

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

FOURTH SECTION

CASE OF BOMAN v. FINLAND

(Application no. 41604/11)

JUDGMENT

STRASBOURG

17 February 2015

FINAL

17/05/2015

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



In the case of Boman v. Finland,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 27 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 41604/11) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Mr Alexander Boman ("the applicant"), on 4 July 2011.

2. The applicant was represented by Mr Marcus Måtar, a lawyer practising in Mariehamn. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the *ne bis in idem* principle had been violated in his case.

4. On 15 March 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1992 and lives in Jomala.

A. Criminal proceedings against the applicant

6. On 26 March 2010 the applicant was charged with, *inter alia*, causing a serious traffic hazard (*törkeä liikenneturvallisuuden vaarantaminen, grovt*

äventyrande av trafiksäkerheten) and operating a vehicle without a licence (*ajoneuvon kuljettaminen oikeudetta, olovlig körning*), both acts having been committed on 5 February 2010. The prosecutor requested that, in relation to the charge of causing a serious traffic hazard, a driving ban be imposed.

7. On 22 April 2010 the District Court (*käräjäoikeus, tingsrätten*) convicted the applicant as charged and sentenced him to 75 day-fines, amounting to 450 euros (EUR). A driving ban was also imposed until 4 September 2010 on the basis of section 44 of the Driving Licence Act of the Province of Åland.

8. No appeal was made against the judgment and it became final.

B. Administrative proceedings

9. On 28 May 2010 the police imposed a new driving ban on the applicant from 5 September to 4 November 2010 on the basis of section 46 §§ 1 (c) and 3 of the Driving Licence Act of the Province of Åland. In their decision the police referred to the fact that on 5 February 2010 the applicant had been driving a vehicle without a licence and that the District Court had convicted him for this by final judgment on 22 April 2010.

10. By letter dated 22 June 2010 the applicant appealed to the Åland Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), claiming that he had been tried and convicted twice in the same matter. He referred to Article 4 of Protocol No. 7 to the Convention.

11. On 20 July 2010 the Åland Administrative Court rejected the applicant's appeal and upheld the driving ban. The court found that the District Court had imposed the driving ban for causing a serious traffic hazard whereas the police had imposed it for operating a vehicle without a licence. Therefore, the applicant was not punished twice for the same offence and his rights protected by Article 4 of Protocol No. 7 to the Convention were not violated.

12. By letter dated 12 August 2010 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), reiterating the grounds of appeal already presented before the Administrative Court. He stressed that both the criminal and the administrative proceedings had related to the same facts which had taken place on 5 February 2010.

13. On 19 January 2011 the Supreme Administrative Court upheld the Administrative Court's decision. It found that the District Court had imposed the driving ban for causing a serious traffic hazard whereas the police had imposed it for operating a vehicle without a licence. Article 4 of Protocol No. 7 to the Convention had therefore not been violated. The decision was not unanimous and one of the judges expressed a dissenting

opinion. In her opinion, it was not to be ruled out that a driving ban constituted a criminal sanction. Referring to the case *Zolotukhin v. Russia*, she considered that after the applicant's final conviction by the District Court, a new driving ban based on the same facts on the basis of which he had already been convicted could no longer be imposed. Therefore, she would have quashed the police decision as well as the Administrative Court's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Section 44 of the Driving Licence Act of the Province of Åland (*körkortslagen för landskapet Åland*; Act no. 79/1991, as modified by Act no. 29/2004) reads as follows:

> "Anyone who is found to have made himself or herself guilty of causing a serious traffic hazard, of drunken driving or of aggravated drunken driving while operating a motor vehicle shall have a driving ban imposed by a court of law. However, if the driver is not sentenced to a punishment for the act, the court may waive imposing a driving ban.
>
> The driving ban referred to in subsection 1 may be imposed for a maximum period of five years. The decision of the court shall specify the last day of validity of the driving ban. The decision shall be enforced despite any appeal.
>
> In determining the time of validity of the driving ban, account shall be taken of the impact of the ban on the recipient's subsistence and other circumstances. The time for which a driving ban or a temporary driving ban has been imposed on the driving licence holder in an administrative procedure shall be deducted from the time of validity of the driving ban imposed by the court. If, thereafter, no time remains, the driving ban shall expire on the day when the decision is delivered or issued.
>
> When the driving ban is imposed, the driving licence holder must leave the licence with the police. If the driving licence holder refuses to leave the licence, it shall be taken from him or her. The driving licence holder shall regain the right to operate vehicles requiring a driving licence when the licence is returned to him or her. If the police have not taken possession of the licence, the driving licence holder shall regain the right to operate vehicles requiring a driving licence when a new licence is delivered.
>
> Anyone on whom a driving ban has been imposed under the provisions of subsection 1 shall, during the validity of the driving ban, have no right to drive a vehicle requiring a driving licence, to take driver training under Chapter 2 of this Act or to train drivers under Chapter 3 of this Act."

15. Section 46 of the same Act provides the following:

> "The police shall impose a driving ban on a driving licence holder if the latter
>
> a) no longer fulfils the preconditions for obtaining a driving licence;
>
> b) has failed to present a medical certificate within a prescribed time or to pass a new test ordered for him or her;
>
> c) when operating a motor vehicle, has made himself or herself guilty of an act not referred to in Section 45 which is punishable under the Traffic Offence Act of the

Province of Åland (Act no. 28/2004) and indicates serious disregard for traffic safety, or has made himself or herself guilty of operating a vehicle without a licence; (Act no. 29/2004)

d) three times within one year or four times within two years or, as a holder of a driving licence with a trial period, twice within one year has made himself or herself guilty of an act punishable under sections 2, 7 and 11 of the Traffic Offence Act of the Province of Åland (Act no. 28/2004), with the exception of acts punishable by a petty fine other than speeding offences, or guilty of a detector offence referred to in the Act on Applying, in the Province of Åland, the Act Prohibiting Devices that Hamper Traffic Supervision (Act no. 11/2003), or guilty of an offence against the Act of the Province of Åland on Vocational Competence of Lorry and Bus Drivers; (Act no. 86/2008)

e) has operated a vehicle despite a valid driving ban; (Act no. 36/1993) or

f) has been sentenced for drunken driving abroad or has made himself or herself guilty of such an act abroad.

The driving ban referred to in subsection 1, paragraphs a and b, shall be valid for an indefinite period.

The driving ban referred to in subsection 1, paragraphs c, d, e and f, shall be valid for the maximum period of six months. In cases referred to in these paragraphs the police may, instead of imposing a driving ban, order that the driving licence holder must take a driving test again. (Act no. 38/1993)

Anyone on whom a driving ban has been imposed under the provisions of subsection 1, paragraph c, except on the basis of operating a vehicle without a licence, has the right to have his or her matter reviewed by a court of law if he or she refers the matter to the court within a week from the date of being informed about the decision. In the case of such a referral the court shall, without delay, inform the police about the pendency of the matter. In such cases the police shall, without delay, return the driving licence. If the court holds that the driving ban is justified, it shall determine how long the ban is to be valid. However, the period of validity must not exceed the original period determined by the police. The court may not declare the driving ban conditional. (Act no. 5/2004)"

16. The Supreme Administrative Court has considered in its case-law (*KHO:2009:60*) that under Finnish law a driving ban was both an administrative security measure as well as a criminal sanction. In that case, after the imposition of a driving ban by the police, the District Court had delivered a final judgment by which the charges against the applicant had been dropped. As the applicant was not found guilty of the sole act on the basis of which the driving ban had been imposed by the police, there was no basis for imposing the driving ban and it had to be quashed.

III. RELEVANT SWEDISH PRACTICE

17. After the delivery of the Court's judgments in cases *Nykänen* and *Glantz* (see *Nykänen v. Finland*, no. 11828/11, § 52, 20 May 2014; and *Glantz v. Finland*, no. 37394/11, § 62, 20 May 2014), the Swedish Supreme Administrative Court found in its judgment of 11 December 2014

(no. 1833-14) that the Swedish practice had been accepted by the Court. The court found that it was clear that a withdrawal of a driving license on the basis of a conviction or other equivalent decision concerning a traffic offence was not considered as new criminal proceedings. This situation differed from that of tax surcharges and criminal proceedings for tax fraud for the same incorrect information and did not therefore violate against the *ne bis idem* principle in Article 4 § 1 of Protocol No. 7 to the Convention.

THE LAW

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

18. The applicant complained under Article 4 of Protocol No. 7 to the Convention that he had been tried and convicted twice in the same matter. Both the District Court and the police had imposed a driving ban for driving a vehicle without a licence on the basis of the same facts. Even though the District Court's judgment had become final on 22 April 2010, the police had imposed a new driving ban on 28 May 2010.

19. Article 4 of Protocol No. 7 to the Convention reads as follows:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 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."

20. The Government contested that argument.

A. Admissibility

21. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

22. The applicant argued that it was an indisputable fact that he had been subject to two sets of criminal proceedings and to two punishments for an offence that had been derived from identical facts, that was, driving a car on 5 February 2010. The so-called administrative driving ban fell within the notion of punishment within the meaning of Article 4 of Protocol No. 7 of the Convention. The preparatory works referred to by the Government had nothing to do with the relevant Act enacted by the Åland Islands' parliament.

23. The applicant noted that the main purpose of the driving ban was punitive. In the case *Nilsson v. Sweden* the Court had found that a driving ban constituted a punishment within the meaning of the Convention. Moreover, in its judgment the District Court had called the driving ban an "other criminal sanction". The relevant domestic law distinguished between situations where a driving ban was to be decided by a court and where it was to be decided by the police. It was for the courts to handle the most "serious" cases and for the police to handle the rest.

24. The applicant pointed out that he had been sentenced for five different offences of which four had been based on the same circumstances and facts, namely driving a car on 5 February 2010. As a punishment he had received a fine and a driving ban. The facts of the two offences had to be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7 of the Convention. The recapitulation of the events and sanctions demonstrated that the applicant's same conduct within the same timeframe was at stake. The prosecutor had requested a driving ban only under count one. However, the District Court was not bound by this request. From the District Court's judgment it was not possible to see exactly for which offence the driving ban had been imposed. The police also referred in their decision to the offences for which the applicant had been sentenced by the District Court. After the District Court judgment had gained legal force, the applicant should have been entitled to rely on the fact that he could not, and would not, be subjected to further punishments or criminal proceedings based on the same facts.

(b) The Government

25. The Government noted that, in their view, it was of no significance to the present case whether the administrative driving ban was held to fall within the notion of a "penal procedure" within the meaning of Article 4 of Protocol No. 7 to the Convention or not. The District Court and the police had not based the bans on the same facts.

26. The Government observed that, in the Ålandic system, a court of law decided on a driving ban for some offences while the police did so for the others. The legislation in that respect was very clear. It could not be presumed that this systemic structure as such amounted to a situation where the imposition of driving licence sanctions partly in criminal proceedings and partly by the police violated Article 4 of Protocol No. 7 of the Convention. In the relevant *travaux préparatoires*, a driving ban was described as a driving licence sanction that could be imposed in addition to a criminal sanction. It was a securing measure, directed at the right to drive motor vehicles in order to prevent drivers from driving when they were considered to lack the capacity to do so. The purpose of the driving ban was to improve road safety.

27. The Government noted that the prosecutor, on the one hand, had required in his indictment a driving ban expressly and only under count one, concerning the applicant's having caused a serious traffic hazard. The police, on the other hand, had based the driving ban only on the applicant's having operated a vehicle without a licence. In their decision, the police had taken into account the earlier driving ban imposed by the police on the applicant on 22 January 2009 for operating a vehicle without a licence. The new driving ban would not have exceeded two months without the existence of an earlier ban. The applicant was not therefore tried, sentenced or punished twice as the driving ban based on his operating a vehicle without a licence had been imposed in proceedings other than those leading to other sanctions. Referring to the case *Nilsson v. Sweden,* the Government argued that this course of conduct did not amount to initiating new proceedings but was, in terms of substance and time, connected with the criminal proceedings where the imputation and imposition of sanctions otherwise took place. There was thus no violation of Article 4 of Protocol No. 7 of the Convention.

2. The Court's assessment

(a) Whether the proceedings were criminal in nature?

28. The Court notes first of all that it is clear that the criminal proceedings against the applicant before the District Court were criminal in nature.

29. As to the criminal nature of a driving ban, the Court reiterates that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of *ne bis in idem* under Article 4 § 1 of Protocol No. 7. Otherwise, the application of this provision would be left to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of the Convention (see for example *Storbråten v. Norway* (dec.), no. 12277/04, ECHR 2007-... (extracts), with further references). The notion of "penal

procedure" in the text of Article 4 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" in Articles 6 and 7 of the Convention respectively (see *Haarvig v. Norway* (dec.), no. 11187/05, 11 December 2007; *Rosenquist v. Sweden* (dec.), no. 60619/00, 14 September 2004; *Manasson v. Sweden* (dec.), no. 41265/98, 8 April 2003; *Göktan v. France*, no. 33402/96, § 48, ECHR 2002-V; *Malige v. France*, 23 September 1998, § 35, *Reports of Judgments and Decisions* 1998-VII; and *Nilsson v. Sweden* (dec.), no. 73661/01, ECHR 2005-XIII).

30. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22), to be considered in determining whether or not there was a "criminal charge". The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not rule out a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Jussila v. Finland* [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV; and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 82-86, ECHR 2003-X).

31. The Court has taken a stand on the criminal nature of a driving ban in several cases, either in the context of Article 6 or in the context of Article 4 of Protocol No. 7. In the case *Escoubet v. Belgium*, the Court found in the context of Article 6 of the Convention that the temporary withdrawal of the applicant's driving licence for six days, before the commencement of any proceedings, on account of a suspected drink-driving offence did not concern a criminal charge (see *Escoubet v. Belgium* [GC], no. 26780/95, § 38, ECHR 1999-VII). A similar approach was followed in the case *Mulot v. France.* In that case the applicant's driving licence was temporarily withdrawn by a prefect for six months for safety reasons before the commencement of any court proceedings (see *Mulot v. France* (dec.), no. 37211/97, 14 December 1999). Also in the case *Hangl v. Austria,* the driving ban imposed by the police authorities for two weeks was considered to be of a preventive nature and not of criminal character (see *Hangl v. Austria* (dec.), no. 38716/97, 20 March 2001). However, in the case *Nilsson v. Sweden* (cited above), the Court found that although under Swedish law the withdrawal of a driving licence had traditionally been regarded as an administrative measure designed to preserve road safety, withdrawal on the ground of a criminal conviction constituted a "criminal" matter for the purpose of Article 4 of Protocol No. 7. What was more, in the view of the Court, the severity of the measure – suspension of the applicant's driving licence for 18 months – was in itself so significant,

regardless of the context of his criminal conviction, that it could ordinarily be viewed as a criminal sanction.

32. In the present case, the Court notes that the second driving ban was issued by the police for two months for reasons of road safety. This decision was taken by the police in the administrative proceedings after the criminal proceedings against the applicant had become final. The first driving ban had already been imposed by the District Court during the criminal proceedings. Following the line of interpretation adopted in *Nilsson v. Sweden* and taking into account the applicant's situation, the Court considers that the second driving ban issued by the police in the administrative proceedings is to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention. The parties also seem to make this presumption.

(b) Whether the offences for which the applicant was prosecuted were the same (*idem*)?

33. The Court acknowledged in the case of *Sergey Zolotukhin v. Russia* (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 81-84, ECHR 2009) the existence of several approaches to the question of whether the offences for which an applicant was prosecuted were the same. The Court presented an overview of the existing three different approaches to this question. It found that the existence of a variety of approaches engendered legal uncertainty incompatible with the fundamental right not to be prosecuted twice for the same offence. It was against this background that the Court provided in that case a harmonised interpretation of the notion of the "same offence" for the purposes of Article 4 of Protocol No. 7. In the *Zolotukhin* case the Court thus found that an approach which emphasised the legal characterisation of the two offences was too restrictive on the rights of the individual. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention. Accordingly, 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. It was therefore important to focus on those facts which constituted a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which had to be demonstrated in order to secure a conviction or institute criminal proceedings.

34. In the present case the parties disagree on whether the criminal proceedings against the applicant, on the one hand, and the proceedings imposing the second driving ban, on the other hand, arose from the same facts. The Court notes that, in the criminal proceedings, the applicant was

charged with, *inter alia*, causing a serious traffic hazard and operating a vehicle without a licence, both acts having been committed on 5 February 2010. The District Court convicted the applicant as charged and sentenced him to day-fines. The District Court imposed the first driving ban on the applicant for causing a serious traffic hazard whereas the police had imposed it for operating a vehicle without a licence. In their decision concerning the imposition of the second driving ban, the police referred to the fact that on 5 February 2010 the applicant had been driving a vehicle without a licence and that the District Court had convicted him for this by final judgment.

35. The Court considers that both sets of proceedings arose from the same facts, namely from the applicant's driving on 5 February 2010. There is no other set of facts which could have constituted the basis for the police's decision to impose the second driving ban. On the contrary, the police specifically relied in its decision on the events of 5 February 2010 and referred to the fact that the applicant had been convicted for these events by the District Court by a final judgment. The Court therefore considers that the two impugned sets of proceedings constituted a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same.

(c) Whether there was a final decision?

36. The Court reiterates that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a "final" decision (see *Franz Fischer v. Austria*, no. 37950/97, § 22, 29 May 2001; *Gradinger v. Austria*, 23 October 1995, § 53, Series A no. 328-C; and *Sergey Zolotukhin v. Russia* [GC], cited above, § 107). According to the Explanatory Report to Protocol No. 7, which itself refers back to the European Convention on the International Validity of Criminal Judgments, a "decision is final 'if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them'". This approach is well entrenched in the Court's case-law (see, for example, *Nikitin v. Russia*, no. 50178/99, § 37, ECHR 2004-VIII; and *Horciag v. Romania* (dec.), no. 70982/01, 15 March 2005).

37. Decisions against which an ordinary appeal lies are excluded from the scope of the guarantee contained in Article 4 of Protocol No. 7 as long as the time-limit for lodging such an appeal has not expired. On the other hand, extraordinary remedies such as a request for reopening of the proceedings or an application for extension of the expired time-limit are not taken into account for the purposes of determining whether the proceedings have reached a final conclusion (see *Nikitin v. Russia*, cited above, § 39).

Although these remedies represent a continuation of the first set of proceedings, the "final" nature of the decision does not depend on their being used. It is important to point out that Article 4 of Protocol No. 7 does not preclude the reopening of the proceedings, as stated clearly by the second paragraph of Article 4.

38. In the present case the applicant did not appeal against the District Court judgment of 22 April 2010. The applicant thus permitted the time-limit to expire without exhausting the ordinary remedies. His conviction therefore became "final", within the autonomous meaning given to the term by the Convention, on 22 April 2010.

(d) Whether there was a duplication of proceedings (*bis*)?

39. The Court reiterates that Article 4 of Protocol No. 7 prohibits the repetition of criminal proceedings that have been concluded by a "final" decision. Article 4 of Protocol No. 7 is not only confined to the right not to be punished twice but extends also to the right not to be prosecuted or tried twice (see *Franz Fischer v. Austria*, cited above, § 29). Were this not the case, it would not have been necessary to add the word "punished" to the word "tried" since this would be mere duplication. Article 4 of Protocol No. 7 applies even where the individual has merely been prosecuted in proceedings that have not resulted in a conviction. The Court reiterates that Article 4 of Protocol No. 7 contains three distinct guarantees and provides that no one shall be (i) liable to be tried, (ii) tried or (iii) punished for the same offence (see *Nikitin v. Russia*, cited above, § 36).

40. The Court notes that Article 4 of Protocol No. 7 clearly prohibits consecutive proceedings if the first set of proceedings has already become final at the moment when the second set of proceedings is initiated (see for example *Sergey Zolotukhin v. Russia* [GC], cited above).

41. As concerns parallel proceedings, Article 4 of Protocol No. 7 does not prohibit several concurrent sets of proceedings. In such a situation it cannot be said that an applicant is prosecuted several times "for an offence for which he has already been finally acquitted or convicted" (see *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX (extracts)). There is no problem from the Convention point of view either when, in a situation of two parallel sets of proceedings, the second set of proceedings is discontinued after the first set of proceedings has become final (see *Zigarella v. Italy* (dec.), no. 48154/99, ECHR 2002-IX (extracts)). However, when no such discontinuation occurs, the Court has found a violation (see *Tomasović v. Croatia*, cited above, § 31; *Muslija v. Bosnia and Herzegovina*, no. 32042/11, § 37, 14 January 2014; *Nykänen v. Finland*, cited above, § 52; and *Glantz v. Finland*, cited above, § 62).

42. However, the Court has also found in its previous case-law (see *R.T. v. Switzerland* (dec.), no. 31982/96, 30 May 2000; and *Nilsson v. Sweden,* (cited above)) that although different sanctions (suspended prison sentences

and withdrawal of driving licences) concerning the same matter (drunken driving) have been imposed by different authorities in different proceedings, there has been a sufficiently close connection between them, in substance and in time. In those cases the Court found that the applicants were not tried or punished again for an offence for which they had already been finally convicted in breach of Article 4 § 1 of Protocol No. 7 to the Convention and that there was thus no repetition of the proceedings.

43. Turning to the present case and regarding whether there was repetition in breach of Article 4 § 1 of Protocol No. 7 to the Convention, the Court notes that both the use of criminal proceedings and the imposition of a driving ban by the police in the administrative proceedings form part of the sanctions under both Finnish and Ålandic law for traffic offences. A driving ban is considered to be both an administrative security measure as well as a criminal sanction. Even if the different sanctions are imposed by two different authorities in different proceedings, there is nevertheless a unity between them, in substance and in time. This is illustrated by the fact that, according to the wording of the relevant legislation, namely section 46 § 1 (c) of the Driving Licence Act of the Province of Åland, the imposition of a driving ban on the basis of that provision presupposes that a person has already been found guilty of a traffic offence or of operating a vehicle without a licence. In the present case, the police decision, shortly after the judgment in the criminal proceedings, to impose the second driving ban was directly based on the applicant's final conviction by the District Court for traffic offences and thus did not contain a separate examination of the offence or conduct at issue by the police. Therefore, it must be said that, under the Ålandic system, the two proceedings, namely the criminal proceedings against the applicant and the proceedings to impose a driving ban, were intrinsically linked together, in substance and in time, to consider that these measures against the applicant took place within a single set of proceedings for the purpose of Article 4 of Protocol No. 7 to the Convention. In conclusion, the Court finds that the applicant was not convicted twice for the same matter in two separate sets of proceedings.

44. Accordingly, there has been no violation of Article 4 of Protocol No. 7 to the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds,* by six votes to one, that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

Done in English, and notified in writing on 17 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

G.R.A.
F.E.P.

DISSENTING OPINION OF JUDGE WOJTYCZEK

1. The instant case raises important issues under Article 4 of Protocol No. 7. I have doubts about the approach adopted in the present case, particularly regarding the criteria applied in the reasoning for the purpose of assessing whether proceedings were conducted twice for the same offence.

I accept that the two sets of proceedings against the applicant were criminal in nature. I agree that the offence for which the applicant was prosecuted in the two sets of proceedings was the same and that the police imposed a sanction after the criminal judgment delivered by the competent District Court became final. At the same time, I find it difficult to agree with the statement that "the applicant was not convicted twice for the same matter in two separate sets of proceedings" (paragraph 43 *in fine*).

2. The *ne bis in idem* principle is a fundamental guarantee of justice in criminal law. The interpretation and proper application of this principle are issues of the utmost complexity. To my regret, I note *en passant* that the case-law of the Court pertaining to Article 4 of Protocol No. 7 is neither consistent nor clear, and that many important legal questions arising from this provision have been left without satisfactory answers.

There is no doubt that the interpretation of Article 4 of Protocol No. 7 must take into account the variety of legal traditions of the High Contracting Parties. Without entering into a detailed comparative law analysis, I would just like to point out that the *ne bis in idem* principle is understood in different ways in different national legal systems. This makes the interpretation of the provision in question particularly difficult.

The *ne bis in idem* principle was initially conceived to prevent multiple prosecutions and trials within the framework of the same body of procedural rules (i.e. criminal procedure). This preoccupation appears clearly in the wording of Article 4 of Protocol No. 7 (especially in the second paragraph). However, the most difficult problems arise where criminal sanctions in the strict sense are cumulated with other types of sanctions, such as administrative sanctions or sanctions for petty offences. In most European States, the law provides for situations in which different sanctions for the same illegal act may be imposed in different types of proceedings. It is not uncommon that competence for imposing sanctions for the same illegal acts is divided between different organs of the State applying different substantive and procedural rules. There may be justified reasons for adopting such solutions which are not necessarily incompatible with Article 4 of Protocol No. 7.

3. The interpretation of Article 4 of Protocol No. 7 must also take into consideration the functions and goals of the *ne bis in idem* principle, which are not mentioned in the explanatory report to the Protocol.

The principle under consideration protects the stability (*res judicata*) of criminal judgments and more broadly the authority of the courts. It enhances

legal certainty by preventing prolonged stress and uncertainty for the accused as regards the outcome of possible subsequent repressive proceedings (compare, for instance, G. Conaway, "*Ne bis in idem in International Law", International Criminal Law Review*, vol. 3 (2003) p. 217-244, at 222-223). It protects against the misuse of criminal proceedings for the purpose of harassment. The imposition of a criminal sanction by a single judicial decision may serve the justice and rationality of criminal policies: all the relevant factual circumstances are comprehensively assessed by the same judges, who also consider all the applicable sanctions. There is no risk of two or more bodies making conflicting choices as regards the punishment of the same offense.

4. Turning to the circumstances of the instant case, I note the applicant was convicted and sentenced by the District Court, *inter alia,* for operating a vehicle without a licence. A joint punishment of 75 day-fines was imposed for the five charges. Later, in subsequent proceedings the police imposed a further sanction (a driving ban) for operating a vehicle without a driving licence.

Different criteria may be used to establish whether specific issues of criminal liability are identical for the purpose of applying the *ne bis in idem* principle. In some judgments, the Court has looked at the legal characterisation of the facts. In others the Court has referred to the facts themselves. Whichever criterion we apply in the instant case, the outcome would be the same as the two sets of proceedings involved the same facts and in both proceedings exactly the same legal characterisation of the facts was adopted (operating the car without a license).

I further note that the applicant was punished twice in the two sets of proceedings. Moreover, the police and the court imposed the same type of punishment (a driving ban), although they imposed it for different offenses. This is not a situation of different State bodies imposing different types of sanctions in different proceedings.

5. The majority refer to the cases of *R.T. v. Switzerland* and *Nilsson v. Sweden*, in which the Court attempted to establish criteria for assessing whether it is acceptable to impose sanctions for the same acts in two sets of proceedings. In this case-law the Court verified whether there was a "sufficiently close connection" between the different proceedings "in substance and in time". It is obvious that proximity in time is an important factor to take into account, whereas the criterion of "close connection in substance" between different proceedings seems obscure and therefore inoperative.

In my view, when applying the *ne bis in idem* principle it is necessary to examine, among other things, the specific purposes of each procedure, the nature and severity of the applicable sanctions, the practical impact of their accumulation, the margin of appreciation left to State bodies when imposing these sanctions, as well as the order of the different procedures, their length

and the detailed rules concerning their articulation and interactions. Furthermore, it may be necessary to assess whether the specific purposes of a procedure require special knowledge on the part of the adjudicating body. At any event, dividing the imposition of sanctions for the same acts between different State bodies requires appropriate justification. Dividing the imposition of sanctions may be justified in particular where the different procedures do not "overlap" in their aims and effects but are established to achieve complementary aims which would be more difficult to achieve in a unified procedure before the same court.

I note that in the present case the duplication of proceedings cannot be justified by the different nature of the sanctions imposed in the second set of proceedings: the same type of sanction (a driving ban) was imposed in the two sets of proceedings. Moreover, whereas I fully respect the freedom of the States to choose and shape their substantive and procedural criminal law, I would observe that the concern to secure just punishment for an illegal act is an argument against dividing the imposition of the same type of sanctions between different State bodies and proceedings. I further note that the police have some discretion in imposing sanctions under section 46 §§ 1 (c) and 3 of the Driving Licence Act of the Province of Åland: they may impose a driving ban of up to 6 months. If the driver has a valid driving licence, the police – instead of imposing a driving ban – may order the person concerned to retake the driving test. Although the punishment may appear relatively mild and a margin of discretion is needed to achieve the aims of the procedure, for some time the applicant nonetheless suffered additional uncertainty about the final outcome of the different proceedings. I also regret that the majority decided not to consider in greater detail the purposes of the two procedures and the rules relating to their articulation and interaction.

Taking into account the foregoing arguments, I conclude that the different proceedings against the applicant cannot be considered as mere stages in one single set of proceedings for the purpose of Article 4 of Protocol No. 7. The applicant was punished twice for the same act (namely operating a car without a driving license), in violation of the prohibition enshrined in this provision.