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

GRAND CHAMBER

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 ("CMVM") and Banco de Portugal ("BdP") for various criminal and administrative offences committed by applicant as Vice-Chairman of Board of Directors of Banco Comercial Português bank • Invalidity of reservation made by Portugal in respect of Art 4 P7 • Jurisdiction *ratione materiae* of Court • New approach by Grand Chamber to examining each component of *ne bis in idem* principle: concept of "criminal proceedings"; concept of "offence" (*idem*); and criteria for determining whether there was a combination of proceedings forming part of an integrated punitive system (*bis*) • Application of new approach to present case • Three sets of proceedings in issue formed part of integrated system of proceedings intended to punish various aspects of impugned acts of reporting false information to BdP and CMVM • Proceedings enabled different aspects of acts in question to be addressed in foreseeable and proportionate manner • Proceedings formed coherent whole which did not subject applicant to any injustice • No duplication of proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 July 2026

This judgment is final, but it may be subject to editorial revision.

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In the case of Jesus Pinhal v. Portugal,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mattias Guyomar, *President*,
Arnfinn Bårdsen,
Lado Chanturia,
Ioannis Ktistakis,
Kateřina Šimáčková,
Georgios A. Serghides
Lətif Hüseynov,
Darian Pavli,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Andreas Zünd,
Alain Chablais,
Artūrs Kučs,
András Jakab,
Anna Adamska-Gallant, *judges*,
João Manuel da Silva Miguel, ad hoc *judge*,

and Abel Campos, *Deputy Registrar*,

Having deliberated in private on 17 September 2025 and 6 May 2026,

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

PROCEDURE

1. The case originated in 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.

2. The applicant was represented by Ms V. Costa Ramos and Ms. L. Prata Cordeiro, lawyers practising in Lisbon. The Portuguese Government ("the Government") were represented by their most recently appointed Agent, Ms H. Carvalho Martins Leitão, Deputy Attorney-General.

3. As Ms Ana Maria Guerra Martins, the judge elected in respect of Portugal was unable to sit in the case (Rule 28 § 2 (b) of the Rules of Court), the President of the Grand Chamber appointed Mr João Manuel da Silva Miguel to sit as an *ad hoc* judge (Rule 29).

4. Relying on Article 13 of the Convention and on Article 4 of Protocol No. 7 to the Convention, the applicant submitted that he had been prosecuted and tried three times for the same acts by the criminal-law authorities, the Securities Market Commission (CMVM) and the Banco de

Portugal (BdP) respectively (application no. 48047/15). He raised further complaints under Articles 6 and 7 of the Convention (application no. 2276/20).

5. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1). On 8 February 2021 notice of the applications was given to the Government.

6. In a judgment of 8 October 2024 a Chamber of that Section, composed of judges Gabriele Kucsko-Stadlmayer, Faris Vehabović, Branko Lubarda, Anja Seibert-Fohr, Anne Louise Bormann, Sebastian Răduleţu, João Manuel da Silva Miguel (*ad hoc* judge), and Andrea Tamietti (Section Registrar), delivered a judgment in which, unanimously, it decided to join the applications and declared admissible the applicant's complaint under Article 4 of Protocol No. 7 to the Convention, including the complaint raised under Article 13 of the Convention, and inadmissible the complaints raised under Articles 6 § 1 and 7 of the Convention. It went on to hold, unanimously, that there had been no violation of Article 4 of Protocol No. 7 to the Convention.

7. On 8 January 2025 the applicant requested that the case be referred to the Grand Chamber under Article 43 of the Convention. On 17 March 2025 the panel of the Grand Chamber granted that request.

8. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

9. The applicant and the Government each submitted written observations on the merits of the case (Rule 59 § 1).

10. Written observations were also received from the Italian Government and the European Criminal Bar Association, having been granted leave by the President of the Grand Chamber to intervene as third parties in both the written and the oral proceedings before the Court (Article 36 § 2 of the Convention and Rules 44 § 3 and 71 § 1).

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 17 September 2025.

There appeared before the Court:

(a) *for the respondent Government*

Ms	H. CARVALHO MARTINS LEITÃO,	*Agent*,
Ms	A. GARCIA MARQUES,	*Co-Agent*,
Mr	H. RIGOR RODRIGUES,	*Adviser*;

(b) *for the applicant*

Ms	V. COSTA RAMOS,	
Ms	CALÇADA SOARES,	*Counsel*;

(c) *for the Italian Government*

Mr	L. D'ASCIA,	*Agent*,

Mr F. MONTANARO,
Ms C. DE NICOLA, *Advisers*;

(d) *for the European Criminal Bar Association (ECBA)*
Mr A. BARLETTA,
Mr A.-A. ANAGNOSTAKIS, *Advisers*;

The Court heard addresses from Ms H. Carvalho Martins Leitão, Ms A. Garcia Marques, Ms V. Costa Ramos, Mr L. D'Ascia, Mr A. Barletta and Mr A.-A. Anagnostakis, and their replies to questions from the judges. Those appearing before the Court submitted further written replies within the time-limit set by the President before the close of the hearing (Rules 71 § 1 and 38 § 1).

INTRODUCTION

12. The case concerns three sets of proceedings initiated against the applicant by the criminal-law authorities, the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM) and the Portuguese central bank, the Banco de Portugal (BdP), respectively, for various criminal and administrative offences committed while he was a member and later Vice-Chairman of the Board of Directors of the Banco Comercial Português bank ("the BCP"). The applicant submitted that his right not to be tried or punished twice for the same acts, as guaranteed by Article 4 of Protocol No. 7 to the Convention, had been infringed and that the absence of any effective remedy by which to assert his rights domestically had entailed a breach of Article 13 of the Convention.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1946 and lives in Lisbon.

A. Background

14. The applicant, who had been a member of the board of directors of the BCP since 1994, was appointed vice-chairman of that board in 1998. In August 2007 he became chairman of the BCP's executive committee.

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" involving several groups of companies, including:

(a) a group of 17 offshore companies registered in the Cayman Islands ("the Cayman group");

(b) a group of four offshore companies registered in the Isle of Man, the British Virgin Islands and Gibraltar ("the G.F. group"); and

(c) a group of companies operating in the real estate sector ("the E.A. group").

The BCP granted substantial loans to these companies to enable them to buy and sell shares in the bank and in other companies belonging to the BCP group, thereby influencing the price of these shares on the securities market.

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

16. The BCP sought to conceal the losses by means of various financial transactions, which it failed to record in its accounting reports.

17. In a letter of 28 November 2007, supplemented by an additional document dated 11 December 2007, J.B., a BCP shareholder, complained of the above-mentioned schemes to the CMVM and the BdP. On 14 December 2007 he sent the Attorney General copies of those documents.

18. Following up on J.B.'s complaint, the public prosecutor's office at the Lisbon District Court, the CMVM and the BdP initiated proceedings against the applicant and other representatives of the BCP in connection with these allegations. The case file shows that the public prosecutor's office, the CMVM and the BdP exchanged information as the pending sets of proceedings progressed.

B. The proceedings instituted by the BdP

19. On 26 December 2007 the BdP instituted administrative proceedings (*processo de contraordenação*) against the BCP and ten individuals linked to it ("the BdP proceedings"). 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 General Regulation on Credit Institutions and Financial Firms (*Regime Geral das Instituições de Crédito e Sociedades Financeiras* – "the RGICSF"; see paragraphs 93-94 below).

20. In a letter dated 26 February 2008 the Chair of the CMVM sent the BdP a report on the CMVM's investigation into the BCP concerning the activities of a number of offshore companies. In the letter, he referred to meetings between the two entities in connection with the BCP case, indicating that he would be happy to provide the BdP with any additional information or to exchange with them further to ensure coordination in the approach to be taken, which he considered essential for the subsequent stages of the proceedings.

1. The BdP's accusations

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

22. On 11 December 2008 the BdP drew up its accusations.

Firstly, with regard to the applicant specifically, it accused him, under Article 211 (r) of the RGICSF (see paragraph 94 below), of three counts of the administrative offence (*contraordenações*) of reporting false or incomplete information to the BdP from 2000 to 2007, a period during which the central bank had launched a special process to monitor the BCP's credit portfolio more closely, involving requests for specific information, in addition to audits and meetings for the purpose of assessing that bank's true financial position. More specifically, it accused the applicant of having been aware, from 2002 onwards, of the existence of the offshore companies effectively controlled by the BCP – referring in particular to the 17 companies of the Cayman group, the four companies of the G.F. group and the companies of the E.A. group (see paragraph 14 above) – and of having failed to inform it thereof and of the millions of euros in loans which these offshore companies had been granted by the bank – with his approval, from 2002 to 2007 – in order to have them buy and sell shares in the BCP or in other companies belonging to the BCP financial group, loans which had resulted in significant financial losses. It also accused him of having given evasive, incomplete and false replies to its various questions and requests for clarification in the period from 2000 to 2007 and of having thereby breached his reporting obligation under Article 120 of the RGICSF (see paragraph 94 below).

Secondly, the BdP accused the applicant of six counts of the administrative offence of false accounting under Article 211 (g) of the RGICSF (see paragraph 94 below). Alleging that he had prevented the BdP from understanding the bank's true financial position and, as a result, from taking the necessary remedial measures, it accused him of having failed to disclose, in the BCP's accounting reports and in those of the BCP financial group, the BCP's controlling interest in the aforementioned offshore companies, the loans it had granted to them and the financial losses incurred by the bank as a result of the drop in the value of its shares from 2001 onwards.

2. The BdP's decision of 27 April 2010

23. In a decision of 27 April 2010 the BdP found the applicant guilty on two counts of reporting false or incomplete information and four counts of false accounting.

24. It ordered him to pay an overall administrative fine of EUR 425,000 on the two counts of false or incomplete reporting under Article 211 (r) of the RGICSF. In accordance with Article 208 of the RGICSF (see paragraph 94 below), it did not fine him on the counts of false accounting under

Article 211 (g) of the RGICSF, on the grounds that he was already being prosecuted in respect of those acts in criminal proceedings on charges of forgery and use of forged documents (*falsificação de documento*) under Article 256 § 1 (d) and (e) of the Criminal Code (see paragraph 92 below).

25. In addition, the BdP imposed the following two ancillary sanctions on the applicant under Article 212 of the RGICSF:

(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.

3. The Lisbon Local Criminal Court's judgment of 29 August 2014

26. On 16 July 2010 the applicant challenged the BdP's decision in the Lisbon Local Criminal Court (*tribunal de pequena instância criminal* – "the TPIC"), complaining, in particular, of a breach of the *ne bis in idem* principle, as guaranteed by Article 29 § 5 of the Constitution and Article 4 of Protocol No. 7 to the Convention. In his defence, he requested that he and 42 witnesses be given a hearing and submitted a number of documents, including a copy of the indictment that had been filed against him in the criminal proceedings (see paragraph 38 below).

27. On 11 April 2011 the TPIC held its first hearing. The oral proceedings went on to span nearly 100 hearings and were adjourned by an interlocutory application made by the applicant regarding evidence, which gave rise to a judgment of the Lisbon Court of Appeal of 4 July 2012. The oral proceedings ended on 1 August 2014.

28. In a decision of 26 February 2014 the TPIC declared the prosecution time-barred on two counts of false accounting under Article 211 (g) of the RGICSF, in respect of the facts involving the 17 companies of the Cayman group.

29. In a judgment of 29 August 2014 the TPIC went on to dismiss the applicant's complaint alleging a breach of the *ne bis in idem* principle. It acknowledged that this principle applied equally to administrative proceedings but found that it had not been breached in the case before it, since the criminal proceedings and the administrative proceedings initiated by the CMVM and the BdP, respectively, did not concern the same facts. In the TPIC's view, in the case before it, the criminal offence of forgery and use of forged documents and the administrative offence of false accounting were concurrent offences (*concurso de crimes*) which, pursuant to Article 208 of the RGICSF, required that two sets of proceedings be instituted to punish the criminal offence and the administrative offence respectively. Having regard to 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 two counts of the administrative offence under Article 211 (r) of the RGICSF (see paragraphs 24 above and 94 below).

It also upheld the two ancillary sanctions imposed on the applicant by the BdP under Article 212 of the RGICSF.

4. *The judgment of the Lisbon Court of Appeal of 9 June 2015*

30. On 9 October 2014 the applicant appealed against the judgment of the TPIC to the Lisbon Court of Appeal, using that opportunity to allege once more that there had been a breach of the *ne bis in idem* principle.

31. On 9 June 2015 the Lisbon Court of Appeal delivered its judgment. It observed that the Constitutional Court, in particular in its judgments nos. 102/99, 244/99, and 356/06 (see paragraphs 108-110 below), had held that a concurrence of criminal and administrative offences was compatible with Article 29 § 5 of the Constitution, having regard to the protected legal interest (*bem jurídico protegido*). It pointed out that the "*idem*" condition could be regarded as being met where the chronology and facts were identical with regard to the protected legal interest and that a strict identity of the facts presupposed that of the protected legal interests. It concluded that prosecution was possible in respect of two offences in the case of an "actual" concurrence (*concurso efetivo*) of offences, whereas "apparent" concurrence (*concurso aparente*) meant that proceedings brought for one of the offences precluded prosecution in respect of the others (see, in this connection, the domestic case-law cited in paragraphs 108 and 116 below). Accordingly, the *ne bis in idem* principle would be breached where the offences in question involved the same defendant and the same acts, while impairing the same protected legal interest.

It found that, in the case at hand, even though the facts were on the whole similar, the criminal and administrative offences in issue, as set out in the Securities Code and the RGICSF respectively, differed both as to the relevant acts constitutive of each offence and as to the legal interests protected thereby, for the following reasons.

The Court of Appeal noted, firstly, that the BdP had conducted administrative proceedings against the applicant under Article 211 (g) and (r) of the RGICSF (see paragraph 94 below) for reporting false and incomplete information on the offshore companies, in the period from 2000 to 2007, and for false accounting. It took the view that those proceedings had stemmed from the existence of a reporting relationship between the BdP and the BCP and, more particularly, from the latter's duty to inform the former of its financial position so that the BdP could fulfil its mandate to ensure the stability of the banking system in order to avoid any systemic risk. It clarified that the protection of consumers and banking customers was also one of the objectives pursued by the prosecution of the administrative offence of reporting false information.

Secondly, the Court of Appeal observed that the criminal proceedings concerned the submission, from 2000 to 2007, to the CMVM's information disclosure system (see paragraphs 38 and 101 below), and thus to investors, of false information regarding both the BCP's financial position and the value of its shares, a fact which had disrupted the proper functioning of the stock market. It further held that the criminal offence of fraud was separate from the criminal offence of market manipulation, in so far as the two offences protected two different interests, namely, the assets of a particular person, in the first case, and the financial market on which transactions took place, in the second. The criminal offence of market manipulation was thus intended to ensure normal price formation by preventing price securing through fraudulent or fictitious mechanisms.

Lastly, the Court of Appeal found that the administrative proceedings before the CMVM concerned the reporting of erroneous information in the BCP's accounting reports for 2003 to 2006, as filed in the last quarter of 2007, and in a statement of 23 December 2007 (see paragraph 62 below). In the court's view, these proceedings thus addressed the need for transparency and reliable information, which were essential for investors and for the proper functioning of the securities market.

32. The Court of Appeal acknowledged, however, that the administrative offence of false accounting of which the applicant was accused by the BdP under Article 211 (g) of the RGICSF (see paragraph 94 below) was congruent with the criminal offence of forgery and use of forged documents with which he was charged in the criminal proceedings under Article 256 § 1 (d) and (e) of the Criminal Code (see paragraph 92 below). It concluded that the relevant facts were the same but that, in the light of the separate protected legal interests, there was an "actual" and "ideal" concurrence (*concurso efetivo e ideal*) of offences within the meaning of Article 20 of the General Regulation on Administrative Offences (*Regime geral das contra-ordenações* – "RGCO"; see paragraph 103 below) and Article 208 of the RGICSF (see paragraph 94 below), which entailed an obligation to punish the criminal offence without prejudice to any ancillary sanctions 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 Securities Code (see paragraphs 94 and 96 below) provided that two separate sets of proceedings should be instituted, although Article 420 § 1 of the Securities Code 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 relating to the security and reliability of the evidential value of documents in legal circulation (*tráfego jurídico*), while the banking offence of false accounting, as the Banco de Portugal alleges, [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 exercise fully its supervisory role in respect of credit institutions and the banking system more generally and, ultimately, in so doing, to protect the legal interest in preserving the stability of the banking system and, thus, in preventing systemic risks

(the aim of protecting consumers and banking customers is also relevant with regard to the offence of disseminating false information).

Thus, there is a concurrence of offences – within the meaning of Article 20 of the RGCO and Article 208 of the RGICSF, in other words, an 'actual' and 'ideal' concurrence – between 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.

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

...

For its part, Article 420 of the Securities Code provides as follows: '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 main difference [between Article 208 of the RGICSF and Article 420 of the Securities Code] 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 Securities Code opts for an actual aggregation of criminal and administrative sanctions.

That said, despite this difference, from a procedural standpoint, it falls in both cases to the criminal courts to rule on the imposition of a criminal sanction ... whereas the Banco de Portugal, in accordance with Article 208 of the RGICSF, will examine the case to address residual matters ... namely, the application, where appropriate, of ancillary sanctions...

This framework can be explained by the specificity of the banking and financial sector in general, by the complexity and difficulty of investigating the issues that arise in such matters and by their highly specialised treatment ..."

33. Concerning the alleged violation of Article 4 of Protocol No. 7, the Lisbon Court of Appeal observed that the case-law of the European Court of Human Rights had difficulty determining clearly the basis and scope of the *ne bis in idem* principle guaranteed by that provision. In particular, it noted that there were inconsistencies in the determination of the "*idem*" condition, referring, by way of example, to *Gradinger v. Austria* (23 October 1995, Series A no. 328-C), *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); *Gauthier v. France* ((dec.), no. 61178/00, 24 June 2003); *Garretta v. France* ((dec.), no. 2529/04, 4 March 2008); and *Hauser-Sporn v. Austria* (no. 37301/03, 7 December 2006). It observed, however, that, from *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, ECHR 2009) onwards, the Court had referred first to the material facts and then to the constituent elements of the offences in question in order to establish the "*idem*" condition. It inferred from this

that the Court did not have a clear position on situations involving an "ideal" concurrence of offences and therefore concluded that the rights guaranteed by Article 4 of Protocol No. 7 and Article 29 § 5 of the Constitution had not been infringed in the case before it (see paragraph 87 below).

34. As to the merits, the Lisbon Court of Appeal found as follows. On the two counts of the administrative offence of reporting false or incomplete information to the BdP under Article 211 (r) of the RGICSF (see paragraph 94 below), it found that the prosecution was time-barred in respect of the acts committed prior to 9 June 2007. As to the remaining accusations, which related exclusively to the E.A. group (see paragraphs 14 and 22 above), the Court of Appeal decided to acquit the applicant on the counts of the administrative offence of which he stood accused under Article 211 (g) and (r) of the RGICSF, taking account of the fact that it had been established in the criminal proceedings that the BCP had not had control over the companies belonging to this group (see paragraph 43 below).

35. The Lisbon Court of Appeal's judgment became final on 26 June 2015.

C. The criminal proceedings

1. *Pre-trial investigations*

36. On 21 December 2007, following up on J.B.'s complaint, the public prosecutor's office at the Lisbon District Court opened a criminal investigation against the applicant for:

(a) market manipulation under Article 379 § 1 of the Securities Code (see paragraph 96 below),

(b) forgery and use of forged documents (*falsificação de documento*) under Article 256 § 1 (d) and (e) of the Criminal Code (see paragraph 92 below), and

(c) aggravated fraud (*burla qualificada*) under Articles 217 § 1 and 218 § 2 (a) of the Criminal Code.

37. On 13 April 2009 the applicant was interviewed by two deputy prosecutors of the public prosecutor's office, in the presence of his lawyer.

2. *Indictment by the public prosecutor's office*

38. On 23 June 2009 the public prosecutor's office filed its indictment against the applicant on charges of market manipulation, forgery and use of forged documents, and aggravated fraud. It accused him 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 having them acquire and sell its shares in order to increase their value on the securities market artificially. It further accused the applicant of

having concealed from the supervisory authorities and from the securities market, until the end of 2007, the true value of the bank's shares and its actual losses – as a result, in both cases, of the activities of those same offshore companies – thereby increasing the part of his compensation that was linked to the bank's financial performance. The public prosecutor's office referred, in particular, to advertising campaigns promoting the sale of BCP shares – including to the bank's customers – while concealing their true value, and to the BCP's annual and quarterly reports on its individual and consolidated accounts from 1999 to 2007, as approved by the bank's shareholders and subsequently submitted to the CMVM's information disclosure system. Moreover, it accused the applicant of having received, in his capacity as a member of the BCP's board of directors, at least EUR 2,931,448 between 2000 and 2004, on the basis of overstated financial statements, thereby adversely affecting the bank's financial interests.

39. In support of its indictment, the public prosecutor's office took into account, *inter alia*, statements given by the applicant and his co-defendants, evidence submitted by them, the formal accusations drawn up by the BdP and copies of the case files in the administrative proceedings before the CMVM and the BdP.

3. Committal for trial

40. The applicant appealed against the decision of the public prosecutor's office to the Lisbon Criminal Investigation Court, requesting the opening of an adversarial investigation (*instrução*).

41. In a decision of 27 July 2010 the investigation judge at the Lisbon Criminal Investigation Court committed the applicant to stand trial (*pronúncia*) for market manipulation and for forgery and use of forged documents, finding that there was no case to answer (*não pronúncia*) on the charge of aggravated fraud.

*4. The judgment of 2 May 2014 of the Eighth Criminal Division (*8ª Vara criminal*) of the Lisbon District Court*

42. The trial spanned more than 130 hearings, during which the four defendants were heard, along with experts and witnesses, including CMVM and BdP officials. It ended on November 2013.

43. In a judgment of 2 May 2014 the Eighth Criminal Division of the Lisbon District Court, sitting as a bench of three judges, found the applicant guilty of market manipulation and of forgery and use of forged documents for having, *inter alia*, from 1998 to 2008, submitted false information on the offshore companies in question (see paragraph 14 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 and consolidated accounting reports submitted to the CMVM's information disclosure system. It found that the

purchase and sale of shares in the BCP through the offshore companies had distorted supply and demand, since those companies had been acting under the control and on behalf of the BCP, although it ruled out any control by the BCP over the companies of the E.A. group.

The court further considered that market manipulation and forgery and use of forged documents were two separate offences, which protected different legal interests. It observed that the first sought to ensure the proper functioning of the securities market, whereas the second sought to guarantee the integrity and reliability of legal documents. The court added that market manipulation could result from the various forms of conduct set out in Article 379 § 1 of the Securities Code (paragraph 96 below), including the reporting, by any means, of false, incomplete, exaggerated or misleading information. This being so, the court considered that the forging of documents had been used as a means of reporting false information and thus of manipulating the market. It concluded that the concurrence of offences established in the case before it should be characterised as an "apparent" one and that the applicant was answerable only for the offence of market manipulation, as the offence of forgery and use of forged documents was merely an aggravating circumstance for sentencing purposes.

44. On these grounds, the court decided to acquit (*absolver*) the applicant of the offence of forgery and use of forged documents and to convict him of market manipulation under Article 379 § 1 of the Securities Code (see paragraph 96 below), sentencing him to two years' imprisonment, which could be suspended upon payment of EUR 300,000 to a charity. In accordance with Article 380 § 1 (a) of the Securities Code, that penalty was accompanied by a four-year ban on exercising administrative, executive or supervisory functions in a credit institution or financial firm.

5. The judgment of the Lisbon Court of Appeal of 25 February 2015

45. The public prosecutor's office appealed against the judgment of the Lisbon District Court. It disputed, in particular, the establishment of the facts and the analysis finding that the acts constitutive of the criminal offence of forgery and use of forged documents were absorbed by the offence of market manipulation (see paragraph 43 above), submitting, rather, that there was an "actual" concurrence between the two offences (see, in this connection, the domestic case-law cited in paragraphs 108 and 116 below).

46. On 9 June 2014 the applicant also appealed against that 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 87 below) and Article 4 of Protocol No. 7 to the Convention, alleging a breach of the *ne bis in idem* principle on the grounds that the CMVM and the BdP had initiated administrative proceedings against him 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

BCP-financed offshore companies to act on the securities market and the failure to disclose their loss in value, including to the supervisory authorities, by falsifying accounting reports. In particular, the applicant argued that Article 420 § 1 of the Securities Code was incompatible with the *ne bis in idem* principle in that it allowed the same acts to be punished both by an administrative sanction and by a criminal sanction, adding that he himself had been the subject of three sets of proceedings in respect of the same acts and that the provisions under which this was permitted, namely Article 420 § 1 of the Securities Code and Article 208 of the RGICSF (see paragraphs 96 and 94 below), were incompatible with Article 29 § 5 of the Constitution (see paragraph 87 below) and Article 4 of Protocol No. 7 to the Convention. He pointed out that, taking into account all the sanctions imposed across the three sets of proceedings, he had been given a two-year suspended prison sentence; ordered to pay a total of EUR 1,450,000, corresponding to the EUR 300,000 paid as a condition for that suspension (see paragraph 44 above) plus the penalties of EUR 700,000 and EUR 425,000 imposed by the CMVM and the BdP, respectively (see paragraphs 67 below and 24 above); and disqualified from taking up any duties in the financial sector for a total of sixteen years, corresponding to the sum of the bans of four years, seven years and two times two years and six months that had been imposed on him in the criminal proceedings, the BdP proceedings and the proceedings before the CMVM, respectively. He thus concluded that his sentence had been disproportionate to the acts in question.

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

48. In a judgment of 25 February 2015 the Lisbon Court of Appeal upheld the judgment of the Lisbon District Court.

49. 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 corresponding offences differed from one set of proceedings to another. It further observed as follows:

(a) There was a concurrence of offences, within the meaning of Article 211 of the RGICSF (see paragraph 94 below), between the administrative offence of false accounting and the criminal offence of forgery and use of forged documents, each of which was to be prosecuted in separate proceedings;

(b) Article 420 § 1 of the Securities Code (see paragraph 96 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 only criminal proceedings could be brought.

Referring to judgment no. 244/99 of the Constitutional Court (see paragraph 109 below), the Lisbon Court of Appeal found that, even where the factual circumstances were identical, to be found guilty of both a criminal and an administrative offence for one and the same act did not breach the *ne bis in idem* principle, as guaranteed by Article 29 § 5 of the Constitution, in so far as these were different offences. Citing the Constitutional Court's judgment no. 356/2006 (see paragraph 110 below), it added that all that was forbidden was double punishment for an act involving the same protected legal interest.

6. *The judgment of the Constitutional Court of 12 November 2015*

50. On 13 March 2015 the applicant lodged a constitutional appeal with the Constitutional Court in which, *inter alia*, he challenged – as being incompatible with the *ne bis in idem* principle enshrined in Article 29 § 5 of the Constitution (see paragraph 87 below) – the constitutionality of the law-making interpretation of Article 20 of the RGCO and of Article 208 of the RGICSF which held that the question whether the facts were identical was to be determined from a normative rather than a substantive standpoint.

51. In a summary decision of 12 November 2015 the Constitutional Court, sitting as a single judge formation, dismissed his appeal.

52. On 27 November 2015 the applicant challenged the summary decision before a three-judge bench of the Constitutional Court.

53. On 15 December 2015 he informed the Constitutional Court of a claim he had lodged with the Lisbon Court of Appeal (see paragraph 55 below).

54. In a judgment of 4 May 2016 the three-judge bench of the Constitutional Court upheld the summary decision of 12 November 2015. On the matter of the alleged breach of the *ne bis in idem* principle, it referred to its judgment no. 356/2006 (see paragraph 110 below) and reiterated that the Constitutional Court had consistently held that the "*idem*" condition was a purely normative concept. The question was therefore whether a specific situation was amenable to different legal assessments (*valorações juridicas*) and could thus give rise to an "actual" and "ideal" concurrence of offences, in which case the concurrence of offences would not be in breach of the *ne bis in idem* principle. The Constitutional Court added that this approach was consistent with the Court's case-law, referring in particular to *Sergey Zolotukhin* (cited above) and *Grande Stevens and Others v. Italy* (nos. 18640/10 and 4 others, 4 March 2014), and with that of the Court of Justice of the European Union (CJEU).

7. *Subsequent developments*

55. In an application of 15 December 2015 the applicant informed the Lisbon Court of Appeal that the proceedings initiated against him by the BdP

had resulted in an acquittal. He explained that the judgment had become final on 26 June 2015 (see paragraphs 34-35 above) and sought, in consequence, the dismissal of the criminal proceedings, failing which the *ne bis in idem* principle would be breached. However, he failed to specify the reasons for his acquittal by the BdP.

56. On 14 July 2016 the applicant's criminal conviction acquired the force of *res judicata*.

57. On 8 September 2016 the applicant applied to the Lisbon District Court, seeking a stay of execution of his conviction pending the outcome of his application to dismiss the criminal proceedings.

58. On 14 and 21 October 2016 the Lisbon District Court dismissed the applicant's applications of 15 December 2015 and 8 September 2016. Referring to the judgments delivered by the Lisbon Court of Appeal and the Constitutional Court on this point in the criminal proceedings (see paragraphs 49, 51 and 54 above), it rejected his arguments alleging a breach of the *ne bis in idem* principle, finding that these judgments were not affected by the final decision handed down in the BdP proceedings.

59. On 4 June 2017 the applicant informed the Lisbon District Court that he had sent a cheque in the amount of EUR 300,000 to a charity. On 6 November 2018 the court declared the applicant's prison sentence terminated.

D. The proceedings instituted by the CMVM

1. *The main proceedings*

(a) The CMVM's accusations

60. On 7 December 2007 the CMVM opened supervisory proceedings (*ação de supervisão*) in respect of the BCP in its capacity as an issuer of securities admitted for trade on the regulated securities market.

61. On 16 September 2008, at the CMVM's request, the BdP sent the CMVM copies of the statements that had been given in the proceedings before it, together with information on several companies linked to the BCP, including offshore companies, in accordance with Article 81 § 1 of the RGICSF (see paragraph 94 below).

62. On 29 December 2008 the CMVM instituted administrative proceedings against various members of the BCP's board of directors, including the applicant. It accused him of six counts of the very serious administrative offence of failure to comply with the obligation to provide quality information within the meaning of Articles 7, 388 § 1 (a) and 389 § 1 (a) of the Securities Code (see paragraphs 96-98 below). It further accused him, in his capacity, first as a member and later as vice-chairman of the BCP's board of directors, and, lastly, as chairman of its executive committee (see paragraph 14 above):

(a) of having approved, from 2004 to 2007, the submission of false and incomplete accounting reports for the years 2003 to 2006;

(b) of having approved, on 17 October 2007, the financial report for the third quarter of 2007, which was false and incomplete;

(c) of having approved, on 23 December 2007, a statement to the securities market that was not truthful.

In the circumstances of the case, the CMVM found that the information contained in these documents, which had subsequently been submitted to its information disclosure system, had been false with regard to the liquidity of the shares sold on the securities market by the BCP and incomplete in so far as it had made no mention of the existence of the Cayman and G.F. groups (see paragraph 14 above), which were controlled by the bank, or of the financial losses the bank had incurred.

(b) The CMVM's decision of 9 July 2010

63. In a decision of 9 July 2010 the CMVM found the applicant guilty on six counts of the very serious administrative offence of failure to comply with the duty to submit quality information, as provided for in Article 7 of the Securities Code (see paragraphs 96-98 below), as a result of false information contained in the reports on the 2003-2007 consolidated accounts that had been submitted to the CMVM's information disclosure system. More specifically, he was found to have approved five accounting reports, between January 2004 and October 2007, and to have authorised the disclosure of information and the publication of a statement to the securities market on 23 December 2007. The information in question was:

(a) false, as the profits were overstated, the losses were not reflected and the BCP's financial performance was reported as superior to what it had actually been;

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

(c) unlawful, owing to a breach of the provisions under which the BCP had a duty to report its true financial situation.

Under Articles 388 § 1 (a), 389 § 1 (a), 404 § 1 (b) and (c), and 405 of the Securities Code (see paragraphs 96-98 below), and Article 19 of the RGCO (see paragraph 103 below), the applicant was ordered to pay an overall administrative fine of EUR 800,000, to which were added the two following ancillary sanctions:

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

(b) disqualification from exercising administrative, 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.

(c) The Lisbon Local Criminal Court's judgment of 18 January 2013

64. The applicant challenged the CMVM's decision before the TPIC. In his statement of appeal, he raised a number of complaints, including an alleged breach of the *ne bis in idem* principle as a consequence of the criminal proceedings brought against him in respect of facts which, in his view, were the same as those at issue in the CMVM proceedings. In his defence, he requested that he and 61 witnesses be given a hearing and submitted a number of documents, some of which related to the ongoing proceedings against him before the criminal courts and the BdP.

65. In a judgment of 18 January 2013 the TPIC, sitting in a single judge formation, upheld the sanctions imposed on the applicant. In so doing, it relied on the documents in the case file and the statements given by the defendants and witnesses.

(d) The Lisbon Court of Appeal's judgment of 6 March 2014

66. The applicant appealed against the TPIC's judgment to the Lisbon Court of Appeal. He argued, in particular, that the prosecution was time-barred on certain counts of the administrative offences of which he stood accused and submitted, moreover, that the TPIC had not addressed his allegation of a breach of the *ne bis in idem* principle.

67. 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 on two counts of the administrative offence of which he stood accused, in respect of acts committed in 2004 and 2005, and ordered him, under Articles 388 § 1 (a) and 389 § 1 (a) of the Securities Code and Article 19 of the RGCO (see paragraph 62 above and paragraphs 96-98 and 103 below) to pay an overall fine of EUR 700,000 on the four remaining counts of that very serious administrative offence, in respect of acts committed in 2006 and 2007 (see paragraph 55 above). In addition, in accordance with Articles 404 and 405 of the Securities Code, it reduced the terms of both ancillary sanctions to two years and six months. It did not address the alleged breach of the *ne bis in idem* principle.

68. The applicant lodged an action to have the judgment set aside. His action was dismissed in a judgment of the Lisbon Court of Appeal of 26 June 2014.

(e) The Constitutional Court's judgment of 27 March 2015

69. 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 Securities Code (see paragraphs 96-98 below) had entailed a breach of the *ne bis in idem* principle, as enshrined in Article 29 § 5 of the Constitution (see paragraph 87 below).

70. 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 grounds that the matter in dispute did not concern the unconstitutionality of any general rule.

2. The proceedings to establish the overall sanction

(a) The Lisbon Local Criminal Court's judgments of 23 October 2015 and 8 June 2018

71. On an unspecified date prior to 27 March 2015 (see paragraph 70 above) the applicant had argued before the TPIC that the prosecution had become time-barred under Article 418 of the Securities Code (see paragraph 96 below) on two counts of the administrative offence of which he had been found guilty (see paragraph 67 above). Accordingly, he had sought, under Article 19 of the RGCO (see paragraph 103 below), a reassessment of the overall administrative sanctions (*cúmulo jurídico das sanções*) imposed on him by the CMVM.

72. In a judgment of 23 October 2015 the TPIC allowed the appeal in part, holding that the prosecution had become time-barred on one of the four counts of the administrative offence of which the applicant had been found guilty. It further decided that the reassessment of the overall administrative sanctions should be adjourned until the judgment it had just delivered had acquired the force of *res judicata*.

73. On 4 April 2018 the applicant alleged once again before the TPIC that there had been a breach of the *ne bis in idem* principle, as enshrined in Article 29 § 5 of the Constitution (see paragraph 87 below), Article 4 of Protocol No. 7 to the Convention and Article 50 of the Charter of Fundamental Rights of the European Union (EU) ("the Charter"; see paragraph 126 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 (see paragraphs 31 and 34-35 above) – in the administrative proceedings initiated by the BdP, in respect of acts which he submitted were identical to those of which he was accused by the CMVM. He had also been convicted, on the same facts again, in criminal proceedings in a decision delivered by the Lisbon Court of Appeal on 25 February 2015, which had acquired the force of *res judicata* on 14 July 2016 (see paragraphs 48-56 above). The applicant asked the court to request a preliminary ruling from the CJEU on the interpretation of Article 50 of the Charter, referring, in that connection, to the Court's case-law in such matters and to the judgment of the CJEU of 20 March 2018 in *Garlsson Real Estate and Others* (see paragraph 133 below).

74. 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 67

and 70 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 and the latter on 26 June 2015. It further found that the *ne bis in idem* principle was not applicable to proceedings concerned with calculating the overall administrative fine.

75. In this connection, the TPIC stated as follows:

> "...
>
> Thus, it can be seen that the decisions on the merits which examined the acts attributed to [the applicant] and [imposed] administrative fines [and] ancillary sanctions [on him] – 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*...
>
> To which must be added that 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 established – is not deferred by [the reassessment] of the overall administrative fine and the ancillary sanctions following the final decision of 23 October 2015 declaring the prosecution time-barred. ... [The authorities which delivered these decisions] have thus exhausted their judicial authority and the only issue to be addressed now is that of establishing [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 that of the assessment or application of the law to the facts, or even one of evidence ... In other words, it is no longer a matter of delivering a decision on the merits for the purposes of establishing the facts, of convicting or acquitting.
>
> Rather, the task at hand, as has already been said, is to review the calculation of the overall administrative fine and the ancillary penalties.
>
> ..."

76. The TPIC went on to point out that a 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 103 below).

77. It observed that, even if one took the view, in accordance with Article 2 § 4 of the Criminal Code (see paragraph 92 below), Article 3 § 2 of the RGCO (see paragraph 103 below) and Article 388 § 5 of the Securities Code (see paragraph 96 below), that Article 420 § 2 of the Securities Code, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 99 below), formed part of the substantive law and was more favourable to the applicant, it was not applicable to the case at hand, since the three decisions against him had already acquired the force of *res judicata*.

78. It also dismissed the request for a preliminary reference to the CJEU regarding the alleged breach of the *ne bis in idem* principle, as guaranteed by Article 50 of the Charter, finding that, unlike the CMVM's decision against the applicant in the case before it, the decision in issue in *Garlsson Real Estate and Others* (see paragraph 133 below), on which the applicant had relied, had not yet acquired the force of *res judicata*. It noted, moreover, that

the duplication of sanctions in that case had involved a prison sentence and a fine, whereas the case before it involved, first, a criminal offence punished solely, by way of principal sanction, by a prison sentence and, second, administrative offences subject to administrative fines. Lastly, in the TPIC's view, the case before it did not involve a duplication of fines. It therefore rejected the applicant's request that the EUR 300,000 paid by him in order to suspend the prison sentence handed down in the criminal proceedings (see paragraphs 44 and 48 above) be deducted from the administrative fine imposed in the CMVM proceedings (see paragraph 67 above).

79. The TPIC went on to calculate the overall administrative fine in accordance with Article 19 of the RGCO (see paragraph 103 below) and Articles 404 and 405 §§ 1, 2 (a), (b), (c) and (d), and 4 of the Securities Code (see paragraph 96 below), both as applicable at the relevant time and as amended by Law no. 28/2017, pursuant to Article 3 § 2 of the RGCO (see paragraphs 99 and 103 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.

80. The TPIC also reduced the ancillary penalties to a term of one year and three months, noting that the sanctions in question had been fulfilled for the enforcement of the judgments delivered in the criminal proceedings and the BdP proceedings. It therefore held that the two ancillary penalties imposed in the case before it were terminated (*extintas*), pursuant to Article 420 § 3 of the Securities Code, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 99 below), which was more favourable to the applicant on that point.

(b) The judgment of the Lisbon Court of Appeal of 11 July 2019

81. On 23 July 2018 the applicant appealed against this last judgment to the Lisbon Court of Appeal. In his statement of appeal, he again alleged a breach of the *ne bis in idem* principle. He challenged the decision not to apply Article 420 § 2 of the Securities Code, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 99 below), which in his view was more favourable to him. He further submitted that, in accordance with Article 420 § 3 of the Securities Code, the EUR 300,000 he had paid in the criminal proceedings (see paragraphs 44 and 59 above) ought to have been deducted from the administrative fine imposed. 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 90 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.

82. In a judgment of 11 July 2019 the Lisbon Court of Appeal dismissed the applicant's claims and upheld the judgment of the TPIC. It rejected his request for a public hearing before it, since 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 90 below). It further held that it could not address the complaint alleging a breach of the *ne bis in idem* principle, as 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 of which he had been found guilty. It added that these considerations also made any preliminary reference to the CJEU pointless.

83. The Lisbon Court of Appeal further found that the main administrative sanction imposed in the CMVM proceedings (see paragraph 79 above) differed in nature from the sanction imposed in the criminal proceedings (see paragraphs 44 and 48 above), the first being an administrative fine, whereas the second was a sum paid to a charity for the purpose of suspending a prison sentence. It therefore concluded that there was no need to apply Article 420 § 3 of the Securities Code (see paragraph 99 below) – as the more favourable law – to the administrative sanction in question.

(c) The constitutional appeal and the Constitutional Court's judgment of 5 November 2020

84. On 12 December 2019 the applicant lodged a constitutional appeal with the Constitutional Court in which he alleged, in particular, that the law-making interpretations given to the following provisions had been unconstitutional:

(a) Article 420 § 2 of the Securities Code, both as amended by Law no. 28/2017 of 30 May 2017 and as previously in force (see paragraphs 96 and 99 below);

(b) Article 420 § 3 of the Securities Code, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 99 below);

(c) Article 7 of the Code of Criminal Procedure regarding the autonomous nature of criminal procedure (see paragraph 89 below).

85. In a summary decision of 24 April 2020 the Constitutional Court held that there was no need to rule on the constitutionality of the law-making interpretations that had been given to Article 420 § 2 of the Securities Code, in either of the two versions specified, or to Article 7 of the Code of Criminal Procedure, as the Lisbon District Court had concluded that it could not address the matter of the *ne bis in idem* principle since the judgment of 6 March 2014 finding against the applicant (see paragraph 67 above) had acquired the force of *res judicata*. It held that the same applied to Article 420 § 3 of the Securities Code, finding, in this connection, that the scope of its review did not encompass the determination of the nature of the sanctions in issue, as that was a question of applying the legislation to the particular facts of the case.

86. 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.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

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

> "1. No one may be convicted of a criminal offence unless the act or omission is punishable under pre-existing legislation, or be subjected to a preventive measure unless the conditions for its application are laid down by pre-existing legislation.
>
> ...
>
> 3. A penalty or preventive measure may be applied only as expressly provided in pre-existing legislation.
>
> 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 more than once for the same criminal offence (*crime*).
>
> ..."

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

B. The Code of Criminal Procedure

89. Article 7 § 1 of the Code of Criminal Procedure provides that each set of criminal proceedings must be conducted independently of any others and must determine every issue that is decisive for the case at hand.

90. 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.

91. 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

92. 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 in pre-existing legislation 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 30
Concurrent offences and continuing offences

"1. The number of offences shall be determined by the number of different offences (*tipos de crime*) actually at stake, or by the number of times the offender's conduct constitutes an instance of the same offence.

2. Multiple acts constituting instances of the same offence or of different offences which fundamentally protect the same legal interest, when carried out in an essentially uniform manner ..., shall constitute a single continuing offence.

3. The provisions of the preceding paragraph shall not apply to offences committed against eminently personal interests."

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. A sentence of two to eight years' imprisonment [shall be imposed] where:

(a) The pecuniary damage is considerable.

..."

Article 256 § 1
[Forgery and use of forged documents] (*falsificação ... de documento*)

"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 intent 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 concealing another offence:

(a) Manufacturing or developing a false document or any component thereof (*qualquer dos componentes destinados a corporizá-lo*);

(b) Falsifying or altering a document or any component thereof;

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

(d) Falsely (*falsamente*) introducing a legally relevant element into a document or any component thereof;

(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 by any means whatsoever."

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

93. 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 of the European System of Financial Supervision (ESFS) or the European Systemic Risk Board (ESRB) (Article 93). More specifically, the BdP's mandate requires it to monitor the activities of credit institutions and review compliance with the statutes governing those activities; issue recommendations to address any irregularities detected; and impose sanctions for any offences committed (Article 116).

94. 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 120
Reporting obligation

“1. Credit institutions shall be required to provide the Banco de Portugal with the information it considers necessary for the purpose of determining:

(a) their degree of lquidity and solvency;

(b) the risks to which they are exposed;

(c) compliance with the laws and regulations governing their activities;

(d) their administrative organisation;

(e) the effectiveness of their internal audits;

(f) their IT security and supervisory processes;

...

2. Credit institutions shall allow the Banco de Portugal to conduct inspections of their establishments and on-site audits of their ledgers and any other items considered relevant by the Bank for the purpose of determining the elements mentioned in the preceding paragraph.

3. The Banco de Portugal may procure copies of, or extracts from, any relevant documents.

...

5. Credit institutions shall make available to the Banco de Portugal, for a period of five years, relevant data on transactions relating to investment services provided in other member States of the European Community involving instruments traded on regulated markets, even if these transactions were not performed on a regulated market.

6. The Banco de Portugal may require credit institutions to submit reports on any work relating to matters of prudential supervision carried out by an entity duly authorised and approved for that purpose by the Bank.”

Article 208
Concurrent offences

“Where a person is answerable for 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 Banco de 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 by a fine of PTE 200,000 to PTE 20,000,000, depending on whether the fine 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 Banco de Portugal, where such failure seriously impairs knowledge of the relevant entity’s assets and financial position;

...

(r) Providing the Banco de Portugal with false information, or with incomplete information potentially leading 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 Banco de Portugal;

(c) Where the accused is a natural person, disqualification (*inibição*) from holding a corporate office and from exercising administrative, executive, management or supervisory (*chefia*) 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 place of residence [of the offender, 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, unless it is challenged before the courts.

2. A decision imposing 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

95. The Securities Code, which was approved by Decree-Law no. 486/99 of 13 November 1999, has undergone a number of successive amendments, the most recent having been enacted by Decree-Law no. 66/2023 of 8 August 2023. Under this Code, any activities as a securities intermediary is subject to prior registration with the CMVM to enable the latter 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 exercised with a view, *inter alia*, to protecting investors, ensuring the efficient and proper functioning of financial markets, verifying the accuracy of information and preventing

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

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

Article 5
Publications

"1. Unless otherwise provided by law, mandatory publication shall be made through a means of communication that is widely used in Portugal and is accessible to those to whom the relevant information is addressed.

2. The CMVM shall define, by regulation, the appropriate means of communication for each type of publication."

Article 7
Quality of information

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

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

..."

Article 244
General rules

"1. The following entities shall submit the documents and information referred to in the following Articles to the CMVM on their date of publication at the latest, unless another time-limit has been specially provided for:

(a) Issuers, subject to Portuguese law, of shares and securities with a nominal value of less than EUR 1,000 admitted to trading on a regulated market located or operating in Portugal or in another member State.

..."

Article 245
Annual report and accounts

"1. The following shall be disclosed by the entities referred to in paragraph 1 of Article 244 within four months from the end of the financial year and shall be made publicly available for five years thereafter:

(a) The management report, the annual financial statements, the statutory auditor's report and any other accounting documents required by law or regulation, even if they have not been submitted for approval by the shareholders;

(b) A report prepared by an auditor registered with the CMVM;

...

3. Issuers that are required to prepare consolidated financial statements shall disclose the information referred to in paragraph 1 both on an individual basis, prepared in accordance with national legislation, and on a consolidated basis, prepared in accordance with Regulation (EC) 1606/2002.

4. Issuers that are not required to prepare consolidated financial statements shall disclose the information referred to in paragraph 1 on an individual basis, prepared in accordance with national legislation.

5. Where the annual report and financial statements do not give a true and fair view of the company's assets, financial position and performance, the CMVM may order the publication of additional information.

6. The documents contained in the report and the financial statements shall be sent to the CMVM as soon as they are made available to shareholders."

Article 355
Exchange of information

"1. Where required in the performance of their respective duties, the CMVM may share confidential information with the following authorities, which shall also be bound by a duty of confidentiality:

(a) The Banco de Portugal...;

..."

Article 367
Disclosure of information

"1. The CMVM shall set up a publicly available digital information disclosure system, which may include information contained in its records, decisions of interest to the public and any other information submitted to or approved by the CMVM, in particular inside information ..., qualifying holdings, accounting documents and prospectuses.

2. The prospectuses referred to in the preceding paragraph shall be made available for at least one year."

Article 374 § 1
Cooperation with other entities

"With regard to entities that are equally subject to the supervision of other authorities, in particular the Banco de Portugal ..., the CMVM shall cooperate with such entities for the purpose of making coordinated use 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, for anyone to disseminate false, incomplete, exaggerated, biased or misleading information, carry out fictitious transactions or engage in other fraudulent practices which may artificially alter the functioning 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 imposed 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 practising the profession or engaging in the activities in connection with which the criminal offence was committed, including disqualification from exercising administrative, executive or supervisory functions in entities subject to the CMVM’s supervision and from representing such entities more generally;

...”

Article 387
Duty to inform

“The Governing Board of the CMVM shall be given notice of any decisions taken in the context of criminal proceedings in respect of offences against the securities market or the market for any other financial instrument.”

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 EUR 25,000 to EUR 2,500,000 where [the offences] are classified as very serious;

...

5. Where a law or CMVM regulation amends the conditions or procedures for 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 any subsequent acts, unless there are grounds for applying the law that is more favourable in practice, in view of the similarity of the acts in question.”

Article 389 § 1
Information

“The following shall constitute very serious administrative offences:

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

...”

Article 394 § 1
Organised trading practices

“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 § 1
Ancillary sanctions

“In addition to the ancillary sanctions provided for by the general regulation on administrative offences, the following ancillary sanctions may be combined with the administrative sanctions imposed on those responsible for any administrative offence:

...

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

(c) disqualification from exercising administrative, management, executive or supervisory functions and, more generally, from representing any financial intermediary in the context of any of its activities as such involving securities or any other financial instruments;

...”

Article 405
Determination of the applicable sanction

“1. The administrative fine and ancillary sanctions shall be determined according to the unlawfulness of the acts in question, the offender’s guilt (*culpa*), the benefit so derived, deterrence requirements and the offender’s status as a natural or legal person.

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

(a) the risk (*perigo*) or damage to investors or the securities market...;

(b) the *ad hoc* or repeated nature of the offence;

(c) whether any action was taken to conceal the facts in order to prevent the offence from being discovered;

(d) whether any action was taken 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 position 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 any proceedings in respect thereof, unless otherwise provided herein.”

Article 418 § 1
Limitation period

“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 cases provided for in Article 394 § 1 (i), where an act potentially constituting both a criminal offence and an administrative offence is attributed to the same person on the same individual grounds (*título de imputação subjetiva*), a single set of criminal proceedings shall be instituted."

97. In the initial version of the Securities Code, as contained Decree-Law no. 486/99 of 13 November 1999, Article 7 § 1 read as follows:

"Any information on securities, public offerings, securities markets, financial intermediation activities or issuers [of securities] that is liable to influence investment decisions or is submitted to supervisory entities or entities responsible for managing markets, settlement systems and centralised securities systems, shall be complete, true, up-to-date, clear, objective and lawful."

98. That same initial version of Article 389 § 1 of the Securities Code provided:

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

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

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

99. The Securities Code 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. As amended following the entry into force of that Law, the Securities Code contained a new Article 399-A which provided that any breach of the prohibition of market manipulation constituted a very serious administrative offence, except where the conduct in question also amounted to a criminal offence. Furthermore, Article 420 § 2 provided that where a breach of the prohibition of market manipulation under Article 399-A § 1 (b) was also classified as 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 under the jurisdiction of different authorities, 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.

100. As to Article 405 § 4 of the Securities Code, as amended by Law no. 28/2017 of 30 May 2017, it stated that the sanction imposed was also to be determined with 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 relevant court over the course of the proceedings.

101. At the material time, in accordance with Article 5 § 2 of the Securities Code (see paragraph 96 above), the CMVM's regulation 4/2004 of 27 May 2004 provided that the reporting requirements laid down in the Securities Code were to be fulfilled either by means of the CMVM's information disclosure system, or by means of a secure electronic disclosure system operated by the entity managing the relevant market, or by means of a newspaper distributed nation-wide (Article 1 § 1 (a), (b) and (c)). Moreover, any information provided to the CMVM concerning issuers of securities authorised for trading on a regulated market was also to be submitted to the entity managing the relevant securities market and published on the issuer's website (Article 1 § 2). The regulation provided that, in addition to the information provided for in Article 245 of the Securities Code, annual reports and financial statements were to include, *inter alia*, the balance sheets for the annual accounts, the minutes of the general meeting that had approved them and the list of any holders of qualifying holdings (Article 8).

F. The General Regulation on Administrative Offences (RGCO)

102. The RGCO is governed by Decree-Law no. 433/82 of 27 October 1982, which is applicable to the facts in the present case under Article 407 of the Securities Code. The preamble of that Decree-Law reads as follows:

> "1. ... [T]he emergence of the law of administrative offences (*contra-ordenações*) derives from the increasingly interventionist tendencies of the contemporary State, which has progressively extended its legislative action into the fields of the economy, health, education, culture, ecological balance, etc. This characteristic, which is common to most States in modern technical societies, is particularly acute in our country owing to the profound and well-known transformations of recent years, as reflected in the 1976 Constitution.
>
> The need to give practical substance to the legislative imperatives resulting from this new and expanding State interventionism by converting them into effective rules of conduct naturally requires resorting to a specific sanctions framework. This cannot be done, however, as is unanimously acknowledged by the most qualified specialists in the criminological and criminal sciences, by broadening the scope of criminal law.
>
> For that would entail, in addition to a clear impoverishment of criminal law – by which its force of persuasion and deterrence would be irreparably lost –, an inability to allocate available resources first and foremost to the tasks of preventing and punishing the most serious forms of criminal activity.
>
> However, it is precisely this type of crime that most greatly endangers citizens' safety, their lives and property and, more generally, their quality of life.

... [C]riminal law must be used only as the *ultima ratio* of criminal policy and only to punish intolerable assaults on the fundamental values or interests of life in society. It cannot legitimately be used to punish offences the criminal seriousness of which has not been demonstrated.

... [B]y opting for a balanced decriminalisation policy, the new Criminal Code leaves a broad scope of application to the law of administrative offences in areas where conduct, although socially unacceptable, does not attain a level of seriousness requiring a criminal sanction.

But it is above all the necessary reforms in areas such as restrictive competition practices, offences against the national economy or the environment, and consumer protection that make the system of administrative offences truly indispensable.

...”

103. The relevant provisions of Decree-Law no. 433/82 read as follows:

Article 1
Definition

“An administrative offence (*contra-ordenação*) is defined as any unlawful and reprehensible act constituting a legally defined offence (*tipo legal*) punishable by an administrative fine (*coima*).”

Article 3 § 2
[Temporal application]

“Where the law in force at the material time has been amended, the law that is most favourable to the accused 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 sanction

“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 derived from the commission of the administrative offence.”

Article 19
Concurrence of 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 taken 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 for the criminal offence without prejudice to the imposition of ancillary sanctions in respect of the administrative offences.”

Article 41 § 1
Subsidiarity

“Unless otherwise provided herein, the provisions governing criminal procedure shall apply, subject to appropriate adjustments.”

Article 75 § 1
Scope and effect of appeal

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

Article 79
Scope of the final decision and 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 judicial decision (*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. Unless otherwise provided herein, 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.

2. An [application for] review of proceedings decided in the accused’s favour on the basis of new facts or evidence shall be inadmissible where:

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

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

3. Administrative proceedings decided against the accused may be reviewed 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, 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

104. 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 currently in force), read as follows:

"A decision shall acquire the force of *res judicata* when it is no longer amenable to ordinary appeal or an action to set aside..."

H. Portugal's declaration regarding Protocol No. 7 to the Convention

105. In Resolution no. 22/90 of 13 July 1990 Parliament approved Protocol No. 7 for ratification, inserting a "reservation" (*reserva*) to the effect that, by "criminal offences" and "offence" in Articles 2 and 4 of the Protocol, Portugal understood only those acts which constituted a criminal offence under domestic law. By Presidential Decree no. 51/90 of 27 September 1990, the President of the Republic ratified Protocol No. 7, referring to that same "reservation".

106. In the instrument of ratification of Protocol No. 7 to the Convention deposited on 20 December 2004 with the Secretary General of the Council of Europe, 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."

107. In Notice no. 264/2005 of 12 May 2005, the Ministry of Foreign Affairs informed the public that the instrument of ratification of Protocol No. 7 had been deposited with the Secretary General of the Council of Europe with the above-mentioned "declaration" (*declaração*) and had entered into force on 1 March 2005.

I. Domestic case-law

1. *Case-law of the Constitutional Court*

(a) Judgment no. 102/99 of the Constitutional Court (3rd Section) of 10 February 1999

108. In its judgment no. 102/99 of 10 February 1999 the Constitutional Court (3rd Section) held that in order to establish a potential breach of Article 29 § 5 of the Constitution, it had to be determined whether the acts in question constituted the "same offence" or whether there was an "actual"

concurrence of offences, be it “ideal” or “real (*real*)”, having regard to the legal interest which the statute was intended to protect. It found that the *ne bis in idem* principle was not breached in the event of “actual” concurrence. Referring to another of its judgments, it pointed out that there was a “real” concurrence between drug trafficking and criminal conspiracy offences that had been prosecuted in the same set of criminal proceedings, since these offences had been defined to protect different legal interests, namely, life and public health in the first case and public peace in the second.

(b) Judgment no. 244/99 of the Constitutional Court (2nd Section) of 29 April 1999

109. In its judgment no. 244/99 of 29 April 1999 the Constitutional Court (2nd Section) clarified that Article 29 § 5 of the Constitution secured to everyone the right not to be tried or convicted twice for the same offence but did not prevent different aspects of the same criminal conduct from being punished. It found that the *ne bis in idem* principle was breached where the statutes criminalising the same conduct protected the same legal interest. Noting that this principle applied equally to administrative proceedings, it held that the duplication of proceedings or penalties for criminal and administrative offences protecting the same legal interests was in breach of the *ne bis in idem* principle.

(c) Judgment no. 356/2006 of the Constitutional Court (2nd Section) of 8 June 2006

110. In its judgment no. 356/2006 of 8 June 2006 the Constitutional Court (2nd Section) reiterated that where the same conduct impaired the same protected legal interest, it could not be punished twice. It went on to hold that the imposition of a criminal fine for drunk driving, together with an administrative fine and a temporary driving ban for an administrative breach of the rules on left-turn manoeuvres, even though the events had taken place in the same factual context, was compatible with Article 29 § 5 of the Constitution, given that the legal interests protected by the relevant provisions were different. It concluded that the corresponding criminal and administrative offences were therefore separate and, in consequence, concurrent in a manner compatible with the *ne bis in idem* principle.

(d) Judgment no. 265/2016 of the Constitutional Court (2nd Division) of 4 May 2016

111. In its judgment no. 265/2016 of 4 May 2016 the Constitutional Court (2nd Section) referred to its judgment no. 356/06 (see paragraph 110 above), reiterating that, in examining compliance with the *ne bis in idem* principle, the aims pursued by the statutes in question should be taken into account in order to determine whether or not a given situation constituted an “actual”

and "ideal" concurrence of offences, which was compatible with Article 29 § 5 of the Constitution.

(e) Judgment no. 298/2021 of the Constitutional Court (3rd Section) of 13 May 2021

112. In its judgment no. 298/2021 of 13 May 2021, referring to judgments nos. 244/99 and 356/2006 (see paragraphs 109-110 above), the Constitutional Court (3rd Section) reiterated that only the concurrence of a criminal offence and an administrative offence resulting from criminal and administrative provisions protecting the same legal interests was in breach of the *ne bis in idem* principle, as guaranteed by Article 29 § 5 of the Constitution. Citing its well-established case-law on this point, it added that the facts should be assessed not from a substantive perspective, with the emphasis placed on the reprehensible act, but from a normative perspective, having regard to the legal characterisation of the conduct in question, concluding that the "*idem factum illicitum*" condition was met only where the same protected legal interest was at stake.

113. In that judgment, the Constitutional Court further observed that, even when the "*idem*" condition, as construed in the aforementioned case-law, could be regarded as established in a situation of concurrent criminal and administrative offences, the legislature had wished to preserve the autonomy of administrative proceedings in relation to criminal proceedings in certain sectors of activity on account of the specific characteristics and specialised status of the administrative authorities exercising supervisory, regulatory and oversight powers, such as the BdP, the CMVM or, in the case under consideration, the National Civil Aviation Agency. It found that these were administrative authorities with special jurisdiction in a regulated sector and were therefore technically empowered, like any other authority, to assess any breach of the administrative rules applicable to the administrative offence in question. It concluded that, in the circumstances of the case at hand, the institution of autonomous administrative proceedings, in parallel with criminal proceedings, was not in breach of the *ne bis in idem* principle, since any finding of liability for the administrative offence would be precluded once a criminal conviction had been handed down in respect of the same acts, in accordance with the applicable legislation.

(f) Judgment no. 816/2024 of the Constitutional Court (1st Section) of 8 November 2024

114. In its judgment no. 816/2024 of 8 November 2024 the Constitutional Court (1st Section) held that the law-making interpretation of Article 208 of the RGICSF such that an individual could be tried and convicted for the criminal offence of forgery and use of forged documents under Article 256 of the Criminal Code (see paragraph 92 above) and for an administrative offence under Article 211 (g) of the RGICSF (see paragraph 94 above) was

not in breach the *ne bis in idem* principle, as enshrined in Article 29 § 5 of the Constitution. In so deciding, it referred to its judgment no. 298/2021 of 13 May 2021 (see paragraph 112 above), clarifying that the offending acts had to be understood in a legal or normative manner, rather than substantively, and finding as follows:

> "...
>
> Viewing the act – 'the same act' – not from a substantive standpoint, which places the emphasis on the reprehensible action, but from a normative standpoint, taking the conduct's legal classification (*valoração jurídica da conduta*) into account, the [Constitutional] Court has held that the '*idem factum illicitum*' condition is satisfied where the offences in question protect the same 'legal interest' or express the same type of 'disvalue' (judgment no. 244/1999). Conversely, it has found that this condition is not met where 'the same conduct, in a material sense ... corresponds to the commission of acts requiring a different legal assessment' and that, 'from the perspective of the degree of disvalue', the legislature has justifiably considered that there is an additional disvalue in the commission of an administrative offence in relation to the disvalue underlying the criminal offence, opting, on the basis of that 'additional disvalue', for a finding of 'actual concurrence (*concurso efetivo*)' between the criminal offence and the administrative offence, rather than for 'alternative findings based on the logic of ideal concurrence (*concurso ideal*)', given that 'the Constitution does not impose any single legal solution in this regard' (judgment no. 356/2006). ..."

115. It concluded that the offences in the case before it differed in so far as they protected different legal interests. Furthermore, it held that the conduct constitutive of the criminal offence had not encompassed every aspect of the defendant's conduct and that the criminal sanction had not sufficed to punish it as a whole, particularly with regard to the pecuniary damage caused. In this connection, it found as follows:

> "...
>
> Situations where criminal law overlaps with the law of administrative offences are more frequent now, given the extension of the law of administrative offences into a wide variety of areas, in particular economic and financial ones. It is worth noting the emergence of a number of legislative instruments relating to sectors in which a particular set of administrative offences has been defined – sets of offences which, owing to their specificity, deviate from the standard or traditional model of administrative offences and sometimes give rise, as a result, to derogations from the general regulation on administrative offences.
>
> ... [T]he specificity and seriousness of certain administrative offences justify their being treated autonomously, particularly at a procedural level, whence the creation of independent regulatory and supervisory authorities on which the legislature relies for their technical competence, their capacity for rapid response and, on another level, their independence from political authorities. On the one hand, that specificity is reflected in the pursuit of specific purposes, the special protection of a particular value or legal interest – even where the same value or interest would seem to be protected by provisions of criminal law – and a 'disvalue' (*desvalor jurídico*) proper to it, and should not be confused with the disvalue underlying a criminal statute providing for a penalty (*norma sancionatória de direito penal*). On the other hand, the more generic nature of certain criminal offences means that the most serious administrative offences cannot be punished appropriately.

Lastly, it is necessary to emphasise the importance of ancillary sanctions for economic and financial offences (for example, disqualification from a certain profession or activity, or from holding certain corporate offices) – especially in situations such as the present one, where, for more than a decade, false information was reported and the accounting records of the bank in question were falsified, with the negative consequences that are now well known – both for the stability of the banking and financial sector (a legal interest in the public interest) and from the standpoint of the confidence of depositors, savers and individual investors.

With regard to the last aspect mentioned above, the long financial crisis which marked the first decades of this century clearly demonstrates the importance of banking and financial communication between banking and financial institutions and the regulatory authorities – in the case of Portugal, the Banco de Portugal and the CMVM. However, such communication requires transparent banking and financial information (for example, regarding the type of products marketed and the existence of equity capital). It is for the independent authorities, on the basis of the information provided to them, to assess, for example, the level of each bank's equity capital, its exposure to risk and the mechanisms in place for assessing and managing it. False or untransparent information and falsified accounting records, especially when widespread and perpetuated over time, may result, at a minimum, in the collapse of a given banking and/or financial institution and, in the worst cases, in an economic and financial crash with serious economic and social consequences. ..."

2. *Case-law of the Supreme Court*

116. In a judgment of 13 October 2004 the Supreme Court defined the concurrence of offences as follows:

"...

5. ... Article 30 of the Criminal Code contains an indication as to the general principle for resolving the issue of concurrent offences (unity and plurality of offences), which is one of the most complex in the general theory of criminal law: the number of offences is determined by the number of different offences (*tipos de crime*) actually at stake, or by the number of times the offender's conduct constitutes an instance of the same offence.

As indicated in the aforementioned provision, the decisive criterion for concurrence is therefore arrived at by taking into consideration the different offences in issue, which shows that the decisive criterion relates to the protected legal interest (*o bem jurídico*).

The law thus accepts the theoretical constructs and dogmatic categories which, successively developed, are expressed in the concepts of 'real' concurrence (*concurso real*) and 'ideal' concurrence (*concurso ideal*). 'Real' concurrence obtains where the offender commits several acts which amount to several autonomous offences or several counts of the same offence (plurality of actions), whereas 'ideal' concurrence obtains where one and the same action breaches several criminal statutes or the same statute several times (unity of action).

... [I]t is important to distinguish between cases of 'actual' concurrence (*concurso efetivo*) (plurality of offences committed through one or more acts) and situations where, although several offences are at stake, there is no actual concurrence of offences (cases of 'apparent' concurrence (*concurso aparente*) or of continuing offences).

In addition to cases of 'actual' concurrence (whether 'ideal' or 'real'), there are thus situations in which criminal statutes are concurrent in appearance alone, as one of them precludes the others. The main idea in such situations is that the disvalue of an action can be exhaustively determined by one of the criminal statutes in issue. The result is then an improper concurrence or a legal unity.

Cases of apparent concurrence are determined, under most definitions, according to the rules of speciality, subsidiarity and absorption.

...

6. The operative criterion for distinguishing between categories, by which it can be determined whether, in the event of multiple actions or multiple offences, there is in fact a unity or a plurality of offences – in other words, a legal (or 'apparent'), 'real' or 'ideal' concurrence – relates to the protected legal interest and to the specific definition underpinning each separate offence. ...

...

7. ... As indicated above, the test for the actuality of a concurrence of offences ('different offences actually at stake'), as laid down in Article 30 of the Criminal Code, is a teleological test, referring essentially to the legal interest protected by each separate offence, to its meaning and scope.

Given that offences, as defined by law, protect legal interests, the singularity or plurality of such protection must prove decisive for reducing (apparent) plurality to (actual) unity, failing which the principle of double jeopardy (*dupla valoração*) will be breached ..."

II. INTERNATIONAL AND EUROPEAN LAW

A. International material

1. The International Covenant on Civil and Political Rights (ICCPR)

117. The relevant parts of Article 14 of the ICCPR read as follows:

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

...

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

2. The Vienna Convention on the Law of Treaties

118. The relevant provisions of the Vienna Convention on the Law of Treaties ("the Vienna Convention"), adopted on 23 May 1969 and ratified by Portugal on 7 August 2003 by Presidential Decree no. 46/2003, read as follows:

Article 2
Use of terms

"...

(d) 'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

..."

Article 19
Formulation of reservations

"A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not failing under subparagraphs *(a)* and *(b)*, the reservation is incompatible with the object and purpose of the treaty."

Article 21
Legal effects of reservations ...

"1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State.

..."

Article 22
Withdrawal of reservations ...

"1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

...

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State only when notice of it has been received by that State;

..."

Article 31
General rule of interpretation

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

...

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended."

119. The issue of reservations is also regulated by Articles 19 to 23 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986 and by Article 20 of the Vienna Convention on Succession of States in respect of Treaties of 23 August 1978.

3. The International Law Commission's Guide to Practice on Reservations to Treaties

120. At its sixty-third session in 2011 the International Law Commission adopted a Guide to Practice on Reservations to Treaties, including a set of guidelines, related commentary and an Annex on the reservations dialogue. By Resolution A/RES/68/111, adopted at its sixty-eighth plenary meeting on 16 December 2013, the General Assembly took note of the Guide and recommended that it be disseminated as widely as possible.

121. The relevant guidelines of the Guide read as follows:

1.1 Definition of reservations

"1. 'Reservation' means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

2. Paragraph 1 is to be interpreted as including reservations which purport to exclude or to modify the legal effect of certain provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation."

1.1.1 Statements purporting to limit the obligations of their author

"A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which its author purports to limit the obligations imposed on it by the treaty, constitutes a reservation."

1.2 Definition of interpretative declarations

"'Interpretative declaration' means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions."

1.3 Distinction between reservations and interpretative declarations

"The character of a unilateral statement as a reservation or as an interpretative declaration is determined by the legal effect that its author purports to produce."

1.3.1 Method of determining the distinction between reservations and interpretative declarations

"To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, the statement should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms, with a view to identifying therefrom the intention of its author, in light of the treaty to which it refers."

1.4 Conditional interpretative declarations

"1. A conditional interpretative declaration is a unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof.

2. Conditional interpretative declarations are subject to the rules applicable to reservations."

3.1 Permissible reservations

"A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be included;

(c) in cases not falling under subparagraphs *(a)* and *(b)*, the reservation is incompatible with the object and purpose of the treaty."

3.1.5 Incompatibility of a reservation with the object and purpose of the treaty

"A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the *raison d'être* of the treaty."

4.2 Effects of an established reservation
4.2.6 Interpretation of reservations

"A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated."

B. Council of Europe material

122. The relevant parts of the Explanatory Report to Protocol No. 7 read as follows:

"27. The words 'under the jurisdiction of the same State' limit the application of the article to the national level. Several other Council of Europe conventions, including the European Convention on Extradition (1957), the European Convention on the International Validity of Criminal Judgments (1970) and the European Convention on the Transfer of Proceedings in Criminal Matters (1972), govern the application of the principle at international level.

...

32. Article 4, since it only applies to trial and conviction of a person in criminal proceedings, does not prevent him from being made subject, for the same act, to action of a different character (for example, disciplinary action in the case of an official) as well as to criminal proceedings.

..."

123. In Recommendation 1671 (2004) "Ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights", adopted on 7 September 2004, the Parliamentary Assembly of the Council of Europe (PACE) stated as follows:

"1. The Parliamentary Assembly underlines the unique and exemplary role played by the European Convention on Human Rights in protecting and developing human rights in Europe over the last fifty years. It pays tribute to the Convention's vitality and dynamism as demonstrated both by the case-law of the European Court of Human Rights and by the adoption of thirteen protocols, some of which have adapted the supervisory machinery while others have added new rights.

2. In order to respond to new needs or to strengthen certain rights already protected, the Assembly has several times invited the Committee of Ministers to adopt additional protocols adding new rights to the Convention. While this policy will be continued for as long as necessary, it is also important to make sure that the entire body of Convention law – comprising the Convention and all the additional protocols – is ratified by all member states and applied throughout all parts of their territory without exception. The Assembly intends doing everything in its power to achieve this.

...

5. Furthermore, the Assembly, whose constant concern has been to see that all the rights guaranteed by the European Convention on Human Rights and the decisions of the Court be implemented in all of the Council of Europe's member states, has noted that the reservations and derogations made in respect of the Convention limit the scope of the Convention.

6. Some member states, when ratifying the Convention, entered one or more reservations under its Article 57 and some of these reservations, entered several years ago, have not been withdrawn.

7. Such reservations are permitted to the extent that legislation in force at the time in the territory of the contracting party is not in conformity with a particular provision of the Convention. They should not therefore be of a permanent nature and should be confined to the period required to bring the legislation in question into conformity with the Convention.

...

9. It must nevertheless be acknowledged that numerous states have in fact withdrawn reservations, declarations or derogations, as is the intended practice. The Assembly welcomes such conduct and congratulates the states in question for their commitment to the protection of human rights and their respect for the principles of international law.

10. The Assembly consequently recommends that the Committee of Ministers invite the States Parties to the European Convention on Human Rights to:

...

10.2 withdraw any reservations which they made upon ratifying the European Convention on Human Rights after, where appropriate, amending the legislation which justified the reservation in order to bring it into conformity with the Convention, within three years of the adoption of the present recommendation;

...”

124. In its reply to Recommendation 1671 (2004) of the Parliamentary Assembly, adopted on 8 June 2005 at the 929th meeting of the Ministers' Deputies, the Committee of Ministers stated that all Contracting Parties should be encouraged to withdraw reservations made to the Convention or the Protocols thereto (see CM/AS(2005)Rec1671-final, § 2). However, it did not consider it necessary to set a general three-year deadline for the withdrawal of reservations (ibid., § 8).

C. European Union law and case-law of the Court of Justice of the European Union

1. *European Union law*

(a) The Convention Implementing the Schengen Agreement (CISA) of 14 June 1985

125. The relevant provisions of the CISA read as follows:

Article 54

"A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party."

Article 55

"1. A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

(a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;

(b) where the acts to which the foreign judgment relates constitute an offence against national security or other equally essential interests of that Contracting Party;

(c) where the acts to which the foreign judgment relates were committed by officials of that Contracting Party in violation of the duties of their office.

2. A Contracting Party which has made a declaration regarding the exception referred to in paragraph 1(b) shall specify the categories of offences to which this exception may apply.

3. A Contracting Party may at any time withdraw a declaration relating to one or more of the exceptions referred to in paragraph 1.

4. The exceptions which were the subject of a declaration under paragraph 1 shall not apply where the Contracting Party concerned has, in connection with the same acts, requested the other Contracting Party to bring the prosecution or has granted extradition of the person concerned."

(b) The Charter of Fundamental Rights of the European Union ("the Charter")

126. 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."

127. Article 52 of the Charter reads as follows:

"1. 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.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said

Convention. This provision shall not prevent Union law providing more extensive protection."

(c) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

128. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA (hereinafter "the Framework Decision on the European arrest warrant") is aimed at enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

129. Article 3 of the Framework Decision on the European arrest warrant sets out the grounds for mandatory non-execution of the European arrest warrant. Paragraph 2 of that Article provides that the executing judicial authority must refuse to execute a European arrest warrant "if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State".

2. *Relevant case-law of the CJEU*

(a) Judgment of the CJEU of 9 March 2006 in *Van Esbroeck* (C-436/04, EU:C:2006:165)

130. With regard to the interpretation of Article 54 of the CISA and the question whether it applied solely to the material element of the facts in issue, irrespective of their legal classification, the CJEU ruled as follows:

"30. There is a necessary implication in the *ne bis in idem* principle, enshrined in that article, that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied (*Gözütok and Brügge*, paragraph 33).

...

35. Because there is no harmonisation of national criminal laws, a criterion based on the legal classification of the acts or on the protected legal interest might create as many barriers to freedom of movement within the Schengen territory as there are penal systems in the Contracting States.

36. In those circumstances, the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood in the sense of the existence of a set of concrete circumstances which are inextricably linked together.

...

42. In the light of the above, the answer to the second question must be that Article 54 of the CISA must be interpreted as meaning that:

– the relevant criterion for the purposes of the application of that article of the CISA is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

– punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the CISA are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.

..."

(b) Judgment of the CJEU of 18 July 2007 in *Kraaijenbrink* (C-367/05, EU:C:2007)

131. Once again with regard to the interpretation of Article 54 of the CISA, the CJEU found as follows:

"28. ... [T]he starting point for assessing the notion of 'same acts' within the meaning of Article 54 of the CISA is to consider the specific unlawful conduct which gave rise to the criminal proceedings before the courts of the two Contracting States as a whole. Thus, Article 54 of the CISA can become applicable only where the court dealing with the second criminal prosecution finds that the material acts, by being linked in time, in space and by their subject-matter, make up an inseparable whole.

29. On the other hand, if the material acts do not make up such an inseparable whole, the mere fact that the court before which the second prosecution is brought finds that the alleged perpetrator of those acts acted with the same criminal intention does not suffice to indicate that there is a set of concrete circumstances which are inextricably linked together covered by the notion of 'same acts' within the meaning of Article 54 of the CISA.

...

36. In the light of the foregoing, the answer to the first question must therefore be that Article 54 of the CISA is to be interpreted as meaning that:

– the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;

– different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as 'the same acts' within the meaning of Article 54 of the CISA merely because the competent national court finds that those acts are linked together by the same criminal intention;

– it is for that national court to assess whether the degree of identity and connection between all the facts to be compared is such that it is possible, in the light of the said relevant criterion, to find that they are 'the same acts' within the meaning of Article 54 of the CISA.

...”

(c) Judgment of the Grand Chamber of the CJEU of 20 March 2018 in *Menci* (C-524/15, EU:C:2018:197)

132. In response to a request for a preliminary ruling in a case concerning a taxpayer, the proprietor of a sole trading business, who had been subjected to an administrative penalty for failure to pay VAT and against whom, after the administrative proceedings had ended, criminal proceedings had also been instituted in respect of the same facts, the CJEU held as follows:

“35. According to the Court’s case-law, the relevant criterion for the purposes of assessing the existence of the same offence is identity of the material facts, understood as the existence of a set of concrete circumstances which are inextricably linked together which resulted in the final acquittal or conviction of the person concerned (see, by analogy, judgments of 18 July 2007, *Kraaijenbrink*, C-367/05, EU:C:2007:444, paragraph 26 and the case-law cited, and of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraphs 39 and 40). Therefore, Article 50 of the Charter prohibits the imposition, with respect to identical facts, of several criminal penalties as a result of different proceedings brought for those purposes.

36. Moreover, the legal classification, under national law, of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another.

...

49. 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.

...

62. Therefore, the conditions to which Article 50 of the Charter, read in conjunction with Article 52(1) thereof, subjects a possible duplication of criminal proceedings and penalties and of administrative proceedings and penalties of a criminal nature, as is apparent from paragraphs 44, 49, 53, 55 and 58 of the present judgment, ensure a level of protection of the *ne bis in idem* principle which is not in conflict with that guaranteed by Article 4 of Protocol No 7 to the ECHR, as interpreted by the European Court of Human Rights.

63. In the light of all of the above considerations, the answer to the question referred is that Article 50 of the Charter must be interpreted as not precluding national legislation in accordance with which criminal proceedings may be brought against a person for failing to pay VAT due within the time limits stipulated by law, although that person has already been made subject, in relation to the same acts, to a final administrative penalty of a criminal nature for the purposes of Article 50 of the Charter, on condition that that legislation:

– pursues an objective of general interest which is such as to justify such a duplication of proceedings and penalties, namely combating VAT offences, it being necessary for those proceedings and penalties to pursue additional objectives,

– contains rules ensuring coordination which limits to what is strictly necessary the additional disadvantage which results, for the persons concerned, from a duplication of proceedings, and

– provides for rules making it possible to ensure that the severity of all of the penalties imposed is limited to what is strictly necessary in relation to the seriousness of the offence concerned.

64. It is for the national court to ensure, taking into account all of the circumstances in the main proceedings, that the actual disadvantage resulting for the person concerned from the application of the national legislation at issue in the main proceedings and from the duplication of the proceedings and penalties that that legislation authorises is not excessive in relation to the seriousness of the offence committed.

...”

(d) 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)

133. In response to a request for a preliminary ruling in a case where the Italian National Companies and Stock Exchange Commission (“the CONSOB”) had imposed an administrative fine on two companies and a private individual for breaches of the legislation on market manipulation, where the same acts of manipulation had also given rise to criminal prosecution against the private individual, leading to his conviction and sentencing to a term of imprisonment that had ultimately been extinguished as a result of a pardon, the CJEU held as follows:

“55. As regards, first, the duplication of proceedings of a criminal nature which, as is apparent from the information in the case file, [are conducted independently,] 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.

...

57. ... it should be noted that, in the event of a criminal conviction under Article 185 of [Legislative Decree no. 58 of 24 February 1998 – ‘TUF’] following criminal proceedings, the bringing of the proceedings relating to an administrative fine of a criminal nature exceeds what is strictly necessary in order to achieve the objective referred to in paragraph 46 of the present judgment, in so far as that criminal conviction is such as to punish the offence committed in an effective, proportionate and dissuasive manner.

...

60. It should be added, as regards the duplication of penalties authorised by the legislation at issue in the main proceedings, that the latter seems merely to provide in Article 187l of the TUF that, where, with respect to the same acts, a criminal fine and an administrative fine of a criminal nature have been imposed, recovery of the former is limited to the part exceeding the amount of the second. In so far as Article 187l of the TUF appears solely to apply to the duplication of pecuniary penalties and not to the duplication of an administrative fine of a criminal nature and a term of imprisonment, it appears that that article does not guarantee that the severity of all of the penalties

imposed are limited to what is strictly necessary in relation to the seriousness of the offence concerned.

...”

(e) Judgment of the Grand Chamber of the CJEU of 20 March 2018 in *Di Puma and Zecca* (C 596/16 and C 597/16, EU:C:2018:192)

134. In this case, the CONSOB had imposed administrative fines on two individuals for insider dealing. Criminal proceedings had also been brought against them for the same acts, following which they had been finally acquitted. In response to a request for a preliminary ruling, the CJEU held that the objective of protecting the integrity of financial markets and public confidence in financial instruments was such as to justify a duplication of proceedings and penalties of a criminal nature only where those proceedings and penalties had additional complementary objectives covering different aspects of the same unlawful conduct (paragraph 42). The CJEU further emphasised that such duplication was subject to strict compliance with the principle of proportionality (paragraph 43). It took the view that the bringing of proceedings for an administrative fine of a criminal nature following a final criminal judgment holding that there were no factors constituting an infringement of the legislation on insider dealing clearly exceeded what was necessary in order to achieve the objective pursued (paragraph 44, cited below). The relevant parts of the judgment read as follows:

“...

31. Moreover, in light of the importance of the principle of *res judicata* both in the legal order of the EU and in national legal orders, the Court has held that EU law does not preclude the application of national procedural rules conferring *res judicata* effects on a judicial decision (see, to that effect, as regards the principle of effectiveness, judgments of 10 July 2014, *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraphs 58 and 59, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraphs 28 and 29).

...

44. In a situation such as that at issue in the main proceedings, the bringing of proceedings for an administrative fine of a criminal nature clearly exceeds what is necessary in order to achieve the objective referred to in paragraph 42 of the present judgment, since there exists a judgment of acquittal holding that there are no factors constituting an offence which Article 14(1) of Directive 2003/6 seeks to punish.

...

46. In view the foregoing considerations, the answer to the first question is that Article 14(1) of Directive 2003/6, read in the light of Article 50 of the Charter, must be interpreted as not precluding national legislation in accordance with which proceedings for an administrative fine of a criminal nature may not be brought following a final criminal judgment of acquittal ruling that the acts capable of constituting a violation of the legislation relating to insider dealing, on the basis of which those proceedings had also been initiated, were not established.

...”

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

135. The case concerned the incumbent postal services provider in Belgium. It had been fined by the postal regulatory authority for infringement of the principle of non-discrimination in pricing on account of an unjustified difference in treatment between direct clients and routing companies, which were consolidators that provided services upstream of the postal distribution service by preparing mail and delivering the mailings. It had also been fined by the Belgian competition authority for abuse of a dominant position, the amount of the second fine having been calculated taking account of the fine imposed by the postal regulatory authority. In response to a request for a preliminary ruling, the Grand Chamber of the CJEU held as follows:

"...

25. As regards the assessment as to whether the proceedings and penalties concerned are criminal in nature, which is a matter for the referring court, it must be noted that three criteria are relevant. The first is the legal classification of the offence under national law, the second is the intrinsic nature of the offence, and the third is the degree of severity of the penalty which the person concerned is liable to incur (see, to that effect, judgments of 5 June 2012, *Bonda*, C-489/10, EU:C:2012:319, paragraph 37, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 26 and 27).

26. It should be pointed out in that regard that the application of Article 50 of the Charter is not limited to proceedings and penalties which are classified as 'criminal' by national law, but extends regardless of such a classification to proceedings and penalties which must be considered to have a criminal nature on the basis of the two other criteria referred to in the preceding paragraph (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 30).

...

34. Moreover, it is apparent from the case-law of the Court that the legal classification under national law of the facts and the legal interest protected are not relevant for the purposes of establishing the existence of the same offence, in so far as the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State to another (judgments of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 36, and of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraph 38).

35. The same is true of the application of the *non bis in idem* principle laid down in Article 50 of the Charter in the field of EU competition law, inasmuch as, as the Advocate General noted in points 95 and 122 of his Opinion, the scope of the protection conferred by that provision cannot, unless otherwise provided by EU law, vary from one field of EU law to another.

36. In that regard, it must also be stated that, in the light of the case-law referred to in paragraph 33 of the present judgment, the '*idem*' condition requires the material facts to be identical. By contrast, the *non bis in idem* principle is not intended to be applied where the facts in question are not identical but merely similar.

37. Identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see,

to that effect, ECtHR, 10 February 2009, *Sergey Zolotukhin v. Russia*, CE:ECHR:2009:0210JUD001493903, § 83 and 84, and ECtHR, 20 May 2014, *Pirttimäki v. Finland*, CE:ECHR:2014:0520JUD003523211, § 49 to 52).

...

49. 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 individual concerned (see, to that effect, ECtHR, 15 November 2016, *A and B v. Norway*, CE:ECHR:2016:1115JUD002413011, § 121 and 132). 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.

...

51. With regard to the strict necessity of such duplication of proceedings and penalties, it is necessary to assess whether 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 different authorities, whether the two sets of proceedings have been conducted in a manner that is sufficiently coordinated and within a proximate timeframe and whether any penalty that may have been imposed in the proceedings that were first in time was taken into account in the assessment of the second penalty, meaning that the resulting burden, for the persons concerned, of such duplication is limited to what is strictly necessary and the overall penalties imposed correspond to the seriousness of the offences committed (see, to that effect, judgment of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 49, 52, 53, 55 and 58, and ECtHR, 15 November 2016, *A and B v. Norway*, CE:ECHR:2016:1115JUD002413011, § 130 to 132).

...”

(g) Judgment of the CJEU of 25 January 2025 in *Engie România SA* (C-205/23, EU:C:2025:43)

136. In this case, the Romanian National Consumer Protection Authority had imputed misleading and aggressive commercial practices to a company providing natural gas after it had unilaterally changed the price of gas three months after the initial offer, even though the initial price was to have remained valid for a period of 12 months. The Authority had ordered Engie to cease those practices, suspend its activities until they had ceased and not change the price of natural gas supplied to household customers. One month later, the National Energy Sector Regulatory Authority had also imposed a sanction on Engie România for lack of transparency, fining it a total of 800,000 Romanian lei (approximately EUR 160,000), on account of irregularities in its offers and a lack of clarity as to the right it reserved to adjust the price set in the contracts. In proceedings initiated by this second Authority, the Bucharest Regional Court had decided, on appeal, to stay the

proceedings and request various preliminary rulings from the CJEU, including one concerning the interpretation of Article 50 of the Charter. The relevant parts of the CJEU's judgment read as follows:

> "55. As regards the '*bis*' condition, in order for a judicial decision to be regarded as having given a final ruling on the facts subject to a second set of proceedings, that decision must not only have become final, in accordance with national law, but must also have been taken after a determination has been made as to the merits of the case (judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraph 29 and the case-law cited). Where such a decision exists, Article 50 of the Charter precludes criminal proceedings in respect of the same facts from being initiated or maintained (see, to that effect, judgment of 14 September 2023, *Volkswagen Group Italia and Volkswagen Aktiengesellschaft*, C-27/22, EU:C:2023:663, paragraph 59).
>
> ...
>
> 58. Since the '*idem*' condition requires the material facts to be identical, Article 50 of the Charter is not intended to be applied where the facts in question are merely similar. Identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, EU:C:2022:202, paragraphs 36 and 37).
>
> ...
>
> 63. A duplication of penalties may, however, be justified where the proceedings brought by two different authorities pursue complementary aims relating to different aspects of the same unlawful conduct. Indeed, 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 individual concerned (see, to that effect, judgment of 22 March 2022, *bpost*, C-117/20, ... paragraphs 49 and 50).
>
> ..."

(h) Judgment of the CJEU of 11 September 2025 in *MSIG* (C-802/23, EU:C:2025:688)

137. The case concerned a question relating to respect for the *ne bis in idem* principle owing to the initiation, first in France, then in Spain, of two sets of criminal proceedings against the same individual on terrorism charges. She had been sentenced to a prison term in France for her involvement in a criminal association (in this case, Euskadi Ta Askatasuna, or ETA) with a view to preparing a terrorist act. She had been convicted, *inter alia*, for having planned, from France, attacks that were carried out in Spain. Having served her sentence in France, she had been surrendered to the Spanish authorities following a request for her extradition in order to stand trial in Spain for her involvement, from France, as a leader of ETA, in terrorist acts carried out in Spain. The case was referred to the *Audiencia Nacional* (National High Court), which decided to defer its decision and request a preliminary ruling from the CJEU on the question whether the act of involvement in a terrorist

association, for which the defendant had been convicted in France, and that of committing acts of terrorism, for which she was on trial in Spain, were "the same act" within the meaning of Article 54 of the CISA, read in the light of Article 50 of the Charter. The relevant parts of the CJEU's judgment read as follows:

"...

37. The '*idem*' condition requires, according to settled case-law, that the material acts be identical. Consequently, the principle *ne bis in idem* is not intended to be applied where the acts at issue are not identical, but merely similar (judgments of 18 July 2007, *Kraaijenbrink*, C-367/05, EU:C:2007:444, paragraph 27; of 23 March 2023, *Generalstaatsanwaltschaft Bamberg (Reservation in relation to the principle ne bis in idem)*, C-365/21, EU:C:2023:236, paragraph 37, and of 12 October 2023, *INTER Consulting*, C-726/21, EU:C:2023:764, paragraph 74).

38. The concept of identity of the material acts is understood to mean a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space (see, to that effect, judgments of 18 July 2007, *Kraaijenbrink*, C-367/05, EU:C:2007:444, paragraphs 26 and 27; of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraph 128; and of 12 October 2023, *INTER Consulting*, C-726/21, EU:C:2023:764, paragraph 75).

39. By contrast, if the material acts do not make up such a set, the mere fact that the court before which the second prosecution is brought finds that the alleged perpetrator of those acts acted with the same criminal intention does not suffice to indicate that there is a set of concrete circumstances which are inextricably linked together covered by the notion of 'same acts' within the meaning of Article 54 of the CISA (judgments of 18 July 2007, *Kraaijenbrink*, C-367/05, EU:C:2007:444, paragraphs 29 and 30, and of 12 October 2023, *INTER Consulting*, C-726/21, EU:C:2023:764, paragraph 76).

40. Moreover, it is settled case-law that both Article 54 of the CISA and Article 50 of the Charter refer only to the nature of the acts irrespective of the legal classification given to them or of the legal interest protected, in so far as the protection conferred by those provisions cannot vary from one Member State to another (see, to that effect, judgments of 16 November 2010, *Mantello*, C-261/09, EU:C:2010:683, paragraph 39; of 22 March 2022, *Nordzucker and Others*, C-151/20, EU:C:2022:203, paragraph 39; and of 12 October 2023, *INTER Consulting*, C-726/21, EU:C:2023:764, paragraph 73 and the case-law cited).

...

43. From that point of view, it must be stated at the outset that, in the light of the case-law referred to in paragraph 40 of the present judgment, and in so far as it is established that the criminal proceedings in the main proceedings and the French judgments to which the referring court refers related to materially identical acts, the fact that those judgments concerned offences different from those at issue in the main proceedings is irrelevant for the purposes of assessing the 'idem' condition (see, to that effect, judgment of 25 January 2024, *Parchetul de pe lângă Curtea de Apel Craiova*, C-58/22, EU:C:2024:70, paragraph 70).

44. The relevant question, in that regard, is not whether or not the constituent elements of the offences at issue in the French judgments were identical, but whether the acts alleged against the person concerned in those judgments and in the criminal proceedings in the main proceedings refer to the same conduct. Where the same conduct

on the part of the same person and within the same time frame is at issue, it is necessary to verify whether the facts of the offence for which the applicant was initially convicted, and those which are the subject of the subsequent criminal proceedings are identical or substantially the same (ECtHR, 19 December 2017, *Ramda v. France*, CE:ECHR:2017:1219JUD007847711, § 87 and the case-law cited).

...

54. In the light of all of the foregoing considerations, the answer to the first question is that Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as meaning that the concept of 'same acts' covers acts of which a person is accused in criminal proceedings brought in a Member State in respect of terrorist acts where that person has already been convicted in another Member State, for the same acts, of involvement in a terrorist association with a view to preparing a terrorist act.

..."

THE LAW

I. DISJOINDER OF THE APPLICATIONS AND SCOPE OF THE CASE

138. According to the Court's settled case-law, the "case" referred to the Grand Chamber embraces all aspects of the application previously examined by the Chamber in its judgment, the scope of its jurisdiction in "the case" being limited only by the Chamber's decision on admissibility (see, for example, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 83, 17 January 2023, and *Savran v. Denmark* [GC], no. 57467/15, § 169, 7 December 2021). It therefore follows that the "case" referred to the Grand Chamber is the application as it has been declared admissible, together with the complaints which have not been declared inadmissible (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 177, 21 November 2019; *Grosam v. the Czech Republic* [GC], no. 19750/13, § 60, 1 June 2023; and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 78, 27 November 202). It follows that the Grand Chamber cannot examine complaints which have previously been declared inadmissible (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 141, 2 February 2021, and *Semenya v. Switzerland* [GC], no. 10934/21, § 93, 10 July 2025).

139. In the present case, in its judgment of 8 October 2024, the Chamber decided to join applications nos. 48047/15 and 2276/20, having regard to the similarity of their subject matter (see paragraph 6 above, and paragraph 129 of the Chamber judgment). However, it declared inadmissible all the complaints raised by the applicant in application no. 2276/20 (see paragraphs 156 and 221 of the Chamber judgment). In the light of the case-law cited above, the Court considers it appropriate to disjoin application no. 2276/20 from application no. 48047/15 and examine the latter alone. Furthermore, as no aspect of the complaints raised by the applicant in the latter application have previously been declared inadmissible, the scope of

the case encompasses the complaints raised by the applicant under Article 13 of the Convention and Article 4 of Protocol No. 7 to the Convention (see paragraph 4 above).

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

140. The applicant submitted that he had been tried three times for the same acts by the criminal-law authorities, the BdP and the CMVM, respectively, in breach of Article 4 of Protocol No. 7 to the Convention, which provides:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
>
> 3. No derogation from this Article shall be made under Article 15 of the Convention."

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

1. *The parties' submissions*

(a) The Government

141. In their observations before the Chamber, the Government submitted that the administrative proceedings instituted against the applicant by the BdP and the CMVM did not fall within the scope of Article 4 of Protocol No. 7 to the Convention, having regard to the declaration made by Portugal in the instrument of ratification of Protocol No. 7 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 (see paragraphs 132-33 of the Chamber judgment).

142. The Government did not reiterate those arguments in the proceedings before the Grand Chamber.

(b) The applicant

143. In his observations before the Chamber, the applicant challenged the Government's objection, arguing that the declaration made by Portugal should be regarded as invalid for the same reasons as those that had led the Court, in *Grande Stevens and Others v. Italy* (nos. 18640/10 and 4 others, §§ 207 and 211, 4 March 2014), to reject the declaration relied on by the

Italian Government in the same regard (see paragraphs 134-36 of the Chamber judgment).

144. The applicant made no comment on the declaration in question in the proceedings before the Grand Chamber.

2. Observations by the Italian Government, third-party intervener

145. The Italian Government submitted that the declaration made by Portugal in the instrument of ratification of Protocol No. 7 to the Convention (see paragraph 105 above), like that made by Italy in the same regard, should be understood not as a "reservation" in the strict sense of Article 57 of the Convention but as an "interpretative declaration".

146. They observed that the Convention made no reference to "interpretative declarations" and that Article 57 of the Convention did not specify the effectiveness of reservations. It was therefore necessary to refer to international law, in particular to the Vienna Convention on the Law of Treaties and the Guide to Practice on Reservations to Treaties published by the UN ("the Guide"; see paragraphs 118 and 120-121 above). In their view, in order to determine whether a "statement" should be characterised as an "interpretative declaration" or as a "reservation", it had to be interpreted in good faith with a view to identifying therefrom the actual intention of the declaring State (referring to guideline 1.3.1 of the Guide), the object and purpose of the relevant treaty and the circumstances at the time of its ratification (referring to guideline 4.2.6 of the Guide). It was therefore a matter of making a substantive interpretation, taking into account the content of the "statement", irrespective of the title formally given to it. In that connection, the Italian Government referred to *Belilos v. Switzerland* (29 April 1988, §§ 48-49, Series A no. 132). They concluded that both the declaration made by Portugal and that made by Italy amounted to "conditional interpretative declarations" which, by reason of their exclusionary effect (see guideline 1.4 of the Guide), prevented the application of Article 4 of Protocol No. 7 to proceedings which were not classified as "criminal" under domestic law.

147. They added that, even if Portugal's interpretative declaration were to be characterised as a reservation, it should be regarded as satisfying the requirements of Article 57 of the Convention, for the following reasons. Firstly, the purpose of that declaration, which was similar to that made by Italy, was neither to derogate from the States' obligations under Article 4 of Protocol No. 7 nor to exempt certain domestic provisions or administrative procedures from any scrutiny but, in keeping with its interpretative function, to clarify how "criminal proceedings" was to be understood in the light of domestic law, in order to determine the scope of Article 4 of Protocol No. 7. Secondly, the declaration was not of a "general character" within the meaning of Article 57, as it did not create any indeterminate or open-ended exclusions. In the present case, like the declaration made by Italy, it was based on a clear,

foreseeable distinction – established in domestic law – between criminal and administrative offences.

3. *The Chamber judgment*

148. In its judgment of 8 October 2024 the Chamber unanimously dismissed the Government's objection based on the declaration made by Portugal in the instrument of ratification of Protocol No. 7 to the Convention deposited on 20 December 2004. It characterised Portugal's declaration as a "reservation" within the meaning of Article 57 of the Convention. Adopting the approach taken in *Gradinger* (cited above, § 50) and *Grande Stevens and Others* (cited above, § 211), it went on to find that the declaration did not satisfy the requirements of Article 57 § 2 of the Convention and was therefore invalid (see paragraphs 143-44 of the Chamber judgment).

4. *The Court's assessment*

149. The Court notes that the Government did not raise before the Grand Chamber – whether in their written submissions or in their oral pleadings – the objection on which they had relied in the Chamber based on the declaration made by Portugal regarding Article 4 of Protocol No. 7 to the Convention (see paragraph 142 above). Furthermore, they did not comment on the written and oral observations submitted by the Italian Government on this point (see paragraphs 145-147 above). Nor did the applicant submit any remarks on this issue (see paragraph 144 above).

150. The Court would point out, however, that this matter goes to its jurisdiction *ratione materiae* (see *Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, ECHR 2001-XI; *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III; and *Benavent Díaz v. Spain* (dec.), no. 46479/10, § 47, 31 January 2017). It is therefore appropriate that the Court examine it of its own motion (compare *Medvedyev and Others v. France* [GC], no. 3394/03, § 71, ECHR 2010, and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 71, 13 December 2016) and determine whether the declaration made by Portugal satisfies the requirements of Article 57 of the Convention, 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."

(a) General principles

(i) Whether a declaration should be characterised as a "reservation" or an "interpretative declaration"

151. In order to establish the legal character of a "declaration", one must look behind the title given to it and seek to determine the substantive content (see *Belilos*, cited above, § 49). In order to determine whether a declaration is a "reservation" or an "interpretative declaration", the intention of its author and the legal effect it aims to achieve are decisive (see *Temeltasch v. Switzerland*, no. 9116/80, Commission's report of 5 May 1982, Decisions and Reports (DR) no. 31, p. 130, § 73).

152. Moreover, the Court reiterates that, in spite of its specific nature as an instrument for the protection of human rights, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law, and, in particular, in the light of the Vienna Convention on the Law of Treaties (see paragraph 118 above). As a matter of fact, the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 23, ECHR 2014, with further references, and *Ukraine v. Russia (*re *Crimea)* [GC], nos. 20958/14 and 38334/18, § 912, 25 June 2024). Thus, in accordance with Article 31 § 1 of the Vienna Convention, any treaty must be interpreted in good faith and in the light of its object and purpose. There shall also be taken into account, together with the context, any subsequent practice in the application of the treaty and any relevant rules of international law applicable in the relations between the parties (Article 31 § 3 (b) and (c) of the Vienna Convention).

153. Lastly, for present purposes, the Court notes that, under Articles 2 (d) and 21 of the Vienna Convention, the term "reservation" means a unilateral statement, however phrased or named, made by a State, purporting to exclude or to modify the legal effect of certain provisions of a treaty (see paragraph 118 above) in that State.

(ii) Validity of reservations or interpretative declarations

154. The Court reiterates that, under Article 19 of the Convention, its role is to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. Under Article 32 § 1 of the Convention, its jurisdiction extends to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it (see *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, § 159, 9 July 2025), including the

validity of an interpretative declaration or a reservation (see *Belilos*, cited above, § 50; *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 60, ECHR 2002-II (extracts); and *Benavent Díaz*, cited above, § 53).

155. In accordance with Article 57 of the Convention, in order to be valid, a reservation must satisfy the following conditions: (a) it must be made at the time the Convention is signed or ratified; (b) it must concern a specific provision of the Convention; (c) it must relate to specific laws in force at the time of ratification; (d) it must not be a reservation of a general character; and (e) it must contain a brief statement of the law concerned (see *Põder and Others v. Estonia* (dec.), no. 67723/01, ECHR 2005-VIII; *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 45, 2 November 2010; *Schädler-Eberle v. Liechtenstein*, no. 56422/09, § 60, 18 July 2013; and *Benavent Díaz,* cited above, § 47).

156. 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 the above-cited cases of *Belilos*, § 55; *Kozlova and Smirnova*; and *Benavent Díaz*, § 50).

157. Article 57 § 1 of the Convention requires "precision and clarity" from the Contracting States by requiring that a reservation contain a brief statement of the law concerned. This provision does not impose a "purely formal requirement" but sets out "a condition of substance" which "both constitutes an evidential factor and contributes to legal certainty" (see *Belilos*, cited above, §§ 55 and 59; *Weber v. Switzerland*, 22 May 1990, § 38, Series A no. 177; *Eisenstecken v. Austria*, no. 29477/95, § 24, ECHR 2000-X; *Grande Stevens and Others*, cited above, § 208; and *Benavent Díaz*, cited above, § 48). Its purpose is to provide a guarantee – in particular for the other Contracting Parties and the Convention institutions – that a reservation does not go beyond the provisions expressly excluded by the State concerned (see *Belilos*, cited above, § 59, and *Dacosta Silva v. Spain*, no. 69966/01, § 37, ECHR 2006-XIII).

158. The Vienna Convention, for its part, lays down a substantive condition in Article 19 (c), which provides that a State may not make a reservation which is "incompatible with the object and purpose of the treaty" (see paragraph 118 above). This substantive requirement is in keeping with the general rule of treaty interpretation established in Article 31 § 1 of the Vienna Convention (see paragraph 118 above). Moreover, it also features in guideline 3.1 of the Guide (see paragraph 121 above).

159. Lastly, the Court takes note of Recommendation 1671 (2004) adopted by the Parliamentary Assembly of the Council of Europe on

7 September 2004, in which that body called on States to withdraw any reservations made upon ratifying the Convention after, where appropriate, amending the legislation which justified the reservation in order to bring it into conformity with the Convention – a recommendation followed by the reply adopted on 8 June 2005 by the Council of Ministers urging all Contracting Parties to withdraw reservations to the Convention or the protocols thereto (see paragraphs 123-124 above).

(b) Application of those principles to the present case

160. The Court notes that in the instrument of ratification of Protocol No. 7 to the Convention deposited on 20 December 2004, Portugal made a "declaration" to the effect that it understood the terms "criminal offences" and "offence" in Articles 2 and 4 of that Protocol to mean acts which constituted criminal offences under its domestic law (see paragraph 105 above). This is one of five "declarations" made by Contracting States under Protocol No. 7 which specify that the words "criminal" or "criminal proceedings", within the meaning of that Protocol, are to be understood in the light of domestic legislation (see *A and B v. Norway*, cited above, § 117).

161. The Court notes that Portugal had initially considered making a "reservation" in respect of Protocol No. 7 rather than a "declaration". Thus, both Parliament Resolution no. 22/90 of 13 July 1990 approving Protocol No. 7 for ratification and Presidential Decree no. 51/90 of 27 September 1990, whereby the President of the Republic ratified Protocol No. 7, refer to a "reservation" (see paragraph 105 above). For its part, the Ministry of Foreign Affairs' Notice no. 264/2005 of 12 May 2005, in which the filing of the instrument of ratification of Protocol No. 7 was made public, clearly indicates that a "declaration" was made under that head (see paragraph 107 above).

162. Turning to the wording of Portugal's "declaration", the Court notes that it clarifies the desired interpretation of Articles 2 and 4 of Protocol No. 7 (see paragraph 105 above). More specifically, this declaration means that the domestic application of these provisions is subject to the definition of the terms "criminal offences" and "offence" under domestic law. In other words, proceedings which were not classified as criminal under Portuguese law would not fall within the scope of Article 4 of Protocol No. 7 in relation to Portugal.

163. The Italian Government inferred from this that Portugal's declaration should be construed as a "conditional interpretative declaration" within the meaning of guideline 1.4 of the Guide, since the consent given by Portugal to be bound by Articles 2 and 4 of Protocol No. 7 was subject to that interpretation (see paragraphs 121 and 146 above). In the light of the substantive content of the declaration, however, the Court finds that the intention of the declaring State was to restrict the scope of Articles 2 and 4 of

Protocol No. 7 in respect of that State and to exclude from that scope any proceedings for offences which were not classified as criminal domestically. By making the application of Articles 2 and 4 of Protocol No. 7 conditional on their being interpreted in a particular manner, the aim pursued was indeed to produce a legal effect on their domestic application. The declaration by Portugal must therefore be treated as a "reservation" within the meaning of Article 57 of the Convention and of Articles 2 and 21 of the Vienna Convention (see paragraph 118 above).

164. Turning now to the validity of the declaration in question, the Court notes that, in the Chamber judgment, it was regarded as failing to meet the formal requirements laid down by Article 57 § 2 of the Convention (see paragraph 148 above). Having regard to its content, the Grand Chamber considers that it risks undermining the very essence of Article 4 of Protocol No. 7, since the mere fact that an offence is not classified as "criminal" under domestic law would suffice for it to be excluded from the scope of that provision. As such, it is incompatible with the object and purpose of Article 4 of Protocol No. 7, which seeks precisely to protect every individual against double jeopardy on the basis of an absolute right admitting of no derogation (see paragraph 200 below). It follows that the declaration is invalid.

165. Furthermore, like the Chamber, the Grand Chamber finds that, in the absence of a "brief statement" of the law then in force in Portugal which, at the time when Protocol No. 7 to the Convention was signed or its instrument of ratification deposited, was incompatible with the provision mentioned in the declaration, the requirements laid down by Article 57 § 2 of the Convention were not complied with either. Thus, as the Court has reiterated above, Article 57 § 1 of the Convention requires "precision and clarity" from the Contracting States, and the requirement of a "'brief statement of the law' both constitutes an evidential factor and contributes to legal certainty" (see the above-cited cases of *Belilos*, §§ 55 and 59; *Weber*, § 38; *Grande Stevens and Others*, § 208; and *Benavent Díaz*, § 48). Since the reservation made by Portugal omits to specify those provisions of Portuguese law which exclude offences or proceedings from the scope of Article 4 of Protocol No. 7, it fails to afford to a sufficient degree a guarantee that it does not go beyond provisions expressly excluded by the Contracting State in question (compare *Eisenstecken*, cited above, § 29, and *Grande Stevens and Others*, cited above, § 210; and contrast *Chorherr v. Austria,* 25 August 1993, § 20, Series A no. 266-B; *Kozlova and Smirnova*, cited above; *Steck-Risch v. Liechtenstein* (dec.), no. 63151/00, ECHR 2004-II; and *Benavent Díaz*, cited above, § 62). In this connection, the Court reiterates that even significant practical difficulties in indicating and describing all of the provisions concerned by a reservation cannot justify a failure to comply with the conditions set out in Article 57 of the Convention (see *Grande Stevens and Others*, cited above, § 210 *in fine*).

166. In the present case, therefore, the absence of a “brief statement of the law concerned” further disqualifies the reservation made by Portugal in respect of that provision.

(c) Conclusion

167. The Court concludes that it has jurisdiction *ratione materiae* to examine the applicant’s complaint under Article 4 of Protocol No. 7 to the Convention.

B. Merits

1. The parties’ submissions

(a) The applicant

(i) Whether the proceedings at issue in the present case were criminal in nature

168. The applicant submitted that the administrative proceedings instituted against him by the BdP and the CMVM were criminal in nature within the meaning of Article 4 of Protocol No. 7, since their aim was both deterrent and punitive.

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

169. The applicant alleged that the proceedings initiated against him by the BdP, the criminal-law authorities and the CMVM respectively in the wake of the same report by a BCP shareholder had concerned a set of factual circumstances that were inextricably linked together in time and space, namely the setting-up of a system of circular trading through offshore companies controlled by the BCP while he had been vice-chairman of its board of directors. Relying on the “*idem factum*” test established in the *Sergey Zolotukhin* judgment (cited above, § 82), he submitted that the three sets of proceedings had concerned the same facts.

170. He pointed out that, even though the domestic courts had acknowledged that the facts attributed to him in the three sets of proceedings were similar, they had found that they were not the same under the “*idem crimen*” test, which took into account the legal interest which the offence in question had been defined to protect, whereas the Court’s case-law and that of the CJEU were based on the “*idem factum*” test.

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

171. The applicant submitted that the case-law established in *A and B v. Norway* (cited above) had restricted the scope and impaired the very essence of the right guaranteed by Article 4 of Protocol No. 7, even though it was an inviolable and non-derogable right. In his view, the judgment called

into question the principles of *res judicata* and legal certainty, giving the State *carte blanche* to multiply authorities and procedures in order to try the same person for the same acts.

172. He argued that, in order to ensure respect for the *ne bis in idem* principle, States should establish a single set of criminal proceedings to punish the most serious and complex types of unlawful conduct fully and proportionately, while guaranteeing the rights of the defence and avoiding the burden resulting from multiple sets of proceedings. In his view, the criteria established in *A and B v. Norway* (cited above) for determining whether there was a sufficiently close "connection in substance and in time" between sets of proceedings were unclear. More specifically, he questioned that judgment's *de facto* reintroduction of the protected legal interest, or the legal classification of the offence, as a criterion for determining whether or not there had been a duplication of proceedings, despite the fact that it had been excluded from the "*idem*" test in *Sergey Zolotukhin* (cited above). He submitted that, by way of the requirement of proportionate sanctions, the *A and B v. Norway* (cited above) judgment admitted an exception to the *ne bis in idem* principle that was incompatible with the absolute and non-derogable nature of the right guaranteed by Article 4 of Protocol No. 7. In his view, there were no compelling grounds that could justify a restriction on that principle. He urged the Court to revert to the case-law set out in *Sergey Zolotukhin* (cited above) and *Grande Stevens and Others* (cited above) in order to restrict the States' margin of appreciation in criminal matters and better protect individuals against uncertainty and arbitrariness.

173. The applicant submitted that if the Grand Chamber opted to rely on the criteria established in *A and B v. Norway* (cited above) in its assessment of the present case, it should acknowledge the lack of a "connection in substance and in time" between the three sets of proceedings in issue and find – for the following reasons – that there had been a duplication of the proceedings against him in respect of the same facts, in breach of Article 4 of Protocol No. 7.

174. Firstly, the sets of proceedings in question had not pursued complementary purposes. In this connection, he argued that the legal interest protected by the criminal proceedings, namely, the general interest of society in having a properly functioning financial system, encompassed the interests addressed by the administrative proceedings instituted by the CMVM and the BdP, namely, the protection of investors and the banking system.

Secondly, he could not have foreseen, despite his position as vice-chairman of the BCP, that three sets of proceedings would be initiated against him for the same facts.

Thirdly, domestic law did not lay down any rules in order to avoid duplication in the collection and assessment of evidence. Admittedly, the authorities had met and there had been some interaction between them, but this had not amounted to coordination, as attested by the fact that the proceedings had stretched out over a 12-year period. The ten defendants and 147 witnesses had been heard in the three sets of proceedings in question, some of them multiple times. He had himself been interviewed 34 times. A criminal conviction, coupled with the imposition of ancillary sanctions, would have been sufficient to punish the impugned acts and, at the very least, the CMVM proceedings ought to have been discontinued once the criminal conviction had acquired the force of *res judicata*.

175. Fourthly, neither his acquittal in the BdP proceedings nor the prison sentence imposed on him in the criminal proceedings – suspended upon payment of EUR 300,000 to a charity – had been taken into account in the CMVM proceedings. He submitted that the domestic courts ought to have taken his acquittal into account, referring in this connection to the CJEU's decision in *Di Puma and Zecca* (cited in paragraph 134 above), which, like the present case, concerned a market-manipulation offence. In his view, the CMVM's refusal to take account of the prison sentence imposed on him in establishing the overall sanction in the proceedings before it, on the grounds that the sanctions differed in nature, had run counter to the aims pursued by the *ne bis in idem* principle. In this connection, the applicant referred to the judgment of the CJEU in *Garlsson Real Estate and Others*, in which it had held that Article 50 of the Charter precluded the pursuit of administrative proceedings following a criminal conviction (see paragraph 60 of the judgment cited in paragraph 133 above). He therefore criticised the Chamber's assessment on this point and alleged that it had not reviewed the proportionality of the sanctions imposed on him.

176. Fifthly, the applicant pointed out that there had been no connection in time between the three sets of proceedings, given the four-year interval between the end of the criminal proceedings and the BdP proceedings, on the one hand, and the end of the CMVM proceedings, on the other, referring, by comparison, to *Goulandris and Vardinogianni v. Greece* (no. 1735/13, §§ 79-80, 16 June 2022) and *Nodet v. France* (no. 47342/14, §§ 52-53, 6 June 2019).

(b) The Government

(i) Whether the proceedings at issue in the present case were criminal in nature

177. The Government submitted that the administrative proceedings conducted by the BdP and the CMVM could not be regarded as criminal proceedings for the following reasons. Firstly, the sanctions imposed in these sets of proceedings were classified as administrative (not criminal) and were therefore not entered in a criminal record. Secondly, such sanctions were of a purely pecuniary nature and could not be replaced by a custodial sentence in the event of non-payment. Thirdly, they applied to a limited and pre-defined category of persons with specific characteristics. Fourthly, the sanctions imposed were designed to ensure the proper functioning of the

administrative authorities in question. The Government urged the Court to assess the severity of the sanctions not *in abstracto* but *in concreto*. Lastly, they observed that in *Prina v. Romania* (no. 37697/13, §§ 53-54, 8 September 2020), the Court had found that the fine in question – which had features in common, both substantively and procedurally, with the administrative fines in the present case – was not a "criminal" sanction for the purposes of its case-law and, accordingly, that Article 4 of Protocol No. 7 was not applicable.

178. The Government argued that the criteria for determining whether a given set of proceedings was "criminal in nature" for the purposes of Article 4 of Protocol No. 7 did not necessarily have to coincide with the criteria used to assess the existence of a "criminal charge" within the meaning of Article 6 of the Convention.

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

179. The Government submitted that, despite the general context common to the three sets of proceedings in issue, the facts in respect of which the applicant had stood accused were different. They thus disputed the conclusion reached by the Chamber in its judgment of 8 October 2024, relying on the "*idem factum*" test established in *Sergey Zolotukhin* (cited above). In their view, for the facts to be found the same, they would have to be "identical", since "similar" facts would not suffice, let alone a similar context. They referred in this connection to the CJEU's judgments in *Engie România* (see paragraph 58 of the judgment, cited in paragraph 136 above) and *bpost* (see paragraph 36 of the judgment, cited in paragraph 135 above).

180. The Government noted that, despite their common context, the offences had been committed over a period of more than ten years, in interaction with third parties in various fields and in pursuit of different ends, citing, by way of comparison, *Ramda v. France* (no. 78477/11, 19 December 2017). It would be excessive to condense and integrate them all into a single factual "*idem*". They further pointed out that the domestic courts had ruled out that the facts could be considered identical and had found the offences to be different in the light of the objective and subjective elements proper to each, thus concluding that the *ne bis in idem* principle had not been breached. For this reason, the Government were of the view that the proceedings in issue in the present case had not concerned a set of factual circumstances which were inextricably linked together in time and space and had not concerned the same conduct on the part of the same defendant and within the same time frame, referring, in this connection, to *Maresti v. Croatia* (no. 55759/07, § 63, 25 June 2009). They emphasised that the facts at issue in the relevant sets of proceedings were not congruent, noting, in particular, as follows:

(a) The CMVM proceedings had concerned the false and incomplete information that had been provided to investors via the financial reporting system on specific dates, namely, on 31 March 2004, 11 April 2004, 20 April 2006, 28 June 2007, 6 November 2007 and 23 November 2007.

(b) The BdP proceedings had pertained to information submitted to it in its supervisory role in the period from 2002 to 2007, and to accounting information provided in letters and meetings.

(c) The criminal proceedings had concerned, in connection with the offence of market manipulation, the strategy implemented to inflate the price of shares in the BCP, a dimension that had been lacking in the CMVM proceedings. As to the offence of forgery and use of forged documents, it had concerned the information on the shares' liquidity, as disclosed in the accounting reports for 2000 to 2003, whereas the CMVM proceedings had involved information submitted to the financial reporting system.

181. The Government argued that the concept of an "offence" could not completely dispense with the protected legal interest underlying each one. In their view, the Court had to reflect on whether it was necessary to revisit the "*idem*" test established in *Sergey Zolotukhin*, given that the context had changed, especially since the 2008 financial crisis. They urged the Court to draw inspiration from the "*idem factum illicitum*" test that was used in the Constitutional Court's case-law, referring, in this connection, to judgments nos. 298/2021 and 816/2024 (see paragraphs 112 and 114-115 above). Where the protected legal interests diverged, complementary sets of proceedings should be allowed. Where the protected legal interests were congruent, however, the result would be a duplication of proceedings in breach of Article 4 of Protocol No. 7.

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

182. The Government acknowledged that Article 4 of Protocol No. 7 made no reference to a "connection in substance and in time" between different sets of proceedings. Nevertheless, they submitted that the principles laid down in the *A and B v. Norway* (cited above) judgment allowed for a fair balance to be struck between respect for the *ne bis in idem* principle and the duty of all States to punish unlawful conduct, if necessary by means of complementary sets of proceedings. They stressed that it was often necessary to institute criminal and administrative proceedings simultaneously where the issues in question required a high level of technical expertise, in particular in the sectors of the securities market, the environment, energy and civil aviation. To prevent States from punishing, through appropriate procedures, acts that had caused decades of damage to the Portuguese financial sector and its credibility would undermine the credibility of the State and its institutions, leaving citizens unprotected.

183. The Government argued that punishing such offences through a single set of proceedings would give rise to extremely complex and drawn-out procedures and would thus prevent the prompt and effective application of sanctions. In their view, therefore, the criteria established in the *A and B*

v. Norway (cited above) judgment were sufficiently precise to provide legal certainty for both States and litigants. Moreover, the Court's case-law was consistent with that of the CJEU (they referred to, among other authorities, the judgments in *Menci*, *Garlsson Real Estate and Others*, *Di Puma and Zecca*, *bpost*, and *Engie România*, cited in paragraphs 132-136 above).

184. With regard to the present case, the Government submitted that the question whether there had been a "final" decision was irrelevant, given that the proceedings had been conducted in parallel.

185. Next, they urged the Court to find that there had been no duplication of proceedings against the applicant, since the proceedings in question had been "sufficiently closely connected in substance and in time" to be regarded as forming a coherent whole, in accordance with Article 4 of Protocol No. 7, for the following reasons. Firstly, having regard to the different legal interests protected, the sets of proceedings had been intended to address different aspects of the applicant's wrongdoing and had therefore been complementary. Secondly, the sets of proceedings in question had been both foreseeable and justified. As vice-chairman of the BCP's board of directors, the applicant had voluntarily placed himself under the supervision of the regulatory administrative authorities of the financial and banking sectors and it was therefore natural that he had been subjected to different procedures in view of the breach of his duties towards those authorities. Thirdly, domestic law provided for continuous cooperation between judicial and administrative authorities conducting parallel sets of proceedings. In this connection, any duplication in the collection of evidence – in particular the prosecuting authorities' questioning of the applicant and witnesses – had been undertaken at the applicant's request. Fourthly, the sanctions imposed in both the criminal proceedings and the BdP proceedings had been taken into account in the CMVM proceedings, since the TPIC's judgment of 8 June 2018, which had been upheld by the Lisbon Court of Appeal on 11 July 2019, had taken into consideration the time during which the ancillary sanctions had already been enforced (see paragraphs 80 and 82 above). Fifthly, despite the time interval between the CMVM proceedings and the other two sets of proceedings, there had been a "connection in time" between the three, as they had been conducted in parallel most of the time.

2. *The third parties' submissions*

(a) The Italian Government

(i) The concept of "criminal proceedings" within the meaning of Article 4 of Protocol No. 7

186. The Italian Government argued that the concept of "criminal proceedings" was to be interpreted in the light of the terms "criminal charge" and "penalty" used in Article 6 and Article 7 of the Convention respectively.

They acknowledged that these notions could be interpreted autonomously, provided that they were not divorced from the legal systems to which they pertained. In their view, the domestic-law context was always to be taken into account when defining the contours of autonomous concepts, referring in this connection to the *Engel and Others v. the Netherlands* (8 June 1976, § 82, Series A no. 22) and *Öztürk v. Germany* (no. 8544/79, §§ 49-53, 21 February 1984) judgments, and to the dissenting opinion of Judge Matscher annexed to the *König v. Germany* (28 June 1978, Series A no. 27) judgment. They thus argued that a comparative analysis of the member States' various legal systems would show that administrative proceedings and sanctions such as those in the present case were not regarded as criminal in nature for the purposes of Article 4 of Protocol No. 7.

187. As to the *Engel* criteria on which the Court relied in order to determine whether proceedings should be regarded as criminal in nature, the Italian Government made a number of observations. Firstly, they emphasised that in applying the second criterion – the nature of the offence and of the penalty imposed – it was important to consider whether or not the legislation in question was directed against a specific group with a particular status (referring to *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284) and whether the procedures involved in its making and implementation were criminal or not (referring to *Welch v. the United Kingdom*, 9 February 1995, § 28, Series A no. 307-A). Secondly, they argued that the third criterion – the severity of the penalty – should be assessed not only in the abstract but taking also into account the particular sanction actually imposed on the person concerned, referring, in this connection, to *Campbell and Fell v. the United Kingdom* (28 June 1984, §§ 72-73, Series A no. 80).

188. The Italian Government added that it was important to distinguish the scope of Article 4 of Protocol No. 7 from that of Articles 6 and 7 of the Convention, as the characterisation as "criminal" for the purposes of Article 4 of Protocol No. 7 had to be construed restrictively. Referring to the *Vegotex International S.A. v. Belgium* ([GC], no. 49812/09, § 76, 3 November 2022) judgment, they argued that, for offences that fell outside the traditional categories belonging to the "hard core" of criminal law, the guarantees of Article 4 of Protocol No. 7 should not be applied with their full stringency.

*(ii) The concept of "offence" within the meaning of Article 4 of Protocol No. 7 (*idem*)*

189. The Italian Government asked the Court to revise the concept of "offence" developed in its case-law to have it include other objective elements, such as the causal link, the effect of the relevant conduct and the identity of the victim. They added that the protected legal interest should be taken into consideration, alongside the material facts. Since the concept of "protected legal interest" was closely related to the Convention concept of

"purpose pursued", it should always be possible to justify dual sanctions where different protected legal interests were at stake.

*(iii) The requisite criteria for determining whether the proceedings were part of an integrated system or whether there has been a duplication of proceedings (*bis*)*

190. Referring to the judgments of the CJEU in *Menci*, *Garlsson Real Estate and Others* and *Di Puma and Zecca* (cited in paragraphs 132-134 above), the Italian Government observed that the CJEU's case-law was aligned with that of the Court in considering that a combination of proceedings pursuing complementary aims was acceptable in order to address different aspects of unlawful conduct.

191. Nevertheless, they submitted that clarification was needed regarding the concept of a "connection in time" laid down in the *A and B v. Norway* (cited above) judgment. In their view, the length of proceedings could not be considered a relevant criterion for establishing such a connection, since the duration of different sets of proceedings could vary depending, first, on their particular characteristics and, second, on the defendants' exercise of their defence rights. Moreover, the time interval between two sets of proceedings might be justified by the different and complementary aims pursued and by different methods of collecting and assessing evidence.

(b) The European Criminal Bar Association (ECBA)

192. As a preliminary consideration, the ECBA emphasised that the *ne bis in idem* principle was the cornerstone of the principle of legal certainty and had both a substantive dimension (linked to the rationality and proportionality of sanctions) and a procedural dimension (linked to the multiplication of proceedings), whence the need for a strict interpretation that was protective of the rights of the individual. The principle was thus a safeguard against the abuse of State power, conferring on all those who had been tried and convicted the right to move on.

193. The ECBA acknowledged that the *A and B v. Norway* judgment had marked a shift from the Court's earlier, more rigid interpretation of the *ne bis in idem* principle and had, in a number of practical contexts, contributed to ensuring a certain degree of rationality and proportionality in dual-track proceedings. However, that judgment deserved to be clarified in order for robust procedural safeguards and limits to be put in place.

194. The ECBA submitted that, even when a sufficiently close connection in substance and in time was established between different sets of proceedings, it was important, for the purposes of compatibility with Article 4 of Protocol No. 7, that the principle of proportionality be respected, in particular in the following three ways.

Firstly, the combined sanctions, the reputational consequences for the defendant and the psychological stress resulting from the multiplication of proceedings had to be commensurate with the gravity of the offences committed and could not undermine the overall fairness of the enforcement framework. Moreover, an upper limit had to be set by law on any combined criminal and administrative sanctions. That limit was also to take account of any psychological harm and non-pecuniary damage sustained as a result of the multiplication of proceedings. Such a legal framework would have to be established to ensure that any duplication of sanctions remained proportionate to the seriousness of the offences concerned, as would be the case in a single, integrated set of proceedings.

Secondly, the proceedings in issue had to be not only procedurally coordinated but also substantively harmonised in order to prevent the same aspect of the offending conduct from being punished twice. Consequently, coordination mechanisms were to provide that the overall quantum of the sanctions not exceed certain limits and that any sanction already imposed be taken into account in subsequent proceedings.

Thirdly, in the light of the principle of legal certainty, it had to be possible for individuals not only to anticipate that dual sets of proceedings could be brought against them but also to have confidence that finality would be respected.

195. The ECBA submitted that the very existence of multiple sets of proceedings over a prolonged period of time was in itself punishment for the person concerned, regardless of the outcome. Such a situation should therefore remain exceptional and be based on compelling grounds. Furthermore, even if dual sets of proceedings were permitted, they should not undermine the defence rights of the individuals concerned. However, the fragmentation of proceedings and their allocation to different authorities, applying different procedural rules, within different time frames, hindered the ability to develop coherent and effective defence strategies. In the ECBA's view, the individuals concerned ended up having to defend themselves simultaneously and successively in parallel sets of proceedings against them, which could result in inconsistencies in the assessment of the facts, in breach of the right to a fair trial. The ECBA submitted that the most troubling issue was the obligation for defendants to cooperate in administrative proceedings on pain of sanctions, even though their statements could then be used in the context of criminal proceedings. This infringed the defendants' right to remain silent and the privilege against self-incrimination. There had to be clear rules, therefore, to prevent the transfer and use of information obtained in this manner.

3. *The Chamber judgment*

196. In its judgment of 8 October 2024 the Chamber found, unanimously, that there had been no violation of the applicant's rights under Article 4 of Protocol No. 7. First, the Chamber found that the three sets of proceedings in issue had been criminal in nature. Next, it considered that it could "accept

that the facts giving rise to the three sets of proceedings in question were essentially the same”. Lastly, it held that, in the light of the principles laid down in *A and B v. Norway*, the three sets of proceedings complained of had been “sufficiently closely connected in substance and in time” and had thus formed a coherent whole, for the following reasons.

197. Firstly, the three sets of proceedings in question had pursued complementary purposes and addressed, not only *in abstracto* but also *in concreto*, different aspects of the socially reprehensible conduct involved.

Secondly, these sets of proceedings had been a foreseeable consequence, both in law and in practice, of the same impugned conduct.

Thirdly, they had been conducted by the criminal-law authorities, the CMVM and the BdP in a coordinated manner so as to avoid as far as possible any duplication in the collection and in the assessment of the evidence.

Fourthly, the ancillary sanction imposed in the criminal proceedings, which had also been enforced in the BdP proceedings, had been taken into account in the CMVM proceedings.

Fifthly, the Chamber found that there was a connection in time, given that the three sets of proceedings had been instituted more or less at the same time (from late 2007 to early 2008) and that, even though the CMVM proceedings had concluded only four years later – in view of the need to reassess the overall administrative sanction imposed on the applicant following the time-barring of the prosecution on one count of the administrative offence of which he had been found guilty – they had been conducted in parallel until 2015.

4. *The Court’s assessment*

198. The Court will first review the general principles from its existing case-law on the interpretation and application of the *ne bis in idem* principle set out in Article 4 of Protocol No. 7 (sub-headings (a) to (c) below). In the light of that review, it will seek to draw the necessary conclusions, clarifying and amending the relevant methodology and criteria as needed (sub-heading (d) below). Lastly, it will apply the *ne bis in idem* rule, as so interpreted by it, to the facts complained of by the applicant (sub-heading (e) below).

(a) General principles

199. 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 *Sergey Zolotukhin*, cited above, § 58; *Velkov v. Bulgaria*, no. 34503/10, § 44, 21 July 2020; and *Mihalache v. Romania* [GC], no. 54012/10, § 48, 8 July 2019). The question whether prosecution, trial or punishment have been duplicated is central to the legal problem addressed by Article 4 of Protocol No. 7 (see *Nikitin v. Russia*, no. 50178/99, § 35, ECHR 2004-VIII, and *Mihalache*, cited above, § 48).

200. Like Articles 2, 3, 4 § 1 and 7 of the Convention, this provision is not subject to derogation under Article 15, as indicated in its third paragraph (see *A and B v. Norway*, cited above, § 106). Nor can the right it enshrines be limited by the States. It must therefore be secured everywhere, to everyone, at all times.

201. The first paragraph of Article 4 of Protocol No. 7 sets out the three components of the *ne bis in idem* principle: the different sets of proceedings initiated "under the jurisdiction of the same State" (see paragraph 27 of the Explanatory Report to Protocol No. 7, cited in paragraph 122 above) must be "criminal" in nature; they must concern the same facts; and there must be duplication of the proceedings (see *Mihalache*, § 49, and *Velkov*, § 44, both cited above).

(b) Methodology and criteria hitherto used in relation to the *ne bis in idem* principle

(i) Criteria for determining whether proceedings are criminal in nature and fall within the scope of Article 4 of Protocol No. 7

202. Article 4 of Protocol No. 7 applies only to criminal matters. Paragraph 32 of the Explanatory Report to Protocol No. 7 clarifies that "Article 4, since it only applies to trial and conviction of a person in criminal proceedings, does not prevent him from being made subject, for the same act, to action of a different character (for example, disciplinary action in the case of an official) as well as to criminal proceedings" (see paragraph 122 above).

203. In order to determine whether proceedings are criminal in nature and fall within the scope of Article 4 of Protocol No. 7, the Court relies on the three *Engel* criteria relating to the concept of a "criminal charge" within the meaning of Article 6 § 1 of the Convention (see *Engel and Others*, cited above, § 82), namely, (1) the legal classification of the offence under national law, (2) the very nature of the offence and (3) the degree of severity of the penalty that the person concerned risks incurring – the second and third criteria being alternative, not necessarily cumulative, whilst a cumulative approach is not excluded (see *Sergey Zolotukhin*, cited above, § 53).

*(ii) Criteria for determining whether offences are the same for the purposes of Article 4 of Protocol No. 7 (*idem*)*

204. In the *Sergey Zolotukhin* judgment (cited above), the Court took the view that Article 4 of Protocol No. 7 had to be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arose from "identical facts" or facts which were "substantially the same" as those underlying the first offence.

205. The starting point for the Court's determination as to whether the facts in both sets of proceedings were identical or substantially the same is the statements of fact concerning both the offence for which the applicant had

already been tried and the offence of which he or she later stood accused. It is irrelevant which parts of the new charges were eventually upheld or dismissed in the subsequent proceedings, because Article 4 of Protocol No. 7 contains a safeguard against being tried or being liable to be tried again in new proceedings rather than a prohibition on a second conviction or acquittal (ibid., § 83).

*(iii) Criteria for determining whether there was a combination of proceedings forming a coherent whole (*bis*)*

206. In the *A and B v. Norway* (cited above, § 123) judgment, the Court held that Article 4 of Protocol No. 7 did not preclude legal systems which took 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. It added that a fair balance had to be struck between duly safeguarding the interests of the individual protected by the *ne bis in idem* principle, on the one hand, and accommodating the particular interest of the community in being able to take a calibrated regulatory approach in the area concerned, on the other (ibid., § 124).

207. 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 was no duplication of prosecution, 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 are "sufficiently closely connected in substance and in time". In other words, it must be shown that they are combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (ibid., § 130).

(α) Relevant criteria for determining whether there is a connection in substance

208. To date, 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 proceedings pursue complementary purposes and thus address, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;

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

– whether the relevant sets of proceedings are 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 competent authorities to ensure that the establishment of the facts in one set of proceedings is replicated in the other;

– and, above all, whether the sanction imposed in the proceedings which become final first is taken into account in those which become 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.

209. The Court has had occasion to emphasise, in *A and B v. Norway* (cited above) and a number of subsequent cases, that dual sets of proceedings will more likely meet the criteria of complementarity and coherence if the sanctions to be imposed in the set of proceedings not formally classified as "criminal" are specific to the conduct in question and differ from "the hard core of criminal law" on account of their nature, severity or stigmatising features (ibid., § 133, with reference to *Jussila v. Finland* [GC], no. 73053/01, § 33, ECHR 2006-XIV; for a more recent example, see also *Goulandris and Vardinogianni*, cited above, § 74, concerning an administrative fine for unlawful construction – a sanction found not to carry stigma and to be specific to the conduct in question).

210. The Court has also had occasion to examine, in the context of dual sets of proceedings, the question whether the continuation of the second set of proceedings after the first set has ended in an acquittal amounts to an infringement of the right guaranteed by Article 4 of Protocol No. 7 to the Convention. In *Kapetanios and Others v. Greece* (nos. 3453/12 and 2 others, § 67, 30 April 2015), prior to *A and B v. Norway* (cited above), the Court found that the continuation of the proceedings against the applicants in the administrative courts, despite the fact that they had been acquitted in a first set of proceedings in the criminal courts, had infringed the right guaranteed by Article 4 of Protocol No. 7, given that the nature of the two sets of proceedings in issue, the facts in question and the constituent elements of the offences involved were identical (*Kapetanios and Others*, cited above, § 74; see also *Sismanidis and Sitaridis v. Greece*, nos. 66602/09 and 71879/12, §§ 45-46, 9 June 2016). In a more recent judgment, *C.Y. v. Belgium* (no. 19961/17, 14 November 2023), the Court reached a different conclusion: having noted that the applicant had been finally acquitted in criminal proceedings in respect of material acts which had also been at issue in administrative proceedings (ibid., §§ 60 and 64), and emphasising the complementarity of the purposes pursued by each of the two sets of proceedings, it concluded, in the light of the criteria established in *A and B v. Norway* (cited above), that the criminal and administrative proceedings had been sufficiently closely connected in substance in the circumstances of the

case and that there had been no violation of Article 4 of Protocol No. 7 (see *C.Y. v. Belgium*, cited above, § 68). Noting that the reasons given for the acquittal handed down in the criminal proceedings – reasons based on the absence of fraudulent intent – had been duly examined by the courts ruling in the subsequent administrative proceedings (ibid., § 67), the Court found that the continuation of the administrative proceedings concerning the same facts had been justified in so far as they had concerned a negligent breach of the relevant legislation, as opposed to one committed with fraudulent intent.

211. More generally, the Court has clarified in its case-law that a decision constitutes an "acquittal" or a "conviction" where the question of the accused's "criminal" responsibility has been decided following an assessment of the circumstances of the case, in other words, where there has been a determination as to the merits of the case. The authority giving the decision must thus be vested by domestic law with decision-making power enabling it to examine the merits of a case. It must then study or evaluate the evidence in the case file and assess the applicant's involvement in one or all of the events prompting the intervention of the investigative bodies, for the purposes of determining whether "criminal" responsibility has been established (see *Mihalache*, cited above, § 97; see also *Smoković v. Croatia*, no. 57849/12, § 45, 12 November 2019, in which the Court found that the termination of proceedings on the basis of the expiry of the statutory limitation period had been neither a "conviction" nor an "acquittal" for the purposes of Article 4 of Protocol No. 7, which was therefore not applicable to that case).

(β) Relevant criteria for determining whether there is a connection in time

212. As to the connection in time, the Court held as follows in its *A and B v. Norway* (cited above, § 134) judgment:

> "Moreover, as already intimated above, 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, pursued for different social purposes, and has not caused the applicant to suffer disproportionate prejudice. However, as indicated above, the connection in time must always be present. Thus, the connection in time must be sufficiently close to protect the individual from being subjected to uncertainty and delay and from proceedings becoming protracted over time (see, as an example of such a shortcoming, *Kapetanios and Others*, cited above, § 67), 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."

(γ) Irrelevance of the question whether there was a final domestic decision in dual sets of proceedings

213. The issue whether a domestic decision is "final" or not is devoid of relevance when there is no real duplication of proceedings but rather a combination of proceedings considered to constitute an integrated whole (see *A and B v. Norway*, cited above, § 126; see also *Mihalache*, cited above, § 82).

(c) Considerations regarding the current methodology and its effects

214. The Court notes that, despite their apparent simplicity, the interpretation and application of the *ne bis in idem* principle by domestic courts in the light of the above criteria have given rise to difficulties and, at times, uncertainty, as noted by the parties and third parties in their submissions to the Grand Chamber (see paragraphs 171, 179, 189, 191 and 193 above). This is also borne out by the numerous questions referred by national courts to the CJEU for a preliminary ruling on the application of these criteria to proceedings conducted by administrative authorities set up under European regulations to punish, for example, tax evasion, money laundering and environmental damage, or to enforce competition law (see the examples cited in paragraphs 132-136 above).

215. As the present case clearly shows, the organisation of national legal systems has become increasingly complex in order to deal more efficiently with the proliferation of sophisticated forms of organised crime, or to protect modern democratic societies from the many challenges they face. A growing number of independent administrative authorities, equipped with particular expertise in a certain field and with specific means of action, have emerged in response to decriminalisation policies and to meet regulatory needs in various areas, such as the banking and financial sectors, competition, the environment, energy and civil aviation (see paragraph 102 above and the observations made by the Constitutional Court in its judgment cited in paragraph 115 above). These authorities have the power not only to regulate economic, social and environmental sectors, but also to inspect, supervise and impose sanctions. As they increase in number, the administrative proceedings instituted by these authorities to punish breaches of their regulations also tend to multiply, sometimes coming on top of ordinary criminal proceedings which are equally designed to protect fundamental interests of society.

216. The Court recognises the many challenges facing today's democratic societies. The domestic authorities' obligation to prevent criminal conduct and punish its perpetrators effectively, if need be through different procedures, while respecting the principles of legal certainty and *res judicata* inherent in compliance with the *ne bis in idem* rule (see *Mihalache*, cited above, § 116), leads the Court to reconsider the relevance of the methodology and criteria used thus far in its case-law under Article 4 of Protocol No. 7, as

the Convention is a living instrument which is to be interpreted in the light of present-day conditions and the current context.

(i) The concept of "criminal proceedings" used in Article 4 of Protocol No. 7

217. In its judgment in *A and B v. Norway* (cited above, § 107), despite raising questions as to the relevance of relying on the three *Engel* criteria to determine whether a given set of proceedings may be characterised as "criminal" for the purposes of Article 4 of Protocol No. 7, the Court chose not to question that approach, which it has continued to apply consistently in its subsequent case-law, without raising any difficulties in practice (see, among many other authorities, *Šimkus v. Lithuania*, no. 41788/11, §§ 41-42, 13 June 2017; *Bjarni Ármannsson v. Iceland*, no. 72098/14, § 40, 16 April 2019; *Mihalache*, cited above, §§ 54-55; *Velkov*, cited above, §§ 46-52; *Milošević v. Croatia*, no. 12022/16, §§ 29-30, 31 August 2021; *Goulandris Vardinoanni*, cited above, §§ 51-52; *Vasile Sorin Marin v. Romania*, no. 17412/16, §§ 41-42, 3 October 2023; and *C.Y. v. Belgium*, cited above, §§ 36-37).

218. Committed as it is to the stability and consistency of its case-law, the Court sees no reason to revisit the definition of the concept of "criminal proceedings" used in Article 4 of Protocol No. 7, especially as it is in line with the interpretation of that concept by the CJEU, which also relies on the *Engel* criteria to determine whether proceedings are criminal in nature for the purposes of any examination of the *ne bis in idem* principle, as guaranteed by various instruments of EU law (see paragraphs 25-26 of the CJEU's *bpost* judgment, cited in paragraph 135 above; see also *Kapetanios and Others*, cited above, § 73, where the convergence between the two European Courts as to the interpretation of the concept of "criminal" proceedings was already noted).

219. Furthermore, the Court reiterates that the Convention must be read as a whole and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see, among other authorities, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X; *Marguš v. Croatia* [GC], no. 4455/10, § 128, ECHR 2014 (extracts); *Merabishvili v. Georgia* [GC], no. 72508/13, § 293, 28 November 2017; *M.A. v. Denmark* [GC], no. 6697/18, § 144, 9 July 2021; and *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 208, 14 September 2022). When using the same terms, the Convention or the Protocols thereto should accordingly be taken to refer to the same concept (see, to similar effect, *Göktan v. France*, no. 33402/96, § 48, ECHR 2002-V, and *Merabishvili*, cited above, § 293). In the Court's view, the terms "criminal proceedings" 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).

220. In accordance with the rules of interpretation laid down in Articles 31 to 33 of the Vienna Convention (see paragraph 118 above), the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 118-19, 8 November 2016). However, as noted above (see paragraph 164 above), to exclude proceedings from the scope of Article 4 of Protocol No. 7 on the basis of what is classified as criminal under domestic law, or to confine the strict application of Article 4 of Protocol No. 7 to punishable offences belonging to the "hard core of criminal law" – in other words, offences punishable by the most severe and stigmatising penalties (see paragraph 209 above) – would run the risk of rendering ineffective a provision the object and purpose of which are precisely to protect every individual against double jeopardy on the basis of an absolute right admitting of no derogation (see paragraph 200 above).

*(ii) The concept of "offence" in Article 4 of Protocol No. 7 (*idem*)*

221. Since the *Sergey Zolotukhin* judgment (cited above), the "*idem*" condition – based on the "*idem factum*" requirement (see paragraph 204 above) – has been met where prosecution for a second "offence" originated in "identical" facts, or facts which were "substantially the same" as those constituting the material element of the first offence.

222. However, this approach has had the effect of broadening the scope of Article 4 of Protocol No. 7, while sometimes leading to difficulties in applying that provision, and even to uncertainty, particularly where, as in the present case, the material facts in the various sets of proceedings were undoubtedly complex, spread out over a significant period of time, or were not all carried over, from a substantive or chronological standpoint, from one set of proceedings to the other.

223. The Court therefore agrees with the respondent Government (see paragraph 179 above) that, in view of the challenges faced by the national authorities in protecting their populations from increasingly sophisticated forms of crime and wrongdoing, the current case-law requirement that the facts need only be "substantially the same" in order to consider the "*idem*" condition to be met does not suffice to establish that the same "offence" has been prosecuted in different sets of proceedings. The "*idem*" condition will henceforth be satisfied only where the material facts constitutive of the material element of the first "offence" are identical to those which gave rise to new proceedings; mere similarity shall no longer suffice.

224. The Court considers it useful to clarify that the concept of identity of the material facts must be understood to mean a set of concrete circumstances stemming from events which are substantially the same, in that they involve

the same perpetrator and are inextricably linked together in time and space. The starting point for the Court's determination of whether the facts in both sets of proceedings are identical must be the statements of fact concerning both the offence for which the applicant was tried first and the offence for which new proceedings were subsequently brought. For the purpose of establishing the "*idem*" condition, the relevant question is therefore whether the accusations against the person concerned refer to the same conduct, without regard to the differing legal classifications given to them by the domestic authorities.

225. The Court would further clarify, specifically with regard to dual or parallel sets of proceedings in which only part of the facts overlap (from a substantive or chronological standpoint), or which differ on minor points, that such a circumstance does not preclude the "*idem*" condition from being met. Thus, even where two or more sets of facts do not fully coincide, this condition can be regarded as being fulfilled where the material facts pertaining to the essential elements of the offence in question are identical. Mere similarity or contextual connection does not suffice, however. If the applicant has not been tried in respect of the same facts – and therefore for the same "offence" – in the dual or parallel sets of proceedings, there will be no "duplication of proceedings" for the purposes of Article 4 of Protocol No. 7 to the Convention.

226. The Court observes, moreover, that the case-law of the CJEU also holds that the *ne bis in idem* principle, as guaranteed in various instruments of EU law, is not intended to be applied where the facts in question are not identical but merely similar (see, for example, paragraph 36 of the *bpost* judgment, cited in paragraph 135 above; paragraph 58 of the *Engie România* judgment, cited in paragraph 136 above; and paragraph 37 of the *MSIG* judgment, cited in paragraph 137 above).

(iii) Criteria established in A and B v. Norway *for determining whether there was a combination of proceedings forming a coherent whole (*bis*)*

227. As indicated above, in *A and B v. Norway* (cited above, § 132) the Court held that Article 4 of Protocol No. 7 did not exclude the conduct of dual sets of proceedings, even to their term, provided that certain conditions were fulfilled. In particular, for the Court to be satisfied that there had been no duplication ("*bis*") of prosecution, trial or punishment, as proscribed by Article 4 of Protocol No. 7, the respondent State had to demonstrate convincingly that the dual sets of proceedings in question were "sufficiently closely connected in substance and in time". The Court went on to set out four criteria for establishing a connection in substance between different sets of proceedings (see paragraph 208 above). In addition to this list, it laid down the requirement that there should be a connection in time between the relevant sets of proceedings (ibid., § 134; see paragraph 212 above).

228. The Grand Chamber considers it appropriate to confirm this "calibrated" approach, as established in *A and B v. Norway* (cited above, § 107), while clarifying and refining the criteria used in that judgment and in the Court's subsequent case-law to determine whether the criminal proceedings in question entail, in substance or in effect, double jeopardy in breach of Article 4 of Protocol No. 7, or whether, in contrast, they are 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 (ibid., § 122).

(α) Criteria for determining whether there is a connection in substance between different sets of proceedings

229. As to the first criterion identified in the *A and B v. Norway* judgment (cited above, § 132) for determining whether there is a sufficiently close connection in substance between the sets of proceedings in issue, the Court's subsequent case-law shows that the examination of the difference and complementarity between the "purposes pursued" by each set of proceedings has played a predominant role in establishing a connection in substance between them (see, for example, *Velkov*, cited above, § 78, with regard to administrative proceedings and criminal proceedings for disturbances of public order; *Tsonyo Tsonev v. Bulgaria (No. 4)*, no. 35623/11, § 51, 6 April 2021, with regard to administrative proceedings and criminal proceedings in connection with an altercation in a third party's home; *Milošević*, cited above, §§ 39-40, with regard to proceedings for a minor offence and criminal proceedings for the use of heating oil as car fuel; and *Vasile Sorin Marin*, cited above, § 58, with regard to administrative proceedings and criminal proceedings for public-order disturbances in a night club).

230. On this point, the Grand Chamber considers it important to clarify that it will henceforth be necessary to refer, under the "*bis*" test, to the difference and complementarity between the protected legal interests or social values which the proceedings seek to address in prosecuting the defendant for the same offending acts. The Court thus finds that, in a punitive system based on a combination of proceedings, it is more appropriate to take account of protected legal interests or social values, since these concepts, while still closely related to that of "purposes pursued", refer both to individual or particular interests and to those needs and values of the community which the offence in question affects or interferes with, thus providing a clearer picture of how the proceedings in question address different aspects of the offending conduct (for examples of protected legal interests or social values, see *Garretta*, cited above, with regard to the protection of contractual expectations; *A. Menarini Diagnostics S.R.L. v. Italy*, no. 43509/08, § 40, 27 September 2011, with regard to the protection of free competition on the market; *Grande Stevens and Others*, cited above,

§ 96, with regard to guaranteeing the integrity of the financial markets and public confidence in the security of transactions; and *Faller and Steinmetz v. France* [Committee], no. 59389/16, § 47, 29 September 2020, with regard to the protection of public confidence in medical professions).

231. In the Court's view, taking account of the protected legal interest or social value under the "*bis*" test will also reinforce the requirement that dual sets of proceedings be foreseeable in the domestic legal system, both in law and in practice. For the Court, this second criterion identified in *A and B v. Norway* (cited above) is still relevant for the purpose of determining whether there is a sufficiently close connection in substance between the sets of proceedings in question. Where a punitive system allows social wrongdoing to be addressed through different sets of proceedings or through parallel stages of legal response by different authorities for different purposes, such an organisation must be based on clear and consistent rules in order to ensure that any further prosecution or proceedings are foreseeable. The Court will return to this point (see paragraphs 236-237 below).

232. Turning to the third criterion established in the *A and B v. Norway* (cited above) judgment, which seeks to determine 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, notably through adequate interaction between the various competent authorities, the Court recognises that this requirement may come into conflict with other imperatives – in particular the need to ensure the independence of the courts when deciding a case – or undermine the rights of the defence, having regard, in particular, to the different standards of proof applicable to criminal and administrative proceedings, the former being subject to stricter requirements with regard to proving the facts, which must be established "beyond reasonable doubt" in order to protect the rights of the accused, whereas the latter, being mainly aimed at establishing the reality of a particular situation, are more flexible and are governed by a less rigorous evidential standard, as noted by the ECBA in its observations (see paragraph 195 above). As a result, the requirement that proceedings be conducted in such a manner as to avoid as far as possible any duplication in the collection and assessment of evidence may sometimes, if strictly and automatically applied, be detrimental to the accused's defence rights: this explains, for example, why in the *Galović* judgment (cited above, § 120) the Court held that a connection in substance was established between the two sets of proceedings in issue, notwithstanding the duplication in the taking of some evidence, which it considered justified in order to safeguard the accused's defence rights.

233. The Court would therefore clarify that, while the criterion requiring coordination in the collection and assessment of the evidence so as to avoid as far as possible any duplication (see paragraph 208 above) remains relevant when examining the connection in substance between sets of proceedings, such a connection may nevertheless be established between the two sets of

proceedings in question despite duplication of the evidence taken, where this is justified by other legitimate imperatives, such as those listed in paragraph 232 above.

234. Turning now to the final criterion identified in *A and B v. Norway* (cited above) for determining whether there is a sufficiently close connection in substance between the sets of proceedings in issue, namely, whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last and, accordingly, whether the overall sanction imposed on the defendant was proportionate, the Grand Chamber would clarify that, although it comes last on the list of criteria to be met, it should have a prominent – if not decisive – role in determining whether there is a sufficiently close connection in substance between the sets of proceedings in issue.

235. It would indeed appear crucial, to the extent that Article 4 of Protocol No. 7 allows for an "integrated" approach to the social wrongdoing in question, and in particular one involving parallel stages of legal response by different authorities and for different purposes, that such an organisation of the punitive system should not impose an excessive burden on the individual concerned (see, to similar effect, the case-law of the CJEU, in particular the judgments in *Menci*, paragraph 63; *Garlsson Real Estate*, paragraph 55; and *bpost*, paragraph 51, cited in paragraphs 132, 133 and 135 above). In the Court's view, this risk is less likely to arise where clear, effective and consistent rules are in place to ensure coordination in the conduct of the sets of proceedings, in a manner respectful of defence rights, and the imposition of an overall sanction that is proportionate to the seriousness of the offending acts.

236. It is therefore essential that such rules be laid down by domestic law, for example, by means of provisions giving precedence to one set of proceedings over the other on the basis of speciality or absorption, or the setting of an upper limit on overall sanctions, understood as the totality of the sanctions imposed on the defendant in the various sets of proceedings against him or her in respect of identical facts. It is also important, in practice, that the domestic authorities examining the same facts in parallel sets of proceedings conducted for different purposes give relevant and sufficient reasons in support of their decisions, explicitly indicating whether the sanction imposed in the proceedings which became final first or any acquittals were taken into account in the proceedings which became final last, and if so, to what extent.

237. In sum, in order to determine whether there is a sufficiently close connection in substance between the dual sets of proceedings in issue, it will be necessary to examine, in the light of the principles of foreseeability and proportionality, whether domestic law lays down clear, consistent and effective rules capable of ensuring coordination in the conduct of the proceedings and the imposition of an overall sanction that is proportionate to

the seriousness of the offending acts. In the event of an acquittal in the proceedings which became final first, it will also be necessary to ensure that the grounds given were duly taken into account by the authorities taking the later decision. It will then be necessary to ascertain whether the different sets of proceedings in issue were indeed conducted in a coordinated manner, while respecting the rights of the defence, and whether the overall sanction imposed on the defendant was in fact proportionate to the seriousness of the acts of which he or she stood accused. The approach thus taken must be such as to avoid placing an excessive burden on the individual concerned at the end of the proceedings which became final last or calling into question the *res judicata* effects of a previous final acquittal.

(β) Criteria for determining whether there is a connection in time between different sets of proceedings

238. With regard to establishing a connection in time, the Court notes that, in order to ascertain whether such a connection was established in cases subsequent to *A and B v. Norway* (cited above), it relied on the criteria for determining the reasonableness of the length of proceedings under Article 6 § 1 of the Convention. It thus found a connection in time where the dual sets of proceedings in question had essentially been conducted in parallel (see, for example, *A and B v. Norway*, § 146, and *C.Y. v. Belgium*, § 69, both cited above) and no such connection where there was a difference in duration between the sets of proceedings in issue (see, for example, the above-cited cases of *Johannesson and Others*, § 54; *Nodet*, §§ 52-53; and *Goulandris and Vardinogianni*, §§ 79-80).

239. However, the Court agrees with the intervening Government (see paragraph 191 above) that it is not necessarily appropriate to establish a connection in time on the basis of the criteria relating to the length of proceedings. Administrative proceedings are, as a rule, dealt with more quickly than criminal proceedings (see, for example, the above-cited cases of *Bjarni Ármannsson*, § 56; *Nodet*, § 52; and *Vasile Sorin Marin*, § 55). Moreover, protracted proceedings are often the result of circumstances that cannot always be attributed to the domestic courts, for example, delays caused by the need to ensure the rights of the defence, or even by dilatory conduct on the part of the persons concerned.

240. In the light of these considerations, the Court considers it important to clarify that the prolongation of one set of proceedings in relation to another set conducted in parallel does not, in itself, pose such a problem that the connection in time between them is severed, thereby automatically entailing a breach of Article 4 of Protocol No. 7. Nevertheless, the requirement of a connection in time, as defined in *A and B v. Norway* (cited above, § 134), remains and must be satisfied even where the connection in substance between dual sets of proceedings against the same defendant is sufficiently strong: where the relevant national system provides for an "integrated"

scheme separating one or more administrative components and a criminal component, a connection in time between the different sets of proceedings must always be present. This connection must be sufficiently close to protect the individual concerned from being subjected to uncertainty and delay. The weaker the connection in time – with too long an interval between sets of proceedings – the greater the burden on the State to explain and justify any delays (ibid.).

(γ) Irrelevance of the question whether there was a final domestic decision in dual sets of proceedings

241. The Court confirms that the question whether a domestic decision is “final” or not is devoid of relevance when there is no real duplication of proceedings but rather a combination of proceedings considered to constitute an integrated whole (see paragraph 213 above). That being said, this question remains relevant nonetheless when ascertaining compliance with the requirement that the overall sanction imposed on the same defendant for identical acts be proportionate: as the Court has just pointed out, the sanction imposed in the proceedings which became final first, namely, the proceedings which concluded with a “final” domestic decision, will have to have been taken into account – in a reasoned manner – in the proceedings which became final last (see paragraph 236 above). The Court reiterates that insufficient reasoning or shortcomings in the reasoning of domestic authorities endowed with the power to punish may lead to the finding of a violation of Article 4 of Protocol No. 7 where these omissions prevent it from effectively exercising its scrutiny as to whether those authorities have met the standards established in its case-law (see paragraph 236 *in fine* above).

(d) The new approach to be followed in relation to the *ne bis in idem* principle

242. The Court reiterates that the guarantee enshrined in Article 4 of Protocol No. 7 occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency (see *Mihalache*, cited above, § 47; see also the general principles set out in paragraphs 199-200 above).

243. As the Court has just pointed out, the present case has provided it with the opportunity, in view of the growing complexity in the organisation of national legal systems and the many challenges faced by modern democratic societies (see paragraphs 215-216 above), to reflect on the relevance of the method and criteria used to examine each of the three components of the *ne bis in idem* principle, as restated in paragraph 201 above. The new approach to be used henceforth is summarised below.

(i) The concept of "criminal proceedings" within the meaning of Article 4 of Protocol No. 7

244. It is appropriate to maintain the approach, based on the *Engel* criteria, to determining whether proceedings are "criminal" in nature such that they fall within the scope of Article 4 of Protocol No. 7. As indicated above (see paragraph 203 above), this examination should take account of (1) the classification of the offence at issue in the proceedings under domestic law, (2) the very nature of the offence and (3) the degree of severity of the penalty that the person concerned risks incurring – the second and third criteria being alternative, and not necessarily cumulative, whilst a cumulative approach is not excluded (see *Sergey Zolotukhin*, cited above, § 53). If two or more sets of proceedings against the same defendant are found to be "criminal" in nature for the purposes of Article 4 of Protocol No. 7, it will then be appropriate to ascertain whether he or she has been tried and punished more than once for the "same offence" (*idem*).

*(ii) The concept of "offence" within the meaning of Article 4 of Protocol No. 7 (*idem*)*

245. For the "*idem*" condition to be satisfied, the material facts alleged against the same defendant in two or more sets of proceedings must be identical. Where two or more sets of facts are not similar in all respects (from a substantive or chronological standpoint), or if they differ on minor points, the "*idem*" condition can be regarded as being fulfilled, provided that the facts pertaining to the essential elements of the offence coincide (see paragraphs 223-225 above). The starting point for this examination will be to compare the statements of the facts in respect of which the defendant stood accused in the separate sets of proceedings, as reflected in the formal accusations or indictments, or in the relevant domestic decisions (see paragraph 224 above). Such a comparison should be capable of establishing, on the basis of the specific circumstances put forward by the competent domestic judicial or administrative authorities, whether the sets of proceedings complained of concerned the same facts (see paragraph 224 above) and involved the same defendant.

246. Where the applicant has not been prosecuted for the same acts and therefore for the same "offence" in the dual sets of proceedings, in other words, where there is no double identity – of the offender and of the material facts – then there is no "duplication of proceedings", as proscribed by Article 4 of Protocol No. 7 to the Convention. The question whether a decision is "final" will not arise in this case; nor will the question whether there was a combination of proceedings forming part of an integrated punitive system.

(iii) The criteria for determining whether there was a combination of proceedings forming part of an integrated punitive system

247. In the event that the same defendant has indeed been prosecuted for the same "offence" in dual sets of proceedings, the "calibrated" approach established in *A and B v. Norway* (cited above, § 107) remains applicable for the purpose of determining whether the impugned criminal proceedings entail, in substance or in effect, double jeopardy in breach of Article 4 of Protocol No. 7 or whether, in contrast, they are 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 (ibid., § 122)

248. The Court reaffirms in this connection that 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 was no duplication of prosecution, 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 legal interests protected through each set of proceedings should be different, but also that the means used to protect them should in essence be complementary and linked in time. More specifically, the consequences of the legal treatment of the offending conduct should be foreseeable and proportionate for the persons affected.

249. In the Court's view, it seems essential that such an organisation of the punitive system on the basis of a combination of proceedings should not impose an excessive burden on the individual concerned, this risk being less likely to arise where clear, effective and consistent rules are in place to ensure coordination in the conduct of the proceedings and the imposition of an overall sanction that is proportionate to the seriousness of the offending acts. The Court refers to paragraphs 234-237 above regarding the decisive nature of the requirement that the overall sanction imposed on the defendant be proportionate in relation to the seriousness of the accusations against him or her and the various means of ensuring compliance with this requirement, both through legislation and in practice.

250. To sum up, the criteria to be satisfied in order for the proceedings in issue to be regarded as sufficiently connected in substance and in time, and therefore as compatible with Article 4 of Protocol No. 7, are as follows:

(a) whether the sets of proceedings in question were intended to address different protected legal interests;

(b) whether the multiplicity of proceedings was provided for by domestic law and was foreseeable;

(c) whether domestic law laid down clear and effective rules to ensure coordination in the conduct of the sets of proceedings, in a manner respectful of defence rights, and the imposition of an overall sanction that was proportionate to the seriousness of the offending acts;

(d) whether the sets of proceedings in question were conducted in a coordinated manner, while respecting the rights of the defence, and, above all, whether the overall sanction imposed was proportionate to the seriousness of the offending acts, such that the individual concerned was not made to bear an excessive burden at the end of the last set of proceedings in issue and the *res judicata* effects of a previous final acquittal were not called into question;

(e) whether the sets of proceedings in question were sufficiently closely connected in time to protect the individual concerned from being subjected to uncertainty and delay.

251. If these criteria are satisfied, dual sets of proceedings against the same defendant in respect of identical facts may be regarded as forming part of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable, proportionate and coherent manner, so that the individual concerned is not thereby subjected to injustice. There will thus be no "duplication of proceedings" as proscribed by Article 4 of Protocol No. 7.

(e) Application of this approach to the present case

(i) Whether the proceedings at issue in the present case were criminal in nature

252. In the present case, it is evident that the proceedings brought against the applicant by the Lisbon public prosecutor's office were criminal in nature. The question therefore only arises in relation to the proceedings instituted against him by the BdP and the CMVM.

253. With regard to the CMVM proceedings, the Court notes that it previously held in *Costa Santos v. Portugal* ((dec.), no. 64144/14, §§ 60-62, 19 September 2023) that such proceedings concerned a "criminal charge", such that Article 6 of the Convention was applicable under its criminal head (see, to similar effect, *Messier v. France* (dec.), no. 25041/07, 19 May 2009; *Grande Stevens and Others*, cited above, §§ 95-99; and *Nodet*, cited above, § 43, judgments which all concerned proceedings conducted by financial market regulatory authorities).

254. The Court finds that the reasoning previously followed to reach this conclusion can be applied to the present case for the purposes of its examination under Article 4 of Protocol No. 7. While the administrative offence of failure to comply with the obligation to provide quality information, for which the applicant was prosecuted by the CMVM, is not formally classified as criminal under domestic law, there are nevertheless a number of indications that it is "criminal" in nature.

255. Firstly, the sanctions for this offence are imposed by the CMVM, in its capacity as the supervisory and regulatory authority for the securities

market (see paragraph 95 above), in order to ensure that it is able, in the general interest, to fulfil its mandate to ensure the proper functioning of the financial markets, but also to punish acts liable to disrupt that functioning. The Court concludes that the purposes pursued by the prosecution of this offence are both deterrent and punitive, as are all criminal proceedings in the classic sense (see *Sergey Zolotukhin*, cited above, § 55; and compare *A. Menarini Diagnostics S.R.L.*, cited above, § 40).

256. Secondly, the imposition of an administrative sanction under Article 405 §§ 1 and 2 of the Securities Code presupposes a finding of guilt (contrast *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, § 42, 23 October 2018) and takes account of the threat or damage to investors and the securities market, together with the *ad hoc* or repeated nature of the offence. Sanctions imposed by the CMVM are therefore not directed solely at a specific group of natural or legal persons.

257. Thirdly, as to the degree of severity of the sanction, which is determined with reference to the maximum potential penalty, rather than the actual penalty imposed (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 120, ECHR 2003-X, and *Mihalache*, cited above, § 61), the Court notes that, as in force at the relevant time, Article 388 § 1 (a) of the Securities Code imposed an administrative fine (*coima*) of up to EUR 2,500,000, to which could be added one of the ancillary sanctions provided for in Article 404 of the Securities Code (see paragraph 96 above), which are also intended to punish and to prevent any further offences. Even though the administrative fine in question could not be replaced by a prison sentence in the event of non-payment, the Court takes the view that the severity of the sanctions potentially incurred by the applicant for the administrative offences of which he stood accused is undeniable. Moreover, it notes that he was ordered to pay a substantial fine of EUR 480,000 in those proceedings (compare *A. Menarini Diagnostics S.R.L.*, cited above, § 41).

258. As to the BdP proceedings, the Court observes that the applicant was prosecuted on three counts of the administrative offence of reporting false or incomplete information to the BdP and on six counts of false accounting (see paragraph 22 above). For the same reasons as those set out in the foregoing assessment of the CMVM proceedings, it finds that, even though these offences were not classified as criminal under domestic law, they have a criminal connotation. Like any criminal offence, they pursue both deterrent and punitive aims, namely, to prevent further offences, having regard to the BdP's mandate in the general interest as the Portuguese central bank entrusted with ensuring the stability of the financial system so as to avoid any systemic effects (see paragraph 93 above; see also, in this connection, *Freire Lopes v. Portugal* (dec.), no. 58598/21, § 58, 31 January 2023). Nor is there any doubt as to the severity of the penalties potentially incurred by the applicant in the BdP proceedings, as he was liable, under Article 211 of the RGICSF, to an administrative fine of up to PTE 20,000,000, or approximately

EUR 100,000, for each count of the administrative offence – a fine to which could further be added the ancillary sanctions provided for in Article 212 of the RGICSF (see paragraph 94 above).

259. Having regard to the foregoing observations, the Court concludes, as did the Chamber, that the offences of which the applicant stood accused were criminal in nature within the autonomous meaning of Article 4 of Protocol No. 7, and therefore that the proceedings initiated against him by the BdP and the CMVM did indeed amount to criminal proceedings for the purposes of that provision.

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

260. The Court notes that there is only a partial overlap – from a substantive and chronological standpoint – between the sets of facts in respect of which the applicant stood accused in the three parallel sets of proceedings conducted against him by the criminal-law authorities, the BdP and the CMVM, respectively. As the Court has just pointed out (see paragraphs 225 and 245 above), the "*idem*" condition can be met in such a situation, provided that the material facts pertaining to the essential elements of the offence in question are identical.

261. Comparing the statements of the facts in respect of which the applicant stood accused by the criminal-law and administrative authorities in the different sets of proceedings against him, the Court notes that he was first prosecuted by the BdP, for the following acts:

(a) With regard to the administrative offence of reporting false or incomplete information (Article 211 (r) of the RGICSF; see paragraph 94 above): for having, in the period from 2000 to 2007, neglected to inform the BdP of the existence of offshore companies controlled by the BCP and of the loans they had been granted with a view to having them acquire and sell shares in the BCP or in other companies belonging to the BCP financial group, and for having given evasive, incomplete and false replies to the BdP's various questions and requests for clarification in that same period (see paragraph 22 above);

(b) With regard to the administrative offence of false accounting (Article 211 (g) of the RGICSF): for having failed to disclose, in the BCP's accounting reports and in those of the BCP financial group, the bank's controlling interest in the offshore companies and the financial losses it had incurred as a result of the drop in the value of its shares from 2001 onwards (see paragraph 22 above).

262. Secondly, the applicant was prosecuted by the public prosecutor's office at the Lisbon District Court, for the following acts:

(a) With regard to the criminal offence of market manipulation (Article 379 § 1 of the Securities Code; see paragraph 96 above): for having participated, from the late 1990s to the early 2000s, in the setting-up and financing of offshore companies placed under the control of the BCP, for the purpose of having them acquire and sell shares in the BCP in order to increase their value on the financial market artificially (see paragraph 38 above);

(b) With regard to the criminal offence of aggravated fraud (Articles 217 § 1 and 218 § 2 (a) of the Criminal Code; see paragraph 92 above): for having received, from 2000 to 2004, as a member of the board of directors of the BCP, no less than EUR 2,931,448 in dividends on the basis of overvalued balance sheets (see paragraph 38 above);

(c) With regard to the criminal offence of forgery and use of forged documents (Article 256 § 1 (d) and (e) of the Criminal Code; see paragraph 92 above): for having reported false information on the offshore companies and their financing, and on the BCP's financial situation and the true value of its shares, to the financial market through advertising campaigns to promote the sale of BCP shares and in the annual and quarterly reports on the bank's individual and consolidated accounts from 1999 to 2007, as submitted to the CMVM's information disclosure system (see paragraph 38 above).

263. Thirdly, the applicant was prosecuted by the CMVM for failure to comply with the obligation to provide it with quality information (Articles 7, 388 § 1 (a) and 389 § 1 (a) of the Securities Code; see paragraphs 96-98 above), for the following acts: contributing – as a member and later vice-chairman of the BCP's board of directors, and, lastly, as chairman of its executive committee – to the dissemination, via the information disclosure system, of false and incomplete information in the bank's consolidated accounting reports for 2003-2007, as approved by the general meeting of the BCP's shareholders, and in a December 2007 press release to the financial market, as to the existence of the offshore companies, the liquidity of the shares sold on the financial market by the BCP and the financial losses incurred (see paragraph 62 above).

264. From a substantive or chronological standpoint, each of these sets of proceedings concerned only part of the facts forming the subject matter of the others, although they overlapped in certain respects. For instance, the facts pertaining to the setting-up of the impugned offshore companies, the financial transactions carried out by them in order to manipulate the BCP's share price and the dividends paid to the applicant were only attributed to him in the criminal proceedings (see paragraph 38 above).

265. However, the criminal-law authorities further prosecuted the applicant for submitting false information to the BdP and the CMVM, acts for which these authorities had also initiated proceedings against him. It is therefore true that he was prosecuted by the criminal-law authorities, the BdP and the CMVM for having provided the latter two with false information over the same period from 2003 to 2007 (see paragraphs 261-263 above). The material facts pertaining to the essential elements of the offences for which the applicant was prosecuted in the criminal proceedings and the BdP proceedings, on the one hand, and in the criminal proceedings and the CMVM

proceedings, on the other, were therefore identical. The "*idem factum*" condition is accordingly met.

266. The Court notes that in the present case the domestic courts dealing with the proceedings against the applicant for criminal and administrative offences committed in the context of his duties as a member and, later, as vice-chairman of the board of directors of a commercial bank found that the offences for which he was prosecuted in the parallel sets of proceedings were not the same, since the protected legal interests which these offences had been defined to address were different (see paragraphs 31-32, 48 and 54 above). In their reasoning, the domestic courts relied on the well-established case-law of the Constitutional Court and the Supreme Court (see paragraphs 108-116 above) to give effect in domestic law to the *ne bis in idem* principle, as guaranteed by Article 4 of Protocol No. 7 and by Article 29 § 4 of the Portuguese Constitution (see paragraph 87 above). The Court notes that this approach is not the same as that of its case-law since the *Sergey Zolotukhin* judgment (cited above, § 82), according to which the "*idem*" condition is based on an "*idem factum*" requirement, as opposed to the protected legal interests which the offences were defined to address (see paragraph 204 above), and which the Grand Chamber intends to confirm in the present judgment (see paragraphs 245-246 above).

267. Accordingly, having applied the double identity test – identity of the offender and of the material facts – and having found that the "*idem factum*" requirement was met, the Court must now examine whether the different sets of proceedings in question formed part of an integrated punitive system.

*(iii) Whether the three sets of proceedings formed part of an integrated punitive system (*bis*)*

268. In order to address this issue, it is necessary to ascertain whether the three sets of proceedings in question were connected in substance and in time in the light of the revised criteria established above (see paragraph 250 above).

(α) Whether the sets of proceedings were intended to punish the impugned acts for impairing different protected legal interests

269. The Court agrees with the assessment made by the Lisbon Court of Appeal in its judgment of 9 June 2015 as to the legal interests protected by each of the three sets of proceedings in issue (see paragraphs 31-32 above).

270. Like the Court of Appeal, the Court observes that the legal interest protected by the proceedings brought by the criminal-law authorities for reporting false information to the financial market (to safeguard public confidence in the validity of the information available to guide financial investment choices) differs from the interest protected by the proceedings concerned with reporting false information to the BdP. In the light of that authority's mandate, it was indeed the stability of the banking industry and

the national economy that the administrative offence in question had been defined to protect. As to the reporting of false information to the CMVM, there too, the protected legal interest was different: in the light of the CMVM's mandate, what was at stake was the proper functioning and integrity of the financial market as a whole. The protected legal interests pursued by the three sets of proceedings were therefore truly separate.

(β) Whether the multiplicity of proceedings was provided for in domestic law and was foreseeable

271. The Court notes that the applicant was prosecuted by the BdP under Article 211 (g) and (r) of the RGICSF (see paragraph 94 above). It observes in this connection that, in his capacity as a member, then as vice-chairman of the board of directors of the BCP and, finally, as chairman of its executive committee (see paragraph 14 above), the applicant had a duty to inform the BdP of, *inter alia*, the bank's financial situation and the risks to which it was exposed, as required by Article 120 of the RGICSF. In the Court's view, the content of this provision was sufficiently clear for the applicant to foresee that he might be prosecuted if he were to give false information to the BdP.

272. Secondly, it finds that, under Articles 5, 244 and 245 of the Securities Code (see paragraph 96 above), it fell to the applicant, in his capacity as a member and, subsequently, as vice-chairman of the board of directors of the BCP – a share-issuing bank – to provide the CMVM with information on its annual reports and accounts for disclosure by the CMVM through its publicly available digital information disclosure system implemented under Article 367 of the Securities Code. Moreover, under Article 7 of the Securities Code, he had a duty to provide the CMVM with comprehensive, true, up-to-date, clear, objective and lawful information on the financial instruments issued by the BCP, its activities as a financial intermediary, the settlement and clearing of transactions, public securities offerings and issuers (see paragraph 96 above). The Court infers from this that the applicant could not have been unaware that in fraudulently submitting the information mentioned above, he ran the risk of incurring sanctions imposed by the CMVM.

273. The proceedings initiated by the criminal-law authorities for forgery and use of forged documents were brought under Article 256 of the Criminal Code, which is applicable to any citizen who commits fraudulent acts of that type.

274. Having regard to the above considerations, the Court is of the view that the maxim that "ignorance of the law is no defence" makes no exception for the applicant and that, as a member and Vice-Chairman of the board of directors of a share-issuing bank, it was his duty to know what was required of him under the RGICSF and the Securities Code (see, *mutatis mutandis*, *K.-H.W. v. Germany* [GC], no. 37201/97, § 73, ECHR 2001-II (extracts)). He

could therefore have foreseen that he risked incurring criminal and administrative sanctions on account of his conduct.

(γ) Whether domestic law laid down clear and effective rules to ensure coordination in the conduct of the proceedings, in a manner respectful of defence rights, and the imposition of an overall sanction that was proportionate to the seriousness of the offending acts

275. It remains to be determined whether domestic law laid down clear and effective rules to ensure coordination in the conduct of the relevant sets of proceedings, in a manner respectful of the rights of the defence, and the imposition of an overall sanction that was proportionate to the seriousness of the offending acts.

276. In this connection, the Court notes that both Article 81 § 1 of the RGICSF and Articles 355 § 1 (a), 374 and 387 of the Securities Code provided for cooperation and the exchange of information between the criminal-law authorities, the BdP and the CMVM (see paragraphs 94 and 96 above).

277. As to respect for the defence rights of individuals facing administrative proceedings, the Court notes that Article 32 § 10 of the Constitution secures to every defendant in such proceedings the right to a hearing and to defend himself or herself (see paragraph 88 above). Every defendant in administrative proceedings therefore has a right to defend himself or herself with regard to the evidence obtained by means of such an exchange of information between various authorities. Moreover, it would seem acceptable for there to be duplication in the hearing of evidence by the various authorities in the context of dual sets of proceedings (see paragraph 280 below), in so far as this is to ensure respect for defence rights, which is a legitimate imperative, as stated in paragraph 232 above.

278. Turning to the combination of sanctions, the Court observes that the domestic legislation contains a set of specific rules which ensure the effective imposition of an overall sanction that is proportionate to the seriousness of the offending acts. It thus notes that Article 20 of the RGCO (see paragraph 103 above), to which Article 208 of the RGICSF refers (see paragraph 94 above), provides that in situations where the same act constitutes both a criminal offence and an administrative offence, a sanction will be imposed solely in respect of the criminal offence, without prejudice to the application of ancillary sanctions for the administrative offence. The Court notes that Article 420 of the Securities Code (see paragraph 96 above) provides that a criminal sanction may be combined with an administrative sanction for an act constituting a criminal offence and an administrative offence falling within the jurisdiction of the CMVM. However, as amended by Law no. 28/2017 of 30 May 2017 (see paragraph 99 above), Article 420 § 3 provides that where the same act gives rise to multiple offences and to proceedings falling within the jurisdiction of different authorities, the

sanctions already enforced in one set of proceedings can be taken into account, as they were in the present case (see paragraph 281 below), for the purpose of determining the sanctions imposed in subsequent proceedings.

(δ) Whether the sets of proceedings were conducted in a coordinated manner, while respecting defence rights; whether the overall sanction imposed was proportionate to the seriousness of the offending acts; and whether or not the *res judicata* effects of a previous final acquittal were called into question by later decisions

279. The Court notes at the outset that, although the first set of administrative proceedings against the applicant, conducted by the BdP, began within no more than a few days of the criminal proceedings, it ended well before the latter (contrast *Kapetanios and Others*, cited above, § 65; see paragraph 210 above). The second set of administrative proceedings, namely the CMVM proceedings, which were conducted, for the most part, at the same time as the two others, ended much later (see paragraphs 19, 36, 35, 56 and 83 above). It must be noted that the issue of coordination between the various sets of proceedings was a constant concern of the domestic authorities, which sought to ensure at each stage, in a thorough and careful manner, that they did not impair the applicant's right not to be tried or punished more than once for the same offence.

280. The Court notes, first of all, that the criminal-law and administrative authorities regularly exchanged information on the progress of their respective sets of proceedings (see paragraphs 18, 20 and 61 above). They took the other authorities' formal accusations into account and the criminal courts heard officials from the CMVM and the BdP (see paragraph 26, 39 and 42 above). While it is true that the courts dealing with the case often established the facts by examining the same witnesses, the Court finds that such duplication took place at the applicant's request and was necessary to secure his defence rights in each set of proceedings (see paragraphs 26, 64 and 88 above).

281. Second, the Court observes that, in the criminal proceedings and those initiated by the BdP, the courts of competent jurisdiction agreed that the act of providing the BdP with false accounting information constituted both the criminal offence of forgery and use of forged documents and the administrative offence of false accounting. They further found that, as the protected legal interests were different, these offences were to be prosecuted in separate proceedings, in accordance with the RGICSF, even though, with the exception of the ancillary sanctions, the administrative sanction imposed in the BdP proceedings was to be absorbed by the criminal sanction (see paragraphs 24, 29 and 32 above). They also observed that the Securities Code provided for a combination of criminal and administrative sanctions for the acts constituting both the criminal offence of forgery and use of forged

documents and the administrative offence of failure to provide the CMVM with quality information (see paragraphs 32, 49 and 77 above).

282. It remains to be examined whether the combined sanctions imposed on the applicant as a result of the domestic courts' approach – based on there being different protected legal interests justifying his prosecution in separate sets of proceedings – was proportionate to the seriousness of the identical material facts in respect of which he stood accused (see paragraph 265 above), and whether or not the reasons given in support of the domestic courts' subsequent decisions were such as to call into question the *res judicata* effects of the final acquittal handed down in his favour in the proceedings which became final first (see paragraph 279 above).

283. In this connection, the Court notes, firstly, that in the BdP proceedings the prosecution against the applicant for providing false and incomplete information to the BdP prior to 2007 was declared time-barred. It reiterates that a decision to terminate proceedings on the basis of the expiry of the statutory limitation period does not amount to an "acquittal" for the purposes of Article 4 of Protocol No. 7 (see paragraph 211 above, and the authorities cited therein). In those same proceedings, he was nonetheless acquitted of the BdP's other accusations against him in connection with the E.A. group, as the Lisbon Court of Appeal took account of the fact that it had been established in the criminal proceedings that the BCP had not had control over the companies in that group (see paragraph 43 above).

284. Secondly, in the criminal proceedings, the applicant was "acquitted" of the criminal offence of forgery and use of forged documents, not because the facts were not established but on the grounds that the underlying circumstances for the charge of forgery and use of forged documents were already covered by the criminal offence of market manipulation. Accordingly, this did not constitute an "acquittal" for the purposes of Article 4 of Protocol No. 7 (see paragraph 211 above), as the acts of which the applicant stood accused on the charge of forgery and use of forged documents had already been taken into account by the competent criminal courts as an aggravating circumstance for the purposes of determining the sentence to be applied for the offence of market manipulation (see paragraph 43 above). As to the seriousness of the criminal penalty imposed on the applicant in this regard, namely, two years' imprisonment, suspended upon payment of EUR 300,000 to a charity, the Court notes that this penalty covered all the acts for which he had been convicted on charges of market manipulation and forgery and use of forged documents, not merely those consisting in having submitted false information to the BdP and the CMVM (see paragraphs 43, 48 and 262 above). That being said, the conviction did not cover the material facts relating to the companies of the E.A. group, in respect of which he had been acquitted in the proceedings instituted by the BdP (see paragraph 43 above).

285. Lastly, the Court notes that in the CMVM proceedings the Court of Appeal upheld the decision ordering the applicant to pay an overall administrative fine of EUR 480,000 on three counts of the very serious offence of failure to comply with the duty to provide quality information (see paragraphs 79 and 82 above), whereas the maximum administrative fine potentially incurred by him was far higher, namely, EUR 2,500,000 under Article 388 § 1 (a) of the Securities Code (see paragraph 96 above). Although the Court of Appeal refused to grant the applicant's request that the sanction imposed on him in the criminal proceedings be taken into account (see paragraph 78 above), on the grounds that it differed in nature from the administrative fine imposed under the Securities Code, it nonetheless considered the ancillary sanctions imposed on him to have lapsed, as they had already been partly served (see paragraphs 80 and 83 above).

286. In the light of the domestic courts' reasoning in support of their decisions, the Court finds that the applicant's acquittal in the BdP proceedings was not subsequently called into question. Even though they found that the offences for which the applicant was prosecuted in the parallel sets of proceedings were not the same, since the protected legal interests these offences were defined to address were different, the domestic courts explicitly indicated, where they saw fit, whether or not the applicant's acquittal or the sanction imposed on him in the proceedings which became final first were relevant to the subsequent proceedings. Moreover, having regard to the seriousness of the accusations against the applicant in these sets of proceedings, the Court finds that the overall sanctions imposed on him were not disproportionate to the damage he had caused to the securities market and the national economy. Accordingly, the applicant was not subjected to excessive, still less arbitrary, punishment.

(ε) Whether the sets of proceedings in issue were sufficiently closely connected in time to protect the individual concerned from uncertainty and delay

287. The Court notes that the three sets of proceedings were instituted within a proximate time frame (see paragraphs 18, 19, 36, and 60 above) and were for the most part conducted in parallel (see paragraph 290 above). It finds that, even though they were not concluded at the same time, the connection in time between them was sufficiently close: as the Court has just noted in paragraph 280 above, the criminal-law and administrative authorities were careful to exchange information regularly on the progress of the their respective sets of proceedings and took the other authorities' formal accusations into account. The complex nature of the facts in each set of proceedings and the duplication of some of the evidence taken (see paragraphs 26, 39 and 42 above) to satisfy the applicant's requests could reasonably justify prolonging certain sets of proceedings in order to secure his defence rights in each of them, which is a legitimate imperative, as stated in paragraph 232 above. On the whole, the Court does not find that there were

any delays which prolonged the proceedings excessively, and there is nothing in the manner in which they gradually unfolded to suggest that the applicant was subjected to uncertainty. It is therefore established that there was a connection in time between the different sets of proceedings.

(iv) Conclusion

288. The foregoing observations demonstrate that the three sets of proceedings in issue in the present case formed part of an integrated system of proceedings intended to punish various aspects of the impugned acts of reporting false information to the BdP and the CMVM. These proceedings enabled different aspects of the acts in question to be addressed in a foreseeable and proportionate manner, thus forming a coherent whole which did not subject the applicant to any injustice. They therefore did not amount to duplication of proceedings.

289. Accordingly, the Court finds that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

290. The applicant complained that all the domestic remedies he had pursued in respect of his complaint under Article 4 of Protocol No. 7 had been dismissed. In his view, this amounted to an infringement of his rights under Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

291. The Chamber refrained from ruling on the admissibility and merits of this complaint. Having reiterated that it was 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, 20 March 2018), it found it appropriate to examine the application solely under Article 4 § 1 of Protocol No. 7 (see paragraph 6 above and paragraph 130 of the Chamber judgment of 8 October 2024).

292. In its *Tsaava and Others v. Georgia* judgment ([GC], nos. 13186/20 and 4 others, § 225, 11 December 2025), the Grand Chamber clarified as follows:

> "225. It is open to the Court not to examine complaints which fully, or to some extent, overlap with complaints which it has already examined because they relate to the same facts, and concern issues which are part of – and are thus absorbed by – the broader issues already examined. Also, when faced with a complaint under two Convention provisions which, on the facts of the case before it, govern the same subject matter but differ in their level of specificity (*lex generalis* and *lex specialis*), the Court normally examines the complaint solely under the latter, sometimes construing it in the light of the former."

293. In view of that principle, the question arises whether, in the present case, the applicant's complaint under Article 13 of the Convention calls for a separate examination from that of his complaint under Article 4 of Protocol No. 7 to the Convention or whether, on the contrary, the two complaints overlap.

294. In this connection, the Court notes, firstly, that both the complaint under Article 4 of Protocol No. 7 and the complaint under Article 13 of the Convention relate to the same facts, namely the institution of three sets of proceedings of a criminal nature against the applicant by the BdP, the CMVM and the criminal-law authorities, respectively (see paragraphs 140 and 290 above).

Secondly, it notes that both complaints also relate to the same issue of an alleged breach of the *ne bis in idem* principle. Under Article 4 of Protocol No. 7, the applicant alleged that he had been tried three times for the same offence and, under Article 13 of the Convention, he complained of the dismissal of his appeals alleging a breach of the *ne bis in idem* principle in the BdP proceedings (see paragraphs 26 and 30 above), the criminal proceedings (see paragraphs 46 and 50 above) and the CMVM proceedings (see paragraphs 64, 66, 69, 73, 81 and 84 above).

295. In these circumstances, having regard to the findings under Article 4 of Protocol No. 7 (see paragraph 289 above), the Grand Chamber considers that it is not necessary to examine the admissibility and merits of the complaint under Article 13 (see, *mutatis mutandis*, *Tsaava and Others*, cited above, § 450), since the latter is absorbed by the broader examination under Article 4 of Protocol No. 7, which thus constitutes a *lex specialis* in relation to the more general requirements of Article 13.

FOR THESE REASONS, THE COURT,

1. *Disjoins*, unanimously, application no. 2276/20 from application no. 48047/15;

2. *Holds*, unanimously, that it has jurisdiction *ratione materiae* to examine the complaint under Article 4 of Protocol No. 7 to the Convention;

3. *Holds*, by fifteen votes to two, that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

4. *Holds*, by sixteen votes to one, that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Mattias Guyomar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting opinion of Judge Pavli;
(b) Dissenting opinion of Judge Serghides.

PARTLY DISSENTING OPINION OF JUDGE PAVLI

1. The "integrated duplication" doctrine, as confirmed by today's judgment, sets a new high for judicial creativity – but not, unfortunately, in the service of fundamental rights. This doctrine stands on the premise that duplication of prosecutions for the same offence is not really duplication – *bis* is not *bis* – if the two sets of proceedings are "sufficiently integrated" in substance and in time. The majority have doubled down on the path chosen in *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, 15 November 2016), when this novel interpretation of Article 4 of Protocol No. 7 was first adopted by the Grand Chamber, after several decades of established interpretation to the contrary. What is more, both Grand Chamber compositions have done so without seeking to explain how this construction of *ne bis in idem* fits with the plain text of the Convention provision, its drafting history, or its object and purpose.

2. As to the operative provisions, I have voted against the indiscriminate holding that there has been no violation of Article 4 of Protocol No. 7 in the present case (see operative provision no. 3), which involves three separate sets of proceedings against the same applicant. I consider that there has been a violation of the said provision as regards the duplication between the criminal proceedings and one set of administrative proceedings (the CMVM procedure), but not in relation to the other (the BdP procedure). Furthermore, I have reached these conclusions on the basis of different criteria from those relied on by the majority.

On discoveries of silent exceptions

3. The text to be construed is fairly straightforward: "[n]o one shall be *liable to be tried or punished again* ... for an offence for which he has already been finally acquitted or convicted" within the same jurisdiction (emphasis added). The ordinary meaning of this formulation is that once a first set of proceedings has resulted in a final acquittal or conviction, continuing or at least seeing a second prosecution for the same offence through to its conclusion will be in violation of the Convention. As the provision establishes a core and non-derogable protection against double jeopardy, without any limitations or qualifications (other than that provided for in its second paragraph), it calls for strict interpretation, with no implied exceptions. In fact, for most of its history of application by the Court, the interpretative dilemmas have focused on what is "criminal" and what should count as "the same offence": in other words, the *idem* aspect of the equation, which is also what most national legal systems have historically grappled with. The *bis* aspect has not attracted much constructive energy because little is needed in view of the plain text of the provision itself (see *Sergey Zolotukhin*

v. Russia [GC], no. 14939/03, § 107, 10 February 2009). That is, until *A and B* came along, with its radical discovery of a silent exception in the context of parallel proceedings.

4. Turning to the drafters' intent, as articulated in the Explanatory Report to Protocol No. 7 and the rest of the relevant *travaux*, I am equally unable to find any support for the exception of "integrated duplication". Nor have the two Grand Chamber judgments at stake provided any evidence to this effect. To the extent that the drafters appear to have envisaged the possibility of *parallel* sets of proceedings – which, one may argue, in itself goes against the spirit of *ne bis in idem*, if not the strict letter of the Convention provision – they only did so in the uncontroversial scenario where one of those sets of proceedings was not "criminal" in nature, as illustrated by the reference to disciplinary proceedings "for the same act"[1]. This single exception suggests that no other parallel duplication *for the same criminal offence* was contemplated by the drafters.

5. Lastly, it is far from evident how the concept of "integrated duplication" fits within the object and purpose of the prohibition against double jeopardy. Historically, the principle has reflected an understanding that it is inherently unfair, and at odds with legal certainty, to subject a person to repeated prosecutions for one and the same offence (see *Sergey Zolotukhin*, cited above, § 110). Notably, the concern is not limited to excessive punishment; it is the repetition of the process itself that is "the evil to be avoided"[2]. Ironically, the Grand Chamber's dismissal of Portugal's declaration, made at the time of its ratification of Protocol No. 7, on the novel basis that it is incompatible with the object and purpose of the Convention provision (see paragraph 164 of the judgment), lends support to this historical reading of the protection against double jeopardy. In the same way that States should not be able to circumvent this "absolute right admitting of no derogation" (ibid) by playing with the definition of what counts as a "criminal charge", nor should they be allowed to do so through a creative duplication of proceedings that are "sufficiently integrated".

6. But what today's majority hath taken from Portugal under *idem*, it hath generously given back under *bis*. This is, in fact, the real purpose and effect of the *A and B* doctrine: to allow those legal systems that have been ambivalent about the ban on double jeopardy from the outset – whether or not they have entered interpretative declarations to this effect – to freely pursue and complete separate *criminal and administrative* proceedings for (what our

[1] See Explanatory Report to Protocol No. 7, paragraph 32: "Article 4, since it only applies to trial and conviction of a person in criminal proceedings, does not prevent him from being made subject, for the same act, to action of a different character (for example, disciplinary action in the case of an official) as well as to criminal proceedings." Available at: https://rm.coe.int/16800c96fd.

[2] See *Black's Law Dictionary*, 440 (5th ed., 1979): "The evil sought to be avoided is double trial and double conviction, not necessarily double punishment."

case law considers to be) the same offence. This has been done in the name of the modern administrative State and the progressive decriminalisation of certain acts that are now increasingly prosecuted as administrative offences (see paragraph 215 of the judgment): the implication being that, to facilitate such *decriminalisation*, the Court will continue to treat such transgressions as "criminal" but will nonetheless allow double prosecutions to proceed, subject only to certain "integration" requirements.

7. A similar narrative can be discerned around the definition of *idem*, with the Grand Chamber having been urged to adopt the concept of triple identity, whereby a set of proscribed actions by the same person would count as the same "offence" only if the relevant legal prohibitions also served the same "protected interest" (see paragraph 189 of the judgment). Had the Grand Chamber accepted such a position, it would have effectively overruled the *Zolotukhin* understanding, based on *idem factum,* and eviscerated most of the remaining protection under Article 4 of Protocol No. 7. While the majority have declined to go fully down that road, they have simply incorporated the diversity of protected interests into the criteria for "sufficient integration" (see paragraph 229 of the judgment). Again, what is denied with one hand is given back with the other.

8. In confirming this approach, the Court has travelled further and further away from the original orbit of Article 4 of Protocol No. 7, to the point that it is hardly concerned anymore with double jeopardy as such, but merely with avoiding an "excessive burden" or moderating the combined weight of sanctions resulting from double (or triple!) prosecutions. In the words of former Advocate General Bobek, that is no longer "a protection against double jeopardy. It is simply an *ex post* protection against the disproportionality of combined or aggregated sanctions" (see his Opinion in the *bpost* case, C-117/20, paragraph 109; see also the Opinion of Advocate General Sanchez-Bordona in the *Menci* case, C-524/15).

9. This reframing has led, unsurprisingly, to the micro-management of double prosecutions from Strasbourg, while the applicable criteria have grown increasingly complex and national courts have struggled to keep pace with the constant fine-tuning and clarification by this Court. Today's judgment provides further evidence of this particular foray down the rabbit hole of "integrated duplication", and I suspect that the process of refinement will not stop here. We have, somehow, managed to transform one of the Convention's core and unqualified prohibitions into one of the most overqualified tests ever designed by the Court.

10. Lastly, another challenge highlighted by today's judgment relates to the rights of the defence in dual sets of proceedings. However, this goes well beyond the need to ensure coordination in the collection of evidence (see paragraphs 232-33 of the judgment): as the applicant and third-party interveners have argued, parallel proceedings may affect the basic fairness guarantees of criminal trials, such as the privilege against self-incrimination.

The difficulties stem from the fact that – even though such dual sets of criminal and administrative proceedings may both qualify as "criminal" under Article 6 of the Convention – they can be subject to quite different requirements at the national level as regards rules of evidence, standards of proof and procedural protections for the person under investigation. This can create tough procedural dilemmas for a defendant facing parallel prosecutions over the same conduct. Such tension is, after all, built into the *Engel* line of case-law.

11. I would like, even if merely as an intellectual exercise, to offer an alternative path to "integrated duplication". There is a clear connection, in my reading, between the gradual shrinking of protections under the *bis* branch of Article 4 of Protocol No. 7 and the expanded definition of "criminal" under the *idem* branch. The latter is the result of the uninhibited growth of the same concept within the criminal limb of Article 6 of the Convention under the *Engel* doctrine. This has meant that many offences or sanctions which are treated as merely administrative in nature within national legal systems trigger in Strasbourg the (almost) full panoply of criminal safeguards. While this approach may be reasonable, depending on the nature and gravity of the administrative sanctions at stake, there is little justification, in my view, for treating an 18-month suspension of a driving licence almost automatically as a criminal sanction (see *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005)[3].

12. I would therefore argue that a partial reconsideration of the *Engel* approach is in order, on the basis that a secondary "sting" of punishment should not be enough to trigger criminal protections if the primary interest of the administrative sanction is preventive and/or remedial (rather than punitive). For one thing, this would be in line with the intent of the drafters of Article 4 of Protocol No. 7, who singled out the possibility of separate *disciplinary* proceedings for the same acts, despite their obviously punitive aspect. For another, it would be more consistent with the general decriminalisation trends in Europe, compared to the "runaround" watering-down of the *bis* component. I note here that the intervening Italian Government have made similar arguments for the tightening of the *Engel* criteria (see paragraph 187 of the judgment), a suggestion with which the majority have chosen not to engage.

13. Lastly, it is important to note that the loss of full "criminal" protection would not be tragic for less serious sanctions, as due-process alternatives exist. One such alternative might be the protection of the civil limb of Article 6, where appropriate. Furthermore, the case-law on the *substantive* provisions of the Convention – including Article 8, which protects the right

[3] It is perhaps no mere coincidence that *Nilsson* was the first ruling of the Court to introduce the notion of a "sufficiently close connection in substance and in time", and to find no violation of *ne bis in idem* on that basis. It did so in a single, final paragraph, with a striking disregard for the text of Article 4 of Protocol No. 7 and the principles of treaty interpretation.

to respect for one's private life, in its multifarious manifestations – has developed robust and autonomous *procedural* protections over time. This now tends to be the preferred option for applicants seeking to challenge, for example, serious disciplinary or other employment-related sanctions, whether in the public or private sectors (see *Denisov v. Ukraine* [GC], no. 76639/11, 25 September 2018).

14. In the remaining part of this opinion, I will seek to apply the ban on double jeopardy, based on the plain meaning of the Convention provision, to the circumstances of this complex case. I will do so without venturing into the business of "proportionate pain", which is after all a matter best left to the wisdom of national criminal courts.

Application to the facts of the case

15. The analysis has to proceed in three steps: (i) whether the three sets of proceedings against the present applicant were criminal in nature; (ii) whether they concerned, in whole or in part, prosecutions for the same "offence"; and (iii) if so, whether, the second and third sets of proceedings were brought to term after the first set resulted in the final acquittal or conviction of the applicant. Chronologically, I will refer to the Banco de Portugal (BdP) proceedings – which came to a conclusion first – as the first set of proceedings, and to the criminal proceedings proper and the CMVM procedure as, respectively, the second and third sets of proceedings.

(a) Whether the administrative proceedings were criminal in nature

16. It is obvious that the proceedings resulting from the charges brought by the Lisbon public prosecutor's office (see paragraph 36 of the judgment) were criminal in nature. It remains to be considered whether the BdP and CMVM proceedings were also criminal.

17. As to the BdP proceedings, the majority find it sufficient that the goals pursued were both preventive and repressive (see paragraph 255 of the judgment). This is not necessarily decisive for me, if the preventive goal was predominant and the punitive "sting" was only a secondary and inevitable aspect of the former (see paragraph 12 of this opinion). Likewise, the accessory sanctions of disqualification from certain positions in the banking industry for a number of years were not sufficient to make the BdP proceedings criminal, as their primary function was arguably preventive and protective of the banking system as a whole. That said, the applicable maximum sanctions of around 100,000 euros (EUR) per administrative violation were sufficiently serious to render them criminal for present purposes, even considering the applicant's high net worth and the sums he obtained as a result of his professional actions subject to prosecution.

18. Similar considerations apply to the CMVM proceedings, where the applicant was exposed to a possible maximum fine of EUR 2.5 million and

incurred an actual fine of EUR 480,000. However, the accessory sanctions on their own would not have been sufficient, in my view, to render the procedure criminal.

(b) Whether the offences were the same ("*idem*")

19. It is important to recall at this point the applicable test, as defined in the *Zolotukhin* case, which remains good law after today's judgment: based on a comparison of the statements of fact in the various procedures, the Court should identify "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; emphasis added). The test is therefore linked to the essential elements of the offences as defined in national law.

20. As an introductory comment, the present applicant's actions and omissions contributed to a series of "circular trading" operations, the purpose of which was to artificially inflate the value of his bank's stock. Apart from the financial machinations, the secrecy of the operations was instrumental to the success of the entire scheme, from the bank's perspective. Therefore, the effort of market manipulation through "circular trading" was closely related to its cover-up, namely, the provision of false information and accounting, both to banking and financial-market regulators such as the BdP and the CMVM and to the financial market as a whole. This suggests that the actions at stake, undertaken over a long period of time, amounted to a unified criminal enterprise. It is therefore not surprising that, following the proceedings in question, Portuguese law on market manipulation was reportedly changed to provide that this offence should only be subject to criminal prosecution, rather than duplicated criminal and administrative procedures.

21. I turn now to the specific charges in each set of proceedings. In the BdP proceedings, the charges included three instances of false and incomplete information being provided to the BdP and six instances of false accounting, by hiding the bank's control over the offshore companies and other related aspects. They were alleged to have been committed in the period from 2000 to 2007.

22. The second set of proceedings relied on charges of market manipulation and forgery. With respect to the latter, both the criminal courts and the courts in the BdP proceedings agreed that essentially the same offence had been subject to both criminal and administrative prosecution on the basis of what the Lisbon Court of Appeal in its judgment of 9 June 2015 characterised as a "*concours idéal et effectif d'infractions*" (see paragraph 32 of the judgment). The fact that the courts in the BdP proceedings did not impose sanctions under this head, based on the legal regime of their absorption by the criminal sanctions, does not change the fact of double prosecution for forgery. Nor does the fact that, ultimately, the criminal courts

in the second set of proceedings considered that the forgery charges were absorbed by the charge of market manipulation, treating forgery as merely an aggravating circumstance thereof.

23. As to the charges of market manipulation in the second set of proceedings, they relied, at least in part, on the provision by the applicant of false information to the two regulators, the BdP and the CMVM. The offence was defined in Article 379 § 1 of the CVM as the act of "disseminat[ing] false, incomplete ... information, carry[ing] out fictitious transactions or engag[ing] in other fraudulent practices which may artificially alter the functioning" of the financial market. Neither the prosecution nor the courts distinguished the act of providing false information *to the regulators* from the other essential elements of the offence which needed to be proven to secure a conviction (see paragraph 20 of this opinion). Indeed, they appear to have treated such actions or omissions towards the regulators, in Convention terms, as "a set of concrete factual circumstances ... inextricably linked together in time and space".

24. Thus, the prosecution charged that the bank managers had undertaken actions, in the period from 1998 to 2008, aimed at hiding the real value of the bank's shares and the real state of its losses, both of which were the result of the activities of the offshore companies under their undisclosed control (see paragraphs 38 and 39 of the judgment). The conclusion of the criminal court of appeal that the acts of forgery (including in documents filed with the two regulators) were to be treated simply as an aggravating circumstance within the umbrella offence of market manipulation points in the same direction.

25. Similar considerations apply to the third set of CMVM proceedings, which relied on charges that the applicant had contributed to the provision of false and incomplete information in reports and other submissions filed with that regulator between 2003 and 2007. As already noted, the definition of market manipulation in national criminal law renders it quite difficult to distinguish lying to the regulators from deceiving the market as whole. In this respect, the majority conclusion that, "[f]rom a substantive or chronological standpoint, each of these sets of proceedings was only partly related to the facts forming the subject matter of the others, although they overlapped in certain respects" (see paragraph 264 of the judgment) appears to make a rather artificial or formal distinction, seen from the perspective of the *Zolotukhin* test.

26. I conclude, therefore, that the applicant was prosecuted for the same "offence" in the first and second sets of proceedings; as well as in the second and third sets of proceedings. There was not necessarily such an overlap between the two sets of administrative proceedings, but it is not necessary to reach a firm conclusion on this point.

(c) Whether there was duplication of proceedings ("*bis*") contrary to Article 4 of Protocol No. 7

27. What the Convention provision requires us to assess at this stage is whether the applicant was subjected to a second or third prosecution which continued even after he had been "already finally acquitted or convicted" for the same offence(s).

28. To begin with, both the Portuguese legislation and the jurisprudence of the national Constitutional Court appear to have been (and to still be) premised on the principle of triple identity, whereby a *bis in idem* problem only arises where the two offences are meant to protect the same "legal interest" – despite being based on the same essential acts, committed by the same person. Such an approach is simply inconsistent with the Court's understanding of *idem factum*, as adopted in the *Zolotukhin* case and largely confirmed in today's judgment. As a result, the national courts were not concerned, from the outset, with avoiding duplication of proceedings, starting from the correct Convention premise. The Grand Chamber majority acknowledge this fact but seek to underplay its consequences (see paragraph 266 of the judgment).

(i) As to duplication between the first and second sets of proceedings

29. The first proceedings to have concluded were the BdP proceedings, with the judgment of the Lisbon Court of Appeal on the merits of the case becoming final on 26 June 2015. Only part of the original charges had survived at this stage, due to the application of statutory bars at earlier stages of the procedure. With respect to the remaining charges of provision of false information to the BdP, the Court of Appeal again applied a statutory bar on the prosecution of any facts that had occurred prior to 9 June 2007; and it acquitted the applicant of the remaining charges of false reporting and false accounting related to the E.A. group of companies. It confirmed, however, the accessory sanctions previously imposed by the BdP, in view of the absence of suspensive effect of the appeal (see paragraph 34 of the judgment).

30. On 26 June 2015, the second set of proceedings were pending before the Constitutional Court, with which the applicant had filed a constitutional complaint against the verdict of the Lisbon Court of Appeal of 25 February 2015, relying essentially on the same Convention arguments as he was later to raise before the Court (see paragraphs 50 et seq. of the judgment). Furthermore, on 15 December 2015, he filed a motion with the Lisbon Court of Appeal seeking the termination of those criminal proceedings in view of the fact that the BdP procedure had already been brought to a conclusion, resulting, in his view, in an unqualified acquittal (see paragraphs 55 et seq. of the judgment). Both the Constitutional Court and the Lisbon Court of Appeal rejected his double-jeopardy arguments and the criminal conviction became final on 14 July 2016.

31. What is to be made of this particular set of circumstances related to the nature of the verdict in the first set of proceedings? To begin with, I agree with the majority position that a decision to discontinue proceedings due to statutory limitation cannot be equated with a full and proper acquittal for the purposes of Article 4 of Protocol No. 7 (see paragraph 283 of the judgment). As to the applicant's acquittal in the first set of proceedings on the charges related to the E.A. group, it is important to note that the Lisbon Court of Appeal expressly relied, in this respect, on the findings of the Lisbon District Court, in the second set of proceedings, to the effect that the BCP's control over the E.A. group had not been proven (see paragraph 43 of the judgment). The latter finding dated from 2 May 2014; and it does not appear that the prosecution appealed against this particular finding. Therefore, it cannot be said that the applicant continued to be liable to prosecution – in relation to the E.A. group – in the second set of proceedings after he had been finally acquitted of those same charges in the first set of proceedings. Accordingly, I must conclude that there has been no violation of Article 4 of Protocol 7 as regards the first and second sets of proceedings.

32. Lastly, as a matter of legal tactics, one could argue that the applicant's petition to the Constitutional Court was bound to fail given that court's clear and established position on *ne bis in idem*. It is possible to concede in general terms – and without suggesting that this was the applicant's intention in this case – that, through the use of delaying procedural tactics, defendants may seek to influence which of several parallel sets of proceedings comes to an end first. While this may be a relevant consideration, it was not unreasonable, in my view, for the present applicant to attempt to change the position of the national Constitutional Court, given, among other factors, the gradual evolution of this Court's own jurisprudence toward a more coherent interpretation of Article 4 of Protocol No. 7.

(ii) As to duplication between the second and third sets of proceedings

33. The second set of proceedings, in which the applicant was convicted of market manipulation, became final and acquired the force of *res judicata* on 14 July 2016 (see paragraph 56 of the judgment). The CMVM proceedings continued well past this date and were eventually completed (see paragraph 86 of the judgment), with additional monetary and accessory sanctions imposed on the applicant. Having found that there was significant substantive overlap in the charges pursued against the applicant in these two sets of proceedings, I must conclude that there has been a violation of Article 4 of Protocol No. 7 in this respect.

Can dual sets of proceedings be Convention-compliant?

34. There is little doubt about the gravity of the actions and omissions attributed to the present applicant as part of a broader scheme of market

manipulation executed by multiple generations of BCP managers. That scheme caused great harm to the interests of the bank's investors and the country's financial system, and nothing in this separate opinion is meant to suggest otherwise. In fact, all things considered, the relative leniency of the sanctions imposed by the criminal courts at the end of the second set of proceedings is somewhat surprising.

35. More generally, a legitimate question may arise as to the possibility for States to launch dual sets of proceedings (formally criminal and administrative) in certain complex areas of modern administrative law if the Court were to adopt Judge Serghides' and my interpretation of Article 4 of Protocol 7 – without losing sight of the fact that this is not a matter of choice for those of us inclined to take the text of the Convention seriously. As a general principle, it is not for the Court to instruct States as to how to organise their legal systems to ensure that they stay, as a whole, within the bounds of the Convention. States enjoy great discretion in this respect, as reflected in the varied laws and practices across Europe on this and related subject matters. Among other things, States may choose to set down rules of priority or precedence among the plurality of "protected interests" served by criminal and/or administrative regulations; seek to integrate multiple charges within the same proceedings; or pursue other approaches that may be distilled from best European practices.

36. In the context of cases such as the present one, and with no ambition of providing any exhaustive guidance, it seems to me that several options are open to the national authorities. First, it should be possible to design administrative sanctions in a way that would keep them below the *Engel* threshold. As I have already argued, the Court could facilitate this process by revisiting the *Engel* criteria, or at least the rigid ways in which they have sometimes been applied in practice. Professional sanctions, in particular, should not automatically get the "criminal" label, and even the size of monetary penalties may take due account of the nature of the infringements and the relevant economic sector. A given fine does not cause the same amount of pain to senior bankers as it does to taxi drivers.

37. Secondly, in some cases it may be possible and indeed more effective to prosecute the various offences within a single set of criminal (or perhaps administrative) proceedings. The recent legislative amendments in Portugal providing for a unified criminal prosecution of the offence of market manipulation appear to go in this direction. This seems preferable to a situation where national law prevents cumulative sanctions but not the very conduct of parallel criminal and administrative proceedings for the same offence (as was the case with the charges of false accounting in the BdP proceedings involving the present applicant).

38. Thirdly, it may be possible for different procedures to rely on sufficiently distinct sets of facts or illegal acts, thus avoiding *idem factum* overlaps, as determined by the *Zolotukhin* test. Thus, national authorities may

be able to argue, for example, that providing false information to different oversight authorities, which exercise different regulatory functions and operate under different regulatory regimes, should not necessarily be treated as "the same offence", even if such practices concern related underlying events. As noted, the *Zolotukhin* standard should not be applied *in abstracto*, but in the light of the essential elements of each charged offence. At the same time, such an approach would require some division of labour and *ex ante* coordination among the various prosecuting authorities.

39. Lastly, as a tactical matter, prosecutors could aim to ensure that the primary criminal proceedings are completed before the conclusion of any other parallel proceedings, thus immunising the former from any possible double-jeopardy challenges. I appreciate, however, that this may be a function of multiple considerations that might not always be juggled successfully.

40. It is obvious, in conclusion, that the "integrated duplication" option favoured by the Grand Chamber majority is the least onerous for the States. But the path of least resistance is not usually the best one for fundamental rights.

DISSENTING OPINION OF JUDGE SERGHIDES

A. Introduction

1. The case concerns three sets of proceedings brought against the applicant by the criminal-law authorities, the Securities Market Commission (CMVM) and the Banco de Portugal (BdP) respectively for various criminal and administrative offences committed while he was a member and later Vice-Chairman of the Board of Directors of the Banco Commercial Português bank ("the BCP"). The applicant raised two complaints: firstly, that his right not to be tried or punished twice for the same acts (*ne bis in idem*), as guaranteed by Article 4 of Protocol No. 7 to the Convention, had been infringed and, secondly, that the absence of any effective remedy by which to assert his rights domestically had entailed a breach of Article 13 of the Convention.

2. I respectfully disagree with the finding that there has been no violation of Article 4 of Protocol No. 7 and that there was no need to examine the admissibility and merits of the complaint under Article 13, which is why I voted against points 3 and 4 of the operative provisions of the judgment.

3. I explain my disagreement on these two points below, but before doing so, I wish to underline that the *ne bis in idem* principle is the cornerstone of legal certainty, one of the most fundamental guarantees of a fair trial and an important safeguard against the abuse of State power.

B. My disagreement with the finding that there has been no violation of Article 4 of Protocol No. 7 to the Convention – The erosion of ne bis in idem under the "coherent whole" or "integrated punitive system" approach

4. It is my submission that the interpretation of Article 4 of Protocol No. 7 to the Convention allowing multiple sets of proceedings on the basis that they form a "coherent whole" or an "integrated punitive system", as established in *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, 15 November 2016) and furthered explained and developed in the present judgment, is fundamentally irreconcilable with the principle of *ne bis in idem*.

5. At its core, such an approach undermines the *absolute* and *non-derogable* character of the right in question (see, in this regard, Article 4 § 3 of Protocol No. 7). The *ne bis in idem* principle enshrines a *categorical rule* that is not subject to any limitation clause, unlike the qualified rights guaranteed by Articles 8 to 11 of the Convention, which contain limitations in their respective second paragraphs. The "reopening" clause in Article 4 § 2 of Protocol No. 7, concerning the emergence of new or newly discovered facts, or the discovery of a fundamental defect in the proceedings, does not

call into question the absolute nature of the right, *as it relates to situations in which the initial decision cannot be regarded as having acquired the requisite finality or validity*.

6. In this connection, it is to be emphasised that the non-absolute character of the requirements of legal certainty must not be conflated with the absolute nature of the right in question. Against this background, the Grand Chamber's observation in *Mihalache v. Romania* ([GC], no. 54012/10, § 129, 8 July 2019) that the requirements of legal certainty are not absolute should be understood as referring to the finality of the earlier decision in the specific circumstances contemplated by Article 4 § 2 of Protocol No. 7. It cannot be construed as suggesting that the guarantee against being tried or punished twice is itself a qualified or non-absolute right. Accordingly, the limited possibility of reopening proceedings where new or newly discovered facts have emerged, or where a fundamental defect has been detected in the previous proceedings, cannot be relied upon to dilute the absolute guarantee enshrined in Article 4 of Protocol No. 7.

7. Consequently, properly understood, the principle of *ne bis in idem* operates *as a strict procedural bar*: once a final decision has been rendered, the State is definitively precluded from pursuing further proceedings in respect of the same facts. As Professor W. A. Schabas observes, the right under Article 4 of Protocol No. 7 "applies not only to a second conviction for the same offence but even to a second prosecution"[1], or, put differently, "it is sufficient that the second proceedings have only begun"[2]. The "integrated system" doctrine, however, effectively undermines this guarantee by transforming a categorical prohibition into a conditional rule, dependent on the degree to which sets of proceedings are connected. In doing so, it introduces balancing considerations that are inherently incompatible with the very nature of an absolute right.

8. This does not mean that the Court should disregard the second set of proceedings altogether. On the contrary, an examination of subsequent proceedings is indispensable in order to determine whether the *idem* requirement is satisfied. However, recognising the existence of subsequent proceedings for the purpose of identifying duplication is fundamentally different from treating both sets of proceedings as components of a single integrated procedure. This latter approach risks neutralising the protective function of the *ne bis in idem* guarantee itself. It may also undermine the integrity and finality of the first set of proceedings, diminishing both the judicial work undertaken and the authority of the decision itself.

9. Respectfully, the approach under discussion is manifestly incompatible with the principle of effectiveness (*effet utile*), which is an overarching

[1] William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford Commentaries on International Law, 2015), p. 1150.

[2] Ibid., p. 1148.

Convention principle[3]. Permitting States to split proceedings deliberately into parallel administrative and criminal tracks, only to reclassify them *ex post facto* as a "coherent whole", fails to secure effective protection of the *ne bis in idem* right. From the perspective of the individual, the reality of his or her situation remains unchanged, with multiple sets of proceedings, repeated exposure to punishment and prolonged legal uncertainty. A guarantee that tolerates such outcomes is no more than a formal and illusory construct, devoid of any practical value.

10. To be more precise, the approach in question gives rise to structural legal uncertainty because the decisive criterion – whether there is a "sufficiently close connection" between sets of proceedings – is framed in broad and indeterminate terms, without clear limits or precise criteria. The notion of a "sufficiently close connection" lacks precision and invites inconsistent and discretionary application, thereby undermining foreseeability and the rule of law. In parallel, it risks institutionalising double punishment, as cumulative sanctions imposed across different sets of proceedings may, in substance, replicate the very duplication which the provision is intended to prohibit. The approach under discussion is therefore incompatible with the principle of human dignity, as it subjects individuals to legal uncertainty and potentially repetitive punitive processes, thereby failing to respect their status as autonomous persons entitled to foreseeability, legal certainty and fair treatment under the law.

11. Respectfully, the counter-arguments advanced in support of this approach are unconvincing and doctrinally flawed. Reliance on the proportionality of the overall sanction is misplaced: *ne bis in idem* prohibits the duplication of proceedings as such, irrespective of the severity of the resulting penalties. Crucially, the absolute character of the right under Article 4 of Protocol No. 7 means that proportionality has no role to play: there are no permissible restrictions to weigh in the balance. The present case goes further still: it effectively applies a retrospective balancing exercise, assessing compliance with the right in question by reference to later sets of proceedings, taken together with the first set. Likewise, the foreseeability of multiple sets of proceedings cannot legitimise a possible violation of the Convention: a predictable breach remains a breach. Nor can the reference to separate legal interests justify multiple proceedings, as the *idem* criterion is grounded in the identity of facts, not their legal characterisation. The *ne bis in idem* guarantee, though not included in Article 6 of the Convention, is still

[3] On this principle, see Daniel Rietiker, "The principle of 'effectiveness' in the recent jurisprudence of the European Court of Human Rights: its different dimensions and its consistency with public international law – no need for the concept of treaty *sui generis*", *Nordic Journal of International Law*, 79 (2010), pp. 245 et seq.

a fair-trial guarantee and should be given the same normative and doctrinal weight as those contained in Article 6[4].

12. To hold otherwise would be to open the door to the artificial fragmentation of a single course of conduct into multiple prosecutable elements. In conclusion, the "integrated punitive system" approach fundamentally distorts and weakens the nature of *ne bis in idem*. It replaces a clear and robust safeguard with a flexible and readily manipulable standard, thereby depriving the right at stake of both its absolute and its non-derogable character, together with its practical effectiveness within the Convention system.

13. In view of the above, and taking into account the circumstances of the present case, I would have found that there had been a violation of Article 4 of Protocol No. 7.

14. I am also unable to agree with the Court's view that its approach in the present case can properly be regarded as an application of the "living instrument" doctrine (see paragraph 216 of the present judgment). Elsewhere, I have discussed in detail the question whether a setback or regression in the protection of a human right, as has occurred in the present case, can strictly speaking be considered an application of the "living instrument" doctrine[5]. I concluded that the answer must be in the negative.

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[4] Regrettably, the difficulties inherent in the Court's reliance on an overall or global assessment are not confined to Article 4 of Protocol No. 7. This methodological tendency can also be observed in other areas of the Convention system, where the weighing-up of competing considerations can, at times, affect the level of protection afforded to individual rights. A comparable issue arises under Article 6 of the Convention, where the Court has occasionally assessed shortcomings in fair-trial guarantees through the prism of "overall fairness", notwithstanding the practical implications of such deficiencies for the effective exercise of the accused's defence rights. This approach is illustrated in *Ibrahim and Others v. the United Kingdom* ([GC], no. 50541/18 and 3 others, 13 September 2016), where restrictions on early access to legal assistance were ultimately evaluated in the light of the proceedings as a whole, despite concerns that those restrictions had had a significant impact on the fairness of the trial from the outset. Such an approach may risk diminishing the visibility of procedural shortcomings and rendering the right to a fair hearing more theoretical than practical. (I respectfully criticised the Court's approach in that case in my partly dissenting opinion in *Simeonovi v. Bulgaria* ([GC], no. 21980/04, 12 May 2017) and my dissenting opinion in *W.R. v. the Netherlands* (no. 989/18, 27 April 2024)). A similar balancing dynamic can be discerned under Article 18 of the Convention, where the finding of a violation requires proof of a "dominant" ulterior purpose, as articulated in *Merabishvili v. Georgia* ([GC], no. 72598/13, 28 November 2017). This standard allows mixed motives where a legitimate aim is considered predominant overall, potentially limiting scrutiny of the instrumentalisation of Convention rights. (This "dominant purpose test" was criticised in my concurring opinion annexed to that judgment). Although the preceding examples do not work directly in favour of the view advanced here, they nonetheless illustrate the broader methodological difficulties inherent in the Court's reliance on an overall or global assessment.

[5] In *The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the ECHR – The norm of all norms and the method of all methods* (Strasbourg,

15. That conclusion, in my view, is equally compelling in the circumstances of the present case. The "living instrument" doctrine is best understood as a specific expression or manifestation of the principle of effectiveness, both as a method of interpretation and as a norm of international law. Consequently, it cannot be used to depart from, or operate against, its very foundation, namely the principle of effectiveness itself. To accept otherwise would be to deprive the doctrine of its normative coherence and transform it into an instrument capable of justifying results antithetical to the object and purpose of the Convention. Properly understood, the "living instrument" doctrine serves to enhance the protection of Convention rights and ensure that they remain practical, effective and adapted to present-day conditions; it cannot be used to justify a diminution of such protection.

16. In this sense, the doctrine is inherently teleological and directional: it operates so as to reinforce, not weaken, the level of protection previously attained. Moreover, the Court's established case-law has consistently linked evolutive interpretation with the need to ensure that rights are "practical and effective" rather than "theoretical or illusory".

17. An interpretation which results in a lowering of existing standards of protection sits uneasily with that requirement, since it risks rendering previously secured guarantees less effective in practice. It follows that a regressive interpretation cannot, without contradiction, be subsumed under the logic of evolutive interpretation. This view is also supported by Gerards, who rightly argues that:

> "... the effectiveness principle and the Preamble to the Convention do not support such a possibility of 'regressive evolution' or, as it has been more recently termed by Helfer and Voeten, 'walking back'. The Convention Preamble states that the aim of the Council of Europe is 'the maintenance and further realisation' of human rights and fundamental freedoms which suggests a one-way dynamic in the direction of offering more rather than less protection of human rights.
>
> ... It is clear ... that, in principle, [the Convention] strives for progressive evolution to enable 'further realisation' of the rights protected by the Convention.[6]"

18. This reading is further corroborated by the interpretative framework set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969, which require that a treaty be interpreted in good faith in the light of its object and purpose. In the case of the Convention, that object and that purpose – as reflected in the Preamble and consistently reaffirmed in the Court's jurisprudence – consist in the progressive realisation and effective protection of fundamental rights.

19. A construction that permits regression would therefore be difficult to reconcile with these general rules of interpretation. Indeed, the Convention is

2022), pp. 441-46. While I have generally avoided referring to my own scholarly work in my separate opinions, I consider it appropriate, exceptionally, to refer to it here.

[6] Janneke Gerards, *General Principles of the European Convention on Human Rights*, 2nd ed. (Cambridge University Press, 2023), § 4.3.4, pp. 115-16.

a living instrument not because it permits the erosion of rights, but because it seeks to ensure that human-rights protection evolves in a manner that is practical, effective and responsive to the conditions of contemporary democratic societies. Its character as "living" denotes adaptability in the service of enhanced protection, not flexibility in the direction of restriction. Evolution in Convention law must remain faithful to the object and purpose of the Convention, namely the effective and progressive protection of human rights.

20. Any departure from the object and purpose of the Convention runs the risk of undermining both the legitimacy of the Court's interpretative authority and the coherence of the Convention system as a whole.

21. I regret to say that, in the present case, the Court has not only followed an approach that walks back the protection of the human right in question, but also appears to affirm that its approach involves no such back-tracking. If an absolute right, such as the one at issue, is treated as a qualified right and, at the same time, in a manner that manifestly undermines its effective protection, it is difficult to see how this could be regarded as anything other than a regression which risks emptying the concept of an "absolute" right of any meaningful content.

C. My disagreement with the finding that there was no need to examine the admissibility and merits of the complaint under Article 13 of the Convention

22. The applicant complained that all the domestic remedies he had pursued in respect of his complaint under Article 4 of Protocol No. 7 had been dismissed and submitted that this consequently amounted to a violation of his rights under Article 13 of the Convention, which guarantees the right to an effective remedy. The judgment, however, states that there is no need to examine the admissibility and merits of that complaint (see paragraph 295 of the judgment and point 4 of its operative provisions).

23. In doing so, it begins by referring to the Chamber's approach, namely its decision to refrain from ruling separately on the admissibility and merits of the complaint on the basis of the principle that the Court "is master of the legal characterisation to be given to the facts of the case" (*jura novit curia*) and on that basis to consider it appropriate to examine the application solely under Article 4 § 1of Protocol No. 7 (see paragraph 131 of that judgment dated 8 October 2024). No mention of the applicant's Article 13 complaint was made in the operative provisions of the Chamber judgment, where it was completely absorbed by the complaint under Article 4 § 1 of Protocol No. 7, with no violation being found.

24. By contrast, it seems that the present Grand Chamber judgment does not rely on this principle of recharacterisation to avoid examining the complaint under Article 13 of the Convention but *on another principle*, using

the *lex specialis* rationale to absorb one Convention right into another. In this connection, it refers to the following passage from *Tsaava and Others v. Georgia* ([GC], nos. 13186/20 and 4 others, 11 December 2025):

"225. It is open to the Court not to examine complaints which fully, or to some extent, overlap with complaints which it has already examined because they relate to the same facts, and concern issues which are part of – and are thus absorbed by – the broader issues already examined. Also, when faced with a complaint under two Convention provisions which, on the facts of the case before it, govern the same subject matter but differ in their level of specificity (*lex generalis* and *lex specialis*), the Court normally examines the complaint solely under the latter, sometimes construing it in the light of the former."

25. Based on the principle set forth in that judgment, the present judgment states that the question arises whether, in the present case, the applicant's complaint under Article 13 calls for a separate examination from that of his complaint under Article 4 of Protocol No. 7 or whether, on the contrary, the two complaints "overlap" (see paragraph 293 of the judgment).

26. In this connection, the present judgment notes (see paragraph 294) that the two complaints in question relate to the same facts, namely the institution of three sets of proceedings of a criminal nature against the applicant by the BdP, the CMVM and the criminal-law authorities respectively. Additionally, it notes (ibid.) that both complaints also relate to the same issue of an alleged breach of the *ne bis in idem* principle. As it goes on to explain, under Article 4 of Protocol No. 7 the applicant alleged that he had been tried three times for the same offence and, under Article 13, he complained of the dismissal of his appeals alleging a breach of the *ne bis in idem* principle in the BdP proceedings, the criminal proceedings and the CMVM proceedings.

27. In view of the above circumstances, the Grand Chamber concludes (see paragraph 295 of the judgment) that it is not necessary to examine the admissibility and merits of the complaint under Article 13, since the latter has been absorbed by the broader examination under Article 4 of Protocol No. 7, which thus constitutes a *lex specialis* in relation to the more general requirements of Article 13.

28. It is noteworthy that, although both the Chamber judgment and the Grand Chamber judgment in the present case treat the Article 13 complaint as being absorbed by the complaint under Article 4 of Protocol No. 7, *only the Grand Chamber judgment includes a point in its operative provisions holding that there is no need to examine the Article 13 complaint.* It remains unclear whether this outcome stems from the Court's use of a different methodology to avoid examining the Article 13 complaint. Specifically, the Chamber judgment relied on the principle of legal recharacterisation prior to its examination, whereas the Grand Chamber refers *in fine* to the principle of *lex specialis*. In both instances, the Court has *performed a form of procedural*

absorption. In the former case, this absorption was so absolute that it precluded any mention of Article 13 in the operative provisions of the judgment. In the latter, however, the absorption is less opaque; while the Court finds it unnecessary to examine the admissibility or merits of the complaint, it nevertheless explicitly records this decision within the operative provisions. This discrepancy raises significant questions as to the transparency of the Court's reasoning and suggests that such "absorption" effectively masks a mere failure to address a distinct procedural violation.

29. In *Tsaava and Others* (cited above), on which the conclusion in question is based, the Grand Chamber held that, in the light of its findings under the procedural limb of Article 3 of the Convention, there was no need to examine the admissibility and merits of the complaint under Article 13 (§ 450). In that case, I appended a partly dissenting opinion criticising this approach, and I would also refer to a number of opinions I have written on the same or similar issues (see, for instance, my two most recent opinions: a partly dissenting opinion in *Batou v. Switzerland*, no. 30781/22, 7 May 2026, and a dissenting opinion in *Eisenauer and Others v. France*, no. 47090/22 and 9 others, 12 May 2026).

30. I respectfully disagree with the above approach adopted by the Grand Chamber in the present case, for the reasons set out below. Absorption is not a neutral analytical step *but a substantive decision* not to adjudicate a complaint. Without a demonstration that all essential elements of the unexamined complaint have been fully addressed, the assertion of overlap remains cursory. It risks replacing reasoned adjudication with an assumed equivalence, thereby depriving applicants of an effective judicial determination of each complaint. The right to an effective remedy is autonomous and express. It cannot be displaced by the right not to be tried or punished twice under Article 4 § 1 of Protocol No. 7. The two rights are conceptually and functionally distinct. Their nature, scope and purpose are different. In my humble submission, even the Grand Chamber in *Tsaava and Others* acknowledged, in paragraph 227 of that judgment, a point that appears to have been overlooked or insufficiently considered both in its own conclusion and in the present judgment. In particular, it observed that, although complaints may arise out of the same facts, they do not necessarily overlap, as there may be differences in the nature of the interests safeguarded by the respective provisions. Complaints under Article 4 of Protocol No. 7 and under Article 13 may well arise from the same facts, but factual overlap is not normative equivalence.

31. In paragraph 294 of the present judgment, the Court provides additional reasoning: both complaints concern the same underlying issue of an alleged breach of the *ne bis in idem* principle. However, this line of reasoning overlooks the fact that Article 13 is inherently concerned with the violation of a right for which no effective domestic remedy was provided. Therefore, the commonality of the essential claim (*ne bis in idem*) does not

necessarily negate the distinct procedural requirement to provide a functional avenue of redress under Article 13. By conflating a possible breach of the right under Article 4 of Protocol No. 7 with the procedural right to a remedy, the Court's logic ineluctably *leads to the conclusion that an Article 13 complaint might never be raised independently*. Such a result effectively amounts to a negation of the right itself, rendering the guarantee of an effective remedy illusory and theoretical, rather than practical and effective.

32. Article 13 gives concrete expression to the subsidiarity enshrined in the Preamble to the Convention: it requires States to provide remedies at national level before the individual resorts to an application to the Court. If the Court refuses to examine an Article 13 complaint because it has already examined a complaint under Article 4 § 1 of Protocol No. 7, it risks emptying Article 13 of its independent meaning and depriving States of guidance on what effective remedies require in practice. Consequently, by failing to take account of the Article 13 complaint, the Court has missed a crucial opportunity to offer States clarification as to the nature and scope of "effective remedies" and what such remedies should entail in practice. In this regard, the Court's reasoning in *Kudła v. Poland* ([GC], no. 30210/96, § 152, ECHR 2000-XI), is particularly instructive:

> "... Article 13, giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights. The object of Article 13, as emerges from the *travaux préparatoires* (see the *Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights*, vol. II, pp. 485 and 490, and vol. III, p. 651), is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings."

33. The use of the *lex specialis* rationale to avoid examining one right separately is conceptually misplaced *where there is no genuine* normative *conflict*. The maxim *lex specialis derogat legi generali*, or *generalia specialibus non derogant*, is a tool for resolving conflicts between legal norms[7]. It applies where two rules lead to incompatible results and one of them must prevail. However, the Convention rights under Article 4 of Protocol No. 7 and Article 13 are not in conflict; on the contrary, the latter supports the former by providing an effective remedy in the event of a violation. The two provisions are capable of simultaneous and mutually reinforcing application.

[7] See Jenkins' *Centuries of Reports*, p. 120; and *Bennion on Statutory Interpretation: A Code*, 5th edition (LexisNexis, 2008), Section 88, pp. 306-07.

34. The Grand Chamber in *Tsaava and Others* (cited above, § 225) reiterated that, where two provisions governed the same subject matter but differed in specificity, the Court would normally examine only the *lex specialis*. However, this presupposes the existence of a normative hierarchy or conflict, which is absent from the Convention system. The relationship between many Convention rights is not hierarchical but complementary. Their concurrent applicability reflects the layered protection intended by the Convention, not their redundancy.

35. As stated above, each Convention right has its own text, purpose, scope, positive and negative obligations, and remedial consequences. To absorb one right into another is to blur these distinctions. It risks conflating legal tests, obscuring the State obligations undertaken and weakening the doctrinal coherence of the Convention. *The Convention is not an undifferentiated reservoir of rights from which the Court may select one provision and pour the others into it. It is a structured charter of distinct guarantees*. Each provision is a separate vessel containing its own legal substance. Combining them into a legal "cocktail" alters both their composition and their function. Nor does the interpretation and application of Convention rights permit recourse to a form of "judicial alchemy", whereby the substance of one guarantee is transmuted into another under the guise of interpretative flexibility; such an approach runs the risk not only of distorting the integrity of individual rights, but also of subtly transforming the character of the Convention as a human-rights treaty into a less determinate and less structurally coherent instrument.

36. It further risks displacing the principled limits inherent in each provision, including the specific conditions under which interferences may be justified, and thereby undermining the carefully calibrated balance which the Convention strikes between individual rights and collective interests. In addition, the methodological discipline of the Court's case-law – built upon distinct tests, thresholds and justificatory frameworks for each right – is eroded when guarantees are collapsed into one another, leading to unpredictability and a loss of normative clarity. Such an approach may also dilute procedural safeguards, as different rights trigger different standards of review, evidential requirements and remedial consequences. Ultimately, the integrity of the Convention system depends upon maintaining the analytical autonomy of each right, while allowing for principled interaction rather than unstructured fusion.

37. Even if the Court states that it will construe the *lex specialis* "in the light of" the *lex generalis*, this is no substitute for an autonomous examination. Without a separate assessment, the specific normative contribution of the so-called "general" provision remains unarticulated and untested.

38. This *lex specialis* approach also creates serious rule-of-law concerns. Applicants and States are left uncertain as to when a complaint will be

examined and when it will be declared absorbed, overlapping or redundant. The Court often fails to identify precisely what elements of the omitted right have supposedly been covered by the right examined. Absent such an explanation, it is impossible to know whether the unexamined complaint has been truly addressed, only partially considered, or simply disregarded. The conclusion that "no separate issue arises" may then become a dismissive device rather than the result of reasoned adjudication.

39. The approach is even more problematic when considered in the light of the Court's own standards under Article 6 of the Convention. Domestic courts are required to conduct a proper examination of the parties' submissions and to give specific and express replies to decisive arguments. The Court cannot credibly demand this of national courts while declining, without sufficient reasoning, to examine central Convention complaints that have been brought before it. The legitimacy of the Court depends not only on the outcome of cases but also on the transparency, completeness and intelligibility of its reasoning.

40. The failure to examine complaints also harms the development of Convention jurisprudence. The Convention is a living instrument whose progressive interpretation depends on the incremental clarification of each right. When complaints are absorbed or dismissed as redundant ("no need to examine"), opportunities are lost to define the content of provisions such as Article 13. Over time, this may lead to doctrinal stagnation, leaving important areas of human-rights protection underdeveloped.

41. Where an applicant raises a distinct and arguable complaint under a separate Convention provision, the Court should address it expressly. Even if the reasoning overlaps with the analysis under another provision, the Court should state whether that other right has been violated. What it should not do is leave the right unexamined through recharacterisation, the *Câmpeanu* formula (distinguishing between main and secondary complaints), or a superficial *lex specialis* analysis. In the present case, it has chosen to follow the third method for not examining a complaint; however, as applied by the Court, all three methods are, in my humble view, contrary to the principle of the effectiveness of the rights concerned. They result not only in a limitation, but in a deprivation of the protection afforded by those rights in practice, rendering them theoretical and illusory, rather than practical and effective.

42. In conclusion, the effectiveness of Convention rights requires that each one retain its autonomous force. The Court's role as guardian of human rights is not fulfilled by selecting one complaint and treating the rest as redundant. The right of individual application guarantees meaningful judicial engagement with alleged violations, not merely access to a judgment on some of them. A practice that leaves pleaded rights-violations unanswered runs the risk of making those rights theoretical and illusory, undermining subsidiarity, weakening legal certainty and eroding confidence in the Convention system. The proper approach is therefore one of principled completeness: every

distinct and arguable Convention complaint should receive separate, reasoned and effective judicial examination.

43. In the light of the foregoing, had I not been in the minority, I would have examined the complaint under Article 13. As noted above, a blanket practice of stating that "there is no need to examine the admissibility and merits of the complaint under Article 13" risks rendering Article 13 illusory and undermining the Court's own standards. As such, it is a practice which I cannot endorse.

D. Conclusion

44. Had I not been in the minority, having found a violation of Article 4 of Protocol No. 7, I would have awarded the applicant just satisfaction and, for all the reasons given above, examined his complaint under Article 13.