



Duplication of tax-related proceedings was in breach of right not to be tried twice for same offence

In its committee judgment in the case of [Bjarni Ármannsson v. Iceland](#) (application no. 72098/14) the European Court of Human Rights has unanimously held that there had been:

a violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice) of the European Convention on Human Rights.

The case concerned the applicant's conviction for aggravated tax offences which had allegedly violated the principle of *ne bis in idem*.

The Court found in particular that there had been a duplication of the proceedings. It accordingly concluded that Mr Ármannsson had been tried and punished twice for the same offence.

The judgment is final.

Principal facts

The applicant, Bjarni Ármannsson, is an Icelandic national who was born in 1968 and lives in Frederiksberg, Denmark. He was the CEO of one of Iceland's largest banks, *Glitnir*, from September 1997 to April 2007.

In July 2009 the Directorate of Tax Investigation began an audit of Mr Ármannsson's tax returns to examine whether he had declared profits from selling shares he had received when he had stepped down as the CEO of *Glitnir*.

The investigation was concluded with a report and Mr Ármannsson was informed that the case had been referred to the Directorate of Internal Revenue for possible reassessment of his taxes. In January 2012 the latter sent him a notification letter which stated that his taxes for the tax years of 2007 to 2009 had been re-assessed.

It also found that, based on the audit report and taking into account the applicant's objections, he had failed to declare significant capital income received from 2006 to 2008. It therefore re-assessed his taxes and imposed a 25% surcharge. Mr Ármannsson paid the taxes and the surcharge. The Directorate of Internal Revenue's decision became final in August 2012.

In March 2012 the Directorate of Tax Investigation reported the matter to the Special Prosecutor. Mr Ármannsson's lawyer protested and argued that the deadline to object to the tax reassessment had not expired and that the referral was ill-founded.

In December 2012 the Special Prosecutor, however, indicted Mr Ármannsson for failing to declare income in his tax returns of 2007 to 2009. The District Court convicted him of these charges in June 2013 and sentenced him to six months' imprisonment, suspended for two years, and the payment of a fine of 38.85 million Icelandic Krónur (ISK; approximately 241,000 euros).

He appealed but by a judgment of May 2014 the Supreme Court rejected his request to dismiss the case and upheld his conviction. His sentence was increased to eight months' imprisonment, again suspended for two years, and the fine was reduced to ISK 35.85 million.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 November 2014.

Relying on Article 4 of Protocol No. 7 to the Convention (right not to be tried or punished twice), Mr Ármannsson complained that, through the imposition of tax surcharges and the subsequent criminal trial and conviction for aggravated tax offences, he had been tried and punished twice for the same offence.

Judgment was given by a Committee of three judges, composed as follows:

Julia Laffranque (Estonia), *President*,
Stéphanie Mourou-Vikström (Monaco),
Arnfinn Bårdsen (Norway),

and also Hasan Bakırcı, *Deputy Registrar*.

Decision of the Court

Article 4 of Protocol No. 7

Under Article 4 of Protocol No. 7, the Court had to determine whether the imposition of tax surcharges was criminal in nature, whether the criminal offence for which the applicant was prosecuted and convicted was the same as that for which the tax surcharges were imposed (*idem*), whether there was a final decision and whether there was duplication of the proceedings (*bis*).

Having established that the two proceedings concerned a criminal offence, that the offence was the same offence (the *idem* part), and that the decisions were final, the Court proceeded to examine in detail the question of duplication (the *bis* part) within the meaning of the European Convention. As stated in the Grand Chamber Judgment in the case of *A and B v. Norway*, for the Court to be satisfied that there was no duplication of trial or punishment (*bis*), the respondent State must demonstrate convincingly that the dual proceedings in question had been “sufficiently closely connected in substance and in time”.

Assessing the connection in substance between the tax and the criminal proceedings, the Court accepted that they had pursued a complementary purpose in addressing the issue of a taxpayer’s failure to comply with the legal requirements relating to the filing of tax returns. Furthermore, the consequences of Mr Ármannsson’s conduct had been foreseeable: the imposition of tax surcharges, the indictment and the conviction had been among the possible actions and penalties levied under Icelandic law for failure to provide accurate information in a tax return.

The Court also considered that the domestic courts’ sentencing in the criminal case had taken sufficient account of the penalties imposed in the tax proceedings.

The police had conducted their own, independent investigation, which had resulted in Mr Ármannsson’s conviction. His conduct and liability under the different provisions of tax and criminal law had therefore been examined by different authorities and courts in proceedings that were largely independent of each other.

Turning to the connection in time between the two sets of proceedings, the Court noted that the overall length of the proceedings was about five years and 10 months. During that period, the proceedings had in effect progressed in parallel only between March 2012, when the Directorate of Tax Investigation had reported the matter to the Special Prosecutor, and August 2012, when the Directorate of Internal Revenue’s decision had become final.

Moreover, Mr Ármannsson had been indicted seven months after the final decision by the Directorate of Internal Revenue had acquired legal force. The criminal proceedings had then continued on their own for two years and nine months, until the Supreme Court's judgment.

Given those circumstances, in particular the lack of an overlap in time and the largely independent collection and assessment of evidence, the Court could not find that there had been a sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings for them to be compatible with the *bis* criterion in Article 4 of Protocol No. 7.

Consequently, Mr Ármannsson had been tried and punished for the same or substantially the same conduct by different authorities in two different sets of proceedings which had lacked the required connection.

There had therefore been a violation of Article 4 of Protocol No. 7.

[Just satisfaction \(Article 41\)](#)

The Court held that Iceland was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 29,800 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.