrary to section 53(1), driving a defective vehicle contrary to section 239(1) and failing to fulfil the duties of road users in the event of an accident

contrary to section 176(1) and (3), such as staying at the scene, providing aid to victims, removing any hazards, preserving evidence and informing the nearest police station (see paragraph 12 above). In the proceedings on indictment, the applicant was punished under Article 272 §§ 1, 2 and 4 of the Criminal Code, which refers to recklessly causing a road accident by violating the regulations on road-traffic safety, as a result of which a person sustains serious bodily injury or dies (see paragraph 13 above).

32. The Court notes that, of the three minor offences in question, only speeding (see paragraph 7 above) was alleged and subsequently found to have been causally linked to the road accident which resulted in a person's death, which was precisely the offence for which the applicant was prosecuted and punished in the criminal proceedings (see paragraph 8 above). Thus, the Court considers that the minor-offence proceedings related to a number of facts – in particular driving a vehicle with worn out tyres and not providing assistance to a victim of a road accident, not informing the police and not waiting for the arrival of a person authorised to carry out an on-site inspection – which were not covered by the subsequent criminal charges (compare *Hauser-Sporn v. Austria*, no. 37301/03, § 43, 7 December 2006).

33. Moreover, the facts for which the applicant had been convicted under section 176(1) and (3) of the Road Traffic Safety Act could not have formed part of the offence of recklessly causing a traffic accident under Article 272 of the Criminal Code, since they covered the applicant's conduct after the accident had taken place. It cannot therefore be said that the facts for which the applicant was punished in the minor-offence proceedings under sections 239(1) and 176(1) and (3) of the Road Traffic Safety Act can be regarded as substantially the same as the facts for which he was subsequently punished in criminal proceedings (see, *mutatis mutandis*, *Ramda v. France*, no. 78477/11, §§ 87-94, 19 December 2017). No issue under Article 4 of Protocol No. 7 thus arises in this regard.

34. Accordingly, the Court will not examine further the applicant's complaint relating to sections 239(1) and 176(1) and (3) of the Road Traffic Safety Act as no issue under Article 4 of Protocol No. 7 to the Convention arises in that respect.

35. On the other hand, the Court notes that speeding was central to the applicant's conviction under section 53(1) of the Road Traffic Safety Act in the minor-offence proceedings and formed an important part of his criminal charge and conviction in criminal proceedings (see paragraphs 5 and 8 above). Consequently, in the present case the Court considers that, in relation to speeding, the *idem* element of the *ne bis in idem* principle is present (compare *Gradinger v. Austria*, 23 October 1995, § 55, Series A no. 328-C).

36. The Court would further note that in the present case the overlap between the facts which were the subject of both the minor-offence proceedings and the criminal proceedings on indictment was only partial. Indeed, the conviction for the minor offence of speeding did not to any extent

include the causing of a road accident which resulted in another person's death. In fact, section 53(1) of the Road Traffic Safety Act is a lesser offence which is absorbed by the greater offence of causing a traffic accident as provided for in Article 272 of the Criminal Code, covering all the facts included in the lesser offence as well as some additional facts.

37. The Court reiterates at this juncture that the Convention does not prohibit the separation of the sentencing process in a given case into different stages or parts, such that different penalties may be imposed, successively or in parallel, for an offence that is to be characterised as “criminal” within the autonomous meaning of that notion under the Convention. States should be able legitimately to choose complementary legal responses to socially offensive conduct (such as non-compliance with road-traffic regulations or non-payment/evasion of taxes) through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned (see *A and B v. Norway*, cited above, §§ 120 and 121). In fact there might be good reasons for trying traffic offences before minor-offence courts or special traffic courts under a simplified procedure, effectiveness being one of them.

38. In the present case the applicant contended that his prior conviction for a logically lesser offence barred his subsequent prosecution for a greater offence (see paragraph 36 above). However, the Court notes that if the criminal court were not to be permitted to convict the applicant of a greater offence, which encompassed facts for which he had not, and could not have, been convicted in minor-offence proceedings, the applicant would not be punished for the entirety of his conduct, taking into consideration all the facts and the overall level of his guilt. At the same time, even when the overlap in facts was only partial, the bifurcation of proceedings carried a risk of “double counting” of punishment and vexatious re-prosecution, both of which are contrary to the principle of *ne bis in idem*. Thus, even in such cases the Court must be satisfied that there has been, even if only partially, no duplication of trial or punishment (*bis*), as proscribed by Article 4 of Protocol No. 7 to the Convention.

(iii) *Whether there was a duplication of proceedings (bis)*

39. As the Grand Chamber explained in *A and B v. Norway* (cited above, § 130), Article 4 of Protocol No. 7 does not preclude the conduct of dual proceedings, provided that certain conditions are fulfilled. In particular, for the Court to be satisfied that there is no duplication of trial or punishment (*bis*) as proscribed by Article 4 of Protocol No. 7, the respondent State must demonstrate convincingly that the dual proceedings in question were “sufficiently closely connected in substance and in time”. In other words, it must be shown that they were combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the

means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (ibid., § 130). As regards the conditions to be satisfied in order for dual criminal and administrative proceedings to be regarded as sufficiently connected in substance and in time and thus compatible with the *bis* criterion in Article 4 of Protocol No. 7, the material factors for determining whether there was a sufficiently close connection in substance include:

- whether the different proceedings pursue complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;

- whether the duality of proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (*idem*);

- whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any additional disadvantages resulting from duplication of proceedings and in particular duplication in the collection as well as the assessment of the evidence, notably through adequate interaction between the various competent authorities to ensure that the establishment of the facts in one set of proceedings is replicated in the other;

- and, above all, whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden; this latter risk is least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall amount of any penalties imposed is proportionate (ibid., §§ 131-32).

Combined proceedings will more likely meet the criteria of complementarity and coherence if the sanctions to be imposed in the proceedings not formally classified as “criminal” are specific for the conduct in question and thus differ from “the hard core of criminal law (ibid., § 133).

40. In the present case, in 2006 the applicant was fined in the minor-offence proceedings for speeding. Before those proceedings were finalised, in 2005 the applicant was indicted under Article 272 of the Criminal Code for causing a road accident in which another person had died as a consequence of reckless driving. He was ultimately sentenced in those proceedings to a prison sentence in 2011.

41. Assessing the connection in substance between the minor-offence and criminal proceedings in the present case – as well as the different sanctions imposed on the applicant – the Court notes that the purpose of the minor-offence proceedings was to address the applicant’s failure to comply with road-traffic regulations, notably speeding, in order to ensure the smooth flow of traffic and prevent conduct endangering public safety (see paragraph 5 above). As the Government explained, this minor offence is aimed at

discouraging all drivers from disregarding speed limits, irrespective of whether or not their conduct causes a road-traffic accident. The subsequent criminal proceedings against the applicant, on the other hand, were conducted precisely with the aim of addressing the consequence of his failure to comply with the speed limit, that is, to penalise his conduct which caused the death of a pedestrian (compare and contrast *Gradinger*, cited above, § 54). The Court therefore accepts that the two sets of proceedings pursued complementary purposes in addressing different aspects of the failure to respect road-traffic safety regulations, criminal proceedings being limited to offences which are particularly serious, such as reckless driving resulting in serious bodily injury or death (see paragraph 13 above).

42. The applicant asserted that the minor offences court had also punished him for the death of the pedestrian. While it is true that the Rijeka Minor Offences Court included the death of the pedestrian in the description of the facts of the case, it is clear from the text of its decision that the actual minor offences of which the applicant was found guilty related only to speeding (see paragraph 5 above). Under Croatian law, causing a death in a road-traffic accident cannot be prosecuted in minor-offence proceedings; instead, it is dealt with as a criminal offence that is subject to public prosecution by the State Attorney in criminal proceedings. Moreover, at the material time, dual-track punitive proceedings combining minor-offence proceedings and criminal proceedings formed part of the actions commonly taken to impose sanctions in accordance with clear and precise rules for failure to comply with road-traffic safety regulations and for reckless driving causing a fatal road-traffic accident (see paragraphs 12, 13 and 23 above). Therefore, the Court cannot accept the applicant's contention that the dual proceedings and penalty had been an unforeseeable consequence of his conduct.

43. As to the manner of conducting the proceedings, the Court notes that the criminal court not only used certain evidence adduced before the Rijeka Minor Offences Court, but also inspected the case file from the minor-offence proceedings in its entirety (see paragraph 8 above). It can therefore be concluded that the interaction between the two courts was adequate and that the two sets of proceedings formed a coherent whole (see, *a contrario*, *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, §§ 65-74, 30 April 2015, where the applicants had first been acquitted in criminal proceedings, and later on imposed with severe administrative fines for the same conduct). Consequently, the applicant has not suffered a disadvantage associated with the duplication of proceedings, beyond what was strictly necessary.

44. The Court further notes that, while the Rijeka Minor Offences Court issued the applicant with a fine in the amount of EUR 95 for speeding (see paragraph 5 above), the criminal court imposed a custodial sentence on him for reckless driving causing a fatal road-traffic accident. Although the criminal court did not expressly refer to the fine previously imposed by the

Rijeka Minor Offences Court, the Court observes that it sentenced the applicant to one and a half years' imprisonment, whereas at the material time the Criminal Code prescribed a maximum sentence for such an offence of up to five years' imprisonment (see paragraph 31 above). In the Court's view, when taken together the penalties imposed did not exceed what was strictly necessary in relation to the seriousness of the offences concerned. It cannot therefore be said that the applicant was made to bear an excessive burden (see the relevant criteria set out in *A and B v. Norway*, cited at paragraph 39 above). Rather, only once punishment for speeding had been complemented by the punishment for causing a fatal road-traffic accident did the applicant in the present case receive an effective, proportionate and dissuasive punishment for his conduct. In any event, the sole fact that the criminal court did not refer *expressis verbis* to the sanction imposed in the minor-offence proceedings might not of itself be sufficient to conclude that the proceedings were not interconnected in substance.

45. Finally, turning to the connection in time between the two proceedings, the Court notes that the minor-offence proceedings were instituted by the Rijeka police on 25 November 2004 (see paragraph 5 above), whereas the criminal indictment was filed by the Rijeka State Attorney's Office some seven months later, on 9 June 2005 (see paragraph 7 above). Although the Court does not have in its possession the exact date of the commencement of the criminal investigation in respect of the applicant, it is clear from the bill of indictment that the applicant and a number of other witnesses had already been questioned prior to the lodging of the indictment. In other words, the two sets of proceedings must have been initiated at practically the same time (contrast *Jóhannesson and Others v. Iceland*, no. 22007/11, § 54, 18 May 2017, where the applicants had been indicted only 15 and 16 months after the decision of the tax authorities had been taken in their cases). The two sets of proceedings were then conducted in parallel for almost another fourteen months, when the Rijeka Minor Offences Court's penalty notice became final, without an appeal having been lodged against it. The criminal proceedings against the applicant thereafter lasted another six years and ten months at four levels of jurisdiction, a period which, in the Court's view, cannot of itself suffice to disconnect in time the minor-offence and the criminal proceedings (see, *mutatis mutandis*, *A and B v. Norway*, cited above, § 151; and contrast *Kapetanios*, cited above, § 67, where the delay between the conclusion of the two sets of proceedings had amounted to between 9 and 14 years; and *Nodet v. France*, no. 47342/14, §§ 52-53, 6 June 2019, where the Court found no sufficiently close substantive or temporal link between the two sets of proceedings). In particular, the additional lapse of time before the criminal courts cannot be considered disproportionate, abusive or unreasonable, taking into consideration that the penalty notice had been issued as a result of summary minor-offence proceedings, whereas the criminal proceedings, which by their nature are more complex, had been

conducted before four court instances. In the above circumstances, the Court is satisfied that the two proceedings were sufficiently connected in time.

46. In conclusion, in the Court's opinion, the aims of punishment, whereby different aspects of the same conduct are addressed, ought to be considered as a whole and have in the present case been realised through two foreseeable complementary sets of proceedings, which were sufficiently connected in substance and in time, as required by the Court's case-law, to be considered to form part of an integral scheme of sanctions under Croatian law for failure to comply with road-traffic safety regulations and causing a traffic accident as a consequence. There was an adequate level of interaction between the two courts in these proceedings, and the punishments imposed, taken together, did not make the applicant bear an excessive burden, but were limited to what was strictly necessary in relation to the seriousness of the offence. In the light of the foregoing, the Court finds no abuse of the State's right to impose a punishment (*jus puniendi*), nor can it conclude that the applicant suffered any disproportionate prejudice resulting from the duplication of proceedings and penalties. Rather, those proceedings and penalties formed a coherent and proportionate whole (see, *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 112, 130 and 147).

47. There has accordingly been no violation of Article 4 of Protocol No. 7 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
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 8 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Krzysztof Wojtyczek
President