



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

FIRST SECTION

CASE OF MILOŠEVIĆ v. CROATIA

(Application no. 12022/16)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Disproportionate prejudice suffered through subjection to minor-offence and administrative (tax) proceedings for using prohibited oil as fuel • Excise duties increased one hundred times in latter proceedings • Two sets of proceedings not sufficiently linked in substance to form a coherent whole

STRASBOURG

31 August 2021

FINAL

30/11/2021

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

In the case of Milošević v. Croatia,

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

Péter Paczolay, *President*,

Ksenija Turković,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 12022/16) 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 national of Bosnia and Herzegovina, Mr Milan Milošević (“the applicant”), on 22 February 2016;

the decision to give notice of the application to the Croatian Government (“the Government”);

the decision by the Government of Bosnia and Herzegovina not to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 1 and 29 June 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the applicant’s punishment in minor-offence proceedings for using prohibited heating oil as fuel in his truck and the subsequent imposition of excise duties for the use of that oil increased one hundred times. The applicant alleges that this infringed his right not to be tried and punished twice for the same offence.

THE FACTS

2. The applicant was born in 1966 and lives in Bosanski Brod. He was represented by Mr D. Hećimović, a lawyer practising in Slavonski Brod.

3. The Government were represented by their Agent, Mrs Š. Stažnik.

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

5. On 29 June 2012 an inspection by the authorised Vukovar Customs Office (*Carinarnica Vukovar*), in cooperation with the police, found that the

fuel in a truck owned by the applicant was a special state-supported heating oil, which could not be used as fuel for motor vehicles.

6. On the same day, the Customs Office found the applicant guilty of a minor offence under the Excise Duties Act for the use of the heating oil in his truck contrary to section 74(2) of that Act and fined him with 4,800 Croatian kunas (HRK; approximately 640 euros (EUR)). The relevant part of the penalty notice (*prekršajni nalog*) reads as follows:

“The [applicant] ... is guilty... because on 29 June 2012 ... a truck owned by him... was using red tinted heating oil as fuel,

whereby he was acting in violation of section 74(2) of the Excise Duties Act,

punishable under section 80(3) of the Excise Duties Act...

...

In accordance with section 34(3) of the Minor Offences Act, if the [applicant] fails to pay the fine in full or in part, it shall be collected by force, and if such enforcement is unsuccessful within a period of one year from initiation of the enforcement proceedings, the competent minor offences court shall convert the [fine] to imprisonment of 16 days...

...

It has been established from the record of the inspection of the proper use of fuel ... and the record of sampling ... that [the applicant's vehicle] used red tinted heating oil as fuel.

In view of the above, the minor-offences committee of this Customs Office has established that the actions of the [applicant] fulfil all characteristics of the minor offence he has been charged with because, as the owner of a motor vehicle, he is responsible for the breach of the Excise Duties Act as stated in the operative part of this penalty notice...

By his action, the [applicant] has violated section 74(2) of the Excise Duties Act, which provides that [heating] oils enumerated in section 73 of that Act could not be used as fuel in motor vehicles, boats or other machines, or for any purpose other than heating...”

7. Since the applicant did not appeal, this decision became final and he duly paid his fine.

8. On the same day, the Vukovar Customs Office sent the relevant record of the inspection of the proper use of fuel and the record of sampling to its administrative department in order to calculate the amount of tax surcharges due.

9. On 2 July 2012 the Osijek Customs Office (*Carinarnica Osijek*) ordered the applicant to pay HRK 123,000 (approximately EUR 16,700) in respect of excise duties, consisting of the amount of excise duties for the amount of oil in question increased one hundred times due to its illegal use on 29 June 2012. This decision was based on section 76(2) of the Excise Duties Act.

10. The applicant challenged this decision before the Ministry of Finance (*Ministarstvo financija*), and on 31 October 2013 the Ministry

quashed the first-instance decision on the grounds that the quantity of the heating oil subject to excise duties had not been properly determined.

11. On 15 January 2014 the Osijek Custom Office rendered a fresh decision ordering the applicant payment of HRK 83,025 (approximately EUR 11,300), which consisted of the amount of excise duties for the amount of heating oil in question increased one hundred times due to its illegal use on 29 June 2012. This decision was upheld on appeal.

12. The applicant then lodged an administrative action, challenging the decision of the administrative authorities.

13. On 20 January 2015 the Osijek Administrative Court (*Upravni sud u Osijeku*) dismissed the applicant's action. That decision was upheld on appeal by the High Administrative Court (*Visoki upravni sud Republike Hrvatske*).

14. Subsequently, the applicant lodged a constitutional complaint before the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining, *inter alia*, that he had been punished twice for the same act, contrary to Article 4 of Protocol No. 7.

15. On 20 January 2016 the Constitutional Court declared the applicant's complaint inadmissible as manifestly ill-founded, without providing a reply to his *ne bis in idem* complaint.

RELEVANT LEGAL FRAMEWORK

16. The relevant provisions of the Excise Duties Act (*Zakon o trošarinama*, Official Gazette no. 83/09), as in force at the material time, read as follows:

Section 1

"This Act regulates the excise duties system of taxation of alcohol and alcoholic drinks, tobacco, energy sources and electricity ... which are released on the market within the territory of the Republic of Croatia."

Section 73

"1. Gas oils subject to tariff codes ..., which are used as heating oil, must be labelled by a prescribed indicator ..."

Section 74

"1. Labelled gas oils referred to in section 73 of this Act may be used and sold solely for the purpose prescribed by this Act.

2. Labelled gas oils referred to in section 73 of this Act may not be used to power motor vehicles ... or for any other purpose except as heating oil."

Section 76

“2. If it is established during an inspection of motor vehicles ..., that gas oils referred to in section 73 of this Act have been used for purposes and in the manner other than those prescribed by section 74 of this Act, the owner of the motor vehicle ... shall be charged with excise duties with respect to the quantities corresponding to the volume of the motor fuel tank, multiplied by a factor of one hundred...”

Excise duties minor-offences

Section 80

“1. A legal person shall be fined in the amount ... for an offence...

47. if they do not use gas oils in the prescribed manner (section 74(2)) ...

3. A natural person shall also be fined for an offence referred to in paragraph 1, point... 47 of this section, in the amount between HRK 2,000 and HRK 10,000.”

17. In 2015 the Excise Duties Act was amended to exclude the increase by one hundred times of the amount of excise duties due in case of the use of gas oils contrary to that Act. According to the final proposal of the Amendments to the Excise Duties Act dated September 2015, such an increase of excise duties due had been contrary to the *ne bis in idem* principle and the Act was amended in order to comply with the jurisprudence of the Court of Justice of the European Union and best practices of other EU Member States. The provision on the excise duties minor offence relating to illegal use of gas oils as fuel in motor vehicles remained unchanged.

18. Section 34 of the Minor Offences Act (*Prekršajni zakon*, Official Gazette no. 107/07), as in force at the material time, provided that any unpaid fine imposed in minor-offence proceedings was to be executed by force and, if such enforcement failed, that it was to be replaced by imprisonment, calculating each day as HRK 300.

THE LAW

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

19. The applicant complained that he had been tried and punished twice for the same offence contrary to Article 4 of Protocol No. 7 to the Convention, the relevant part of which 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.”

A. Admissibility

20. The Government submitted that the applicant had failed to exhaust domestic remedies since he had not raised his *ne bis in idem* complaint before the administrative authorities deciding his case.

21. The applicant disagreed. He maintained that he had raised the said argument in his constitutional complaint. He further pointed out that a copy of the Court's judgment in the case *Ruotsalainen v. Finland* (no. 13079/03, 16 June 2009), which was identical to his, had formed part of his case file before the Administrative Court, as submitted by the Government. The administrative authorities must have therefore been aware of his *ne bis in idem* grievance.

22. The Court notes that the applicant expressly raised a complaint under Article 4 Protocol No. 7 in his constitutional complaint and that he received no reply. The applicant thereby provided the national authorities with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 § 1 of the Convention, namely that of putting right the violations alleged against them (see, for instance, *Arps v. Croatia*, no. 23444/12, § 20, 25 October 2016). The Government's object must therefore be dismissed.

23. 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' arguments

24. The applicant maintained that both the minor-offence and the subsequent administrative (tax) proceeding concerned the same event and had been based on the same legal provision. The fact that the excise duties imposed on him had been increased one hundred times proved that the said measure had been criminal in nature and had not been solely aimed at prevention of tax evasion.

25. The Government maintained that the two proceedings constituted a single integrated response to the unlawful conduct by the applicant. The minor-offence proceedings were primarily aimed at protection of traffic safety since heating oil was damaging to the engine of the vehicle that used it, whereas the administrative (tax) proceedings were aimed at collecting excise duties and therefore punishing and preventing tax evasion. Since heating oil was significantly cheaper than diesel or petrol fuel, due to a number of fiscal and parafiscal burdens the latter entailed, using heating oil in vehicles constituted a form of tax evasion because the unlawful use of heating oil to power motor vehicles caused the State to lose revenue it would otherwise have made by selling diesel or petrol fuel to drivers.

26. The Government further asserted that the two proceedings had been a foreseeable consequence of the applicant's illegal behaviour and that there had been no duplication in the collection and assessment of evidence, primarily because the minor-offence penalty notice had been issued in a summary procedure. Moreover, the penalties for the two proceedings had been integrated on the level of the law and the applicant's fine in the minor-offence proceedings had been only slightly above the legal minimum. Finally, in the Government's view, the two sets of proceedings had also been sufficiently connected in time since the administrative (tax) proceedings were initiated on the next working day following the applicant had been issued the minor-offence penalty notice.

2. The Court's assessment

(a) General principles

27. 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).

28. 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

29. The Court notes at the outset that neither the minor-offence nor the subsequent administrative (tax) proceedings at issue in the present case concerned the "hard core of criminal law". However, 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 *Sergey Zolotukhin*, cited above, § 52; and *Seražin v. Croatia* (dec.), no. 19120/15, § 64, 9 October 2018; see also *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 76, 22 December 2020).

30. 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 does not, however, 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).

31. Turning to the present case, the Court has held in a number of previous cases against Croatia that minor-offence proceedings were to be considered “criminal” for the purposes of Article 4 of Protocol No. 7 (see *Bajčić v. Croatia*, no. 67334/13, § 27, 8 October 2020, with further references; see also, in the context of Article 6, *Marčan v. Croatia*, no. 40820/12, § 33, 10 July 2014). The Court sees no reason to hold otherwise in the present case (see, in particular, paragraphs 6 and 18 above).

32. As regards the subsequent administrative (tax) proceedings, the Court observes that the relevant provision of the Excise Duties Act was directed towards all citizens rather than only a group possessing a special status and that the applicant was ordered to pay excise duties in his capacity as owner of a motor vehicle (see paragraph 16 above). Moreover, the amount of the excise duties due was increased one hundred times on account of illegal use of heating oil as fuel (see paragraph 11 above). This must, in the Court’s view, be seen as a punishment to deter re-offending, recognised as a characteristic feature of criminal penalties (see *Ezeh and Connors*, cited above, §§ 102 and 105). Bearing in mind its previous case-law on the matter (see *Ruotsalainen v. Finland*, no. 13079/03, §§ 42-47, 16 June 2009; and *Rinas v. Finland*, no. 17039/13, §§ 40-43, 27 January 2015), the Court concludes that the excise duties in the present case were

imposed by a rule whose purpose was not merely compensatory but also deterrent and punitive, which is sufficient to establish the criminal nature of the proceedings at issue, within the autonomous meaning of Article 4 of Protocol No. 7.

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

33. 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).

34. In the present case, there is no doubt that both the minor-offence proceedings and the subsequent administrative proceedings concerned an inspection of the fuel used in a truck owned by the applicant, which took place on 29 June October 2012, and the establishment of the fact that the fuel tank contained hearing oil (see paragraph 5 above). Consequently, the *idem* element of the *ne bis in idem* principle is present (see *Ruotsalainen*, cited above, §§ 50-56).

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

35. 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).

36. In the present case, following an inspection on 29 June 2012, the applicant was fined by way of a minor-offence penalty notice for having used a type of heating oil for a purpose which was not allowed by the Excise Duties Act. Three days later, he was ordered to pay excise duties on the heating oil he had used increased one hundred times.

37. Assessing the connection in substance between the minor-offence and the administrative (tax) proceedings in the present case, the Government maintained that the two sets of proceedings pursued complementary purposes. While the administrative (tax) proceedings had been aimed at punishing the perpetrator for attempted tax evasion, the Government claimed that the purpose of the minor-offence proceedings was

primarily traffic safety, since the use of heating oil as fuel was generally unsafe and could damage the engine of the vehicle using it as fuel (see paragraph 25 above).

38. In this connection, the Court firstly notes that the provision on the basis of which the applicant had been issued the minor-offence fine forms part of the Excise Duties Act, which regulates the excise duties system of taxation of energy sources, and is classified in that Act under the title “excise duties minor-offence” (see paragraph 16 above). Secondly, the competent customs office made no mention of any traffic safety concerns when issuing the minor offences penalty notice (see paragraph 6 above). Most significantly, however, when amending the Excise Duties Act in 2015, while admitting that the existing legislative solution had been contrary to the *ne bis in idem* principle, the legislator removed the increase of one hundred times of the excise duties due, while maintaining the minor offence provision as the sole taxation-related penalty for the illegal use of heating oil as fuel (see paragraph 17 above). In the Court’s view, notwithstanding possible traffic safety considerations the use of heating oil as fuel may generally entail, the foregoing clearly indicates that the primary purpose of the fine imposed on the applicant in the minor-offence proceedings had been to punish him for a taxation-related minor-offence.

39. The Court further notes that the subsequent administrative (tax) proceedings against the applicant ordering him to pay excise duties on the fuel used were also conducted with the aim of addressing the taxation-related consequence of his illegal behaviour. Moreover, as already observed by the Court (see paragraph 32 above), the amount the applicant was ordered to pay in those proceedings did not consist of a simple calculation of the excise duties due, but instead an increase of that amount by one hundred times because he had used heating oil contrary to section 74(2) of the Excise Duties Act. That amount thereby also pursued a punitive aim of punishing the applicant for attempted tax evasion. It can therefore not be said that the two sets of proceedings pursued merely complementary purposes in addressing different aspects of the failure to respect regulations on the use of heating oil (conversely *Bajčić*, cited above, § 41).

40. The Court notes that the two sets of proceedings complained of therefore sanctioned the same behaviour, defining and qualifying the illegal use of heating oil in the same manner and prescribing two separate sanctions which were not of a different nature (compare *Nodet v. France*, no. 47342/14, § 48, 6 June 2019). This is sufficient for the Court to conclude that the present case did not address different aspects of the wrongdoing in a manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice (see paragraph 35 above).

41. In addition, the Court observes that the fine imposed on the applicant in the minor-offence proceedings was not taken into account in subsequent administrative (tax) proceedings. Indeed, none of the four instances of

administrative authorities and courts deciding the applicant's case referred to the fine previously imposed on him by the Vukovar Customs Office, let alone lowered the amount of excise duties which the applicant was ultimately ordered to pay. Given the clear wording of section 76 of the Excise Duties Act as in force at the material time, it would appear that they did not even have leeway to reduce the amount prescribed therein (see paragraph 16 above).

42. The foregoing reinforces the Court's conclusion that, notwithstanding their foreseeability, the two sets of proceedings had not been sufficiently linked in substance, as required under the Court's case-law, to be considered to form part of an integral scheme of sanctions under Croatian law, as in force at the material time, for illegal use of specially-taxed heating oil as fuel. On the contrary, having been punished twice for the same conduct, the applicant had in the Court's view suffered disproportionate prejudice resulting from the duplication of proceedings and penalties, which did not form a coherent and proportionate whole in his case (see, *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 112, 130 and 147). In such circumstances, the Court finds it unnecessary to review whether the two sets of proceedings were sufficiently connected in time (see the relevant criteria set out in *A and B v. Norway*, cited at paragraph 35 above; see also *Tsonyo Tsonev v. Bulgaria (no. 4)*, no. 35623/11, § 50, 6 April 2021). The Court is thus of the opinion, and agrees with the domestic authorities who subsequently amended the relevant provisions of the Excise Duties Act (see paragraph 17 above), that the duplication of the proceedings in the present case had been the direct consequence of the domestic law which, on the one hand, prescribed a fine for illegal use of special heating oil as fuel and, at the same time foresaw a hundred times increase of the tax surcharge that the perpetrator had to pay for such use.

43. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention.

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 applicant claimed reimbursement of EUR 689 in respect the amount he had paid for the fine in the minor-offences proceedings. He also

claimed non-pecuniary damage, leaving the amount to the judgment of the Court.

46. The Government contested that claim.

47. The Court considers that the applicant incurred both pecuniary and non-pecuniary damage in connection with the duplication of proceedings against him (see *Khmel v. Russia*, no. 20383/04, § 76, 12 December 2013). Accordingly, it awards him an aggregate amount of EUR 3,000 in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant also claimed EUR 1,185 for the costs and expenses incurred before the domestic courts and EUR 135 for translation expenses. He also sought the costs of his legal representation before the Court without specifying the amount.

49. The Government contested those claims.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant only submitted itemised claims and supporting documents concerning part of the costs and expenses incurred in the domestic proceedings amounting to EUR 685. On the other hand, he failed to submit itemised claims and supporting documents or particulars concerning costs and expenses incurred in the proceedings before the Court, as required under Rule 60 §§ 2 and 3 of the Rules of Court. In such circumstances, the Court awards the applicant EUR 685 under this head, plus any tax that may be chargeable to him.

C. Default interest

51. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance

with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:

- (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
- (ii) EUR 685 (six hundred and eighty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Péter Paczolay
President