



## Icelandic authorities violated human rights by carrying out two sets of proceedings relating to the same offence

In today's **Chamber judgment**<sup>1</sup> in the case of [Jóhannesson and Others v. Iceland](#) (application no. 22007/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 4 of Protocol No.7 (right not to be tried or punished twice) of the European Convention on Human Rights.**

The application had been lodged by two individuals and one company, who complained that they had been tried twice for the same conduct of failing to make accurate declarations for tax assessments: first through the imposition of tax surcharges, and second through a subsequent criminal trial and conviction for aggravated tax offences.

The Court upheld the complaints of the two individual applicants, finding that they 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 does not exclude 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 this case.

The Court held that the applicant company's complaint was **inadmissible**, because the company had failed to show that it wished to continue its application before the Court.

### Principal facts

The application was lodged by two individuals and one company. Jón Ásgeir Jóhannesson and Tryggvi Jónsson are Icelandic nationals who were born in 1968 and 1955 and live in London and Reykjavík, respectively. Fjárfestingafélagið Gaumur was a private limited liability company registered in Iceland at the time the application was lodged.

Following an audit of the applicants' tax affairs, the Directorate of Internal Revenue found that they had failed to declare a number of important matters in their tax returns for the years 1999 to 2002 (and, in the case of Mr Jóhannesson and the third applicant, also for the year of 1998). The undeclared information included payments that Mr Jóhannesson and Mr Jónsson had received, profits made by Mr Jóhannesson and the third applicant resulting from the sale of shares in the Baugur Group Company, and corporate benefits provided to Mr Jóhannesson and Mr Jónsson. The Directorate imposed a 25% surcharge on the applicants' taxes for the relevant years; and, in the case of the third applicant, a further 10% surcharge due to its failure to withhold levies at source and pay

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

them to the state treasury. Following an appeal, in August and September 2007 the Internal Revenue Board upheld the tax surcharges for the most part.

In December 2008 - about nine months after the tax appeal decisions had become final - the applicants were also indicted for aggravated tax offences. These proceedings also concerned the declarations that the applicants had made in tax returns for the years between 1999 and 2003. However, the Supreme Court ruled that the criminal proceedings were not an unlawful duplication of the tax surcharge proceedings. After considering the case, the Reykjavik District Court convicted all three of the applicants in respect of some of the charges against them, finding both Mr Jóhannesson and Mr Jónsson criminally liable for gross negligence. On appeal the Supreme Court, in February 2013 upheld their convictions for the most part and furthermore, convicted Mr Jóhannesson of two further charges. Respectively, they were given sentences of 12 and 18 months imprisonment (suspended for two years), as well as fines of 62,000,000 and 32,000,000 Icelandic krónur (around 360,000 and 186,000 euros at the relevant time).

## Complaints, procedure and composition of the Court

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), the applicants complained that they had been tried twice for the same offence of failing to make accurate declarations for tax assessments: first through the imposition of the tax surcharges, and second through the subsequent criminal trial and their convictions.

The application was lodged with the European Court of Human Rights on 21 March 2011.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Kristina **Pardalos** (San Marino),  
Aleš **Pejchal** (the Czech Republic),  
Armen **Harutyunyan** (Armenia),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”) and,  
Oddny Mjoll **Arnardottir** (Iceland), *ad hoc Judge*,

and also Renata **Degener**, *Deputy Section Registrar*.

## Judgment of the Court

### Admissibility

The Court noted that the third applicant, Fjárfestingafélagið Gaumur, had failed to show that it wished to pursue its application. The Court decided to strike out the company’s complaints.

### Article 4 of Protocol No. 7 (right not to be tried or punished twice)

Applying the relevant case law, the Court found that both sets of proceedings had been “criminal” in nature. Furthermore, the facts underlying the two sets of proceedings had been the same or substantially the same: both the applicants’ conviction and the imposition of tax surcharges had been based on the same failure to declare income during the same period of time - and they also related to essentially the same amount of evaded taxes.

When the authorities respond to offending conduct with both criminal and administrative proceedings, Article 4 of Protocol No.7 does not exclude the carrying out of two such sets of proceedings, provided that certain conditions are fulfilled. In particular, in order for there to be no duplication of trial or punishment, the two sets of proceedings must be sufficiently closely

connected in substance and in time. In other words, they should be combined in an integrated manner so as to form a coherent whole.

The Court found that there was not a sufficiently close connection in substance and in time between the two sets of proceedings for them to avoid duplication. This was for two reasons in particular. First, there had been only a limited overlap in the timing of the two sets of proceedings. Their combined overall length had been about nine years and three months – yet they had only been conducted in parallel for a little more than a year. Mr Jóhannesson and Mr Jónsson had been indicted in the criminal proceedings in December 2008, 15 and 16 months after the Internal Revenue Board had issued its decisions upon their tax appeals. Second, there had been a separate collection and assessment of the evidence in the two sets of proceedings, because the police had conducted their own independent investigation. The applicants' liability had therefore been assessed by different authorities and courts in proceedings that were largely independent of each other.

In light of the above, the Court held that the two sets of proceedings had breached the applicants' right not be tried or punished twice for the same crime, in violation of Article 4 of Protocol No.7.

### Just satisfaction (Article 41)

The Court held that Iceland was to pay Mr Jóhannesson and Mr Jónsson 5,000 euros (EUR) each in respect of non-pecuniary damage. It was also held that Iceland was to pay them 10,000 EUR and 5,000 EUR respectively in regard to costs and expenses.

*The judgment is available only in English.*

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