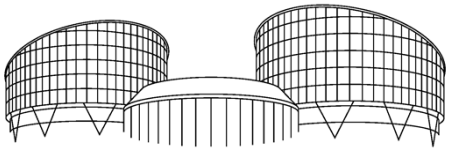

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BJARNI ÁRMANNSSON v. ICELAND

(Application no. 72098/14)

JUDGMENT

STRASBOURG

16 April 2019

This judgment is final but it may be subject to editorial revision.

In the case of Bjarni Ármannsson v. Iceland,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Julia Laffranque, *President,*
Stéphanie Mourou-Vikström,
Arnfinn Bårdsen, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 19 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 72098/14) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Mr Bjarni Ármannsson ("the applicant"), on 11 November 2014.

2. The applicant was represented by Mr Stefán Geir Þórisson, a lawyer practising in Reykjavik. The Icelandic Government ("the Government") were represented by their Agent, Mr Einar Karl Hallvarðsson, the State Attorney General.

3. On 13 June 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Fredriksberg, Denmark. The applicant was the CEO of one of Iceland's largest banks, *Glitnir,* from September 1997 to the end of April 2007.

A. Tax proceedings

5. On 30 July 2009 the Directorate of Tax Investigation (*Skattrannsóknarstjóri ríkisins)* initiated an audit of the applicant's tax returns. The Directorate's reason for initiating the investigation was to examine whether the applicant had declared profits from selling shares he received when he stepped down as the CEO of *Glitnir.* The applicant was questioned by the Directorate of Tax Investigation on 17 August and

2 October 2009. The investigation was concluded with a report issued on 5 October 2010.

6. By a letter of 6 October 2010, the Directorate informed the applicant of its findings and that the case had been referred to the Directorate of Internal Revenue (*Ríkisskattstjóri*) for possible reassessment of his taxes. It also informed the applicant about the Directorate's upcoming decision on possible criminal proceedings, listed possible ways of finalising the criminal proceedings in the case and gave the applicant 30 days to comment thereon.

7. In an email of 11 November 2010, the Directorate of Tax Investigation stated that a decision on possible criminal proceedings would be postponed until the Directorate of Internal Revenue had issued its notification letter (*boðunarbréf)* on the re-assessment of the applicant's taxes.

8. By a letter of 2 May 2011, the Directorate of Internal Revenue notified the applicant that his taxes for the tax years 2007 to 2009 had been re-assessed. The applicant objected to the re-assessment.

9. On 16 January 2012, in the light of the applicant's objections, the Directorate of Internal Revenue sent the applicant an amended notification letter (*boðunarbréf)* which stated that his taxes for the tax years of 2007 to 2009 had been re-assessed. The Directorate cancelled the prior re-assessment of taxes relating to the profits for selling shares received when the applicant stepped down as the CEO of *Glitnir*.

10. Based on the report issued by the Directorate of Tax Investigation, and taking into account the applicants' objections, the Directorate of Internal Revenue, ruling on 15 May 2012, found that the applicant had failed to declare significant capital income received from 2006 to 2008. Therefore, it revised upwards the amount declared as capital in his tax returns for 2007 to 2009 and, consequently, re-assessed his taxes and imposed a 25% surcharge. The applicant paid the taxes owed and the imposed surcharge.

11. The applicant did not appeal against the decision to the State Internal Revenue Board, which thus acquired legal force 3 months later, in August 2012, when the time-limit for an appeal had expired.

B. Criminal proceedings

12. On 1 March 2012 the Directorate of Tax Investigation reported the matter to the Special Prosecutor and forwarded its report concerning the applicant. The Directorate reported the full matter for investigation, including the possible tax violation related to profits for selling shares received when the applicant stepped down as the CEO of *Glitnir*. The applicant was informed by letter the same day.

13. By email of 2 March 2012, the applicant's lawyer protested at the case being sent to the Special Prosecutor. The lawyer argued that the

deadline to object to the Directorate of Internal Revenue's reassessment had not expired, that the referral was ill-founded and requested that it be withdrawn.

14. By email of 5 March 2012, the Directorate of Tax Investigation replied and stated that the deadline for the applicant to express his opinion had expired as the Directorate of Internal Revenue's notification letter (*boðunarbréf)* had already been issued and sent to the applicant on 16 January 2012 (see paragraph 9 above). Furthermore, it was stated that the Special Prosecutor would make an independent assessment of the applicant's case, repeat an investigation and issue an indictment if there was reason to do so. Any questions about the procedure before the Special Prosecutor had to be taken up with the Special Prosecutor as he was responsible for the criminal proceedings in the case.

15. On 26 September 2012 the applicant was interviewed by the Special Prosecutor. The applicant was informed that the investigation concerned the case as it was concluded by the Directorate of Internal Revenue. Certain aspects of the case reported to the Special Prosecutor had been dropped.

16. On 17 December 2012 the Special Prosecutor indicted the applicant for aggravated tax offences. The applicant was indicted for having failed to declare income in his tax returns of 2007 to 2009. This included the failure to declare his capital income in the form of property sale profits, dividend payments, interest payments and foreign exchange rate gains, received from 2006 to 2008.

17. The applicant requested that the case be dismissed, *inter alia,* on the basis of Article 4 of Protocol No. 7 to the Convention. By a ruling of 23 April 2013, the District Court rejected his claim.

18. By a judgment of 28 June 2013, the District Court found that the applicant had acted with gross negligence, which was sufficient for criminal liability under the relevant provisions of the tax law, and thus convicted the applicant of the charges against him. The court sentenced him to six months' imprisonment, suspended for two years, and the payment of a fine in the amount of 38,850,000 Icelandic *Krónur* (ISK; approximately 241,000 euro (EUR) at the material time). In fixing the fine the court had regard to the tax surcharges imposed, without describing any calculation made in this respect.

19. The applicant lodged an appeal against the District Court's judgment.

20. By a judgment of 15 May 2014 the Supreme Court rejected the applicant's request to dismiss the case on the basis of Article 4 of Protocol No. 7 to the Convention. The court upheld the applicant's conviction and confirmed the fine imposed by the District Court. However, the court sentenced the applicant to eight months' imprisonment, suspended for two years.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant Sections of the Income Tax Act (*Lög um tekjuskatt*, no. 90/2003) read as follows:

Section 108

"If an entity that is obliged to submit a tax return does not do so within the given deadline, the Director of Internal Revenue is permitted to add up to a 15% charge to his tax-base estimate. The Director of Internal Revenue is nonetheless required to take notice of the extent to which taxation has taken place through withheld taxes. The Director of Internal Revenue sets further rules on that point. If a tax return on which the levying of taxes will be based is submitted after the filing deadline, but before a Local Tax Commissioner completes assessing taxes, there can only be added a 0.5% charge to the tax base for each day that the filing of a tax return has been delayed after the given deadline, although no more than a 10% charge.

If a tax return is faulty, as noted in Article 96, or specific items declared wrongly, the Director of Internal Revenue can add a 25% charge to estimated or wrongly declared tax bases. If a tax entity corrects the errors or adjusts specific items in the tax return before taxes are assessed, the charge of the Director of Internal Revenue may not be higher than 15%.

Additional charges, in accordance with this Section, are to be cancelled if a tax entity can show with justification that it is not to blame for limitations in the tax return, the failure to file, that *force majeure* made it impossible to file the tax return in the given time, it rectifies faults in the tax return or corrects specific items therein.

Complaints to the Directorate of Internal Revenue and the State Internal Revenue Board are subject to the provisions of Article 99 of the Act and the provisions of Act No. 30/1992 on the State Internal Revenue Board."

Section 109

"If a taxable person, intentionally or out of gross negligence, makes false or misleading statements about something that matters in relation to its income tax, such person shall pay a fine of up to tenfold the tax amount from the tax base that was concealed and never a lower fine than double the tax amount. Tax from a charge in accordance with Article 108 is deducted from the fine. Paragraph 1 of Article 262 of the Penal Code applies to major offences against this provision.

If a taxable person, intentionally or out of gross negligence, neglects to file a tax return, the violation calls for a fine that is never to be lower than double the tax amount from the tax base that was lacking, if the tax evaluation proved to be too low when taxes were re-assessed in accordance with paragraph 2 of Article 96 of this Act, in which case the tax on the added charge shall be deducted from the amount of the fine in accordance with Article 108. Paragraph 1 of Article 262 of the Penal Code applies to major offences against this provision.

If a taxable person gives false or misleading information on any aspects regarding his tax return, then that person can be made to pay a fine, even if the information cannot affect his liability to pay taxes or tax payments.

If violations of paragraph 1 or paragraph 2 of the provision are discovered when the estate of a deceased person is wound up, then the estate shall pay a fine of up to quadruple the tax amount from the tax base that was evaded and never less than the

tax amount plus half of the tax amount. Tax from a charge in accordance with Article 108 is deducted from the fine. Under circumstances stated in Paragraph 3, the estate may be fined.

Any person who wilfully or by gross negligence provides tax authorities with wrongful or misleading information or documentation regarding the tax returns of other parties or assists a wrongful or misleading tax return to tax authorities, shall be subject to punishment as stated in Paragraph 1 of this Article.

If a person, intentionally or out of gross negligence, has neglected his duties according to the provisions of Articles 90, 92 or 94 he shall pay a fine or be sentenced to imprisonment for up to 2 years.

An attempted violation and accessory to a violation of this Act is punishable according to the provisions of Chapter III of the Penal Code and is subject to a fine up to the maximum stated in other provisions of this Article.

A legal entity may be fined for a violation of this Act, irrespective of whether the violation may be attributable to the criminal act of an officer or employee of the legal entity. If its officer or employee has been guilty of violating this Act, the legal entity may be subject to a fine and withdrawal of its operating licence in addition to a punishment inflicted on it, provided the violation is committed for the benefit of the legal entity and it has profited from the violation."

Section 110

"The State Internal Revenue Board rules on fines in accordance with Article 109 unless a case is referred for investigation and judicial treatment in accordance with paragraph 4. Act 30/1992 on the State Internal Revenue Board, applies to the Board's handling of cases.

The Directorate of Tax Investigations in Iceland appears before the Board on behalf of the state when it rules on fines. The rulings of the Board are final.

Despite the provision of paragraph 1, the Directorate of Tax Investigations or its representative learned in law is permitted to offer a party the option to end the penal proceedings of a case by paying a fine to the Treasury, provided that an offence is considered proved beyond doubt, and then the case is neither to be sent to be investigated by the police nor to fine proceedings with the State Internal Revenue Board. When deciding the amount of a fine, notice is to be taken of the nature and scale of the offence. Fines can amount to between 100 thousand *krónur* and 6 million *krónur*. The entity in the case is to be informed of the proposed amount of a fine before it agrees to end a case in such a manner. A decision on the amount of a fine according to this provision is to have been made within six months from the end of the investigation of the Directorate of Tax Investigations.

An alternative penalty is not included in the decision of the Directorate of Tax Investigations. On the collection of a fine imposed by the Directorate of Tax Investigations the same rules apply as to taxes according to this Act, the right to carry out distraint included. The State Prosecutor is to be sent a record of all cases that have been closed according to this provision. If the State Prosecutor believes that an innocent person has been made to suffer a fine in accordance with paragraph 2, or that the closure of the case has been improbable in other ways, he can refer the case to a judge in order to overthrow the decision of the Directorate of Tax Investigations.

The Directorate of Tax Investigations can, of its own accord, refer a case to be investigated by the police as well as at the request of the accused, if he is opposed to

the case being dealt with by the State Internal Revenue Board in accordance with paragraph 1.

Tax claims can be upheld and judged in criminal proceedings because of offences against the Act.

Fines for offences against this Act go to the Treasury.

An alternative penalty does not accompany the State Internal Revenue Board's rulings of a fine. On the collection of a fine issued by the State Internal Revenue Board the same rules apply as to taxes according to this Act, the right to carry out distraint included.

Charges in accordance with Article 109 have a six-year limitation period from the time an investigation by the Directorate of Tax Investigations commences, as long as that there are no unnecessary delays in the investigation of a case or the issue of punishment."

22. Article 262 of the Penal Code (*Almenn hegningarlög*, no. 19/1940) stipulates:

"Any person who intentionally or through gross negligence is guilty of a major violation of the first, second or fifth paragraphs of Article 109 of Act No. 90/2003 on income tax, cf. also Article 22 of the act on municipal tax revenues, the first, second or seventh paragraphs of Article 30 of the Act on the withholding of public levies at source, cf. also Article 11 of the Act on payroll taxes, and of the first or sixth paragraphs of Article 40 of the Act on value added tax, shall be subject to a maximum of 6 years' imprisonment. An additional fine may be imposed by virtue of the provisions of the tax laws cited above.

The same punishment may be imposed on a person who intentionally or through gross negligence is guilty of a major violation of the third paragraph of Article 30 of the Act on the withholding of public levies at source, the second paragraph of Article 40 of the Act on value added tax, Articles 37 and 28, cf. Article 36, of the Act on accounting or Articles 83-85, cf. Article 82, of the Act on annual accounts, including any intent to conceal an acquisitive offence committed by oneself or others.

An action constitutes a major violation pursuant to the first and second paragraphs of this Act if the violation involves significant amounts, if the action is committed in a particularly flagrant manner or under circumstances which greatly exacerbate the culpability of the violation, and also if a person to be sentenced to punishment for any of the violations referred to in the first or second paragraph has previously been convicted for a similar violation or any other violation covered by the provisions."

THE LAW

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

23. The applicant complained that, through the imposition of tax surcharges and the subsequent criminal trial and conviction for aggravated tax offences, he had been tried and punished twice for the same offence. He

relied on Article 4 of Protocol No. 7 to the Convention, which 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.
>
> ..."

24. The Government contested that argument.

A. Admissibility

25. 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

26. The applicant submitted that, according to the Court's case-law, the imposition of surcharges constituted criminal sanctions for the purpose of Article 4 of Protocol No. 7 to the Convention. The imposition of surcharges under Article 108 of the Income Tax Act was seen as a punishment to deter violations of the positive obligations of tax payers and it had been substantial in his case.

27. The applicant maintained that the offence for which he was prosecuted was the same as the one that formed the basis for the imposition of the tax surcharges, which was clear from the domestic courts' judgments.

28. The applicant argued that although the case had been referred to the police on 1 March 2012, the criminal proceedings should be considered to have started on 26 September 2012, the date on which he was first questioned by the police. Furthermore, the tax proceedings had been finalised when the time-limit to appeal to the State Internal Revenue Board expired.

29. The applicant submitted that the proceedings had neither been sufficiently connected in time or substance, nor had they been foreseeable or proportionate. The applicant pointed out that the two sets of proceedings

had never been conducted in parallel. Moreover, the Supreme Court had stated that the office of the Special Prosecutor had indicted him pursuant to its own investigation.

30. The applicant maintained that it had not been foreseeable, in the light of the conclusion of the tax authorities to dismiss the majority of the original claims against him, that his case, as a whole, would be referred to the police for criminal investigation. There were no rules or administrative provisions on the dual procedure, nor were there any written rules or letters from the tax authorities which had clearly indicated that his case would be referred to the Special Prosecutor.

31. The applicant rejected the Government's assertions that the only reason why the criminal proceedings had not been initiated earlier had been because of the applicant's request to delay referral to the Special Prosecutor. The original accusations against him had been more severe, and most of them had been dropped only after his objections, and the part which had been dropped had been the initial reason for the investigation. Given the circumstances of the case it was normal that the Directorate of Tax Investigations agreed to wait before deciding on the criminal aspect of the case.

(b) The Government

32. The Government did not dispute that the imposition of a 25% surcharge pursuant to Section 108 of the Income Tax Act constituted a penalty within the meaning of Article 4 of Protocol No. 7 and that therefore the proceedings before the tax authorities had been criminal in nature.

33. As to whether the applicant had been tried or punished twice for the same offence, the Government acknowledged that the tax proceedings, on the one hand, and the criminal proceedings, on the other, had been rooted in the same events, and had concerned the same time period and in the main the same amounts.

34. However, the Government pointed out that Article 4 of Protocol No. 7 does not as such proscribe dealing with the same offence, firstly, by the tax authorities, which can result in re-assessment of taxes levied and the imposition of surcharges, and secondly, by the courts in a criminal case which could result in punishment for the same or similar events if certain criteria were satisfied. In this respect the Government referred, *inter alia,* to the case of *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, 15 November 2016 and *Johannesson and Others v. Iceland*, no. 22007/11, 18 May 2017. The Government argued that the two sets of proceedings had been sufficiently connected in substance and time to be regarded as forming an integrated legal response to the applicant's conduct.

35. The consequences of the applicant's conduct had been foreseeable as both procedures were part of the actions and sanctions applied for violations of the tax law. The tax authorities had informed the applicant at all stages

about the steps to be taken in the case. In particular, in a letter of 1 March 2012 the tax authorities informed the applicant that his case had been referred to the Special Prosecutor.

36. The Government submitted that the criminal proceedings were in substance complementary or supplementary to the tax proceedings. An audit by tax authorities and the imposition of sanctions for violation of the tax law was subject to other legal rules than a police investigation, which could form the basis for indictment and a conviction by a court. The tax proceedings were aimed at revealing factors other than those investigated by the police and decided by a court in connection with the same violation of tax law, the penalties were different and the conditions for the application differed. The Government stated that, due to dissimilar requirements and penalties, it had been necessary for the police to gather additional documentation.

37. The Government maintained that the two sets of proceedings had been conducted in parallel and had been interconnected. By a letter of 6 October 2010, the Directorate of Tax Investigation had informed the applicant of the conclusion of its investigation. Furthermore, the applicant had been informed about a criminal procedure which was planned in the case and what it could involve, and he had been given a chance to comment. The Government noted that the proceedings had in effect been progressing concurrently between 1 March 2012, when the case was referred to the Special Prosecutor, and 15 May 2012, or three months later, when the time limit to appeal to the State Internal Revenue Board expired. However in the Government's view the two sets of proceedings were conducted in parallel from 6 October 2010 when the applicant was informed about the planned criminal proceedings. The reason for the delay was the applicant's request, which was granted, that the referral of the case to the Special Prosecutor be postponed until a notification were issued by the Directorate of Internal Revenue. This had to be taken into account when the overall length of proceedings was being assessed. The overall length of the proceedings had only lasted for four years and nine months, from the moment when the case was initiated until it was heard by the Supreme Court.

38. Lastly, the Government argued that, although the indictment had been issued seven months after the conclusion of the tax proceedings had ended in the present case, it could not be concluded that it had caused extreme uncertainty or had resulted in unnecessary delays in the proceedings. Mere chance could determine whether an indictment would be issued shortly before or after the conclusion of a case at the administrative level.

2. The Court's assessment

39. Under Article 4 of Protocol No. 7 to the Convention, the Court has to determine whether the imposition of tax surcharges was criminal in

nature, whether the criminal offence for which the applicant was prosecuted and convicted was the same as that for which the tax surcharges were imposed (*idem*), whether there was a final decision and whether there was duplication of the proceedings (*bis*).

(a) Whether the imposition of tax surcharges was criminal in nature

40. In comparable cases involving the imposition of tax surcharges, the Court has held, on the basis of the "Engel criteria" (that is, the legal classification under domestic law, the nature of the offence and the degree of severity of the penalty – see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22)., that the proceedings in question were "criminal" in nature, not only for the purpose of Article 6 of the Convention but also for the purpose of Article 4 of Protocol No. 7 to the Convention (see *A and B v. Norway*, cited above, §§ 107, 136 and 138, and *Johannesson and others v. Iceland*, cited above, § 43).

41. Noting that the parties did not dispute this, the Court concludes that both sets of proceedings in the present case concerned a "criminal" offence within the autonomous meaning of Article 4 of Protocol No. 7.

(b) Whether the criminal offence for which the applicant was prosecuted and convicted was the same as that for which the tax surcharges were imposed (*idem*)

42. The notion of the "same offence" – the *idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – is to be understood as prohibiting prosecution or conviction for a second "offence" in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin v. Russia* (cited above), § 78-84).

43. In the criminal proceedings in the present case, the applicant was indicted and convicted for aggravated tax offences. Both parties submitted that the facts underlying the indictment and conviction were the same or substantially the same as those leading to the imposition of tax surcharges.

44. The Court agrees with the parties. The applicant's conviction and the imposition of tax surcharges were based on the same failure to declare income. Moreover, the tax proceedings and the criminal proceedings concerned the same period of time and the same amount of evaded taxes. Consequently, the *idem* part of the *ne bis in idem* principle is present.

(c) Whether there was a final decision

45. Before determining whether there was a duplication of proceedings (*bis*), in some cases the Court has first undertaken an examination of whether and, if so, when there was a "final" decision in one set of proceedings (potentially barring the continuation of the other set). However, the issue of whether a decision is "final" is devoid of relevance if there is no real duplication of proceedings but rather a combination of proceedings

considered to constitute an integrated whole. In the present case, the Court does not find it necessary to determine whether and when the first set of proceedings – the tax proceedings – became "final", as this circumstance does not affect the assessment given below of the relationship between them (see *A and B v. Norway,* cited above*,* §§ 126 and 142, and *Jóhannesson and others v. Iceland,* cited above, § 48).

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

46. In the Grand Chamber judgment in the case of *A and B v. Norway* (cited above), the Court stated (§ 130):

> "On the basis of the foregoing review of the Court's case-law, it is evident that, in relation to matters subject to repression under both criminal and administrative law, the surest manner of ensuring compliance with Article 4 of Protocol No. 7 is the provision, at some appropriate stage, of a single-track procedure enabling the parallel strands of legal regulation of the activity concerned to be brought together, so that the different needs of society in responding to the offence can be addressed within the framework of a single process. Nonetheless, as explained above (see notably paragraphs 111 and 117-120), Article 4 of Protocol No. 7 does not exclude the conduct of dual proceedings, even to their term, provided that certain conditions are fulfilled. In particular, for the Court to be satisfied that there is no duplication of trial or punishment (*bis*) as proscribed by Article 4 of Protocol No. 7, the respondent State must demonstrate convincingly that the dual proceedings in question have been "sufficiently closely connected in substance and in time". In other words, it must be shown that they have been combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected."

47. In the above-mentioned case, the Court exemplified what should be taken into account when evaluating the connection in substance and in time between dual criminal and administrative proceedings, see §§ 132-134 of the judgment.

48. In the case of *A and B v. Norway* (cited above) the Court found that the conduct of dual proceedings, with the possibility of a combination of different penalties, had been foreseeable for the applicants, who must have known from the outset that criminal prosecution as well as the imposition of tax penalties was possible, or even likely, based on the facts of their cases. The Court observed that the administrative and criminal proceedings had been conducted in parallel and had been interconnected. The facts established in one of the sets of proceedings had been relied on in the other set and, as regards the proportionality of the overall punishment, the sentence imposed in the criminal trial had taken account of the tax penalty. The Court was satisfied that, while different penalties had been imposed by two different authorities in the context of different procedures, there had nevertheless been a sufficiently close connection between them, both in

substance and in time, for them to be regarded as forming part of an overall scheme of sanctions under Norwegian law.

49. In contrast, for example, in the case of *Johannesson and others v. Iceland* (cited above), the Court found that the two individual applicants had been tried and punished twice for the same conduct. In particular, this was because the two sets of proceedings had both been "criminal" in nature; they had been based on substantially the same facts; and they had not been sufficiently interlinked for it to be considered that the authorities had avoided a duplication of proceedings. Though Article 4 of Protocol No.7 did not rule out the carrying out of parallel administrative and criminal proceedings in relation to the same offending conduct, the two sets of proceedings must have a sufficiently close connection in substance and in time to avoid duplication. The Court held that there had not been a sufficiently close connection between the sets of proceedings in that case.

50. In the present case the Court has to determine the timeframe to be taken into account.

51. A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, 13 September 2016, with further references).

52. On 30 July 2009 the Directorate of Tax Investigation initiated a tax audit of the applicant and interviewed him on 17 August and 2 October 2009. The investigation was finalised with the issuing of a report on 5 October 2010. By email of 11 November 2010, the Directorate of Tax Investigation accepted that a decision on possible criminal procedure would be postponed until the Directorate of Internal Revenue had issued its notification letter on the reassessment of the applicant's taxes. On 16 January 2012 the Directorate of Internal Revenue sent the applicant its final notification letter. On 1 March 2012 the Directorate of Tax Investigation reported the matter to the Special Prosecutor for criminal investigation. The Directorate of Internal Revenue ruling in the tax proceedings was issued on 15 May 2012 and became final 3 months later, in August 2012. On 26 September 2012 the applicant was interrogated by the police for the first time. On 17 December 2012, about 4 months after the decision in the tax proceedings became final, the indictment in the criminal case was issued. By a judgment of 28 June 2013, the District Court convicted the applicant of aggravated tax offences. On 15 May 2014, the Supreme Court upheld the applicant's conviction. Thus, the overall length of the two sets of proceedings, from the start of the Directorate's investigation until the Supreme Court gave its final ruling, was about four years and ten months.

53. Assessing the connection in substance between the tax and criminal proceedings in the present case – as well as the different sanctions imposed on the applicant –the Court accepts that they pursued a complementary purpose in addressing the issue of a taxpayer's failure to comply with the legal requirements relating to the filing of tax returns. Furthermore, the consequences of the applicant's conduct were foreseeable: both the imposition of tax surcharges and the indictment and conviction for tax offences form part of the actions taken and sanctions levied under Icelandic law for failure to provide accurate information in a tax return.

54. The District Court, confirmed by the Supreme Court, handed the applicant a six months' suspended sentence and ordered him to pay a fine. In fixing the fine the court had regard to the tax surcharges that had already been imposed on the applicant, albeit without providing any details on the calculation in this respect. Nevertheless, the Court considers that the sanctions already imposed in the tax proceedings were sufficiently taken into account in the sentencing in the criminal proceedings.

55. As noted above (paragraph 12) the Special Prosecutor in charge of the criminal investigation had access to the report issued by the Directorate of Tax Investigation. Nonetheless, the police proceeded by conducting their own independent investigation, which resulted in the applicant's conviction by the Supreme Court more than two years after the Directorate had reported the matter to the Special Prosecutor. The applicant's conduct and his liability under the different provisions of tax and criminal law were thus examined by different authorities and courts in proceedings that were largely independent of each other.

56. Turning to the connection in time between the two sets of proceedings, the Court notes that the overall length of the proceedings was about four years and ten months. During that period, the proceedings in effect progressed in parallel only between 1 March 2012, when the Directorate of Tax Investigation reported the matter to the Special Prosecutor, and August 2012, when the Directorate of Internal Revenue's decision became final, that is for a period of little more than five months. Moreover, the applicant was indicted on 17 December 2012, seven months after the final decision was taken by the Directorate of Internal Revenue and about four months after it acquired legal force. The criminal proceedings then continued on their own for one year and five months: the District Court convicted the applicant on 28 June 2013, more than a year after the decision of the Internal Revenue, and the Supreme Court's judgment was not pronounced until almost one year later.

57. Having regard to the above circumstances, in particular the lack of overlap in time and the largely independent collection and assessment of evidence, the Court cannot find that there was a sufficiently close connection in substance and in time between the tax proceedings and the criminal proceedings in the case for them to be compatible with the *bis*

criterion in Article 4 of Protocol No. 7. It does not alter this conclusion that the Directorate of Tax Investigation accepted in November 2010 the applicant's request to postpone its decision on possible criminal proceedings until the Directorate of Internal Revenue had issued its notification letter on the reassessment of the applicant's taxes. It is incumbent on the member State to ensure that criminal proceedings fulfil the requirements of the *ne bis in idem* rule.

58. Consequently, the applicant was tried and punished for the same or substantially the same conduct by different authorities in two different sets of proceedings which lacked the required connection.

There has therefore been a violation of Article 4 of Protocol No. 7 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed ISK 35,850,000 (corresponding to approximately EUR 257,000 at today's exchange rate) in respect of pecuniary damage for the fine resulting from the Supreme Court's judgment of 15 May 2014. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

61. The Government argued that if a violation of Article 4 of Protocol No. 7 were to be found, such a finding by the Court would in itself constitute just satisfaction for any non-pecuniary damage claimed.

62. The Court observes that the Government did not explicitly object to the applicant's claim for an award for pecuniary damage. However, the applicant has not substantiated before the Court that he has in fact paid the fine imposed on him by the Supreme Court. Therefore, the Court rejects the applicant's claim under this head (*Johannesson and Others*, cited above, § 60).

63. However, the finding of a violation cannot be said to compensate the applicant fully for the sense of injustice and frustration that he must have felt. Making its assessment on an equitable basis, the Court therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed ISK 9,488,598 (corresponding to approximately EUR 68,000 at today's exchange rate) for the costs and expenses incurred before the domestic courts and ISK 3,598,629 (corresponding to approximately EUR 25,800 at today's exchange rate) for those incurred before the Court.

65. The Government asserted that the costs claimed before the domestic courts and the Court were excessive as to *quantum*.

66. According 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.

67. The applicant was ordered to pay legal costs in the domestic proceedings. The District Court ordered the applicant to pay ISK 1,691,113 (corresponding to approximately EUR 12,100 at today's exchange rate) for his legal counsel. The Supreme Court ordered the applicant to pay legal costs of ISK 1,068,960 (corresponding to approximately EUR 7,700 at today's exchange rate), of which ISK 1,000,000 for his defence counsel. The Court notes that the domestic courts are in general better placed to evaluate the costs and expenses which are actually and necessarily incurred in domestic proceedings.

68. Therefore, as regards the applicant's claims for the costs incurred before the domestic courts, the Court awards the applicant EUR 19,800 for costs and expenses in the domestic proceedings.

69. As regards the applicant's claim concerning his costs and expenses before the Court, the Court finds that they are excessive. However, making an overall assessment, the Court considers it reasonable to award the applicant EUR 10,000 for costs and expenses incurred during the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application 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 44 § 2 of the Convention, the following amounts plus any tax that may

be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 29,800 (twenty-nine thousand and eight hundred euros) 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 16 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Julia Laffranque
President