

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

FOURTH SECTION

CASE OF ÖSTERLUND v. FINLAND

(Application no. 53197/13)

JUDGMENT

STRASBOURG

10 February 2015

FINAL

10/05/2015

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



In the case of Österlund v. Finland,

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

Guido Raimondi, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 20 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 53197/13) 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 Rabbe Roley Ragnar Österlund ("the applicant"), on 23 July 2013.

2. The applicant was represented by Mr Mikko Siika-Aho, a lawyer practising in Helsinki. 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 3 December 2013 the complaint concerning the *ne bis in idem* principle was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Karjaa.

A. Taxation proceedings

6. In 2004 and 2005 the applicant's two companies were subject to a tax inspection. The tax inspection was concluded with a final report on 20 December 2005.

7. On 25 August and 12 September 2006 the tax authorities imposed on the applicant additional taxes as well as tax surcharges (*veronkorotus, skatteförhöjning*) for the tax years 2000 to 2003 as he had, *inter alia,* received disguised dividends from the companies. The amount of tax surcharges varied between 240 and 5,000 euros (EUR).

8. By letter dated 16 September 2008 the applicant sought rectification from the local Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden*), requesting it to quash the decisions of 25 August and 12 September 2006 concerning the tax years 2002 to 2003.

9. By letter dated 16 September 2008 the applicant lodged a material appeal (*perustevalitus, grundbesvär*) with the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) in respect of the tax years 2000 and 2001.

10. On 24 February 2010 the Tax Rectification Committee rejected the applicant's applications for rectification concerning the tax years 2002 and 2003.

11. By letter dated 12 April 2010 the applicant appealed against the rectification decisions of 24 February 2010 to the Helsinki Administrative Court, requesting that the taxation decisions concerning the tax years 2002 and 2003 be quashed and the tax surcharges be withdrawn. He referred to the *ne bis in idem* principle and claimed that the taxation decisions violated that principle.

12. On 5 April 2011 the Helsinki Administrative Court cancelled some of the tax surcharges in respect of tax years 2001 to 2003 and quashed the relevant tax decisions. For the rest, it rejected the applicant's appeals. The court found that there was no impediment to imposing taxes on disguised dividends even if there was already a final criminal judgment in this respect, because imposing taxes on disguised dividends was not considered criminal. There could thus be no question of double jeopardy in this respect. The taxation decisions for the tax years 2002 and 2003 were thus upheld. As far as the tax surcharges and the right to impose additional taxes were concerned, the court found that the tax surcharges and the charges on tax fraud concerned the same matter. The tax surcharges thus related to acts in respect of which the applicant had already been convicted or acquitted. As both matters were pending simultaneously and not consecutively, there was no impediment to continuing the taxation proceedings. Even if the criminal proceedings became final while the taxation proceedings were still pending, this did not prevent the continuation of the taxation proceedings. There was

thus no reason to change the tax surcharges as far as the corresponding criminal charges had been dismissed, namely, in respect of the disguised dividends received during the tax years 2002 and 2003. As far as the proceedings led to both criminal conviction and imposition of tax surcharges, the situation was contrary to Article 4 of Protocol No. 7 to the Convention and the tax surcharges were therefore cancelled in respect of tax years 2001 to 2003. The decision was not unanimous.

13. By letter dated 13 June 2011, the applicant appealed against the Administrative Court decision to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), reiterating the grounds of appeal already presented before the Administrative Court. He argued that his acquittal prevented the further examination of the same matter in taxation proceedings.

14. On 23 January 2013 the Supreme Administrative Court refused the applicant leave to appeal but granted the Tax Ombudsman (*veroasiamies, skatteombudet*) leave to appeal. It quashed the Administrative Court's decision regarding cancellation of the tax surcharges and upheld the lower court's decisions. The court found that it had, in its decision of 20 April 2011, examined the scope of the *ne bis in idem* principle and the Court's case-law in this respect. In the present case the charges and the tax surcharges concerned essentially the same matter. However, the *ne bis in idem* principle was applicable only when the first set of proceedings had become final before the second set of proceedings started. In the present case the proceedings had been simultaneous. Tax surcharges could thus be imposed on the applicant even if the criminal proceedings against him had already become final. The Administrative Court's decision thus needed to be quashed.

B. Criminal proceedings

15. On 25 April 2007 the public prosecutor brought charges against the applicant, *inter alia*, for aggravated tax fraud (*törkeä veropetos, grovt skattebedrägeri*) concerning the tax years 2001 to 2003. According to the charges, the applicant was accused of aggravated tax fraud as he had avoided taxes. The tax authorities joined the charges and presented a compensation claim totalling EUR 150,508.52 plus interest, which was the amount of avoided taxes.

16. On 20 March 2008 the Raasepori District Court (*käräjäoikeus, tingsrätten*) convicted the applicant of aggravated tax fraud, and sentenced him to a suspended prison sentence of 7 months. He was ordered to pay the tax authorities EUR 89,113.80 plus interest in compensation for the avoided taxes. The court found that the applicant had avoided taxes during the tax years 2001 to 2003 but dismissed the charges as far as they concerned the disguised dividends, for lack of proof.

17. By letter dated 14 August 2009 the applicant appealed to the Turku Appeal Court (*hovioikeus, hovrätten*), requesting that the charges of aggravated tax fraud be dismissed as tax surcharges had already been imposed in the matter.

18. On 15 April 2009 the Turku Appeal Court upheld the District Court judgment. It found that possible tax surcharges imposed on the applicant did not prevent him from being convicted of tax fraud and sentenced.

19. On an unspecified date the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Appeal Court.

20. On an unspecified date, the Supreme Court granted the applicant leave to appeal.

21. On 19 November 2010 the Supreme Court upheld the Appeal Court judgment. It found that the charges of aggravated tax fraud undisputedly concerned the same failure to declare income for which tax surcharges had been imposed for the tax years 2001 to 2003. The court found that the fact that taxation proceedings became final while criminal proceedings were still pending did not prevent the examination of the charges being continued. In the present case, the charges had been brought before the time-limit for lodging an application for rectification had run out. The tax surcharges in respect of the tax years 2001 to 2003 were thus all still pending before the Administrative Court. As the charges had been brought while the taxation proceedings had not yet become final, there was no impediment to examining the charges of aggravated tax fraud. This judgment was published (KKO 2010:82).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Tax Assessment Procedure Act

22. Section 57, subsection 1, of the Tax Assessment Procedure Act (*laki verotusmenettelystä, lagen om beskattningsförfarande,* Act no. 1558/1995, as amended by Act no. 1079/2005) provides that if a person has failed to make the required tax returns or has given incomplete, misleading or false information to the tax authorities and tax has therefore been incompletely or partially levied, the taxpayer shall be ordered to pay unpaid taxes together with additional tax and a tax surcharge.

B. Penal Code

23. According to Chapter 29, sections 1 and 2, of the Penal Code (*rikoslaki, strafflagen,* as amended by Acts no. 1228/1997 and no. 769/1990), a person who (1) gives a tax authority false information on a fact

that influences the assessment of tax, (2) files a tax return concealing a fact that influences the assessment of tax, (3) for the purpose of avoiding tax, fails to observe a duty pertaining to taxation, influencing the assessment of tax, or (4) acts otherwise fraudulently and thereby causes or attempts to cause a tax not to be assessed, or too low a tax to be assessed or a tax to be unduly refunded, shall be sentenced for *tax fraud* to a fine or to imprisonment for a period of up to two years. If by the tax fraud (1) considerable financial benefit is sought or (2) the offence is committed in a particularly methodical manner and the tax fraud is aggravated when assessed as a whole, the offender shall be sentenced for *aggravated tax fraud* to imprisonment for a period between four months and four years.

C. Supreme Court's case-law

24. The Supreme Court has taken a stand on the *ne bis in idem* principle in its precedent case *KKO 2010:46* which concerned tax surcharges and aggravated tax fraud. In that case it found, *inter alia*, that even though a final judgment in a taxation case, in which tax surcharges had been imposed, prevented criminal charges being brought about the same matter, such preventive effect could not be applied to pending cases (*lis pendens*) crossing from administrative proceedings to criminal proceedings or vice versa. However, in July 2013 the Supreme Court reversed its line of interpretation, finding that charges for tax fraud could no longer be brought if there was already a decision to order or not to order tax surcharges in the same matter (*KKO 2013:59*).

D. Legislative amendments

25. The Act on Tax Surcharges and Customs Duty Surcharges Imposed by a Separate Decision (*laki erillisellä päätöksellä määrättävästä veron- tai tullinkorotuksesta, lagen om skatteförhöjning och tullhöjning som påförs genom ett särskilt beslut*, Act no. 781/2013) entered into force on 1 December 2013. According to the Act, the tax authorities can, when making a tax decision, assess whether to impose a tax surcharge or to report the matter to the police. The tax authorities can decide not to impose a tax surcharge. If they have not reported the matter to the police, a tax surcharge can be imposed by a separate decision by the end of the calendar year following the actual tax decision. If the tax authorities have imposed tax surcharges, they can no longer report the same matter to the police unless, after imposing the tax surcharges, they have received evidence of new or recently revealed facts. If the tax authorities have reported the matter to the police, tax surcharges can, as a rule, no longer be imposed. The purpose of the Act is thus to ensure that a tax or a customs duty matter is processed and possibly punished in only one set of proceedings. The Act does not,

however, contain any transitional provisions extending its scope retroactively.

THE LAW

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

26. The applicant complained under Article 4 of Protocol No. 7 to the Convention about double jeopardy. He had been both convicted and acquitted of charges of aggravated tax fraud in the criminal proceedings which had become final on 19 November 2010 but tax surcharges had been imposed thereafter in taxation proceedings which had become final on 23 January 2013. The applicant argued that the conviction and acquittal in the criminal proceedings had prevented another examination of the same matter in taxation proceedings.

27. 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."

28. The Government contested that argument.

A. Admissibility

29. 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

30. The applicant agreed with the Government that it was obvious that both the tax surcharge proceedings and the tax fraud proceedings were of a criminal nature and that both sets of proceedings concerned the same circumstances. The applicant observed that in the Court's recent case-law an extension from the *res judicata* criterion to the *lis pendens* criterion had been made in several cases, including the cases *Glantz v. Finland* and *Nykänen v. Finland*.

31. The applicant argued that, in the present case, the proceedings had been conducted in parallel. In 2006 the tax authorities had imposed tax surcharges on the applicant. In April 2011 the Administrative Court had cancelled some of them but in January 2013 the Supreme Administrative Court had re-imposed the tax surcharges. In the criminal proceedings the public prosecutor had brought charges against the applicant for aggravated tax fraud. In March 2008 the District Court had convicted the applicant and in April 2009 the Appeal Court had upheld the conviction. The Supreme Court, by a final decision, had upheld the Appeal Court judgment in October 2010. The applicant thus considered that he had been punished twice for the same acts.

(b) The Government

32. The Government found it indisputable that both the tax surcharge proceedings and the tax fraud proceedings were of a criminal nature for the purposes of the Article relied on. It was also obvious that both sets of proceedings had concerned the same circumstances. The *ne bis in idem* rule thus applied, and the applicant had victim status.

33. The Government pointed out, however, that Article 4 of Protocol No. 7 did not seem to apply to parallel proceedings. Both the Supreme Court and the Supreme Administrative Court had also followed this line of interpretation but especially the former had adjusted its line of interpretation in 2013. The Court's case-law did not provide a completely clear answer to this question.

34. The Government observed that in the present case the first set of proceedings had not yet become final within the meaning of the Convention when the second set of proceedings became pending on 25 April 2007. Since the proceedings had taken place simultaneously, the case did not fulfil the *res judicata* criterion. The Court's case-law did not indicate any clear extension of the *res judicata* criterion to cover also the *lis pendens* criterion. However, after the delivery of the judgments in the cases *Glantz* and *Nykänen*, the Court's line of interpretation had become clearer. According

to these judgments, parallel sets of proceedings in the same matter were not prohibited as such but a violation occurred if the first set had become final and the second set was still continued. In the present case, the criminal proceedings had become final on 19 October 2010. As a result, the tax surcharge proceedings should have been discontinued as the criminal conviction had already become final in the same matter.

2. The Court's assessment

(a) Whether the proceedings were criminal in nature?

35. The Court notes first of all that it is clear that the criminal proceedings for aggravated tax fraud were criminal in nature.

36. As to the criminal nature of tax surcharge proceedings, 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).

37. 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).

38. The Court has taken a stand on the criminal nature of tax surcharges, in the context of Article 6 of the Convention, in the case *Jussila v. Finland*

(cited above). In that case the Court found that, regarding the first criterion, it was apparent that the tax surcharges were not classified as criminal but as part of the fiscal regime. This was, however, not decisive but the second criterion, the nature of the offence, was more important. The Court observed that the tax surcharges were imposed by general legal provisions applying to taxpayers generally. Further, under Finnish law, the tax surcharges were not intended as pecuniary compensation for damage but as a punishment to deter re-offending. The surcharges were thus imposed by a rule, the purpose of which was deterrent and punitive. The Court considered that this established the criminal nature of the offence. Regarding the third Engel criterion, the minor nature of the penalty did not remove the matter from the scope of Article 6. Hence, Article 6 applied under its criminal head, notwithstanding the minor nature of the tax surcharge (see *Jussila v. Finland* [GC], cited above, §§ 37-38). Consequently, proceedings involving tax surcharges are "criminal" also for the purpose of Article 4 of Protocol No. 7.

39. Therefore, in the present case, the Court considers that it is clear that both sets of proceedings are to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention. The parties also find this to be undisputed.

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

40. 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.

41. In the present case, the Court notes that the tax surcharge proceedings and the tax fraud proceedings against the applicant arose from the same facts, namely the applicant's failure to declare income to the tax authorities concerning the tax years 2001 to 2003. The Court agrees therefore with the parties that the tax surcharge proceedings and the tax fraud proceedings against the applicant arose from identical facts or facts which were substantially the same.

(c) Whether there was a final decision?

42. 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).

43. 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.

44. In the present case, the tax fraud proceedings concerning the tax years 2001 to 2003 became final on 19 November 2010 when the Supreme Court upheld the Appeal Court judgment. No further ordinary remedies were available to the parties. The applicant's criminal conviction for

aggravated tax fraud was therefore "final", within the autonomous meaning given to the term by the Convention, on 19 November 2010.

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

45. 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).

46. 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).

47. 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*, no. 11828/11, § 52, 20 May 2014; and *Glantz v. Finland*, no. 37394/11, § 62, 20 May 2014).

48. 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* (dec.), no. 73661/01, 13 December 2005) 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.

49. 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 it is true that both the use of criminal proceedings and the tax surcharges imposed on the applicant form part of the sanctions under Finnish law for the failure to provide information about income in a tax declaration with a result that a too low tax assessment is made. However, under the Finnish system the criminal and the administrative sanctions are imposed by different authorities without the proceedings being in any way connected: both sets of proceedings follow their own separate course and become final independently from each other. Moreover, neither of the outcomes of the proceedings is taken into consideration by the other court or authority in determining the severity of the sanction, nor is there any other interaction between the relevant authorities. More importantly, the tax surcharges are imposed under the Finnish system following an examination of an applicant's conduct and his or her liability under the relevant tax legislation, which is independent from the assessments made in the criminal proceedings. This contrasts with the Court's earlier cases *R.T.* and *Nilsson* relating to driving licences, where the decision on withdrawal of the licence was directly based on an expected or final conviction for a traffic offence and thus did not contain a separate examination of the offence or conduct at issue. Therefore, it cannot be said that, under the Finnish system, there is a close connection, in substance and in time, between the criminal and the taxation proceedings.

50. Consequently, the present case concerns two parallel and separate sets of proceedings of which the first set of proceedings concerning the tax surcharges started in 2006 when the tax surcharges were imposed on the applicant. He appealed against these decisions. These proceedings became final on 23 January 2013 when the Supreme Administrative Court refused the applicant leave to appeal. The second set of proceedings concerning the tax fraud charges was initiated on 25 April 2007 and concluded on 19 November 2010 when the Supreme Court rendered its final judgment. The two sets of proceedings were thus pending concurrently until 19 November 2010 when the second set became final.

51. The Court notes that when the second set of proceedings became final on 19 November 2010, the applicant's appeal against the tax surcharge decisions was still pending before the Administrative Court. As the proceedings before the Administrative Court, and subsequently before the Supreme Administrative Court, were not discontinued after the criminal proceedings became final but were continued until a final decision on 23 January 2013, the applicant was convicted twice for the same matter in two sets of proceedings which became final on 19 November 2010 and on 23 January 2013 respectively.

52. In conclusion, the Court finds that there has been a violation of Article 4 of Protocol No. 7 to the Convention since the applicant was convicted twice for the same matter in two separate sets of proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicant claimed EUR 384,455.27 in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

55. The Government considered that the applicant's claim for pecuniary damages should be rejected due to a lack of a causal link as far as it related to his criminal conviction or to claims declared unsubstantiated in the criminal proceedings. As concerned his claims for pecuniary damages in respect of tax surcharges, the Government pointed out that the applicant had the right to apply for annulment of the tax surcharge decisions before the Supreme Administrative Court. Therefore these claims for pecuniary damages should also be rejected. As to non-pecuniary damage, the Government considered the amount claimed excessive. In their opinion the compensation for non-pecuniary damage should not exceed EUR 1,500.

56. The Court acknowledges that the applicant can seek annulment of the tax surcharge decisions before the Supreme Administrative Court. As the domestic system provides a possibility to obtain redress in such situations, the Court rejects the applicant's claims for pecuniary damages. On the other hand, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 24,650 for the costs and expenses incurred apparently before the domestic courts as well as the Court.

58. The Government noted that the invoices presented by the applicant did not contain any reference to the proceedings before the Court or to any other relevant information such as the hours invoiced. It was not at all clear whether the claims even related to the present case. Accordingly, in their view, the applicant's claims for costs and expenses should be rejected in their entirety. Were the Court to have another view, the Government considered the amount claimed for costs and expenses excessive as to

quantum. In their view, the total amount of compensation for costs and expenses should not exceed EUR 3,000 (inclusive of value-added tax).

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for costs and expenses under all heads for lack of sufficient substantiation, as required by Rule 60 of the Rules of Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 4 of Protocol No. 7 to the Convention admissible;

2. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Registrar	President