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

Press Release
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ECHR 267 (2020)
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The *ne bis in idem* principle applies only to criminal proceedings

In its decision in the case of Prina v. Romania (application no. 37697/13) the European Court of Human Rights has by a majority declared the application inadmissible.

The case concerned two penalties imposed on the applicant for acts allegedly committed in his capacity as head of the city's technical department: an administrative fine and a suspended prison sentence.

The Court reiterated that the first paragraph of Article 4 of Protocol No. 7 set forth the three components of the right not to be tried or punished twice (*ne bis in idem*): the two sets of proceedings had to be "criminal" in nature; they had to concern the same facts; and there had to be duplication of the proceedings.

In the present case, observing that the fine imposed on the applicant could not have been replaced by a custodial sentence in the event of non-payment or given rise to an entry in the criminal record, the Court concluded that the fine had not been a "criminal" penalty within the meaning of its case-law. Accordingly, Article 4 of Protocol No. 7 was not applicable in this case.

The decision is final.

Principal facts

The applicant, Minel Florin Prina, is a Romanian national who was born in 1973 and lives in Slatina (Romania). He was head of the city's technical department and, at the time of the events, was in charge of managing and coordinating investments, civil-engineering projects, calls for tenders and public contracts. He was also a member of the public procurement board.

In 2006 he was ordered by the Court of Auditors to pay an administrative fine of 3,000 Romanian lei (RON – approximately 850 euros (EUR)) for "several finance-related breaches" of the rules on the award of public contracts. He paid the fine.

Later the same year Mr Prina was sentenced by the Craiova Court of Appeal to a suspended term of four years' imprisonment for abuse of power, following criminal proceedings brought against him by the national anti-corruption prosecution service.

The Court of Appeal held that the *ne bis in idem* principle was not applicable in the case at hand since the criminal proceedings concerned the award of 18 public contracts, whereas the fine imposed on the applicant by the Court of Auditors had related to the conduct of 12 public procurement procedures and had not been criminal in nature.

Mr Prina denied the charges before the Court of Appeal, arguing that he had merely implemented the decisions taken by the municipal council and the public procurement board.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 4 June 2013.

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), Mr Prina alleged that he had been prosecuted and punished twice for the same offence, in breach of the *ne bis in idem* principle.

The decision was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar.*

Decision of the Court

Article 4 of Protocol No. 7

The Court reiterated that Article 4 of Protocol No. 7 set forth three components of the *ne bis in idem* principle: the two sets of proceedings had to be "criminal" in nature; they had to concern the same facts; and there had to be duplication of the proceedings.

In the present case, the Court noted that the Romanian Government had disputed the presence of the first of these three components.

The Court's established case-law set out three criteria to be considered in determining whether or not there was a "criminal charge": the legal classification of the measure in question in national law, the very nature of the measure, and the nature and degree of severity of the "penalty" that the person concerned risked incurring (*Engel and Others v. the Netherlands*). The second and third criteria were alternative, and not necessarily cumulative.

With regard to the legal classification, the Court noted that domestic law did not classify the offences for which the applicant had been fined as "criminal". In addition, it observed that the Court of Auditors had found that the acts committed had not been sufficiently serious to constitute a criminal offence and had not referred them to the prosecuting authorities.

Concerning the very nature of the provision of domestic law forming the legal basis for the applicant's fine, the Court found that the sanction imposed by the Court of Auditors was more akin to the exercise of disciplinary powers in respect of civil servants than to the imposition of penalties that were generally applicable to all citizens for committing criminal offences.

As to the degree of severity of the penalty, the Court pointed out that this was determined by reference to the maximum penalty provided for by the applicable legal provision. The maximum fine provided for by domestic law was RON 7,500 (approximately EUR 2,100). The applicant had been fined RON 3,000 (approximately EUR 850), the minimum amount that could be imposed.

In view of the above considerations, and bearing in mind that the fine in question could not have been replaced by a custodial sentence in the event of non-payment or given rise to an entry in the criminal record, the Court concluded that the fine imposed on the applicant had not been a "criminal" penalty within the meaning of its case-law.

Accordingly, Article 4 of Protocol No. 7 was not applicable in the present case. The application was therefore inadmissible.

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.