



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

FOURTH SECTION

CASE OF JESUS PINHAL v. PORTUGAL

(Applications nos. 48047/15 and 2276/20)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Three sets of proceedings initiated by criminal-law authorities, Securities Market Commission and Bank of Portugal for various criminal and administrative offences committed by applicant as Vice-Chairman of Board of Directors of Banco Comercial Português • Proceedings sufficiently connected in substance and in time to be regarded as forming coherent whole

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 October 2024

THIS CASE WAS REFERRED TO THE GRAND CHAMBER, WHICH DELIVERED JUDGMENT ON 9 JULY 2026. THIS CHAMBER JUDGMENT HAS NOT THEREFORE BECOME FINAL, AND IS LEGALLY VOID IN SO FAR AS IT CONCERNED THE MERITS OF THE CASE.

In the case of Jesus Pinhal v. Portugal,

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

Gabriele Kucsko-Stadlmayer, *President*,
Faris Vehabović,
Branko Lubarda,
Anja Seibert-Fohr,
Anne Louise Bormann,
Sebastian Rădulețu, *judges*,
João Manuel da Silva Miguel, *ad hoc judge*,
and Andrea Tamietti, *Section Registrar*,

Having regard to:

the applications (nos. 48047/15 and 2276/20) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Portuguese national, Mr Filipe de Jesus Pinhal (“the applicant”), on 24 September 2015 and 3 January 2020, respectively;

the decision to give notice of the applications to the Portuguese Government (“the Government”);

the withdrawal of Ms. Guerra Martins, judge elected in respect of Portugal (Rule 28 of the Rules of Court) and the decision of the President of the Chamber to appoint Mr João Manuel da Silva Miguel to sit as *ad hoc* judge (Rule 29 § 1 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 3 September 2024,

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

INTRODUCTION

1. The case concerns three sets of proceedings brought against the applicant by the criminal-law authorities, the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – “the CMVM”) and the Bank of Portugal (*Banco de Portugal* – “the BdP”), respectively, for various criminal and administrative offences committed while he was Vice-Chairman of the Board of Directors of the Banco Comercial Português bank (“the BCP”). Relying on Article 4 of Protocol No. 7 to the Convention, the applicant complained that he had been prosecuted (*poursuivi*) three times for the same acts. He also raised complaints under Articles 6 and 7 of the Convention.

THE FACTS

2. The applicant was born in 1946 and lives in Lisbon. He was represented by Ms V. Costa Ramos and Ms L. Prata Cordeiro, lawyers practising in Lisbon.

3. The Government were represented until 1 October 2022 by their Agent, Ms F. Carvalho, Deputy Attorney General, and, from that date onwards, by their Agent, Mr Ricardo Bragança de Matos, Public Prosecutor.

I. BACKGROUND

4. At the relevant time, the applicant was the Vice-Chairman of the Board of Directors of the BCP.

5. From 1999 to 2007, as part of a strategy to increase the bank's share capital, the BCP's Board of Directors set up a system of "circular trading" through offshore companies registered in the Cayman Islands, the Isle of Man, the British Virgin Islands and Gibraltar, to which it granted substantial loans to enable them to buy and sell shares in the bank and in other entities belonging to the BCP group, thereby influencing their price on the financial market.

6. Despite this strategy, which was aimed at increasing the value of shares in the BCP, the bank incurred losses of nearly 590 million euros (EUR).

7. The BCP sought to conceal these losses by means of various financial transactions, which it did not record in its accounting reports.

8. In a letter of 28 November 2007, supplemented by an additional document dated 11 December 2007, J.B., a shareholder in the BCP, complained to the CMVM and to the Portuguese central bank, the BdP, of the manoeuvres mentioned in paragraphs 5-7 above (see paragraph 105 below).

9. On 14 December 2007 he sent a copy of the complaint and the additional document to the Attorney General.

II. THE CRIMINAL PROCEEDINGS

A. The pre-trial criminal investigations (case no. 7327/07.9TDLSB)

1. The public prosecutor's investigation and the indictment

10. On 21 December 2007, following J.B.'s complaint (see paragraph 8 above), the Public Prosecutor's Office at the Lisbon District Court opened a criminal investigation against the applicant on charges of market manipulation under Article 379 § 1 of the Securities Code (*Código dos Valores Mobiliários* – "CVM"; see paragraph 108 below), forgery and use of forged documents (*falsificação de documento*) under Article 256 § 1 (d) and (e) of the Criminal Code and aggravated fraud (*burla qualificada*) under

Articles 217 § 1 and 218 § 2 (a) of the Criminal Code (see paragraph 104 below).

11. On 10 January 2008 the public prosecutor at the Lisbon District Court held a meeting with two representatives of the CMVM.

12. On 16 January 2008 he requested information from the CMVM concerning the dates on which the BCP's capital had increased in the period from January 2000 to December 2007 and changes in the bank's share price over the same period. He also asked to be kept informed of the various preliminary and administrative proceedings that had been instituted against the BCP since January 2000 in connection with the acts complained of by J.B.

13. On 6 February 2008 the prosecutor met with representatives of the BdP.

14. On 3 July 2008 the CMVM sent the Public Prosecutor's Office the information it had requested (see paragraph 12 above).

15. On 4 July 2008 the Deputy Attorney General acknowledged receipt of the information forwarded by the CMVM and indicated that the Public Prosecutor's Office was prepared to take any action in conjunction with the CMVM in order to ensure the best possible protection of the integrity of the financial markets.

16. On 27 August 2008 the BdP sent the Public Prosecutor's Office the evidence that had already been gathered in the context of the proceedings pending before it (see paragraphs 80-85 below).

17. On 22 December 2008 it forwarded the accusations (*acusação*) it had drawn up against the applicant (see paragraph 83 below).

18. On 13 April 2009 the applicant was interviewed by two deputy prosecutors of the Public Prosecutor's Office, in the presence of his lawyer.

19. On 23 June 2009 the Public Prosecutor's Office filed its indictment against the applicant and his co-defendants, based, *inter alia*, on the following evidence:

- (a) the defendants' statements,
- (b) the expert reports submitted during the investigation,
- (c) the documents added to the file by the applicant and his co-defendants,
- (d) the submissions drawn up by the BdP (see paragraph 17 above) in the context of the administrative proceedings it had initiated,
- (e) copies of the case files in the administrative proceedings initiated by the CMVM and the BdP respectively (see paragraphs 40 and 80 below),
- (f) the statements given by forty-six witnesses, including officials who had intervened in the proceedings pending before the CMVM and the BdP.

20. In its indictment, the Public Prosecutor's Office indicted the applicant on charges of market manipulation, forgery and use of forged documents and aggravated fraud. In particular, it accused him, first, of having participated,

from the late 1990s to the early 2000s, in his capacity as Vice-Chairman of the Board of Directors of the BCP, in the setting-up and financing of offshore companies placed under the bank's control for the purpose of acquiring and selling their shares in order to increase their value artificially on the financial market and, second, of having concealed from the supervisory authorities and the financial market, until the end of 2007, the true value of the shares and the bank's actual losses resulting, in both cases, from the activities of those same offshore companies.

21. The Public Prosecutor's Office also ordered that notice of its indictment be given to the Governing Board (*Conselho Directivo*) of the CMVM and to the Governor of the BdP.

2. The judicial investigation and the committal for trial

22. On an unspecified date the applicant appealed to the Lisbon Criminal Investigation Court against the decision of the Public Prosecutor's Office, requesting the opening of an adversarial judicial investigation (*instrução*).

23. His request was granted and, in the context of the ensuing investigation, the Criminal Investigation Court heard all the defendants, along with thirty-four witnesses. It also commissioned an expert report and re-examined the evidence in the case file.

24. In a decision of 27 July 2010 it committed the applicant to stand trial (*pronúncia*) for market manipulation and forgery and use of forged documents, finding that there was no case to answer (*não pronúncia*) on the charge of aggravated fraud.

B. The trial and the Lisbon District Court's judgment of 2 May 2014

25. The case was assigned to the Eighth Criminal Division (*8ª Vara Criminal*) of the Lisbon District Court.

26. The applicant filed his defence on 29 March 2011.

27. The Lisbon District Court scheduled hearings for 24 and 26 October; 9, 14, 23 and 30 November; and 14 December 2011.

28. On 21 June 2011 the applicant and his co-defendants asked the court to postpone the hearings until after March 2012 on the grounds that they were in the process of being interviewed by the BdP and the CMVM and were therefore unable to attend additional hearings. The court granted their request and scheduled the opening of the trial for 26 September 2012.

29. The trial spanned more than one hundred and thirty hearings during which the four defendants were heard, together with experts and witnesses, including CMVM and BdP officials. It ended in November 2013.

30. On 2 May 2014 the Lisbon District Court, sitting as a bench of three judges, acquitted the applicant of the charge of forgery and use of forged documents and convicted him of market manipulation under Article 379 § 1 of the CVM (see paragraph 108 below), sentencing him to two years'

imprisonment, which could be suspended upon payment of EUR 300,000 to a charitable organisation. In accordance with Article 380 § 1 (a) of the CVM (ibid.), that penalty was accompanied by a four-year ban on exercising administrative, executive or supervisory functions in any credit institutions or financial firms. In its judgment, the court found the applicant guilty of market manipulation for having, *inter alia*, submitted, between 1998 and 2008, false information on the offshore companies (see paragraph 5 above) and their financing and on the BCP's financial situation and the true value of its shares, both to the financial market and in the quarterly accounting reports submitted for the CMVM's Information Disclosure System (*Sistema de Difusão de Informação* – “SDI”). It took the view that the purchase and sale of shares in the BCP through the offshore companies had distorted supply and demand, since the companies in question had been acting under the control and on behalf of the BCP.

C. The applicant's appeal and the Lisbon Court of Appeal's judgment of 25 February 2015

31. The Public Prosecutor's Office appealed against the judgment.

32. On 9 June 2014 the applicant also appealed against the judgment to the Lisbon Court of Appeal. He challenged the accusations against him and relied, furthermore, on Article 29 § 5 of the Constitution (see paragraph 99 below) and Article 4 of Protocol No. 7 to the Convention, alleging a breach of the *ne bis in idem* principle in the light of the administrative proceedings initiated by the CMVM and the BdP in respect of acts which, in his view, were identical to those at issue in the criminal proceedings, namely the use, in his capacity as a director of the BCP, of a series of offshore companies, financed by the BCP, to operate on the financial market and the concealment, in particular from the supervisory authorities, of the loss of value of those companies through the falsification of accounting reports. In particular, the applicant argued that Article 420 § 1 of the CVM (see paragraph 108 below) was in breach of the *ne bis in idem* principle in that it allowed the same acts to be punished by both an administrative sanction and a criminal sanction and submitted that, in his case, three sets of criminal proceedings had been brought against him in connection with the same acts and that the legislation under which this was permitted, namely Article 420 § 1 of the CVM (see paragraph 108 below) and Article 208 of the General Regulation on Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras* – “the RGICSF”; see paragraph 106 below), were incompatible with Article 29 § 5 of the Constitution (see paragraph 99 below) and with Article 4 of Protocol No. 7 to the Convention. He pointed out that, taking into account all the sanctions imposed in the three sets of proceedings, he had been sentenced to two years' imprisonment, suspended; ordered to pay a total of EUR 1,450,000, corresponding to the

EUR 300,000 paid as a condition for the suspension of his prison sentence (see paragraph 30 above), plus the penalties of EUR 700,000 and EUR 425,000 imposed respectively by the CMVM (see paragraph 53 below) and the BdP (see paragraphs 84 and 89 below); and barred for a total of sixteen years from taking up any duties in the financial sector, namely the sum of the bans of four years, seven years and two times two years and six months (see paragraph 53 below) that had been imposed on him in the criminal proceedings, the proceedings before the BdP and those before the CMVM, respectively. He concluded that his sentence had been disproportionate to the impugned acts.

33. On 28 January 2015 the Lisbon Court of Appeal held a hearing at which the defendants' lawyers made their oral submissions.

34. In a judgment of 25 February 2015 the Lisbon Court of Appeal upheld the judgment of the Lisbon District Court. Having noted that, in parallel with the criminal proceedings, two sets of administrative proceedings had been instituted against the applicant by the CMVM and the BdP, respectively, it rejected the argument that the *ne bis in idem* principle had been breached, finding that the offending acts and the relevant offences differed from one set of proceedings to another. It further observed as follows:

(a) In the light of the provisions of Article 20 of the General Regulation on Administrative Offences (*Regime geral das contra-ordenações* – “RGCO”) and of Article 208 of the RGICSF (see paragraphs 106 and 113 below), the administrative offence of false accounting and the criminal offence of forgery and use of forged documents were concurrent offences and were to be prosecuted in separate proceedings;

(b) Article 420 § 1 of the CVM (see paragraph 108 below) provided that where the same act constituted both a criminal offence and an administrative offence, separate proceedings were to be instituted by the competent authorities, except in the case of insider dealing (*violação do regime da informação privilegiada*), for which criminal proceedings alone were to be instituted.

D. The constitutional appeal and the Constitutional Court's judgment of 12 November 2015

35. On 13 March 2015 the applicant lodged a constitutional appeal with the Constitutional Court, in which he raised, in particular, the issue of a breach of the *ne bis in idem* principle.

36. In a summary decision of 12 November 2015 the Constitutional Court, sitting as a single judge, dismissed his appeal, rejecting the argument that there had been a breach of the *ne bis in idem* principle, as enshrined in Article 29 § 5 of the Constitution (see paragraph 99 below), and referring, in this connection, to its judgment no. 356/2006 (see paragraph 115 below), in which it had ruled on a similar issue in another case. The summary decision

was upheld on 4 May 2016 by a panel of three judges of the Constitutional Court.

37. On 14 July 2016 the applicant's criminal conviction acquired the force of *res judicata* (*caso julgado*).

E. Subsequent developments

38. On 25 January 2017 the Lisbon District Court noted that the applicant had paid the sum of EUR 300,000 to a charitable association and that he had thereby met the condition for the suspension of the prison sentence that had been imposed on him in the criminal proceedings (see paragraphs 30 and 32 above). On 6 November 2018 the court declared that the term of the prison sentence had expired.

39. On 17 October 2020 the Lisbon District Court declared that the additional penalty that had been imposed on the applicant – namely, the four-year ban on exercising administrative, executive or supervisory functions in any credit institutions or financial firms (see paragraph 30 below) – had expired by reason of its having been served.

III. THE ADMINISTRATIVE PROCEEDINGS INITIATED BY THE CMVM

A. The main proceedings (application no. 48047/15)

1. Proceedings before the CMVM (proceedings no. 42/2008) and its decision of 9 July 2010

40. Following J.B.'s complaint (see paragraph 8 above) the CMVM opened an administrative investigation into the alleged acts.

41. On 21 July 2008 the CMVM asked the BdP to provide copies of the statements that had been given in the proceedings before it and information on several companies linked to the BCP, including offshore companies.

42. On 16 September 2008 the BdP forwarded the information to the CMVM, in accordance with Article 81 § 1 of the RGICSF (see paragraph 106 below).

43. On 29 December 2008 the CMVM filed its accusations against the applicant and eight co-defendants. It accused them of having, from the late 1990s onwards, used offshore companies, set up and financed by the BCP, for the purpose of purchasing and selling shares in the bank. It further accused them of having concealed the losses sustained by the bank and its true financial situation, and of having artificially inflated the value of its shares, which had increased their price and dividends.

44. In view of the reports on the consolidated accounts (*documentos de prestação de contas consolidadas*) for 2003, 2004, 2005, 2006 and 2007 published in its SDI (see paragraph 30 above), the CMVM accused the

applicant of six counts of the very serious administrative offence (*contra-ordenações*) of failure to comply with the obligation to provide high-quality information pursuant to Articles 7, 388 § 1 (a) and 389 § 1 (a) of the CVM (see paragraphs 108-110 below) for having contributed to the reporting of false and incomplete information regarding the existence of the offshore companies, the liquidity of the shares sold by the BCP on the financial market and the financial losses incurred.

45. On 6 March 2009 the applicant filed his defence.

46. The CMVM heard four defendants and fifty-one witnesses.

47. In a decision of the CMVM's Governing Board of 9 July 2010 the applicant was found guilty of breaches of his duty to provide high-quality information, as provided for in Article 7 of the CVM (see paragraphs 108-109 below), which constituted six counts of a very serious administrative offence consisting in reporting false information in the consolidated account reports for 2003-2007 submitted for the CMVM's SDI. More specifically, he was found to have approved, between January 2004 and 10 October 2007, and authorised, on 23 December 2017, the disclosure of five reports on the accounts and one statement to the financial market, respectively, containing information that was:

(a) false, since the profits were overstated, the losses were not reflected and the BCP's financial performance was reported as having been better than its actual results;

(b) incomplete, since the offshore companies in question were not listed as entities belonging to the BCP financial group;

(c) unlawful, in view of breach of the rules under which the BCP was required to disclose its true financial situation.

48. In accordance with Articles 388 § 1 (a), 389 § 1 (a), 404 § 1 (b) and (c) and 405 of the CVM, and with Article 19 of the RGCO (see paragraphs 108, 110 and 113 below), the applicant was ordered to pay an overall administrative fine of EUR 800,000 and incurred the following two ancillary sanctions:

(a) a ban on engaging in the profession or activities in connection with which the administrative offence had been committed, for a period of five years;

(b) disqualification from exercising any administrative, managerial, executive or supervisory functions or, more generally, from representing a financial intermediary in the context of its activities as such, for a period of five years.

2. *The proceedings before the Lisbon Local Criminal Court and the judgment of 18 January 2013 (case no. 1923/10.4TFLSB)*

49. The applicant and eight other defendants challenged the CMVM's decision before the Lisbon Local Criminal Court (*tribunal de pequena instância criminal* – “TPIC”; case no. 1923/10.4TFLSB). In his statement of

appeal, the applicant raised a number of points, including an alleged breach of the *ne bis in idem* principle on account of the fact that a criminal prosecution had been brought against him on the same facts as those at issue in the CMVM proceedings.

50. From 20 September 2011 to 7 January 2013 the TPIC held seventy hearings, during which it heard the nine defendants and more than sixty witnesses, for both the prosecution and the defence.

51. In a judgment of 18 January 2013 the TPIC, sitting as a single judge, upheld the sanctions that had been imposed on the applicant (see paragraph 48 above). It relied on the documents in the case file and the statements given by the defendants and witnesses.

3. *The applicant's appeal and the Lisbon Court of Appeal's judgment of 6 March 2014*

52. The applicant lodged an appeal against the TPIC's judgment with the Lisbon Court of Appeal. He argued, in particular, that the prosecution on some counts of the administrative offences of which he was accused were time-barred and submitted, furthermore, that the TPIC had not addressed the point concerning a breach of the *ne bis in idem* principle.

53. In a judgment of 6 March 2014 the Lisbon Court of Appeal allowed the applicant's appeal in part. It held that the prosecution was time-barred in respect of two counts of the administrative offence committed in 2004 and 2005, respectively, and ordered the applicant to pay an overall fine of EUR 700,000 on the four remaining counts of very serious administrative offences, pursuant to Articles 388 § 1 (a) and 389 § 1 (a) of the CVM and Article 19 of the RGCO (see paragraphs 108, 110 and 113 below). In addition, in accordance with Articles 404 and 405 of the CVM, it reduced the terms of the two ancillary sanctions (see paragraph 48 above) to two years and six months.

54. The applicant lodged an objection against the judgment on grounds of nullity. His objection was dismissed in a judgment of the Lisbon Court of Appeal of 26 June 2014.

4. *The constitutional appeal and the judgment of 27 March 2015*

55. On 24 March 2014 the applicant had also lodged an appeal with the Constitutional Court, arguing, in particular, that the interpretation given to Articles 388 § 1 (a), 389 § 1 (b) and 420 of the CVM (see paragraphs 108 and 110 below) entailed a breach of the *ne bis in idem* principle enshrined in Article 29 § 5 of the Constitution (see paragraph 99 below).

56. In a summary decision of 8 January 2014, upheld by a bench of three judges on 27 March 2015, the Constitutional Court declared the constitutional appeal inadmissible on the ground that the matter in dispute did not concern the unconstitutionality of any rule.

B. The proceedings concerning the time-barring of an administrative offence and the reassessment of the overall administrative sanctions (application no. 2276/20)

1. The proceedings before the TPIC and the judgment of 8 June 2018

57. On an unspecified date prior to 27 March 2015 the applicant had argued before the TPIC that the prosecution on two counts of the administrative offence for which he had been held liable had become time-barred (see paragraph 53 above) under Article 418 of the CVM (see paragraph 108 below). Accordingly, he had sought a reassessment of the overall administrative sanctions (*cúmulo jurídico das sanções*) that had been imposed on him, under Article 19 of the RGCO (see paragraph 113 below).

58. In a judgment of 23 October 2015, after noting that the applicant's conviction had acquired the force of *res judicata* on the date of the Constitutional Court's judgment (see paragraphs 53 and 56 above), namely on 27 March 2015, the TPIC observed that the applicant's claim had been lodged before that date and found, accordingly, that it had been lodged within the statutory time-limit. It went on to allow the appeal in part, declaring that the prosecution on one of the four counts of the administrative offence for which the applicant had been held liable (see paragraph 53 above) had become time-barred. It further decided that the reassessment of the overall administrative sanctions should be adjourned until the judgment had acquired the force of *res judicata*.

59. On 4 April 2018, after the dismissal of the applicant's appeals against the judgment of 23 October 2015 lodged with the Court of Appeal and the Constitutional Court respectively, the TPIC held a hearing to reassess the overall administrative sanctions.

60. Also on 4 April 2018, the applicant once again argued, before the TPIC, that there had been a breach of the *ne bis in idem* principle in the light of Article 29 § 5 of the Constitution (see paragraph 99 below), Article 4 of Protocol No. 7 to the Convention and Article 50 of the Charter of Fundamental Rights and Freedoms of the European Union (EU) ("the Charter" – see paragraph 117 below). In this connection, he pointed out that he had been acquitted in a decision of 9 June 2015 – which had acquired the force of *res judicata* on 26 June 2015 – in the administrative proceedings initiated by the BdP (see paragraph 97 below), for acts which he submitted were identical to those of which he had been accused by the CMVM. He added that he had also been convicted on the same facts by the Lisbon Court of Appeal in a decision delivered on 25 February 2015, which had acquired the force of *res judicata* on 14 July 2016 (see paragraph 34 above). The applicant asked the court to refer a preliminary question to the Court of Justice of the European Union (CJEU) on the interpretation of Article 50 of the Charter (see paragraph 117 below), relying on the Court's case-law in such

matters and on the judgment of the CJEU of 20 March 2018 in *Garlsson Real Estate and Others* (C-537/16, EU:C:2018:193 – see paragraph 128 below).

61. In a judgment of 8 June 2018 the TPIC noted, firstly, that the decision on the merits delivered by the Lisbon Court of Appeal on 6 March 2014 had, on 27 March 2015, acquired the force of *res judicata* (see paragraphs 53 and 56 above), as had his conviction in the criminal proceedings and his acquittal in the administrative proceedings initiated by the BdP, the former on 14 July 2016 (see paragraphs 34 and 36-37 above) and the latter on 26 June 2015 (see paragraph 98 below). It further found that the *ne bis in idem* principle was not applicable to proceedings concerned with calculating the overall administrative fine.

In this connection, the TPIC found as follows:

“...

Thus, it can be seen that the decisions on the merits which assessed the acts attributed to [the applicant] and [imposed] administrative fines [and] ancillary sanctions – constituting the main sanctions and the ancillary sanctions ... in the present case –, both in criminal case no. 7327/07.9TDLSB and in administrative case no. 1453/10.4TFLSB initiated by the BdP, have acquired the force of *res judicata* ...

It should be added that [the reassessment] of the overall administrative fine and the ancillary sanctions following the final decision of 23 October 2015 declaring the prosecution time-barred does not defer the force of *res judicata* acquired on 27 March 2015 in the present case, whereby the facts, the application of the law to those facts for the purposes of acquittal or conviction, the administrative fines and the ancillary sanctions [imposed on the applicant] in respect of each of the offences were all dealt with. ... [T]he [authorities having delivered these decisions] have thus exhausted their judicial authority and the only issue to be decided now is the setting [of the overall administrative sanctions]. Contrary to [the applicant’s allegation], the question before this court is no longer one of pending proceedings, whether criminal or administrative, or of the assessment or application of the law to the facts, or even one of evidence ... In other words, it is no longer a question of delivering a decision on the merits to establish the facts, convict or acquit.

Rather, the task at hand, as has already been said, is to review the calculation of the overall administrative fine and the ancillary penalties.

...”

62. The TPIC went on to point out that any judicial decision that had become final could only be varied by way of an application for review, in accordance with Articles 79 § 2, 80 and 81 of the RGCO (see paragraph 113 below).

63. It noted that, even if one took the view, in accordance with Article 2 § 4 of the Criminal Code and Article 3 § 2 of the RGCO (see paragraphs 104 and 113 below), and with Article 388 § 5 of the CVM (see paragraph 108 below), that Article 420 § 2 of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 below), formed part of the substantive law and was more favourable to the applicant, it was not

applicable in the present case, since the three decisions against him had already acquired the force of *res judicata*.

64. It also dismissed the request for a preliminary reference to the CJEU on the alleged breach of the *ne bis in idem* principle guaranteed by Article 50 of the Charter, taking the view that, unlike the CMVM's decision finding against the applicant in the instant case, *Garlsson Real Estate and Others* (see paragraph 128 below) had concerned a decision that had yet to acquire the force of *res judicata*. It noted, moreover, that in that case, the combined sanctions in question had involved a prison sentence and a fine, whereas the case before it concerned, on the one hand, a criminal offence punished – by way of principal sanction – solely by a prison sentence and, on the other, administrative offences for which administrative fines were imposed. Lastly, in the court's view, there had been no combination of fines in the case before it. It therefore rejected the request to deduct the EUR 300,000 paid by the applicant for the purpose of suspending the prison sentence handed down in the criminal proceedings (see paragraphs 30, 34 and 38 above) from the administrative fine imposed on him in the proceedings before the CMVM (see paragraph 53 above).

65. Pursuant to Article 19 of the RGCO (see paragraph 113 below) and Articles 404, 405 §§ 1, 2 (a), (b), (c) and (d), and 4 of the CVM, the TPIC went on to calculate the overall administrative fine, both as applicable at the relevant time and as amended by Law no. 28/2017 (see paragraphs 108 and 111-112 below), in accordance with Article 3 § 2 of the RGCO (see paragraph 113 below). It established the overall administrative fine at EUR 480,000 for three counts of the very serious administrative offence of reporting false information to the financial market.

66. The TPIC also reduced the ancillary penalties (see paragraphs 48 and 53 above) to a period of one year and three months, and noted that the sentences in question had been served for the purposes of enforcing the judgments handed down in the criminal proceedings and in the BdP proceedings. It therefore held that the terms of the two ancillary penalties that had been imposed in the present case had expired (*extintas*) pursuant to Article 420 § 3 of the CVM, as amended by Law no. 28/2017 of 30 May 2017, which was more favourable to the applicant in that regard (see paragraph 111 below).

2. *The applicant's appeal and the Lisbon Court of Appeal's judgment of 11 July 2019*

67. On 23 July 2018 the applicant, through his two lawyers, appealed against the judgment to the Lisbon Court of Appeal. In his statement of appeal, which ran to 108 pages, he again complained of a breach of the *ne bis in idem* principle. He contested the decision not to apply Article 420 § 2 of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 below), which he claimed was more favourable to him. He

further submitted that the administrative fine imposed on him ought to have been reduced, pursuant to Article 420 § 3 of the CVM (see paragraph 111 below), by deducting the EUR 300,000 he had paid in the criminal proceedings (see paragraphs 38 and 64 above). He sought a preliminary reference to the CJEU in this regard and, lastly, under Article 411 § 5 of the Code of Criminal Procedure (see paragraph 102 below), which was applicable to the proceedings before the CMVM, he requested that a public hearing be held before the Lisbon Court of Appeal to discuss all the issues raised by the case and, more specifically, those pertaining to EU law.

68. In a judgment of 11 July 2019 the Lisbon Court of Appeal dismissed the applicant's claims and upheld the judgment of the TPIC (see paragraphs 61-66 above). It dismissed the applicant's request for a public hearing before it, as he had failed to specify the points he wished to have discussed at such a hearing, as required by Article 411 § 5 of the Code of Criminal Procedure (see paragraph 102 below). It further held that it could not rule on the question whether there had been a breach of the *ne bis in idem* principle since the decisions against the applicant were all final and the proceedings before it concerned solely the calculation of the overall administrative fine following the time-barring of the prosecution on one count of the administrative offence for which the applicant had been held liable. It added that these considerations also made it pointless to refer a preliminary question to the CJEU.

69. The Lisbon Court of Appeal also found that the main administrative sanction imposed was different in nature from the sanction imposed in the criminal proceedings, the first being an administrative fine, whereas the second was a sum paid to a charitable institution for the purpose of suspending a prison sentence. It therefore concluded that there was no need to apply Article 420 § 3 of the CVM (see paragraph 111 below), as the more favourable law, in respect of the administrative sanction in question.

70. The applicant argued that the judgment was null and void on account of the fact that his request for a hearing to be held before the Lisbon Court of Appeal had been rejected. His claim was dismissed in a judgment of 27 November 2019.

3. The constitutional appeal and the judgment of the three-judge bench of the Constitutional Court of 5 November 2020

71. On 12 December 2019 the applicant lodged a constitutional appeal with the Constitutional Court in which he argued that the interpretations given to the following statutes had been unconstitutional:

- (a) Article 420 § 2 of the CVM, both as amended by Law no. 28/2017 of 30 May 2017 and as previously in force (see paragraphs 108 and 111 below);
- (b) Article 420 § 3 du CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 below);

(c) Article 7 of the Code of Criminal Procedure regarding the autonomous nature of criminal procedure (see paragraph 101 below);

(d) Article 411 § 5 of the Code of Criminal Procedure (see paragraph 102 below) with regard to the requirement that the appellant specify the questions he or she wished to have discussed at a hearing before the Court of Appeal.

72. In a summary decision of 24 April 2020 the Constitutional Court held that there was not need to rule on the constitutionality of the interpretations that had been given to Article 420 § 2 of the CVM, in either of the two versions specified, or of Article 7 of the Code of Criminal Procedure, since the Lisbon District Court had concluded that it could not examine the question concerning the *ne bis in idem* rule because the judgment of 6 March 2014 finding against the applicant (see paragraph 53 above) had acquired the force of *res judicata*. It held that the same applied to Article 420 § 3 of the CVM, holding, in this connection, that the determination of the nature of the sanctions in issue did not fall within the scope of its review, as it involved the application of the legislation to the particular facts of the case.

73. Lastly, it found that the Lisbon Court of Appeal's interpretation (see paragraph 68 above) of Article 411 § 5 of the Code of Criminal Procedure (see paragraph 102 below) was not unconstitutional, referring to another judgment in which it had held that such an interpretation was not incompatible with Article 32 § 1 of the Constitution (see paragraph 100 below).

74. The applicant appealed to the three-judge panel of the Constitutional Court, which, in a judgment of 5 November 2020, upheld the summary decision in full.

C. Subsequent developments

75. On 5 June 2020 the applicant applied to the TPIC, relying on Article 3 § 2 of the RGCO (see paragraph 113 below) and seeking a declaration to the effect that the term of the administrative sanction imposed on him in the proceedings before the CMVM (see paragraph 65 above) had expired by virtue of a retrospective application of Article 399-A § 1 (b) of the CMV, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 below), which he argued was more favourable to him.

76. In a judgment of 25 April 2021 the TPIC held that there was no need to examine the issue raised by the applicant, since it had already been decided in the judgment of 8 June 2018, which had since become final (see paragraphs 61-63 above).

77. The applicant appealed against the judgment of 25 April 2021 to the Lisbon Court of Appeal.

78. In a judgment of 25 November 2021 the Court of Appeal dismissed his appeal and upheld the judgment appealed against. It noted that Law no. 28/2017 of 30 May 2017 had included under Article 399-A of the CVM

(see paragraph 111 below) a new administrative offence of market manipulation, which had not existed at the material time, and that, in the case before it, the only sanctions imposed on the applicant had been for the criminal offence of market manipulation under Article 379 of the CVM and, in the CMVM proceedings (see paragraphs 48 and 53 above), for administrative offences defined in Articles 388 § 1 (a) and 389 § 1 (a) of the CVM, read in conjunction with Article 7 of the CVM (see paragraphs 108-110 below). Regarding the relevant administrative offences, the Court of Appeal observed as follows:

“...

Article 389 § 1 of the CVM makes it an offence for a banking entity to breach its duty to provide high-quality information. While this offence may be linked to the offence of market manipulation, it comes into play at an earlier stage. Irrespective of the outcome, what is sought is to preserve the truth and transparency of the securities market, independently of any fraudulent or fictitious manipulation designed to bring about an effective change in the conditions of price formation, the normal conditions of supply and demand regarding securities or any other financial instrument, or the normal conditions for making or accepting a public offer, in short, to alter artificially the rules governing the free operation of the markets, [rules which] are protected by Articles 379 and 399-A of the CVM, in line with the considerations set forth in Directive 2003/06/EC, in order to ensure the integrity of the financial markets and to maintain investor confidence by prohibiting any practices that might call that integrity into question.

...”

79. The Court of Appeal found that Law no. 28/2017 had therefore had no impact on the applicant and that Article 420 § 2 of the CVM (see paragraph 111 below) was not applicable, since no sanction had been imposed on him for the new administrative offence of market manipulation. Accordingly, there was in fact no more favourable law to be applied in his favour under Article 2 § 4 of the Criminal Code and Article 3 § 2 of the RGCO (see paragraphs 104 and 113 below).

IV. THE PROCEEDINGS INITIATED BY THE BANK OF PORTUGAL

A. The proceedings before the Bank of Portugal (case no. 24/07/CO) and the decision of 27 April 2010

80. On 26 December 2007, on the basis of J.B.’s complaint (see paragraph 8 above), the BdP initiated proceedings against the BCP and ten individuals linked to it. The applicant was accused of reporting false and incomplete information to the BdP and of false accounting (*falsificação de contabilidade*) under Article 211 (g) and (r) of the RGICSF (see paragraph 106 below).

81. In a letter dated 26 February 2008 the Chair of the CMVM sent the BdP a report on its investigation against the BCP concerning the activities of

a number of offshore companies. In the letter, he referred to meetings between the two entities regarding the BCP case, indicating that he would be happy to provide the BdP with any additional information or exchange with them further with a view to adopting a collaborative approach to the case, which he considered essential for the subsequent stages of the proceedings.

82. On 16 April 2008 the applicant was interviewed in the context of the administrative proceedings before the BdP.

83. On 11 December 2008 the BdP drew up its accusations against the applicant, accusing him of the following acts:

(a) having participated in setting up offshore companies with a view to having them acquire and sell shares in the BCP and in other companies belonging to the BCP financial group (see paragraph 5 above);

(b) having authorised the grant of millions of euros in financial loans to these companies;

(c) having failed to disclose or having fraudulently (*falseada*) reported the existence of those offshore companies to the BdP;

(d) having failed to disclose the BCP's controlling interest in those offshore companies in the BCP's accounting reports and in those of the BCP financial group; and

(e) having failed to disclose, in the BCP's accounting reports and in those of the BCP financial group, the financial losses incurred by the bank as a result of the drop in the value of its shares from 2001 onwards.

Taking the view that, in so acting, the applicant had prevented the BdP from understanding the bank's true financial situation and, consequently, from taking the necessary remedial measures, it accused him of the following:

(a) three counts of the administrative offence of providing the BdP with false or incomplete information in the period from 2000 to 2007, under Article 211 (r) of the RGICSF (see paragraph 106 below), and

(b) six counts of the administrative offence of false accounting, under to Article 211 (g) of the RGICSF (*ibid.*).

84. On 27 April 2010 the BdP delivered its decision. It found the applicant guilty on two counts of providing the BdP with false or incomplete information and on four counts of false accounting. It ordered him to pay an overall administrative fine of EUR 425,000 in respect of the two counts of providing false or incomplete information. In accordance with Article 208 of the RGICSF (see paragraph 106 below), it did not fine him on the counts of false accounting under Article 211 (g) of the RGICSF on the ground that the facts in question were being prosecuted in criminal proceedings on general charges of forgery and use of forged documents (*falsificação de documento*), under Article 256 § 1 (d) and (e) of the Criminal Code (see paragraph 104 below).

85. In addition, the BdP imposed the following ancillary sanctions on the applicant, under Article 212 of the RGICSF (see paragraph 106 below):

(a) publication of the final sanction, and

(b) disqualification from exercising any corporate, executive, managerial or administrative functions in a credit institution or financial firm, for a period of seven years.

B. The applicant's appeal to the TPIC (case no. 1453/10.4TFLSB) and the judgment of 29 August 2014

86. On 16 July 2010 the applicant challenged the BdP's decision in the TPIC, complaining, in particular, of a breach of the *ne bis in idem* principle enshrined in Article 29 § 5 of the Constitution (see paragraph 99 below) and in Article 4 of Protocol No. 7 to the Convention.

87. On 11 April 2011 the TPIC held its first hearing. The trial spanned nearly one hundred hearings – with an adjournment on account of an interlocutory application concerning evidence, which gave rise to a judgment of the Lisbon Court of Appeal of 4 July 2012 – and ended on 1 August 2014.

88. In a decision of 26 February 2014 the TPIC declared the prosecution time-barred on the two counts of false accounting on which the BdP had found the applicant guilty (see paragraph 84 above).

89. Subsequently, in a judgment of 29 August 2014, the TPIC dismissed the applicant's argument that there had been a breach of the *ne bis in idem* principle (see paragraph 86 above), holding that the criminal and administrative proceedings initiated by the CMVM and the BdP, respectively, had not concerned the same acts. Taking account of the documents in the case file and the statements given by witnesses and the defendants, it ordered the applicant to pay an overall administrative fine of EUR 425,000 in respect of the administrative offences set out in Article 211 (g) and (r) of the RGICSF (see paragraph 106 below). It also upheld the two ancillary sanctions that had been imposed on the applicant by the BdP (see paragraph 85 above) under Article 212 of the RGICSF.

C. The applicant's appeal and the Lisbon Court of Appeal's judgment of 9 June 2015

90. On 9 October 2014 the applicant appealed against this judgment to the Lisbon Court of Appeal. He took the opportunity to complain once more of a breach of the *ne bis in idem* principle.

91. On 9 June 2015 the Lisbon Court of Appeal delivered its judgment. Regarding the alleged breach of the *ne bis in idem* principle, it took the view that the criminal and administrative offences in question differed as to the facts and the interests protected, for the following reasons.

92. Firstly, the BdP proceedings had stemmed from its relationship to the BCP and, more particularly, from the latter's duty to inform the BdP of its financial situation so as to enable the latter to fulfil its mandate to ensure the stability of the financial system in order to avoid any systemic risk.

93. Secondly, the criminal proceedings had concerned the transmission, in the period from 2000 to 2007, of false information for the CMVM's SDI (see paragraph 30 above), and thus to investors, regarding not only the BCP's financial situation but also the value of its shares. The Court of Appeal further held that the criminal offence of fraud could be distinguished from the criminal offence of market manipulation since the two offences protected two different interests, namely, the assets of a particular person in the case of the former and, in the case of the latter, the financial market on which transactions took place. The criminal offence of market manipulation was thus aimed at safeguarding lawful price formation against price securing using fraudulent or fictitious mechanisms.

94. Thirdly, the administrative proceedings before the CMVM had concerned the reporting of erroneous information to the market, which spoke to the need for transparent and high-quality information, these being essential for investors and for the proper functioning of the securities market.

95. The Court of Appeal considered, however, that the administrative offence of false accounting of which the applicant had been accused by the BdP was congruent with the criminal offence of forgery and use of forged documents which had been at issue in the criminal proceedings (see paragraphs 20 and 30 above). It inferred from this that the facts in question could be regarded as similar and constituted concurrent offences within the meaning of Article 20 of the RGCO (see paragraph 113 below) and Article 208 of the RGICSF (see paragraph 106 below), which entailed an obligation to punish the criminal offence without prejudice to any ancillary sanction imposed in respect of the administrative offence. It further noted that, in the event of concurrent criminal and administrative offences, both Article 208 of the RGICSF and Article 420 § 1 of the CVM (see paragraphs 106 and 108 below) provided that two separate sets of proceedings should be instituted, although Article 420 § 1 of the CVM set out a system for combining criminal and administrative sanctions. On these points the Court of Appeal held as follows:

“...

The [criminal] offence of forgery and use of forged documents aims to protect the legal interests of the security and reliability of the evidential value of documents in legal circulation (*tráfego jurídico*), while the banking offence of false accounting, as the Bank of Portugal asserts, [has] a specific purpose (*teleologia*) proper to the banking sector, namely, the need to ensure that the supervisory entity is equipped with the means to ensure full supervision of credit institutions and the banking system in general and, ultimately, in this way, to protect the legal interest in safeguarding the stability of the banking system, thereby preventing systemic risks (protecting consumers and banking customers is also relevant, as regards the reporting of false information).

Thus, the criminal offence of forgery and use of forged documents prosecuted in the criminal proceedings and the administrative offence of false accounting under the RGICSF at issue in the present case are concurrent offences within the meaning of

Article 20 of the RGCO and Article 208 of the RGICSF – in other words, a notional multiplicity of offences.

The application [of the provisions] of Articles 20 of the RGCO and 208 of the RGICSF, from which the punishment for the criminal offence flows, without prejudice to the application of the ancillary sanctions for the administrative offence, does not, therefore, breach the *ne bis in idem* principle, or any other constitutional principle.

...

Article 420 of the CVM lays down the rule that ‘Where the same act constitutes both a criminal offence and an administrative offence, the offender shall be liable for both offences and two separate sets of proceedings shall be conducted and decided by the competent authorities’.

The substantial difference [between Article 208 of the RGICSF and Article 420 of the CVM] lies in the regulation governing the sanctions: whereas the RGICSF maintains the system of the RGCO – one that provides for a combination of sanctions based on the principle of absorption (application of the criminal sanction, as the most serious) together with ancillary sanctions for administrative offences –, the CVM opts for an actual aggregation of criminal and administrative sanctions.

That said, despite this difference, from a procedural standpoint, it falls to the criminal courts to rule in either case for the purpose of imposing a criminal sanction ... whereas the Bank of Portugal, in accordance with Article 208, will examine the case to address residual matters ... in other words, ‘the application, where appropriate, of ancillary sanctions’ ... ”

96. In its examination of the alleged breach of the *ne bis in idem* principle, the Lisbon Court of Appeal took into account the case-law of both the CJEU and the Court, referring in particular to the judgments in *Oliveira v. Switzerland* (30 July 1998, *Reports of Judgments and Decisions* 1998-V), *Franz Fischer v. Austria* (no. 37950/97, 29 May 2001), *Göktan v. France*, no. 33402/96, ECHR 2002-V), *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, ECHR 2009) and *Grande Stevens and Others v. Italy* (nos. 18640/10 and 4 others, 4 March 2014).

97. As to the merits, relying on the facts established by the TPIC, the Lisbon Court of Appeal found that the proceedings were time-barred with regard to part of the facts in connection with the administrative offence of providing false or incomplete information to the BdP, under Article 211 (r) of the RGICSF (see paragraph 106 below), and acquitted the applicant of the remaining accusations.

98. The Lisbon Court of Appeal’s judgment became final on 26 June 2015.

RELEVANT EUROPEAN AND DOMESTIC LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

99. The relevant parts of Article 29 of the Constitution read as follows:

“1. No one may be convicted under the criminal law unless the relevant act or omission is punishable under a pre-existing law, or be subjected to a preventive measure unless the conditions for its application are laid down by a pre-existing law.

...

3. No penalty or preventive measure may be applied except as expressly provided for in a pre-existing law.

4. No one may be subjected to a heavier penalty or preventive measure than was provided for at the time when the offence was committed or its constituent elements established. Criminal laws the content of which is more favourable to the accused shall apply retrospectively.

5. No one may be tried twice for the same criminal offence (*crime*).

...”

100. Procedural rights in criminal matters are set out in Article 32 of the Constitution. The rights of the defence and the right of appeal are guaranteed in all criminal proceedings (Article 32 § 1). In all proceedings relating to an administrative offence, the accused has the right to a hearing and to defend himself or herself (Article 32 § 10).

B. The Code of Criminal Procedure

101. Article 7 § 1 of the Code of Criminal Procedure provides that all criminal proceedings are to be conducted independently from any others and must determine every issue that is decisive for the case at hand.

102. Under Article 411 § 5 of the Code of Criminal Procedure, the appellant may, in his or her statement of appeal, request that a hearing be held, specifying the issues he or she wishes to have discussed.

103. The grounds for review of a final judgment delivered in criminal proceedings are set out in Article 449 of the Code of Criminal Procedure (see, in this connection, *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 27, 11 July 2017).

C. The Criminal Code

104. The relevant provisions of the Criminal Code read as follows:

Article 1 § 1

[Principle that only the law can define an offence and prescribe a penalty]

“Only such acts as are described and made punishable by a pre-existing law may be punished as a criminal offence.”

Article 2 § 4

[Temporal application]

“Where the provisions of criminal law in force at the time of the wrongdoing differ from those laid down in subsequent laws, the framework most favourable to the offender in practice shall always be applied; in the event of a conviction, even if it has acquired the force of *res judicata*, enforcement and its effects for criminal-law purposes shall cease once the part of the sentence that has been served reaches the maximum term provided for in the subsequent law.”

Article 217 § 1

Fraud (*burla*)

“It shall be an offence, punishable by up to three years’ imprisonment or a fine, for anyone to induce others, by misleading them, to perform acts causing pecuniary damage to themselves or to another person, with the intent of procuring undue gains for himself or herself, or for a third party.”

Article 218

Aggravated fraud (*burla qualificada*)

“1. Where the pecuniary damage is substantial, the offence referred to in paragraph 1 of the preceding Article shall be punishable by up to five years’ imprisonment or a day-fine for a period of up to 600 days.

2. By two to eight years’ imprisonment where:

(a) The pecuniary damage is considerable.

...”

Article 256

[Forgery and use of forged documents] (*falsificação ... de documento*)

“1. It shall be an offence, punishable by up to three years’ imprisonment or a fine, for anyone to commit any of the following acts with the intention of causing damage to another person or to the State, of obtaining an undue benefit for himself or herself or for another, or of preparing, facilitating, carrying out or covering up another offence:

(a) Creating or drawing up a false document, or [any decisive component thereof (*qualquer dos componentes destinados a corporizá-lo*)];

(b) Forging or altering a document, or [any decisive component thereof];

(c) Misusing another person’s signature to forge or counterfeit a document;

(d) Falsely (*falsamente*) introducing a salient legal element into a document or any of its constituent parts;

(e) Making use of a document of the kind referred to in the preceding sub-paragraphs;

(f) Delivering or being in possession of a forged or counterfeit document.”

D. The General Regulation on Credit Institutions and Financial Firms (RGICSF)

105. The RGICSF was approved by Decree-Law no. 298/92 of 31 December 1992. It governs access to credit institutions and financial firms, their activities and their supervision (Article 1). All credit institutions are subject to authorisation by the BdP (Article 16), which is the Portuguese central bank (Article 92). In that capacity, it falls to the BdP to supervise the activities of such institutions and financial firms, in particular through cooperation with the authorities operating under the European System of Financial Supervision (ESFS) or the European Systemic Risk Board (ESRB) (Article 93). As part of this mandate, the BdP is required, *inter alia*, to monitor the activities of credit institutions and review compliance with the rules governing those activities, to issue recommendations to address any irregularities detected and to impose sanctions for any offences committed (Article 116).

106. The relevant provisions of the RGICSF, as in force at the material time, read as follows:

Article 81 Cooperation with other entities

“1. The BdP may exchange information with the following authorities ... ;
(a) ... the CMVM ... ;
...”

Article 208 Concurrent offences

“Where a person is found guilty of both a criminal offence and an administrative offence (*ilícito de mera ordenação social*) in respect of the same acts, the [RGCO] shall apply, but separate sets of proceedings shall be instituted before the criminal courts and the Bank of Portugal, respectively, the latter applying, where appropriate, the ancillary sanctions provided for herein.”

Article 211 Particularly serious offences

“The following offences shall be punishable by a fine of 500,000 to 50,000,000 Portuguese escudos (PTE), or a fine of PTE 200,000 to PTE 20,000,000, depending on whether it is imposed on a legal or a natural person.

...

(g) False accounting (*falsificação de contabilidade*), failure to keep detailed accounts and failure to comply with other applicable accounting rules laid down by law or by the Bank of Portugal, where such failure seriously impairs knowledge of the relevant entity’s assets and financial situation;

...

(r) Providing the Bank of Portugal with false information, or with incomplete information that could lead to erroneous conclusions to the same or similar effect as false information on the same subject;

...”

Article 212 **Ancillary sanctions**

“1. In addition to the administrative fines provided for in [Article 211], the following sanctions may be imposed on the offender:

...

(b) Publication of the final sanction by the BdP;

(c) Where the accused person is a natural person, disqualification from holding a corporate office and from exercising administrative, executive, management or managerial functions in a credit institution or financial firm, ... for a period of one to ten years, in the cases provided for in Article 211.

...

2. The publications referred to in the preceding paragraph shall be made in the in the Official Gazette, or in one of the most widely read newspapers ... of [the offender’s] place of residence[, if he or she is a natural person].”

Article 227 **Enforceability (*exequibilidade*) of the decision**

“1. Without prejudice to the following paragraph, the final decision shall be immediately enforceable if it is not challenged before the courts.

2. A decision applying one of the penalties provided for in points (c) and (d) of Article 212 shall be immediately enforceable until such time as it is set aside in a final judicial decision.

...”

E. The Securities Code (CVM)

107. The CVM, which was approved by Decree-Law no. 486/99 of 13 November 1999, has been amended on successive occasions, the most recent amendment having been adopted by Decree-Law no. 66/2023 of 8 August 2023. Under this Code, all securities intermediation activities are subject to prior registration with the CMVM in order for it to verify compliance with the prerequisites for engaging in such activities and to monitor them (Articles 295 and 296). The CMVM is also entrusted with regulating and supervising securities markets and centralised securities systems (Article 353 § 1 (a) and (b)). Its supervisory powers are designed, in particular, to protect investors, ensure the efficiency and lawfulness of the financial markets, verify the accuracy of information and prevent systemic

risk (Article 358). Proceedings in respect of administrative offences fall within the jurisdiction of the CMVM's Board of Directors (Article 408).

108. The relevant provisions of the CVM, as amended by Decree-Law no. 357-A/2007 of 31 October 2007 and in force at the material time, read as follows:

Article 7
Quality of information

"1. Information on financial instruments, organised trading practices, financial intermediation activities, the settlement and clearing of transactions, public offers of securities and issuers shall be comprehensive, true, up-to-date, clear, objective and lawful.

2. The preceding paragraph shall apply irrespective of the means of reporting...

..."

Article 374
Cooperation with other entities

"1. In relation to entities that are subject to the supervision of other authorities, in particular the Bank of Portugal ... , the CMVM and these authorities shall cooperate with each other in order to coordinate the exercise of their respective supervisory and regulatory powers

..."

Article 379 § 1
Market manipulation

"It shall be an offence, punishable by up to three years' imprisonment or a fine, to report false, incomplete, exaggerated, biased or misleading information, carry out fictitious transactions or engage in other fraudulent practices which artificially alter the operation of the securities market or the market for other financial instruments."

Article 380 § 1
Ancillary sanctions

"In addition to those mentioned in the Criminal Code, the following ancillary sanctions may be applied in respect of the criminal offences mentioned above:

(a) a ban of up to five years, imposed on the perpetrator [of the criminal offence], on exercising the profession or engaging in the activities in connection with which the criminal offence was committed, including disqualification (*inibição*) from exercising administrative, management, executive, managerial (*chefia*) or supervisory functions in entities subject to the CMVM's supervision and, more generally, from representing such entities;

..."

Article 388
Common provisions

"1. The following administrative fines (*coimas*) shall apply to the administrative offences (*contra-ordenações*) set out in the present Section:

(a) From 25,000 euros (EUR) to EUR 2,500,000 where [the offences] are classified as very serious;

...

5. Where a law or CMVM regulation amends the conditions or terms of compliance with a duty arising from an earlier law or regulation, the earlier law shall apply to acts committed while it was in force and the new law shall apply to subsequent acts, unless the more favourable law in practice should be applied, having regard to the similarity of the facts.”

Article 389 § 1

Information

“1. The following shall constitute very serious administrative offences:

(a) Submitting or reporting, by any means whatsoever, information that is not complete, true, up-to-date, clear objective or lawful;

...”

Article 394

Organised trading practices

“1. The following shall constitute very serious administrative offences:

...

(i) insider dealing (*violação do regime da informação privilegiada*), unless the act in question constitutes a criminal offence.

...”

Article 404

Ancillary sanctions

“1. In addition to those provided for in the general regulation on administrative offences, the following ancillary sanctions may be applied in combination with the administrative sanctions against those responsible for any administrative offences:

...

(b) a temporary ban, imposed on the offender, on exercising the profession or engaging in the activities in connection with which the administrative offence was committed;

(c) disqualification (*inibição*) from exercising administrative, management, executive, managerial (*chefia*) or supervisory functions and, more generally, from representing any financial intermediary, in the context of any intermediation activities involving securities or any other financial instruments;

...”

Article 405

Determination of the applicable sanction

“1. The administrative fine and ancillary sanctions shall be determined on the basis of the unlawfulness of the acts in question, the offender’s guilt (*culpa*), the benefit so

derived, prevention requirements and whether the offender is a private individual or a legal entity.

2. When assessing the unlawfulness of the acts in question and the guilt of legal entities ... , the following circumstances, *inter alia*, must be taken into account:

- (a) the risk (*perigo*) or damage to investors or to the securities market ... ;
- (b) the occasional or repeated nature of the offence;
- (c) the existence of actions aimed at concealing the facts with a view to impeding discovery of the offence;
- (d) the existence of actions by the offender, on his or her own initiative, to make good the damage or avert the risk caused by the commission of the offence.

...

4. The offender's financial situation and his/her/its prior conduct shall also be taken into account in determining the applicable sanction."

Article 407 **Subsidiarity**

"The general regulation on administrative offences shall apply to the administrative offences defined in the present Code and to the related proceedings, unless otherwise provided herein."

Article 418 **Limitation period**

"1. Proceedings in respect of administrative offences shall be subject to a limitation period of five years.

..."

Article 420 **Concurrent offences**

"1. Where the same act constitutes both a criminal offence and an administrative offence, the offender shall be liable for both offences and two separate sets of proceedings shall be conducted and decided by the competent authorities..."

2. In the situations provided for in Article 394 § 1 (i), where an act potentially constituting both a criminal offence and an administrative offence is imputed to the same person on the same individual grounds (*título de imputação subjetiva*), only criminal proceedings shall be instituted."

109. In the initial version of the CVM, as contained Decree-Law no. 486/99 of 13 November 1999 (see paragraph 107 above), Article 7 § 1 read as follows:

"Any information on securities, public offerings, securities markets, financial intermediation activities or issuers [of securities] which is likely to influence investors' decisions or is transmitted to supervisory entities or to entities responsible for managing the market, settlement systems and centralised securities systems shall be complete, true, up-to-date, clear, objective and lawful."

110. Article 389 § 1 of the CVM, in the same initial version, provided:

“It shall be a very serious administrative offence to transmit or disclose, by any means, information relating to securities or to other financial instruments that is not complete, true, up-to-date, clear, objective or lawful.”

Article 389 § 1 of the CVM, as amended by Decree-Law no. 52/2006 of 15 March 2006, provided:

“It shall be a very serious administrative offence to transmit or disclose, by any means, information that is not complete, true, up-to-date, clear, objective or lawful.”

111. The CVM was amended by Law no. 28/2017 of 30 May 2017 transposing into domestic law Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 and adapting Portuguese law to Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (see paragraphs 122-123 below). In the version applicable following the entry into force of that Law, the Code contained a new Article 399-A, which provided that an infringement of the prohibition of market manipulation constituted a very serious administrative offence, except where the conduct in question also constituted a criminal offence. Furthermore, Article 420 § 2 provided that, where the infringement of the prohibition of market manipulation under Article 399-A § 1 (b) also constituted an offence under criminal law, only criminal proceedings were to be instituted. In a third paragraph included in Article 420, it was further specified that where a single act had given rise to multiple offences and to proceedings falling within the jurisdiction of different entities, the sanctions that had already been enforced in one set of proceedings could be taken into account for the purpose of determining the sanctions imposed in subsequent proceedings.

112. As to paragraph 4 of Article 405 of the CVM, as amended by Law no. 28/2017 of 30 May 2017, it stated that the sanction imposed was also to be determined having regard to the offender’s financial situation and his or her conduct before and after the offence, such as whether he or she had cooperated with the CMVM or the court over the course of the proceedings.

F. The General Regulation on Administrative Offences (RGCO)

113. The RGCO is governed by Decree-Law no. 433/82 of 27 October 1982, which is applicable to the facts in the present case by virtue of Article 407 of the CVM (see paragraph 108 above). The relevant provisions of the RGCO read as follows:

Article 1 Definition

“An administrative offence (*contra-ordenação*) shall mean any unlawful and reprehensible act meeting the legal criteria (*tipo legal*) for the imposition of an administrative fine (*coima*).”

Article 3 § 2
[Temporal application]

“If the law in force at the material time has been amended, the law that is most favourable to the accused person shall apply, unless he or she has been convicted in a decision that has become final or has acquired the force of *res judicata* and has already been enforced.”

Article 18 § 1
Determination of the administrative fine

“The administrative fine shall be determined on the basis of the seriousness of the administrative offence, the perpetrator’s guilt, his or her financial situation and the economic benefit he or she has derived from the commission of the administrative offence.”

Article 19
Concurrent administrative offences

“1. Anyone who has committed several administrative offences shall be liable to an administrative fine [the maximum amount of which shall not exceed] the sum of the fines imposed for each of the concurrent offences individually.

2. The administrative fine imposed shall not exceed twice the highest maximum fine for any one of the concurrent administrative offences.

3. The administrative fine imposed shall not be less than the highest fine incurred for any one of the concurrent offences.”

Article 20
Concurrent offences

“Where the same act constitutes both a criminal offence and an administrative offence, the perpetrator shall be punished in respect of the criminal offence without prejudice to the application of the ancillary sanctions for the administrative offences.”

Article 75 § 1
Scope and effect of appeal

“Unless otherwise provided herein, the reviewing court shall rule on points of law alone. No appeal shall lie against its decisions.”

Article 79
Scope of the final decision and of the force of *res judicata* (*caso julgado*)

“1. No act may be re-examined as an administrative offence once the decision of the administrative authority having examined it as an administrative offence has become final or the judicial decision having examined it as a criminal offence has acquired the force of *res judicata*.

2. The fact that a judgment or court order (*despacho judicial*) examining an act as an administrative offence has acquired the force of *res judicata* shall also preclude any fresh examination of the same act as a criminal offence.”

Article 80
Admissibility of an application for review

“1. The review of decisions that have become final or acquired the force of *res judicata* in respect of administrative offences shall be governed by Article 449 of the Code of Criminal Procedure, unless otherwise provided herein.

2. A [request to] reopen proceedings decided in the accused person’s favour on the basis of new facts or evidence shall be inadmissible where:

(a) the accused person was ordered to pay an administrative fine of less than 37.41 euros;

(b) five years have passed since the decision sought to be revised became final or acquired the force of *res judicata*.

3. Administrative proceedings decided against the accused person may be reopened only if they concern his or her conviction for a criminal offence.”

Article 81
Review procedure

“1. The review of a decision by an administrative authority shall be dealt with by the court with jurisdiction to hear appeals.

2. Review may be sought by the accused person, the administrative authority or the public prosecutor’s office.

3. The administrative authority shall transfer the case file to the representative of the public prosecutor’s office at the court of competent jurisdiction.

4. The review of a judgment shall fall within the jurisdiction of the Court of Appeal ...”

G. The Code of Civil Procedure (CPC)

114. As in force at the material time, Article 677 of the Code of Civil Procedure (which corresponds to Article 628 of the Code of Civil Procedure as currently in force), read as follows:

“A decision shall acquire the force of *res judicata* when it is no longer subject to ordinary appeal or to an objection ...”

H. Domestic case-law

115. In its judgment no. 356/2006 of 8 June 2006 the Constitutional Court held that the imposition, under section 136 of the Road Traffic Act, of a fine for drunk driving, as provided for in Article 292 of the Criminal Code, together with an administrative fine and a temporary driving ban for an infringement of section 44 of the Road Traffic Act resulting from a breach of the rule on changing speed in the left-hand lane was not contrary to Article 29 § 5 of the Constitution (see paragraph 99 above). It considered that the relevant criminal and administrative offences were distinct and, in

consequence, that it was a situation of concurrent offences that was not in breach of the *ne bis in idem* principle.

II. EUROPEAN UNION (EU) LAW AND CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU)

A. The Treaty on the Functioning of the European Union (TFEU)

116. Article 267 of the Treaty on the Functioning of the European Union (TFEU – former Article 234 of the Treaty establishing a European Community) provides for preliminary references to the CJEU as follows:

“The Court of Justice shall have jurisdiction to give preliminary rulings concerning

(a) the interpretation of this Treaty,

(b) the validity and interpretation of acts of the institutions of the Community...;

...

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.”

B. The Charter of Fundamental Rights of the European Union (“the Charter”)

117. Article 50 of the Charter provides:

“No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.”

118. Article 52 § 1 of the Charter reads as follows:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

C. EU directives and regulations

1. *Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)*

119. Article 5 of this directive, which was in force until it was repealed by Regulation (EU) no. 596/2014 of the European Parliament and of the

Council of 16 April 2014 on market abuse (market abuse regulation – see paragraph 123 below), provided that member States were to prohibit all persons from engaging in market manipulation.

120. Under Article 1, point 2, of the Directive, “market manipulation” was defined as follows for the purposes of the Directive:

“(a) transactions or orders to trade:

- which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

- which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed ... taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

In particular, the following instances are derived from the core definition given in points (a), (b) and (c) above:

- conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,

- the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices,

- taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

The definitions of market manipulation shall be adapted so as to ensure that new patterns of activity that in practice constitute market manipulation can be included.”

121. In addition, Article 14, paragraph 1, of the Directive provided:

“Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of this

Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.”

2. *Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive”)*

122. The relevant parts of this Directive provide:

Article 5
Market manipulation

“1. Member States shall take the necessary measures to ensure that market manipulation as referred to in paragraph 2 constitutes a criminal offence at least in serious cases and when committed intentionally.

2. For the purposes of this Directive, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or

(ii) secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level;

unless the reasons for so doing of the person who entered into the transactions or issued the orders to trade are legitimate, and those transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial instrument, or a related spot commodity contract, or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, where the persons who made the dissemination derive for themselves or for another person an advantage or profit from the dissemination of the information in question; or

(d) transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.”

Article 7
Criminal penalties for natural persons

“1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive criminal penalties.

2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 5 are punishable by a maximum term of imprisonment of at least four years.

...”

3. *Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)*

123. The relevant provisions of this Regulation provide:

Article 12
Market manipulation

“1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or

(ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;

(d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

2. The following behaviour shall, inter alia, be considered as market manipulation:

(a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(b) the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;

(c) the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a) or (b), by:

(i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;

(ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;

(d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;

(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

3. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 2, Annex I defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

4. Where the person referred to in this Article is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.”

Article 15

Prohibition of market manipulation

“A person shall not engage in or attempt to engage in market manipulation.”

Article 30

Administrative sanctions and other administrative measures

“1. Without prejudice to any criminal sanctions and without prejudice to the supervisory powers of competent authorities under Article 23, Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures in relation to at least the following infringements:

(a) infringements of Articles 14 and 15, Article 16(1) and (2), Article 17(1), (2), (4) and (5), and (8), Article 18(1) to (6), Article 19(1), (2), (3), (5), (6), (7) and (11) and Article 20(1); and

(b) failure to cooperate or to comply with an investigation, with an inspection or with a request as referred to in Article 23(2).

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in point (a) or point (b) of that subparagraph are already subject to criminal sanctions in their national law by 3 July 2016. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA [European Securities Market Authority], the relevant parts of their criminal law.

By 3 July 2016, Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative sanctions and to take at least the following administrative measures in the event of the infringements referred to in point (a) of the first subparagraph of paragraph 1:

(a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;

(b) the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(d) withdrawal or suspension of the authorisation of an investment firm;

(e) a temporary ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

(f) in the event of repeated infringements of Article 14 or 15, a permanent ban of any person discharging managerial responsibilities within an investment firm or any other natural person who is held responsible for the infringement, from exercising management functions in investment firms;

(g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account;

(h) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement, where those can be determined;

(i) in respect of a natural person, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(iii) for infringements of Articles 18, 19 and 20, EUR 500 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(j) in respect of legal persons, maximum administrative pecuniary sanctions of at least:

(i) for infringements of Articles 14 and 15, EUR 15 000 000 or 15 % of the total annual turnover of the legal person according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014;

(ii) for infringements of Articles 16 and 17, EUR 2 500 000 or 2 % of its total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014; and

(iii) for infringements of Articles 18, 19 and 20, EUR 1 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on 2 July 2014.

References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 23(1).

For the purposes of points (j)(i) and (ii) of the first subparagraph, where the legal person is a parent undertaking or a subsidiary undertaking which is required to prepare consolidated financial accounts pursuant to Directive 2013/34/EU (28), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting directives – Council Directive 86/635/EEC (29) for banks and Council Directive 91/674/EEC (30) for insurance companies – according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

3. Member States may provide that competent authorities have powers in addition to those referred to in paragraph 2 and may provide for higher levels of sanctions than those established in that paragraph.”

D. CJEU case-law

1. Judgment of the CJEU of 14 September 2023 in Volkswagen Group Italia and Volkswagen Aktiengesellschaft (C-27/22, EU:C:2023:663)

124. In the judgment, the CJEU gave a preliminary ruling on a question referred to it by the Italian *Consiglio di Stato* (Supreme Administrative Court) concerning, in particular, the interpretation of Article 50 of the Charter (see

paragraph 117 above), in proceedings between Volkswagen Group Italia SpA and Volkswagen Aktiengesellschaft, on the one hand, and the Italian Competition and Markets Authority (*Autorità Garante della Concorrenza e del Mercato*), on the other, concerning the decision of that authority to impose a fine on those companies for unfair commercial practices.

125. The relevant parts of the judgment clarified as follows:

“...

93. As regards compliance with the principle of proportionality, it requires that the duplication of proceedings and penalties provided for by the national legislation does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 48 and the case-law cited).

94. In that regard, it must be stated that public authorities can legitimately choose complementary legal responses to certain conduct that is harmful to society 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 person concerned. Consequently, the fact that two sets of proceedings are pursuing distinct objectives of general interest which it is legitimate to protect cumulatively can be taken into account, in an analysis of the proportionality of the duplication of proceedings and penalties, as a factor that would justify that duplication, provided that those proceedings are complementary and that the additional burden which that duplication represents can accordingly be justified by the two objectives pursued (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 49).

...”

126. The CJEU concluded as follows:

“...

(3) Article 52(1) of the Charter of Fundamental Rights of the European Union must be interpreted as authorising the limitation of the application of the principle *ne bis in idem*, enshrined in Article 50 of that charter, so as to permit a duplication of proceedings or penalties in respect of the same facts, provided that the conditions laid down in Article 52(1) of the abovementioned charter, as defined by the case-law, are satisfied, namely (i) that such duplication does not represent an excessive burden for the person concerned, (ii) that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication, and (iii) that the sets of proceedings in question have been conducted in a manner that is sufficiently coordinated and within a proximate timeframe.”

2. *Judgment of the Grand Chamber of the CJEU of 22 March 2022 in bpost (C-117/20, EU:C:2022:202)*

127. In the judgment, which concerned a request for a preliminary ruling on the interpretation of Article 50 of the Charter (see paragraph 117 above) referred by the Brussels Court of Appeal (Belgium) in proceedings between

bpost SA and the Belgian Competition Authority concerning the lawfulness of a decision by which bpost had been fined for abuse of a dominant position, the CJEU held as follows:

“Article 50 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 52(1) thereof, must be interpreted as not precluding a legal person from being fined for an infringement of EU competition law where, on the same facts, that person has already been the subject of a final decision following proceedings relating to an infringement of sectoral rules concerning the liberalisation of the relevant market, provided that there are clear and precise rules making it possible to predict which acts or omissions are liable to be subject to a duplication of proceedings and penalties, and also to predict that there will be coordination between the two competent authorities; that the two sets of proceedings have been conducted in a sufficiently coordinated manner within a proximate timeframe; and that the overall penalties imposed correspond to the seriousness of the offences committed.”

3. *Judgment of the Grand Chamber of the CJEU of 20 March 2018 in Garlsson Real Estate and Others (C-537/16, EU:C:2018:193)*

128. In the judgment, the subject of which was a request for a preliminary ruling on the interpretation of Article 50 of the Charter (see paragraph 117 above), read in the light of Article 4 of Protocol No. 7 to the Convention, referred by the Italian Court of Cassation in proceedings between Garlsson Real Estate SA, in liquidation at the time, Mr Stefano Ricucci and Magiste International SA, on the one hand, and the National Companies and Stock Exchange Commission (*Commissione Nazionale per le Società e la Borsa*), on the other hand, concerning the legality of an administrative fine that had been imposed on them as a result of breaches of the legislation on market manipulation, the CJEU ruled as follows:

“... ”

46. As regards the question whether the limitation of the *ne bis in idem* principle resulting from national legislation, such as that at issue in the main proceedings, meets an objective of general interest, it is apparent from the case file before the Court that that legislation seeks to protect the integrity of the financial markets of the European Union and public confidence in financial instruments. In the light of the importance that is given in the Court’s case-law, for the purposes of achieving that objective, to combating infringements of the prohibition on market manipulation (see, to that effect, judgment of 23 December 2009, *Spector Photo Group and Van Raemdonck*, C-45/08, EU:C:2009:806, paragraphs 37 and 42), a duplication of criminal proceedings and penalties may be justified where those proceedings and penalties pursue, for the purpose of achieving such an objective, complementary aims relating, as the case may be, to different aspects of the same unlawful conduct at issue, which it is for the referring court to determine.

47. In that regard, concerning offences relating to market manipulation, it seems legitimate that a Member State might wish, first, to dissuade and punish any infringement, whether intentional or not, of the prohibition of market manipulation by imposing administrative penalties set, as the case may be, on a flat-rate basis and, secondly, to dissuade and punish serious infringements of such a prohibition, which

have particularly negative effects on society and which justify the adoption of the most severe criminal penalties.

48. As regards compliance with the principle of proportionality, it requires that the duplication of proceedings and penalties provided for by national legislation, such as that at issue in the main proceedings, does not exceed what is appropriate and necessary in order to attain the objectives legitimately pursued by that legislation, it being understood that, when there is a choice between several appropriate measures, recourse must be had to the least onerous and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgments of 25 February 2010, *Müller Fleisch*, C-562/08, EU:C:2010:93, paragraph 43; of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 86; and of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraphs 37 and 39 and the case-law cited).

...

51. With regard to its strict necessity, national legislation, such as that at issue in the main proceedings, must, first of all, provide for clear and precise rules allowing individuals to predict which acts or omissions are liable to be subject to such a duplication of proceedings and penalties.

...

54. Next, national legislation, such as that at issue in the main proceedings, must ensure that the disadvantages resulting, for the persons concerned, from such a duplication are limited to what is strictly necessary in order to achieve the objective referred to in paragraph 46 of the present judgment.

55. As regards, first, the duplication of proceedings of a criminal nature which, as is apparent from the information in the case file, the requirement noted in the above paragraph implies the existence of rules ensuring coordination so as to reduce to what is strictly necessary the additional disadvantage associated with such a duplication for the persons concerned.

...

63. In the light of the foregoing considerations, the answer to the question referred is that Article 50 of the Charter must be interpreted as precluding national legislation which permits the possibility of bringing administrative proceedings against a person in respect of unlawful conduct consisting in market manipulation for which the same person has already been finally convicted, in so far as that conviction is, given the harm caused to the company by the offence committed, such as to punish that offence in an effective, proportionate and dissuasive manner.

...

68. Therefore, the answer to the second question is that the *ne bis in idem* principle guaranteed by Article 50 of the Charter confers on individuals a right which is directly applicable in the context of a dispute such as that at issue in the main proceedings.”

THE LAW

I. JOINDER OF THE APPLICATIONS

129. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7 TO THE CONVENTION (APPLICATION No. 48047/15)

130. Relying on Article 4 of Protocol No. 7 to the Convention, the applicant complained that he had been tried three times for the same acts. He further complained that all his domestic claims in this connection had been dismissed and that his right to an effective remedy under Article 13 of the Convention had thus been infringed.

131. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), the Court finds it appropriate to examine the applicant's complaint solely under Article 4 § 1 of Protocol No. 7 to the Convention, which provides:

“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

1. *Portugal's declaration regarding Article 4 of Protocol No. 7 to the Convention*

(a) The parties' submissions

(i) *The Government*

132. The Government explained that Portugal had made a declaration to the effect that the term “offence”, within the meaning of Articles 2 to 4 of Protocol No. 7, was to be understood to mean any offence classified as criminal under domestic law. They added that Portuguese law did not consider administrative offences to be “criminal” and that there was a clear distinction between administrative offences and criminal offences at the domestic level. In particular, they observed as follows.

Firstly, under Article 1 § 1 of the Criminal Code (see paragraph 104 above), and in accordance with the principle that only the law can define an offence and prescribe a penalty, a criminal offence was any offence that was defined and made punishable, thus making it possible to determine with certainty what constituted or did not constitute a criminal offence under

Portuguese law. Article 1 of the RGCO (see paragraph 113 above), on the other hand, defined administrative offences as any unlawful and reprehensible act for which an administrative fine could be imposed.

Secondly, criminal offences and administrative offences were governed by separate bodies of substantive and procedural law and punished by separate authorities.

Thirdly, criminal offences were punishable by imprisonment, unlike administrative offences, for which only administrative fines could be imposed.

133. The Government inferred from this that Article 4 of Protocol No. 7 to the Convention was not applicable to the proceedings that had been instituted against the applicant before the CMVM and the BdP (see paragraphs 40 and 80 above).

(ii) The applicant

134. The applicant replied that the declaration made by Portugal could not have the scope of a reservation within the meaning of Article 57 of the Convention for the same reasons as those that had led the Court to find, in the *Grande Stevens and Others v. Italy* (nos. 18640/10 and 4 others, 4 March 2014) case, that the declaration relied on by the Italian Government on that occasion – a declaration similar to Portugal’s, in the applicant’s view – was invalid. He submitted, firstly, that Portugal’s declaration was of a general character. He further observed that it made no reference to a law in force at the time when it had been made.

135. Secondly, the applicant noted that, at the time when Portugal had made the declaration, the *Öztürk v. Germany* (21 February 1984, Series A no. 73) judgment – according to which administrative offences were regarded as “criminal” offences for the purposes of the Convention and the Protocols thereto – had already been delivered.

136. He concluded that, having regard to the autonomous meaning of the concepts of an offence and of a criminal charge under the Convention, Portugal’s reservation ought to have clarified that those concepts excluded administrative offences.

(b) The Court’s assessment

137. The Court notes that in the instrument of ratification of Protocol No. 7 to the Convention deposited on 20 December 2004, Portugal made the following declaration:

“By ‘criminal offences’ and ‘offence’ in Articles 2 and 4 of the present Protocol, Portugal understands only those acts which constitute a criminal offence under its internal law.”

138. It considers that this declaration is to be regarded as a “reservation” within the meaning of Article 57 of the Convention (compare *Gradinger*

v. Austria, 23 October 1995, § 50, Series A no. 328-C). It is therefore necessary to determine whether it satisfies the requirements of Article 57 of the Convention (*ibid.*; see also *Grande Stevens and Others*, cited above, § 206), which provides:

“1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2. Any reservation made under this article shall contain a brief statement of the law concerned.”

(i) *General principles on reservations*

139. The Court reiterates that, in order to be valid, a reservation must satisfy the following conditions:

(1) it must be made at the time the Convention or the Protocols thereto are signed or ratified;

(2) it must concern a particular provision of the Convention;

(3) it must relate to specific laws in force at the time of ratification;

(4) it must not be a reservation of a general character;

(5) it must contain a brief statement of the law concerned (see *Benavent Díaz v. Spain* (dec.), no. 46479/10, § 47, 31 January 2017, with further references).

140. The Court has had occasion to specify that Article 57 § 1 of the Convention requires “precision and clarity” from the Contracting States, and that in requiring that a reservation is to contain a brief statement of the law concerned, this provision is not a “purely formal requirement” but sets out “a condition of substance which constitutes an evidential factor and contributes to legal certainty” (see *Grande Stevens and Others*, cited above, § 208).

141. Moreover, what is meant by “reservation of a general character” in Article 57 § 1 of the Convention is a reservation which does not refer to a specific provision of the Convention or is couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope. The wording of the declaration must enable the scope of the Contracting State’s undertaking to be ascertained, in particular as to which categories of dispute are included, and must not lend itself to different interpretations (see *Belilos v. Switzerland*, 29 April 1988, § 55, Series A no. 132, and *Benavent Díaz*, cited above, § 50).

142. The Court would also point out that even significant practical difficulties in indicating and describing all of the provisions concerned by the reservation cannot justify a failure to comply with the conditions set out in Article 57 of the Convention (see *Liepājnīeks v. Latvia* (dec.), no. 37586/06, § 54, 2 November 2010).

(ii) Application of those principles to the present case

143. In the present case, the Court finds that the reservation made by Portugal, like those made by Austria and Italy (see *Gradinger*, § 51, and *Grande Stevens*, § 210, both cited above), does not contain a “brief statement” of the law that was allegedly incompatible with Article 4 of Protocol No. 7 to the Convention, contrary to the requirements of Article 57 § 2 of the Convention (contrast *Benavent Díaz*, cited above, § 62). Admittedly, as the Government argued (see paragraph 132 above), it can be inferred from the wording of the reservation that Portugal intended to exclude from the scope of Article 4 of Protocol No. 7 all proceedings which were not classified as criminal under domestic law. However, a reservation which does not refer to or mention those specific provision of Portuguese law which exclude offences or proceedings from the scope of Article 4 of Protocol No. 7 does not afford to a sufficient degree a guarantee that it does not go beyond the provisions expressly excluded by the Contracting State (compare *Gradinger*, § 51, and *Grande Stevens*, § 210, both cited above; and contrast, *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI).

144. Having regard to the foregoing considerations, the same conclusion as that reached by the Court in *Gradinger* (cited above, § 51) and *Grande Stevens* (cited above, § 211) applies in the present case. Thus, the Court finds that the reservation made by Portugal does not satisfy the requirements of Article 57 § 2 of the Convention. That reservation cannot be regarded as valid, therefore, and there is no further need for the Court to examine its compliance with the other requirements of Article 57 of the Convention (see paragraph 139 above).

2. *Preliminary objection of incompatibility ratione materiae with the Convention*

(a) *The parties’ submissions*

145. The Government also raised an objection on grounds of incompatibility *ratione materiae* with the Convention. They submitted that the administrative proceedings that had been instituted against the applicant before the CMVM and the BdP could not be characterised as “criminal” within the autonomous meaning of that term under the Convention and that, in consequence, Article 4 of Protocol No. 7 was not applicable in the present case.

146. The applicant contested the Government’s objection. He submitted that the offences of which he had been accused by the CMVM and the BdP were of a criminal nature, notwithstanding their formal designation as administrative offences. Referring to the *Engel* criteria, he alleged that the CMVM and BdP proceedings had carried a certain degree of stigma and had been aimed at protecting both investors and the effectiveness and transparency of the financial markets by means of regulation and supervision

carried out by the two entities in question. He added that the sanctions incurred were severe were thus punitive in nature, referring, in this connection, to the judgments in *Grande Stevens and Others* (cited above) and *Nodet v. France* (no. 47342/14, 6 June 2019).

(b) The Court's assessment

(i) General principles

147. The Court reiterates that Article 4 of Protocol No. 7, which enshrines the principle of *ne bis in idem* (prohibition of double jeopardy), applies only to the trial and/or conviction of a person in “criminal proceedings” (see *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 103, 15 November 2016). It is therefore applicable only where it is established that one of the sets of proceedings in question amounted to a “criminal” prosecution and/or conviction (see *Paksas v. Lithuania* [GC], no. 34932/04, § 68, ECHR 2011 (extracts), and *Seražin v. Croatia* (dec.), no. 19120/15, § 63, 9 October 2018).

148. In this connection, the Court would emphasise that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the *ne bis in idem* principle 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. 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, with further references).

149. In particular, as the Court has clarified in the *A and B v. Norway* (cited above, § 107) judgment, the *Engel* criteria constitute the model test for determining whether the proceedings concerned are “criminal” for the purposes of Article 4 of Protocol No. 7 and, accordingly, whether the *ne bis in idem* principle is engaged (see also *Jóhannesson and Others v. Iceland*, no. 22007/11, § 43, 18 May 2017; *Ghoumid and Others v. France*, nos. 52273/16 and 4 others, § 68, 25 June 2020; and *Velkov v. Bulgaria*, no. 34503/10, § 45, 21 July 2020). The first of these criteria is the legal classification of the offence under national law, the second is the very nature of the offence or of the measure imposed and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not rule out a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Sergey Zolotukhin*, cited above, § 53; *Mihalache*

v. Romania [GC], no. 54012/10, § 54, 8 July 2019; and *Ghoumid and Others*, cited above, § 68).

(ii) *Application of those principles to the present case*

(α) The proceedings before the CMVM

150. In the present case, the Court notes that, in the CMVM proceedings, an overall administrative fine of EUR 480,000 was imposed on the applicant on three counts of the very serious offence of disclosing false information to the financial market (see paragraphs 40, 44, 53 and 65 above), pursuant to Articles 388 § 1 (a) and 389 § 1 (a) of the CVM, and Article 19 of the RGCO (see paragraphs 108, 110 and 113 above). Although the proceedings before the CMVM were classified as administrative at the domestic level, the Court refers to its assessment in the *Costa Santos v. Portugal* decision ((dec.), no. 64144/14, §§ 60-62, 19 September 2023) and reiterates the conclusion it reached in that case, namely, that such proceedings are of a “criminal” nature, within the autonomous meaning of the Convention (*ibid.*, § 63)

(β) The proceedings before the BdP

151. As to the proceedings before the BdP, the Court notes that the applicant was accused of providing false and incomplete information and of false accounting under Article 211 (g) and (r) of the RGICSF (see paragraphs 80 and 106 above). It observes that these proceedings resulted in the time-barring of part of the accusations against the applicant and in his acquittal as to the remaining accusations (see paragraph 97 above).

152. In the light of the *Engel* criteria set out in paragraph 149 above, the Court notes that, as with the CMVM proceedings, the BdP proceedings were not classified as “criminal” under domestic law, as the Government observed (see paragraph 132 above). It further notes that the BdP is the Portuguese central bank (see paragraphs 8 and 105 above) and, as such, is entrusted with a mandate in the general interest to ensure the stability of the financial system so as to avoid any systemic effects (see, in this connection, *Freire Lopes v. Portugal* (dec.), no. 58598/21, § 58, 31 January 2023), as pointed out in the present case by the Lisbon Court of Appeal, in its judgment of 9 June 2015 (see paragraph 92 above). This is a general interest of society, usually protected by criminal law (see, *mutatis mutandis*, *Grande Stevens and Others*, cited above, § 96, and *Edizioni Del Roma Societa Cooperativa A.R.L. and Edizioni del Roma S.R.L. v. Italy*, nos. 68954/13 and 70495/13, § 41, 10 December 2020, with further references).

153. As to the severity of the sanction, the Court notes that, while the administrative offences in issue, which were classified as “particularly serious” in Article 211 of the RGICSF (see paragraph 106 above), were not punishable by imprisonment, that Article, as in force at the material time, provided for the imposition of an administrative fine ranging from

PTE 200,000, or roughly EUR 40,000, to PTE 20,000,000, or roughly EUR 100,000, for each administrative offence. In the Court's view, these are not negligible sums. It notes, moreover, that this administrative fine could be combined with ancillary sanctions consisting, *inter alia*, in disqualification from exercising corporate, administrative or managerial functions in a credit institution or financial firm, in accordance with Article 212 of the RGICSF (see paragraph 106 above). It therefore seems clear that the sanctions incurred in the BdP proceedings were punitive in nature.

154. In the light of all the foregoing considerations, the Court finds that the purpose of the rules on which these proceedings were based was both deterrent and punitive (compare *Grande Stevens and Others*, cited above, § 96; *Edizioni Del Roma Societa Cooperativa A.R.L. and Edizioni del Roma S.R.L.*, cited above, § 41; and *Costa Santos*, cited above, § 61). The proceedings instituted against the applicant by the BdP were therefore “criminal” within the autonomous meaning of the Convention.

(γ) Conclusion

155. In view of the above observations (see paragraphs 150 and 154 above) the Court concludes that Article 4 of Protocol No. 7 to the Convention is applicable in the present case. The Government's objection on grounds of incompatibility *ratione materiae* with the provision relied on by the applicant must be dismissed.

3. *Conclusion as to admissibility*

156. The Court notes, moreover, that the complaint under Article 4 of Protocol No. 7 to the Convention is not manifestly ill-founded or inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) **The applicant**

157. The applicant complained that he had been prosecuted (*poursuivi*) three times –namely, by the criminal-law authorities, by the CMVM and by the BdP – for the same acts. In his view, this situation was the consequence of a structural problem deriving from the RGICSF and the CVM (see paragraphs 105-107 above). Referring to the *Grande Stevens and Others* (cited above) and *Sergey Zolotukhin* (cited above) judgments, he submitted that the three sets of proceedings in question had concerned the same acts and alleged that the decisions which had been delivered by the criminal courts, the CMVM and the BdP, respectively, had acknowledged the similarity of

the facts and their links in time and space. In particular, he explained that in all three sets of proceedings he had been accused of having authorised financial transactions through offshore companies and of having concealed the BCP's financial losses and provided false information on the relationship between the BCP and those offshore companies.

158. Furthermore, the applicant submitted that the impugned sets of proceedings had not been sufficiently closely connected in substance and in time to be regarded as complementary or parallel, having regard to the *A and B v. Norway* (cited above) judgment. Rather, in his view, the sets of proceedings in question had “coincided” in time. Allowing that the authorities involved had exchanged information concerning the different proceedings, he submitted that this was by no means sufficient to conclude that the investigations and prosecutions had been coordinated. In this connection, he alleged that the evidence had not been shared between the various authorities either in part or in whole but that, on the contrary, it had been produced independently in each set of proceedings. As an example, he pointed out that he and the same witnesses had been heard separately and independently by each authority. He thus argued that the duplication of proceedings had involved a duplication of the collection of evidence, which, he explained, had required his lawyers to prepare for multiple hearings, sometimes at very short intervals. The applicant inferred from this that the conditions laid down in the *A and B v. Norway* (cited above, § 132) judgment were not met. In his view, in the absence of any genuine coordination between the entities concerned, he had been the defendant, for ten years, in three sets of proceedings relating to the same facts.

159. The applicant observed that, admittedly, in accordance with Article 420 § 3 of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above) – which was more favourable to him in that regard – the term of the ancillary sanction imposed by the CMVM had been considered to have expired, as it had been enforced in the proceedings before the BdP (see paragraph 66 above). However, this measure had only been applied once he had filed a request to that effect, whereas the authorities had never sought to alleviate the burden weighing on him as a result of the multiplicity of proceedings. He also complained that the domestic authorities had failed to take into consideration the exhaustion caused by the multiple sets of proceedings, the costs incurred in each of them and the ban on engaging in professional activities in the financial sector.

160. The applicant further pointed out that the ancillary penalty that had been imposed on him had already been enforced for five years when he had been acquitted in the proceedings before the BdP (see paragraphs 85 and 97 above). In this connection, he explained that his acquittal in that context had had no effect on the other sets of proceedings.

161. The applicant also complained that the authorities had refused to apply Article 420 § 2 of the CVM, read in conjunction with Article 399-A

§ 1 (b), as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above), explaining that, had they done so, this would have led the CMVM to discontinue the proceedings before it, since the acts in question could be prosecuted solely as a criminal offence and not additionally as an administrative one.

162. He further submitted that the prosecuting authorities had reached different conclusions in respect of the same facts. He explained, for example, that the CMVM had found him guilty of all the administrative offences in relation to the offshore companies, whereas the criminal courts had not convicted him in connection with a number of those companies. He pointed out that the authorities could have applied Article 20 of the RGCO (see paragraph 113 above) and brought a single set of criminal proceedings with regard to the facts in issue.

163. In the applicant's view, he was in a similar situation to that of the applicant in the *Nodet* (cited above) case, which had resulted in the finding of a violation of Article 4 of Protocol No. 7 to the Convention. He therefore invited the Court to reach a similar conclusion in the present case.

(b) The Government

164. The Government acknowledged that there was a shared background for the three sets of proceedings, especially since they had all been instituted following a complaint filed by the same person (see paragraphs 8-9 above). That being said, in their view, the acts prosecuted in the criminal proceedings were separate from those in issue in the two sets of administrative proceedings. They relied in this connection on the Lisbon Court of Appeal's analysis in the judgments of 25 February 2015 (see paragraph 34 above) and 9 June 2015 (see paragraphs 91-96 above) regarding the criminal proceedings and the BdP proceedings, respectively.

165. The Government further submitted that, even assuming that the same facts had been in issue in the three sets of proceedings, it did not follow that there had been a duplication of proceedings. In their view, the institution of the three sets of proceedings had been an appropriate and proportionate response to the applicant's conduct, having regard to the background of the case and the aims pursued by each set. They argued that, in his capacity as a director of the BCP, namely a credit institution and a financial intermediary that issued securities, the applicant could have foreseen that the three sets of proceedings would be brought against him, given that, owing to the nature of its activities, the BCP was under the supervision of the BdP and the CMVM.

166. The Government added that the purposes pursued by the three sets of proceedings were complementary, having regard to the interests protected in each case. They thus explained that, in accordance with Article 379 § 1 of the CVM (see paragraphs 10 and 108 above), the purpose of the criminal proceedings instituted for market manipulation had been to protect the general interest of society in having a properly functioning financial market,

whereas the CMVM proceedings had concerned the BCP's activities as a financial intermediary that issued securities, since the purpose of the administrative offences defined in Articles 7 and 389 of the CVM (see paragraphs 108-110 above) was to preserve the transparency of the financial market and ensure the reporting of high-quality information to investors. As to the proceedings brought by the BdP, they had concerned the applicant in his capacity as a director of a banking establishment and the administrative offences defined in Article 211 (g) and (r) of the RGICSF (see paragraphs 80 and 106 above) were designed to ensure that the BdP could fulfil its mandate to supervise the banking sector. The Government pointed out, moreover, that both the CMVM proceedings and the BdP proceedings had concerned entities that were subject to the supervision of those authorities on account of the nature of their activities – entities, in other words, that had deliberately placed themselves under that supervision.

167. Thus, in the Government's submission, the proceedings had been conducted in parallel, in a concerted and complementary manner. They noted, in this connection, that the hearings held in the three sets of proceedings had taken place almost simultaneously. Noting, moreover, that the three authorities had cooperated with each other in accordance with Article 81 § 1 of the RGICSF and Article 374 § 1 of the CVM (see paragraphs 106 and 108 above), they alleged that the exchange of information among these authorities had made it possible to avoid multiplying evidence-gathering processes. Furthermore, each of the authorities had taken into consideration the decisions taken in the other sets of proceedings against the applicant, in accordance with Article 208 of the RGICSF and Article 420 § 3 of the CVM (see paragraphs 106 and 108 above), and had thereby ensured that the applicant would not bear an excessive burden. The Government concluded that the criteria established in the *A and B v. Norway* (cited above) judgment had been met.

2. *The Court's assessment*

168. The Court reiterates that Article 4 of Protocol No. 7 to the Convention enshrines a fundamental right guaranteeing that no one is to be tried or punished in criminal proceedings for an offence of which he or she has already been finally convicted or acquitted (see *Mihalache*, cited above, § 48; *Sergey Zolotukhin*, cited above, § 58; and *Velkov*, cited above, § 44). The question whether a trial or punishment has been duplicated is central to the legal problem addressed by Article 4 of Protocol No. 7 (see *Mihalache*, cited above, § 48, and *Nikitin v. Russia*, no. 50178/99, § 35, ECHR 2004-VIII).

(a) Whether the impugned proceedings concerned the same facts (“idem”)

(i) General principles

169. The Court observes that the wording of the first paragraph of Article 4 of Protocol No. 7 sets out the three components of the application of the *ne bis in idem* principle: the two sets of proceedings must be “criminal” in nature; they must concern the same facts; and there must be duplication of the proceedings (see *Mihalache*, cited above, § 49, and *Velkov*, cited above, § 44).

170. Article 4 of Protocol No. 7 must be understood as prohibiting prosecution or trial for a second “offence” in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin*, cited above, § 82; *A and B v. Norway*, cited above, § 108; and *Mihalache*, cited above, § 67).

171. The statements of facts concerning both the offence for which the applicant had already been tried and the offence of which he or she later stood accused form an appropriate starting-point for the Court’s determination of whether the facts in both proceedings were identical or substantially the same (see *Sergey Zolotukhin*, cited above, § 83). The Court’s inquiry should 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 (see *Sergey Zolotukhin*, cited above, § 84, and *Ramda v. France*, no. 78477/11, § 83, 19 December 2017).

(ii) Application of those principles to the present case

172. In the present case, it is not disputed that the proceedings before the criminal-law authorities were criminal in nature. As the Court has already noted, the proceedings before the CMVM and the BdP were also “criminal” in nature, within the autonomous meaning of that term under Article 4 of Protocol No. 7 (see paragraphs 150 and 154-155 above).

173. The Court further notes that the parties disagreed as to whether the proceedings complained of had concerned the same facts (see paragraphs 157 and 164 above).

174. For its part, the Court notes that the three sets of proceedings were instituted following a letter from J.B., a shareholder in the BCP, to the CMVM and the BdP on 28 November 2007, then to the Attorney General, supplemented by additional written submissions on 11 December 2007 (see paragraphs 8, 9, 10, 40 and 80 above). It further notes that J.B. complained of the schemes set up by the BCP’s Board of Directors, which consisted in a “circular trading” system using offshore companies controlled by the bank (see paragraphs 5-7 above). The criminal proceedings and the administrative proceedings initiated against the applicant by the CMVM and the BdP in the wake of that complaint all concerned the use of offshore companies, set up

and financed by the BCP, to buy and sell shares in the bank, together with the concealment of its losses (see paragraphs 20, 43 and 83 above). The Court can therefore accept that the facts giving rise to the three sets of proceedings in question were essentially the same (see, *mutatis mutandis*, *Bragi Guðmundur Kristjánsson v. Iceland*, no. 12951/18, § 53, 31 August 2021).

(b) Whether there was a final decision

(i) General principles

175. The Court reiterates that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a “final” decision. According to the Explanatory Report on Protocol No. 7, which itself refers back to the European Convention on the International Validity of Criminal Judgments, a decision is final “if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them”. This approach is well established in the Court’s case-law (see *Sergey Zolotukhin*, cited above, § 107, with further references).

176. Decisions against which an ordinary appeal lies are excluded from the scope of the guarantee contained in Article 4 of Protocol No. 7 as long as the time-limit for lodging such an appeal has not expired. On the other hand, extraordinary remedies are not taken into account for the purposes of determining whether the proceedings have reached a final conclusion (*ibid.*, § 108).

177. Thus, in order to decide whether a decision is “final” within the meaning of Article 4 of Protocol No. 7, it must be ascertained whether it is subject to an “ordinary remedy”. In establishing the “ordinary” remedies in a given case, the Court will take domestic law and procedure as its starting-point. Domestic law – both substantive and procedural – must satisfy the principle of legal certainty, which requires both that the scope of a remedy for the purposes of Article 4 of Protocol No. 7 be clearly circumscribed in time and that the procedure for its use be clear for those parties that are permitted to avail themselves of the remedy in question. In other words, for the principle of legal certainty – a principle which is inherent in the right not to be tried or punished twice for the same offence – to be satisfied, a remedy must operate in such a manner as to admit of no ambiguity whatsoever as to the point in time when a decision becomes final. In particular, the Court observes in this context that the requirement of a time-limit in order for a remedy to be regarded as “ordinary” is implicit in the wording of the Explanatory Report itself, which states that a decision is irrevocable where the parties have permitted the “time-limit” to expire without availing themselves of such a remedy. A law conferring an unlimited discretion on

one of the parties to make use of a specific remedy, or subjecting such a remedy to conditions disclosing a major imbalance between the parties in their ability to avail themselves of it, would run counter to the principle of legal certainty (see *Mihalache*, cited above, § 115).

(ii) *Application of those principles to the present case*

178. In the present case, the Court notes that, while the proceedings in issue were instituted more or less at the same time, they concluded on different dates. Thus:

(a) The administrative proceedings initiated by the BdP were concluded by a judgment of the Lisbon Court of Appeal delivered on 9 June 2015, which acquired the force of *res judicata* on 26 June 2015 (see paragraphs 91-96 above).

(b) The criminal proceedings ended with a judgment of the Lisbon Court of appeal of 25 February 2015, which acquired the force of *res judicata* on 14 July 2016 (see paragraphs 34 and 37 above).

(c) The administrative proceedings initiated by the CMVM ended with a judgment of the Lisbon Court of Appeal of 11 July 2019 which determined the overall administrative fine and the final ancillary sanction (see paragraph 68 above).

179. Consequently, the first proceedings to have been concluded by a “final” decision were the administrative proceedings initiated by the BdP, followed by the criminal proceedings and, lastly, the CMVM proceedings. That being said, the Court takes the view that this circumstance does not affect the assessment, given below, of the relationship between the three sets of proceedings (compare *A and B v. Norway*, § 142, and *Nodet*, § 46, both cited above).

(c) Whether there was a duplication of proceedings (“bis”) or whether they were the product of an integrated system enabling different aspects of the wrongdoing to be addressed

(i) *General principles*

180. In cases raising an issue under Article 4 of Protocol No. 7, it is the task of the Court to determine 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, and *Korneyeva v. Russia*, no. 72051/17, § 56, 8 October 2019). This provision does not outlaw legal systems which take an “integrated” approach to the social wrongdoing in question, and in particular an approach involving parallel stages of legal

response to the wrongdoing by different authorities and for different purposes (see *A and B v. Norway*, cited above, § 123, and *Korneyeva*, cited above, § 56). Article 4 of Protocol No. 7 does not exclude the conduct of dual sets of proceedings, even to their term, 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 sets of 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 have been 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 have been proportionate and foreseeable for the persons affected (see *A and B v. Norway*, cited above, § 130; *Jóhannesson and Others*, cited above, § 49, 18 May 2017; and *Velkov*, cited above, § 70).

181. In the *A and B v. Norway* (cited above, §§ 132-34) judgment, the Court exemplified what should be taken into account when evaluating the connection in substance and in time between dual sets of criminal and administrative proceedings (see also *Jóhannesson and Others*, cited above, § 49, and *Velkov*, cited above, §§ 71-72).

182. Material factors for determining whether there is a sufficiently close connection in substance include (see *A and B v. Norway*, cited above, § 132):

- whether the different sets of proceedings pursued complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the socially reprehensible conduct involved;
- whether the duality of proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (“*in idem*”);
- whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any duplication in the collection and in the assessment of the evidence, notably through adequate interaction between the various authorities to ensure that the establishment of the facts in one set of proceedings was 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 situation where the individual concerned is in the end made to bear an excessive burden, this latter risk being least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall quantum of any penalties imposed is proportionate.

183. In addition, when deciding whether Article 4 of Protocol No. 7 has been complied with in cases concerning dual sets of administrative and criminal proceedings, the extent to which the administrative proceedings bear the hallmarks of ordinary criminal proceedings is an important factor.

Different types of proceedings will more likely satisfy the criteria of complementarity and coherence if the sanctions to be imposed in the proceedings not formally classified as “criminal” are specific to the conduct in question and thus differ from “the hard core of criminal law” (see, in this connection, *Jussila v. Finland* [GC], no. 73053/01, § 43, ECHR 2006-XIV). The additional factor that those proceedings do not carry any significant degree of stigma renders it less likely that the combination of proceedings will entail a disproportionate burden on the accused person. Conversely, the fact that the administrative proceedings have stigmatising features largely resembling those of ordinary criminal proceedings enhances the risk that the social purposes pursued in sanctioning the conduct in different sets of proceedings will be duplicated (*bis*) rather than complementing one another (see *A and B v. Norway*, cited above, § 133).

184. As to the temporal link between the two sets of proceedings, the Court reiterates that, even where the connection in substance is sufficiently strong, the requirement of a connection in time nonetheless remains and must be satisfied. This does not mean, however, that the two sets of proceedings have to be conducted simultaneously from beginning to end. It should be open to States to opt for conducting the proceedings progressively in instances where doing so is motivated by interests of efficiency and the proper administration of justice, where the proceedings pursue different social purposes and where adopting such an approach does not cause the person concerned to suffer disproportionate prejudice. However, the connection in time must always be present. This connection must be sufficiently close to protect the individual from being subjected to uncertainty and delay and from proceedings becoming protracted over time, even where the relevant national system provides for an “integrated” scheme separating administrative and criminal components. The weaker the connection in time, the greater the burden on the State to explain and justify any such delay as may be attributable to its conduct of the proceedings (see *A and B v. Norway*, cited above, § 134).

(ii) *Application of those principles to the present case*

(α) Whether there was a connection in substance

– *Whether the three sets of proceedings pursued complementary purposes*

185. As to whether the three sets of proceeding pursued complementary purposes and addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved (see *A and B v. Norway*, cited above, § 132, and, to similar effect, the judgment of the CJEU in *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, § 94, cited in paragraph 125 above), the Court notes that, in the Government’s view, the purposes pursued by the proceedings were complementary in so far as the aim of the criminal proceedings was to protect the general interest of society in

having a properly functioning financial market, whereas the purpose of the administrative proceedings initiated by the CMVM was to protect the interests of investors, while the BdP proceedings protected the banking system (see paragraph 166 above). It notes that the applicant disputed that argument (see paragraph 158 above).

186. The Court shares the Government's view and finds that the interests protected by the three sets of proceedings were distinct and that these proceedings sought to address different aspects of the applicant's alleged wrongdoing (compare *C.Y. v. Belgium*, no. 19961/17, § 62, 14 November 2023, and contrast *Tsonyo Tsonev v. Bulgaria (no. 4)*, no. 35623/11, § 51, 6 April 2021). As the Lisbon Court of Appeal observed in its judgment of 9 June 2015 (see paragraph 91-94 above), whereas the criminal proceedings pursued the aims of deterrence and punishment, the purpose of the two sets of administrative proceedings under the RGICSF and the CVM (see paragraphs 105 and 107 above), in addition to their punitive function, was also to prevent any systemic risk, while protecting investors and ensuring the proper functioning of the financial markets, in the case of the CMVM proceedings, and protecting the banking system, in the case of the BdP proceedings. The Court finds that these purposes are complementary, having regard to the different interests they sought to protect and the different aspects of the facts in issue (compare *A and B v. Norway*, cited above, § 144). The Court therefore rejects the applicant's argument (see paragraph 163 above) that the present case is similar to the *Nodet* (cited above) case. In that case, which concerned two sets of proceedings brought respectively by the French criminal-law authorities and the French Financial Markets Supervisory Authority (*Autorité des Marchés Financiers*), the interests protected in both sets were the same (see *Nodet*, cited above, § 48), as indeed were the facts (in this connection, see *Grande Stevens and Others*, cited above, § 227) and the aspects of the misconduct that were in issue (see *A and B v. Norway*, cited above, § 132).

– *Whether the combination of procedures was foreseeable*

187. As to whether the combination of the three sets of proceedings in question was a foreseeable consequence, both in law and in practice, of the same impugned conduct (see *A and B v. Norway*, cited above, § 132; see also, to similar effect, the judgment of the CJEU in *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, cited in paragraph 126 above, and the judgment of the CJEU in *bpost*, C-117/20, cited in paragraph 127 above), the Court observes that the applicant was prosecuted in his capacity as Vice-Chairman of the Board of Directors of a banking establishment – the BCP – acting as a financial intermediary (see paragraph 4 above). In that capacity, he could not have been unaware that the bank was subject to the supervision of the BdP – the Portuguese central bank – and the CMVM as public authorities responsible for regulating and supervising the financial markets

(see paragraphs 105 and 107 above). The Court infers from this that the applicant could therefore have known that, as Vice-Chairman of the Board of Directors of the BCP, he was liable to prosecution for failing to fulfil his obligations in respect of those authorities, in addition to the criminal prosecution to which anyone would be liable (compare *Bragi Guðmundur Kristjánsson*, cited above, § 61).

- *Whether the proceedings were conducted in such a manner as to avoid as far as possible any duplication in the collection and assessment of the evidence*

188. Regarding whether the proceedings were conducted in such a manner as to avoid as far as possible any duplication in the collection and in the assessment of the evidence, in particular through adequate interaction between the various authorities (see *A and B v. Norway*, cited above, § 132), the Court notes that the criminal-law authorities, the CMVM and the BdP constantly exchanged information concerning the proceedings they had initiated following J.B.’s complaint and were conducting in parallel (see paragraphs 8-9, 11-17, 40-42 and 81 above).

189. In particular, the Court notes that on 22 December 2008 the BdP sent the public prosecutor at the Lisbon District Court a copy of the accusations it had filed against the applicant (see paragraph 17 above). It further notes that, in substantiating its own indictment, the public prosecutor’s office took into account the case files in the administrative proceedings against the applicant which it had received from the CMVM and the BdP (see paragraph 19 above). Moreover, the public prosecutor’s office ordered that the indictment be sent to these authorities (see paragraph 21 above).

190. The proceedings were indeed conducted in a coordinated manner, therefore. The fact – as noted by the applicant (see paragraph 158 above) – that the defendants and witnesses were examined in all three sets of proceedings can be explained by the need to safeguard the rights of the accused under Article 6 § 1 of the Convention (compare *Galović v. Croatia*, no. 45512/11, § 120, 31 August 2021).

- *Whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to avoid imposing an excessive burden on the applicant*

191. Lastly, as to the question whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to avoid imposing an excessive burden on the applicant (see *A and B v. Norway*, cited above, § 132, and, to similar effect, the judgment of the CJEU in *bpost*, C-117/22, cited in paragraph 127 above), as the Court has already noted (see paragraphs 178-179 above), the first set of proceedings to have become “final” were the administrative proceedings initiated by the BdP. Admittedly, no sanction was imposed on the applicant in those proceedings, since they concluded with a judgment of 9 June 2015

in which the Lisbon Court of Appeal quashed the TPIC's judgment convicting the applicant, declaring the proceedings time-barred in respect of part of the administrative offences of which he had been accused and acquitting him of the remaining accusations (see paragraphs 89 and 91-97 above). However, the Court notes that under Article 227 § 2 of the RGICSF (see paragraph 106 above), any ancillary sanction imposed by the BdP was enforceable until such time as it was set aside in a final judicial decision. Thus, by the time the final decision was delivered in the proceedings in question, the applicant, as he maintained, had already observed, for upwards of five years, the ancillary sanction that had been imposed on him by the BdP, namely, disqualification from exercising corporate, executive, management or administrative functions in a credit institution or financial firm (see paragraphs 84-85, 97 and 160 above).

192. Turning to the criminal proceedings, the Court observes that they resulted in the applicant's sentencing, under Article 379 § 1 of the CVM, to two years' imprisonment, which could be suspended upon payment of EUR 300,000 to a charitable organisation, for market manipulation, a sentence which was accompanied, in accordance with Article 380 § 1 (a) of the CVM, by a four-year ban on exercising administrative, executive or supervisory functions in any credit institution or financial firm (see paragraphs 30, 34, 37 and 108 above). It was therefore in these proceedings that the first sanction was handed down. Consequently, it must now be ascertained whether, in the subsequent proceedings, namely, those before the CMVM, which ended last (see paragraphs 178-179 above), the sanctions imposed in the criminal proceedings were taken into account.

193. The Court notes that these proceedings ended with a judgment of the Lisbon Court of Appeal of 11 July 2019 and resulted in the applicant's being ordered to pay an overall administrative fine of EUR 480,000 on three counts of the very serious administrative offence of reporting false information to the financial market (see paragraphs 65-66 and 68 above). It further notes that the term of the ancillary sanctions imposed on the applicant was reduced to one year and three months, and then declared to have expired (*extintas*), in accordance with Article 420 § 3 of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above) – the wording of which was considered more favourable to the applicant –, on account of the fact that it had already been served for the purposes of enforcing the sanctions imposed in both the criminal proceedings and the proceedings before the BdP (see paragraph 66 above). The Court further notes that the Lisbon Court of Appeal rejected the applicant's request that similar treatment be given to the main administrative sanction (see paragraph 67 above), on the ground that the sanction in question differed in nature from the prison sentence handed down in the criminal proceedings, in relation to which the condition of payment to a charitable institution had applied (see paragraph 69 above).

194. It follows from the above findings that the last authority to have ruled, namely the CMVM, did take into consideration the main and ancillary sanctions imposed in the criminal proceedings and, moreover, the ancillary sanction that had been observed *de facto* in the context of the proceedings before the BdP (compare *C.Y. v. Belgium*, cited above, § 67; and contrast *Milošević v. Croatia*, no. 12022/16, § 41, 31 August 2021, and *Gouladris and Vardinogianni v. Greece*, no. 1735/13, § 78, 16 June 2022).

195. In the final analysis, the applicant was sentenced to two years' imprisonment, suspended on condition of payment of EUR 300,000 to a charitable institution, and ordered to pay an administrative fine of EUR 480,000. He was also disqualified from exercising administrative, executive or supervisory functions in any credit institution or financial firm for five years (see paragraph 191 above). In the Court's view, it therefore does not appear that the applicant suffered any disproportionate prejudice or injustice as a result of the integrated legal response to the impugned acts (compare *A and B v. Norway*, cited above, § 147, and see, to similar effect, the judgment of the CJEU in *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, § 93, cited in paragraph 125 above).

– *Conclusion as to the existence of a connection in substance*

196. In the light of the above findings (see paragraphs 185-195 above), the Court finds that the proceedings brought against the applicant by the criminal-law authorities, the CMVM and the BdP, respectively, were sufficiently closely connected in substance.

(β) Whether there was a connection in time

197. As to the requirement of a connection in time, as noted in paragraphs 174 and 178 above, the Court observes that the three sets of proceedings in issue were instituted at the same time – in late 2007 and early 2008 – on the basis of the same complaint (see paragraphs 8-9, 10, 40 and 80 above).

198. Whereas the criminal proceedings and the proceedings before the BdP concluded more or less at the same time (see paragraphs 34, 37, 91 and 98 above), those conducted by the CMVM only concluded four years later, as it had been necessary, following the time-barring of one count of the administrative offence for which the applicant had been held liable (see paragraph 68 above), to reassess the overall administrative sanctions imposed on him as a result of that finding. However, that circumstance alone does not preclude the existence of a connection in time in the present case. Thus, the proceedings were conducted in parallel until 2015, and the applicant even pointed out that hearings before the various authorities had at times been held at very short intervals (see paragraph 158 above). Accordingly, in the Court's view, the three sets of proceedings brought against the applicant were indeed

connected in time (contrast *Bragi Guðmundur Kristjánsson*, cited above, § 75).

3. Conclusion

199. Having regard to all these observations, the Court concludes that the different sets of proceedings in issue in the present case were sufficiently closely connected in substance and in time to be considered to form a coherent whole (compare *A and B v. Norway*, cited above, § 153, and *Galović*, cited above, § 123).

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (APPLICATION No. 2276/20)

201. Regarding the proceedings to determine the overall administrative sanctions imposed by the CMVM (see paragraph 57 above), the applicant complained, first, that no reasons had been given in the decisions in which the domestic courts had dismissed his request for a preliminary reference to the CJEU and, second, that the Lisbon Court of Appeal had refused to hold a public hearing. He alleged a violation of his rights under Article 6 § 1 of the Convention, the relevant parts of which provide:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...”

A. Preliminary observation

202. The Government raised an objection on grounds of incompatibility *ratione materiae* of those complaints with Article 6 of the Convention. Referring to the *A.R. v. Italy* (no. 13960/88, 12 October 1992), *Bravo Belo v. Portugal* ((dec.), no. 57026/11, 21 June 2016), *Previti v. Italy* ((dec.), no. 1845/08, § 80, 12 February 2013) and *Nurmagomedov v. Russia* (no. 30138/02, § 50, 7 June 2007) cases, they submitted that the proceedings conducted following the time-barring of one count of the administrative offence for which the applicant had been held liable (see paragraphs 53 and 58 above) had no longer involved the determination of a “criminal charge” against him, but the calculation of the overall administrative fine in accordance with Article 19 of the RGCO (see paragraph 113 above). Thus, in the Government’s view, the only issue to be determined in those proceedings had been a matter of procedural law.

203. The applicant submitted that the Government’s objection should be dismissed. He alleged that the proceedings to determine the overall administrative fine had concerned a matter of substantive criminal law. He

argued that the Article 19 of the RGCO had to be read in conjunction with Article 18, which laid down the criteria that were to be taken into consideration in determining the administrative sanction (see paragraph 113 above). He submitted that the accused person's overall liability was thus reviewed in the course of such proceedings and that the suspension of the sanction could therefore be decided in that context, as could the question of the most favourable law, which could be applied at that point in time.

204. Should the criminal head of Article 6 be found not to apply to the proceedings to determine the overall administrative fine, the applicant submitted that the matter fell under the civil head of that provision, referring in that connection to the *Torri v. Italy* (no. 26433/95, § 19, 1 July 1997) judgment.

205. The Court takes the view that it is not necessary to rule on the Government's objection of incompatibility *ratione materiae* of the applicant's complaints under Article 6 § 1 of the Convention (see paragraph 202 above), since those complaints are in any event inadmissible for the reasons set out below.

B. Alleged violation of Article 6 § 1 of the Convention on account of the refusal to seek a preliminary ruling from the CJEU

1. The parties' submissions

(a) The Government

206. Should Article 6 § 1 of the Convention be found to be applicable to the proceedings to determine the overall administrative fine, the Government submitted that, as to the alleged lack of reasoning in the domestic decisions rejecting the applicant's request of 4 April 2018 (see paragraph 60 above) for a preliminary reference to the CJEU, both the TPIC's judgment of 8 June 2018 and the Lisbon Court of Appeal's judgment of 11 July 2019 (see paragraphs 61, 64 and 68 above) were sufficiently reasoned. They explained that the preliminary reference sought in the present case concerned the question whether the *ne bis in idem* principle guaranteed by Article 50 of the Charter (see paragraph 117 above) had been satisfied. As the domestic courts had noted, the applicant's conviction had become final on 27 March 2015 and the sole concern of the proceedings conducted after the statute-barring of one count of the administrative offence for which the applicant had been held liable had been to determine an overall fine. They were thus of the opinion that the question as to a possible breach of the *ne bis in idem* principle could no longer have arisen, concluding that the preliminary reference in question would have been pointless.

(b) The applicant

207. The applicant disputed the Government's arguments. He complained that the domestic courts had dismissed his request for a preliminary reference to the CJEU on the interpretation of Article 50 of the Charter, without giving reasons. He alleged that the domestic courts had acknowledged that the question was relevant but had dismissed his claim on the sole ground that the domestic decision had acquired the force of *res judicata*. In his view, this reasoning was arbitrary, especially as it did not refer to the *Cilfit* criteria. He further submitted that the present case was comparable to the *Sanofi Pasteur v. France* (no. 25137/16, 13 February 2020) case, which had also concerned the dismissal of a request for a preliminary reference in the context of an appeal against a judgment that had not yet become final.

2. The Court's assessment**(a) General principles**

208. The general principles on the right of access to a procedure for referring a question to the CJEU were summarised in the *Ullens de Schooten and Rezabek v. Belgium* (nos. 3989/07 and 38353/07, §§ 57-62, 20 September 2011) judgment and reiterated in the *Sanofi Pasteur* judgment (cited above, §§ 69-71; concerning the CJEU's case-law on preliminary references, see §§ 36-38).

209. The Convention does not guarantee, as such, any right to have a case referred by a domestic court to the CJEU for a preliminary ruling (see *Ullens de Schooten and Rezabek*, cited above, § 57). Article 6 § 1 nonetheless requires the domestic courts to give reasons, in the light of the applicable law, for any decision refusing to refer a question for a preliminary ruling, especially where the applicable law allows for such a refusal only on an exceptional basis. The Court has thus concluded that when it hears a complaint alleging a violation of Article 6 § 1 on this basis, its task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning. However, it has emphasised that, while this verification has to be made thoroughly, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law (see *Sanofi Pasteur*, cited above, § 69, with further references). In this connection, it has also held that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law, the Court's role being confined to ascertaining whether the effects of such adjudication are compatible with the Convention (see *Ullens de Schooten and Rezabek*, cited above, § 54).

210. The Court has further clarified that, in the specific context of the third paragraph of Article 267 of the Treaty on the Functioning of the European Union, where a national court against whose decisions there is no remedy under national law refuses to refer to the CJEU a preliminary question on the

interpretation of EU law that has been raised before it, that court is obliged to give reasons for its refusal in the light of the exceptions provided for in the case-law of the CJEU (see *Ullens de Schooten and Rezabek*, cited above, § 62, and *Sanofi Pasteur*, cited above, § 70).

(b) Application of those principles to the present case

211. In the present case, the Court notes, firstly, that on 4 April 2018, as the TPIC was preparing to reassess the overall administrative sanctions to be imposed on the applicant after the time-barring of one count of the administrative offence for which he had been held liable, the applicant asked the TPIC to refer a preliminary question to the CJEU on the interpretation of Article 50 of the Charter (see paragraphs 60 and 117 above). It observes that the TPIC dismissed this request on 8 June 2018 on the grounds that the judgment of 6 March 2014 convicting the applicant in the CMVM proceedings had acquired the force of *res judicata* on 27 March 2015 and that the only issue it was called upon to decide was the calculation of the overall administrative fine (see paragraphs 53, 56 and 61 above). The Court notes that the TPIC further considered that the applicant's convictions in the criminal proceedings and the BdP proceedings, respectively, had become final as well (see paragraph 61 above), concluding that this distinguished the case before it from the CJEU's *Garlsson Real Estate and Others* case, on which the applicant had relied in support of his claim (see paragraphs 64 and 128 above).

212. Secondly, the Court observes that, in a judgment of 11 July 2019, when it had been called upon to rule at second and last instance, pursuant to Article 75 of the RGCO (see paragraph 113 above), and was, as such, potentially required to make the preliminary reference in question to the CJEU, in accordance with Article 267 of the TFEU (see paragraph 116 above), the Lisbon Court of Appeal upheld the refusal to seek a ruling from the CJEU based on the same reasoning as that given by the TPIC (see paragraph 68 above). In other words, both the TPIC and the Lisbon Court of Appeal considered that the request for a preliminary ruling was unnecessary since the decisions finding against the applicant in the three sets of proceedings against him had acquired the force of *res judicata* and that any examination to ensure consistency with the *ne bis in idem* principle under Article 50 of the Charter was thus time-barred. How that provision was interpreted by the CJEU was therefore irrelevant. The Court takes the view that it is not for it to call into question such an interpretation of domestic law, which aimed to ensure legal certainty and the proper administration of justice (see, in this connection, *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 57, 20 October 2011). Moreover, the applicant did not explain why he had failed to make his request earlier, when the three sets of proceedings had still been pending.

213. Moreover, as the refusal to refer the preliminary question raised in the present case to the CJEU appears neither arbitrary nor unreasonable, the Court finds that the essence of the applicant's right of access to a procedure for seeking a preliminary reference to the CJEU was not impaired. Accordingly, the complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 6 § 1 of the Convention on account of the Court of Appeal's refusal to hold a public hearing

1. The parties' submissions

(a) The Government

214. As to the Court of Appeal's refusal to grant the applicant's request for a public hearing (see paragraph 201 above), the Government explained that the applicant had not fulfilled the conditions laid down in Article 411 § 5 of the Code of Criminal Procedure (see paragraph 102 above), which was applicable to the proceedings in question, since he had failed to indicate the points he wished to have discussed at such a hearing. They pointed out that the request had been made in point 113 of the conclusion of the applicant's statement of appeal, referring merely to a discussion of all issues pertaining to EU law. The Government submitted that, in so far as he had failed to specify the issues he wished to have examined in a public hearing, the applicant alone had been responsible for the fact that no such hearing had been held in the context of his appeal to the Lisbon Court of Appeal.

(b) The applicant

215. The applicant contested the Government's argument. He submitted that it had been important that he be heard in a public hearing to determine the overall administrative fine to be imposed on him. In his view, moreover, crucial questions had remained to be discussed, such as the question of a breach of the *ne bis in idem* principle and the interpretation of that principle in the light of EU law. He submitted that the Lisbon Court of Appeal had rejected his request for a public hearing on overly formalistic grounds, in breach of the requirement of procedural fairness under Article 6 of the Convention.

2. The Court's assessment

(a) General principles

216. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court is not a court of appeal from the national courts and it is not its function to deal with

errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018, with further references; see also the case-law cited in paragraph 209 above). This applies in particular to the interpretation by courts of rules of a procedural nature such as time-limits governing the filing of documents or lodging of appeals. The Court further considers that the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty, and that litigants should expect those rules to be applied (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 33, ECHR 2000-I). That being said, while the right of appeal is of course subject to statutory requirements, the courts must, in applying the rules of procedure, avoid both excessive formalism that would impair the fairness of the proceedings and excessive flexibility such as would render nugatory the procedural requirements laid down in statutes (see *Bulena v. the Czech Republic*, no. 57567/00, § 30, 20 April 2004).

(b) Application of those principles to the present case

217. Turning to the present case, the Court observes that the applicant asked the Lisbon Court of Appeal to hold a public hearing to discuss all the issues raised before it and, more specifically, those pertaining to EU law (see paragraph 67 above). His request was dismissed on the ground that he had not specified, as required by Article 411 § 5 of the Code of Criminal Procedure (see paragraphs 68 and 102 above), which particular points he wished to have discussed.

218. The Court notes that the court in question was called upon to rule on the applicant's appeal, which had been lodged by way of a statement of appeal running to one hundred and eight pages (see paragraph 67 above) and that it was thus ruling at second instance, in accordance with Article 75 § 1 of the RGCO (see paragraph 113 above), that is to say, on points of law concerning the calculation of the overall administrative fine. It further notes that a public hearing had already been held before the TPIC (see paragraph 59 above). Having regard to the scope of the appeal, the Court can understand the requirement under the domestic legislation that the points of law to be discussed should be specified. Unlike the applicant (see paragraph 215 above), it therefore fails to see how such a requirement might constitute proof of excessive formalism, especially since, in the present case, the applicant was represented by two lawyers in the appeal in question (see paragraph 67 above).

219. As a subsidiary consideration, the Court finds that the applicant has not shown in the present case how the public hearing he sought was essential, having regard to the scope of the proceedings in question and, more

particularly, to the purely legal questions which, in his view, the case raised (see paragraph 67 above). Moreover, the applicant's situation does not appear to fall under the kinds of situations for which a public hearing would have been necessary (see, in this connection, *Ramos Nunes de Carvalho e Sá*, cited above, § 191).

220. Consequently, it has not been shown that in rejecting the applicant's request for a public hearing the Lisbon Court of Appeal displayed excessive formalism such as to impair the fairness of the proceedings.

D. Conclusion

221. Having regard to the above considerations, the applicant's complaints under Article 6 § 1 of the Convention must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION (APPLICATION No. 2276/20)

222. In his submissions to the Court on 11 April 2022, the applicant complained for the first time that the domestic courts had dismissed his request for the application of Article 420 § 2 of the CVM in conjunction with Article 399-A § 1 (b) of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above). In his view, these provisions were more favourable to him in so far as they entailed that the administrative proceedings initiated by the CMVM should be discontinued. He complained of a violation of Article 7 of the Convention, the relevant parts of which provide:

“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.”

223. In their additional observations before the Court the Government objected to its examination of that complaint, arguing that it did not fall within the scope of the case as communicated to them. They further submitted that the complaint in question was manifestly ill-founded, explaining that the administrative offence of market manipulation stemmed from Article 399-A (b) of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above) and that, as a result, the CMVM had not initiated proceedings against the applicant on that ground. Accordingly, in their view the question of applying a law that was more favourable to the applicant in that regard had not arisen.

A. General principles

224. The Court reiterates that Article 7 § 1 of the Convention guarantees not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law. That principle is embodied in the rule that where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment is rendered, the courts must apply the law whose provisions are most favourable to the defendant (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 109, 17 September 2009; *Advisory opinion concerning the use of the “blanket reference” or “legislation by reference” technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, § 82, 29 May 2020 – hereinafter “*Advisory Opinion P16-2019-001*”; and *Jidic v. Romania*, no. 45776/16, § 80, 18 February 2020). The principle of retrospective application of the more lenient criminal law also applies in the context of an amendment relating to the definition of the offence (see *Parmak and Bakır v. Turkey*, nos. 22429/07 and 25195/07, § 64, 3 December 2019, and *Advisory Opinion P16-2019-001*, cited above, § 82).

225. It is not the Court’s task to review *in abstracto* whether the failure to retroactively apply the new criminal law is, *per se*, incompatible with Article 7 of the Convention. This matter must be assessed on a case-by-case basis, taking into consideration the specific circumstances of the case and, notably, whether the domestic courts have applied the law whose provisions are most favourable to the defendant (see *Maktouf and Damjanović v. Bosnia-Herzegovina* [GC], nos. 2312/08 and 34179/08, § 65, ECHR 2013, and *Jidic*, cited above, § 82). What is crucial is whether the decision to apply one criminal law rather than the other following a concrete assessment of the specific acts has put the defendant at a disadvantage as concerns the sentencing (see *Maktouf and Damjanović*, cited above, §§ 69-70, and *Jidic*, cited above, § 85).

226. Even though the principle of concretisation was developed in cases relating to an amendment of the relevant penalties, the Court considers, having regard to the foregoing considerations, that the same principle also applies to cases involving a comparison between the definition of the offence at the time of its commission and a subsequent amendment (see *Advisory Opinion P16-2019-001*, cited above, § 90).

B. Application to the present case

227. In the present case, the Court agrees with the Government that the applicant raised the complaint under Article 7 of the Convention for the first

time before the Court on 11 April 2022, as part of his observations (see paragraph 222 above). He complained that he had not had the benefit of a retrospective application of a criminal law which, in his view, was more favourable to him. The Court does not consider it necessary to ascertain whether this complaint falls within the scope of the case as communicated (see the Government's objection in this regard, summarised in paragraph 223 above), as it is in any event inadmissible for the following reasons.

228. In this connection, the Court notes that, relying on Article 3 § 2 of the RGCO (see paragraph 113 above), the applicant sought the retrospective application of Article 399-A (b) of the CVM, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 111 above), which in his view was more favourable to him, in a request filed with the TPIC on 5 June 2020, that is to say, after his application no. 2276/20 had been lodged with the Court (see paragraph 75 above).

229. It notes that the TPIC dismissed his claims in a judgment of 25 April 2021 on the ground that the matter had already been addressed in the decision it had delivered on 8 June 2018, which had since become final (see paragraphs 61-63 and 76 above). The Court notes that the Lisbon Court of Appeal upheld the dismissal of that request on 25 November 2021 (see paragraph 78 above).

230. The Court observes that the CMVM initiated proceedings against the applicant on several counts of failure to comply with the duty to provide high-quality information, as provided for in Articles 7, 388 § 1 (a) and 389 § 1 (a) of the CVM (see paragraphs 44 and 84 below), and not for the administrative offence of market manipulation. That offence was added to the CVM by Law no. 28/2017 of 30 May 2017 transposing into domestic law Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 and adapting Portuguese law in the light of Regulation (EU) no. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (see paragraphs 111, 122 and 123 above). The offence referred to in Article 399-A § 1 (b) of the CVM was therefore a new administrative offence. Thus, in the Court's view, the Lisbon Court of Appeal's interpretation of Article 420 § 2 of the CVM in its judgment of 25 November 2021 (see paragraphs 78-79 above) does not appear to have been unreasonable in so far as, in this case, the question of a duplication of proceedings for market manipulation – criminal under Article 379 § 1 of the CVM (see paragraphs 10 and 108 above) and administrative under the new Article 399-A § 1 (b) of the same Code – did not arise before the CMVM. In these circumstances, the Court cannot accept the applicant's argument that the domestic courts arbitrarily refused to apply the criminal law which was more favourable to him.

231. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. Declares the complaint under Article 4 of Protocol No. 7 to the Convention (application no. 48047/15) admissible and the complaints under Articles 6 § 1 and 7 of the Convention (application no. 2276/20) inadmissible;
3. *Holds* that there has been no violation of Article 4 of Protocol No. 7 to the Convention;

Done in French, and notified in writing on 8 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President