

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

FOURTH SECTION

CASE OF RINAS v. FINLAND

(Application no. 17039/13)

JUDGMENT

STRASBOURG

27 January 2015

FINAL

27/04/2015

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



In the case of Rinas v. Finland,

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

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

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 6 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 17039/13) 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 Russian national, Mr Pavel Vladimirovic Rinas ("the applicant"), on 5 March 2013.

2. The applicant was represented by Mr Seppo Jääskeläinen, a lawyer practising in Espoo. 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 1960 and lives in Vantaa.

A. Taxation proceedings

6. In 1998 the applicant's Finnish company was subjected to a tax inspection but the tax authorities found no irregularities.

7. In 2004 and 2005 the applicant was again subjected to a tax inspection of his foreign companies. The preliminary tax inspection report was issued on 5 December 2005. The tax inspection was concluded with a final report on 27 February 2006.

8. On 22 December 2005 the tax authorities imposed on the applicant additional taxes as well as tax surcharges (*veronkorotus, skatteförhöjning*) for the tax year 1999 for having received disguised dividends from the foreign companies. The tax surcharges amounted to 6,727 euros (EUR).

9. By letter dated 19 February 2006 the applicant sought rectification from the local Tax Rectification Committee (*verotuksen oikaisulautakunta, prövningsnämnden i beskattningsärenden*), requesting it to quash the decision of 22 December 2005 concerning the tax year 1999.

10. On 26 June 2006 the tax authorities imposed on the applicant additional taxes and tax surcharges for the tax years 2000, 2002, 2003 and 2004 for having received disguised dividends from the foreign companies. The amount of tax surcharges varied between EUR 824 and EUR 5,000.

11. By letter dated 25 August 2006 the applicant sought rectification from the local Tax Rectification Committee, requesting it to quash the decisions of 26 June 2006 concerning the tax years 2000 and 2002 to 2004.

12. On 4 October 2006 the Tax Rectification Committee rejected the applicant's applications concerning the tax imposed for the tax years 1999, 2000, 2002, 2003 and 2004.

13. By letter dated 31 December 2009 the applicant appealed against the rectification decisions of 4 October 2006 to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), requesting that the taxation decisions be quashed and the tax surcharges withdrawn. He also requested that an oral hearing be held.

14. On 8 April 2011 the Helsinki Administrative Court rejected the applicant's appeals as well as the request for an oral hearing. The court found that it was not necessary to hold an oral hearing as the same witnesses had already been heard by the District Court and the Appeal Court in the same matter. The court examined the appeal concerning the tax years 1999, 2000 and 2002 as a material appeal (*perustevalitus, grundbesvär*) and the rest as ordinary appeals.

15. By letter dated 7 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. Moreover, he pointed out that the charges had already been dismissed by the Appeal Court for the tax years 1999 to 2000 without examining the merits

and that this fact should prevent the further examination of these matters by the administrative courts.

16. On 13 September 2012 the Supreme Administrative Court refused the applicant leave to appeal.

B. Criminal proceedings

17. By letter dated 15 April 2005 the tax authorities asked the police to investigate whether the applicant had committed aggravated tax fraud between 1999 and 2005 concerning the tax years 1998 to 2004.

18. On 17 November 2008 the public prosecutor brought charges against the applicant, *inter alia*, for aggravated tax fraud (*törkeä veropetos, grovt skattebedrägeri*) concerning the tax years 1999 to 2000 and 2002 to 2004. According to the charges, the applicant was accused of aggravated tax fraud as he had failed to declare in his personal taxation income received from the foreign companies and, consequently, the tax imposed on him had been too low. The tax authorities joined the charges and presented a compensation claim totalling EUR 48,870 which was the amount of avoided taxes still unpaid.

19. On 12 June 2009 the Vantaa District Court (*käräjäoikeus, tingsrätten*) convicted the applicant of aggravated tax fraud, and imposed a suspended prison sentence of 1 year and 6 months. He was ordered to pay the tax authorities the EUR 48,870 claimed, plus interest, in compensation.

20. By letter dated 14 August 2009 the applicant appealed to the Helsinki Appeal Court (*hovioikeus, hovrätten*), requesting that the District Court judgment be quashed and the charges dismissed. He also requested that an oral hearing be held.

21. On 21 December 2010 the Helsinki Appeal Court, after having held an oral hearing, dismissed the charges concerning the tax years 1999 to 2000 without examining the merits but otherwise upheld the District Court's judgment. The sentence imposed was reduced to a 10-month suspended sentence. The compensation to be paid to the tax authorities was reduced to EUR 10,718 plus interest. The court raised *ex officio* the question of *ne bis in idem*. It found that the charge of aggravated tax fraud and the tax surcharges imposed clearly concerned the same failure to declare income. As the time-limit for applying for rectification within the taxation proceedings in respect of the tax years 1999 and 2000 had already run out before the charges were brought, the taxation had become final and these years could no longer be the subject of criminal proceedings. Therefore the charges had to be dismissed without examining the merits. However, as the charges had been brought before the time-limit ran out in respect of the tax years 2002 to 2004, there was no impediment to examining the charges in respect of these tax years.

22. By letter dated 20 February 2011 the applicant appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Appeal Court. Moreover, he noted that the Appeal Court's interpretation of the finality of the taxation decisions could not be tied to the time-limit for lodging an application for rectification because in the present case the Tax Rectification Committee had already rejected such applications in 2006.

23. On 12 September 2011 the Supreme Court granted the applicant leave to appeal as far as the charges concerned the tax years 2002 to 2004.

24. On 31 May 2012 the Supreme Court upheld the Appeal Court judgment. It found that the tax rectification decisions could not have become final before the time-limit for lodging an application for rectification had run out because the same time-limit also applied for lodging a further appeal to the administrative courts. As, at the time of bringing charges, the applicant still had a right to appeal to the administrative courts, which he had in fact exercised after the charges had been brought, the taxation decisions for the tax years 2002 to 2004 had not yet become final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Tax Assessment Procedure Act

25. 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

26. 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

27. 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

28. 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

29. The applicant complained under Article 4 of Protocol No. 7 to the Convention about double jeopardy. Tax surcharges had been imposed on the applicant for the tax years 1999 to 2000 and 2002 to 2004 and these decisions had become final on 13 September 2012. In 2009 he had been convicted of aggravated tax fraud and ordered to pay compensation to the tax authorities. This judgment had become final on 31 May 2012.

30. 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."

31. The Government contested that argument.

A. Admissibility

32. 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

33. The applicant agreed with the Government that both sets of proceedings had been criminal in nature for the purposes of Article 4 of Protocol No. 7. Also the same circumstances had been examined in both sets of proceedings. In the applicant's case the parallel proceedings had led to successive judgments. Both the Supreme Administrative Court and the Supreme Court had been aware of the existence of the parallel proceedings.

34. The applicant noted that, as the time-limit for applying for rectification in the taxation proceedings in respect of the tax years 1999 and 2000 had already run out before the criminal charges had been brought, these proceedings had become final and these tax years could no longer be the subject of criminal proceedings. Therefore the charges had to be dismissed without examining the merits, and the applicant was convicted only in the taxation proceedings. However, in respect of the tax years 2002 to 2004 the applicant had been tried and convicted both in the taxation proceedings and in the criminal proceedings.

35. The applicant further noted that if the finality of a decision was the determining criterion for applying the *ne bis in idem* principle, it rendered the use of appeals not only futile but also dangerous, because the longer a person was able to seek recourse, the longer it took for a decision to become final. It also led to arbitrary justice both in form and substance as the first decision to become final determined the consequences in the matter.

(b) The Government

36. The Government found it indisputable that both sets of proceedings, the criminal proceedings as well the tax surcharge proceedings, had been criminal in nature for the purposes of the Article relied on. It was also obvious that the same circumstances had been examined both in the criminal proceedings and the taxation proceedings, although the applicant had not been convicted of a tax offence in all respects.

37. The Government acknowledged that from the Court's established case-law it was not entirely clear whether pending proceedings also created a preventive effect. Article 4 of Protocol No. 7 to the Convention was not clearly worded when it came to parallel proceedings. In 2013 the Finnish Supreme Court had extended in its case-law the *ne bis in idem* prohibition also to parallel proceedings. After the judgment in *Nykänen* and *Glantz*, the Court also found that parallel sets of proceedings in the same matter were not prohibited as such but that a violation occurred if the first set became final and the second still continued. 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 17 November 2008. The proceedings had thus taken place simultaneously.

38. Were the Court to take the view that the *ne bis in idem* prohibition applied also to parallel proceedings, the Government argued that the applicant no longer had victim status to the extent that the Appeal Court had dismissed the charges against him. That court had dismissed the charges without examining the merits expressly on account of the *ne bis in idem* prohibition. Therefore, only the tax years 2002, 2003 and 2004 were at stake in the present case.

2. The Court's assessment

(a) Whether the proceedings were criminal in nature?

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

40. 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).

41. 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).

42. 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.

43. 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*)?

44. 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.

45. 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 1999 to 2000 and 2002 to 2004.

However, the Court notes that the Appeal Court dismissed the charge of aggravated tax fraud without examining the merits as far as the charge concerned the tax years 1999 to 2000. This judgment was based on the application of the *ne bis in idem* principle and on the Appeal Court's finding that this issue had already been finally decided in the taxation proceedings. The Court thus considers that the Appeal Court has remedied the situation in this respect and that the applicant can no longer claim to be a victim of double jeopardy in relation to the tax years 1999 and 2000.

46. As far as the remaining tax years 2002 to 2004 are concerned, the Court agrees 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?

47. 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).

48. 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 of that provision.

49. In the present case, the tax fraud proceedings concerning the tax years 2002 to 2004 became final on 31 May 2012 when the Supreme Court delivered its judgment in the matter. 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 31 May 2012.

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

50. 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).

51. 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).

52. 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).

53. 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.

54. 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, although nowadays there is more coordination between the two (see paragraph 28 above). 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.

55. 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 2005 and 2006 when the tax surcharges were imposed on the applicant. He appealed against these decisions. These proceedings became final on 13 September 2012 when the Supreme Administrative Court refused the applicant leave to appeal. The second set of proceedings concerning the aggravated tax fraud charges was initiated on 15 April 2005 and was concluded on 31 May 2012 when the Supreme Court rendered its final judgment. The two sets of proceedings were thus pending concurrently until 31 May 2012 when the second set became final.

56. The Court notes that when the tax fraud proceedings became final on 31 May 2012, the applicant's appeal against the tax surcharge decisions was still pending before the Supreme Administrative Court. As the proceedings before the Supreme Administrative Court were not discontinued after the tax fraud proceedings became final but were continued until a final decision on 13 September 2012, the applicant was convicted twice for the same matter concerning the tax years 2002 to 2004 in two sets of proceedings

which became final on 31 May 2012 and on 13 September 2012 respectively.

57. 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

58. 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

59. The applicant claimed EUR 57,334.32 plus interest, or alternatively EUR 388,016.80 plus interest, in respect of pecuniary damage and EUR 50,000 plus interest in respect of non-pecuniary damage.

60. The Government considered that the applicant's alternative claim for pecuniary damage should be rejected due to lack of a causal link. As concerned his primary claim for pecuniary damage, 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 damage should also be rejected. As to the 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.

61. 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 damage. On the other hand, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

62. The applicant also claimed EUR 15,135.40 plus interest for the costs and expenses incurred before the Court.

63. The Government noted that in his application the applicant had also complained about the tax years 1999 to 2000 which were not relevant here, and for this reason a reduction should be made when calculating the costs and expenses to be awarded. 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 5,100 (inclusive of value-added tax).

64. 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 considers it reasonable to award the sum of EUR 7,000 for the proceedings before the Court.

C. Default interest

65. 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 amounts:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 27 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Guido Raimondi
Registrar	President