



Combination of criminal sanctions and tax penalties to punish exploitation of prostitution and money laundering: application rejected

In its decision in the case of [Alves de Oliveira v. France](#) (application no. 23612/20) the European Court of Human Rights unanimously declared the application inadmissible as the complaints were manifestly ill-founded.

The case concerned the combination of criminal sanctions and tax penalties applicable under domestic law for the offence of assisting or benefiting from prostitution, together with laundering of the proceeds from that offence, and the proportionality of these different sanctions and measures.

As regards Article 1 of Protocol No. 1, the Court found that the authorities' interference with the applicant's enjoyment of his property rights had been provided for by law, that it pursued a public interest in respect of both offences, that it was not disproportionate and that a fair balance had been struck in the present case, taking account of the extent and seriousness of the offences committed and of the entirety of the applicant's property. The complaint was rejected as manifestly ill-founded.

As regards Article 4 of Protocol No. 7 (right not to be tried or punished twice), the Court considered that the criminal sanctions imposed solely in the context of the criminal proceedings had not concerned identical facts or facts which could be regarded as the same in substance. It further noted that the combination of criminal sanctions had not led to a disproportionate result. Moreover, the Court noted, fully in line with its case-law, that criminal proceedings for tax fraud and the administrative proceedings concerning the tax base, together with associated penalties, had not been directed against the same offence, such that no question arose in the present case under Article 4 of Protocol No. 7. This complaint was also rejected as manifestly ill-founded.

The decision is final.

Principal facts

The applicant, Antonio Hilario Alves de Oliveira, is a Portuguese national who was born in 1957 and is currently in prison in Lyon (France).

On 22 June 2018 the Lyon Criminal Court found the applicant guilty of aggravated offences of money laundering and assisting or benefiting from prostitution, committed by him as a repeat offender between 1 January 2015 and 20 October 2017.

Mr Alves de Oliveira was sentenced to four years' imprisonment, and as an additional sanction, a number of his properties in Lyon and Grigny were confiscated, together with sums of money on various bank accounts and on those of his three children.

On 20 December 2018 the Lyon Court of Appeal upheld the judgment in part. As regards his guilt, it reduced the time-frame of the offences by a few days and, as to the sanction, limited the confiscation of his real estate to the thirteen properties that had been used for the commission of the offences.

On 18 December 2019 the Court of Cassation declared inadmissible an appeal on points of law lodged by Mr Alves de Oliveira.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 June 2020.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained that he had been dispossessed of “all” his flats and that the quantum of the confiscation was disproportionate to the proceeds in question, while stating that he would have preferred to pay a fine. Under Article 4 of Protocol No. 7 (right not to be tried or punished twice), the applicant submitted that he had been punished several times for more or less the same acts, complaining that, in addition to being sentenced to four years’ imprisonment, he had had the sum of 100,000 euros (EUR) confiscated from his bank accounts and had been subjected to a tax reassessment “in accordance with the accounting procedures of the justice system”. Lastly, under Article 1 of Protocol No. 12 (prohibition of discrimination), the applicant complained that he had been discriminated against because of his foreign nationality and his wealth.

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

Ganna **Yudkivska** (Ukraine), *President*,
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Martina **Keller**, *Deputy Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1](#)

The Court observed that the authorities’ interference with the applicant’s right to the peaceful enjoyment of his possessions had been provided for by law, as the principle of the confiscation of movable and immovable property had been expressly laid down by Articles 225-24 and 324-7 of the Criminal Code. In addition, the Court had no doubt that the interference pursued, in respect of each of the offences, a public-interest aim, namely to prevent the exploitation of prostitution and the laundering of proceeds from that offence.

As regards the proportionality of the interference and the fair balance to be struck between the public interest and the applicant’s right to the enjoyment of his possessions, the domestic courts had assessed, in a particularly well-reasoned manner, whether or not the quantum of the confiscation of movable and immovable property was excessive, in view of the scale and seriousness of the acts committed by the applicant as a repeat offender and of the adverse consequences for him. The Court noted that not all his property had been confiscated, but only 13 out of the 28 properties owned by the applicant in France and the 31 in Portugal. The Court also found that the quantum of the confiscation of the 13 properties at issue appeared proportionate.

The Court noted that the applicant had been able to exercise the remedies provided for under domestic law in order to challenge, in the context of adversarial proceedings, the basis of the assessment adopted and that on appeal he had obtained a reduction in the property confiscated. Lastly, with regard to the total amount of the confiscated sums of money held in various bank accounts, the Court also noted that it appeared proportionate in relation to the amount of all the rental income he had received from tenants engaged in prostitution.

The Court thus found that the interference had not been disproportionate and that a fair balance had been struck in the present case, taking account of the seriousness and extent of the offences committed and of the entirety of the applicant’s property.

This part of the application was manifestly ill-founded and had to be rejected.

Article 4 of Protocol No. 7

With regard to the penalties imposed in the criminal proceedings alone, the Court noted that the applicant had been convicted, first, for having knowingly made available several flats belonging to him for the benefit of tenants who engaged in prostitution in those properties and, secondly, for having assisted in a transaction involving the investment, concealment or conversion in France and Portugal of the direct or indirect proceeds of the offence of assisting or benefiting from prostitution.

The criminal sanctions, which had been imposed at the same time by a single court, had not concerned identical facts or facts which could be regarded as the same in substance. That combination of criminal sanctions had not led to a disproportionate result.

In those circumstances, in so far as the applicant had exhausted domestic remedies, the Court did not detect any manifest violation of Article 4 of Protocol No. 7. That complaint was manifestly ill-founded and had to be rejected.

As to the tax penalties imposed following a tax reassessment, the applicant had only challenged the rental income taken as the basis of calculation.

Referring to its case-law, the Court reiterated its finding from [Ponsetti and Chesnel v. France](#) that criminal proceedings for tax fraud and administrative proceedings to determine the basis of assessment, together with associated penalties, were not directed against the same offence, such that no question arose under Article 4 of Protocol No. 7. The Court saw no reason to depart from that finding in the circumstances of the present case, with regard to the criminal proceedings for assisting and benefiting from prostitution and laundering of the proceeds, on the one hand, and the administrative proceedings to establish the tax basis and calculation of penalties, on the other.

This complaint was also rejected as manifestly ill-founded.

Article 1 of Protocol No. 12

As France had not signed Protocol No. 12, this part of the application also had to be rejected.

The decision is available only in French.

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