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

SECOND SECTION

DECISION

Application no. 22779/14
Matthildur INGVARSDOTTIR
against Iceland

The European Court of Human Rights (Second Section), sitting on 4 December 2018 as a Committee composed of:
Ledi Bianku, *President,*
Jon Fridrik Kjølbro,
Ivana Jelić, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*
Having regard to the above application lodged on 11 March 2014,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant was born in 1949 and lives in Garðabær.

A. The circumstances of the case

2. On 5 April 1991 the applicant set up a fund in Liechtenstein using assets she had inherited. In 1994, financial assets she received after separating from her partner were added to the fund.
3. In 2004 the fund established a limited company, Miko Valley Ltd, in the Bahamas and the assets of the fund were transferred to the company.

1. Tax proceedings

4. By a letter of 19 March 2009, the Directorate of Internal Revenue (*Ríkiskattstjóri*), under Section 94 of the Income Tax Act No. 90/2003 (obligation to give information to tax authorities), requested information and explanations on the applicant's foreign credit card usage and how her

credit card bills had been paid. Furthermore, the applicant was requested to inform the Directorate about her foreign bank balance and provide the appropriate documents.

5. By a letter of 27 March 2009, the Directorate of Internal Revenue informed the applicant that her case would be sent to the Directorate of Tax Investigation (*Skattrannsóknarstjóri ríkisins)*.

6. By a letter of 17 April 2009 the applicant replied that, after her separation from her partner, she had obtained a credit card which was connected to his bank account.

7. By a letter of 27 May 2009, the Directorate of Internal Revenue referred the case to the Directorate of Tax Investigations.

8. On 2 October 2009, the Directorate of Tax Investigation reported the matter to the National Police Commissioner (*Ríkislögreglustjóri*) (see paragraph 19 below).

9. On 24 November 2009 the National Police Commissioner referred the case back to the Directorate of Tax Investigation for further investigation, with reference to Section 103 of the Income Tax Act. It forwarded documents and other information collected during its investigation. In its letter the Commissioner stated that the investigation was in its early stages and that further investigation was expected, in close cooperation with the police. Furthermore, it stated that the investigation should end with an evaluation of whether the case should be referred again to the police.

10. By a letter of 17 February 2010, the Directorate of Tax Investigation informed the applicant that an audit of her taxes had been initiated. The Directorate requested the applicant to submit documents and provide information. By letter of 31 March 2010 the applicant's lawyer replied.

11. On 8 June 2010 the applicant was questioned by the Directorate regarding her income and tax returns. The applicant confirmed her credit card usage, the foreign interest receivables and the ownership of the fund, later the company.

12. By a letter of 27 October 2010 the Directorate requested more documents from the applicant. However, she submitted no documents.

13. The investigation ended with a report issued on 17 December 2010. It concluded that the applicant had submitted incorrect tax returns for the income years of 2005 to 2008. The applicant had failed to declare her ownership of the limited company, Miko Valley Ltd, payments from the company and foreign interest receivable from 2005 to 2008.

14. By a letter of the same day the applicant was informed about the conclusion of the investigation and that a decision as to the re-assessment of her taxes would be taken by the Directorate of Internal Revenue. Furthermore, the applicant was informed that the Directorate of Tax Investigation would take a decision regarding a possible criminal procedure, and the applicant was invited to comment within 30 days.

15. On the basis of the report, the Directorate of Internal Revenue, ruling on 15 August 2011, found that the applicant had failed to declare her ownership of her company, and a significant sum she had received in the form of payments from her company and foreign receivables in the years 2005 to 2008. Furthermore, it concluded that the payments from the company should be taxed as other income. It re-assessed her taxes and imposed a 25% surcharge.

16. On 19 October 2011 the applicant appealed against the Directorate's decision as regards the taxation of the payments to her from her company.

17. The State Internal Revenue Board, in its decision of 17 October 2012, concluded that the payments from the company should be taxed as dividends, not as other income. It reassessed the applicant's taxes and confirmed the 25% tax surcharge imposed by the Directorate.

18. The applicant did not seek judicial review of the decision, which thus acquired legal force six months later, in April 2013, when the time-limit for appeal had expired.

2. Criminal proceedings

19. On 2 October 2009, the Directorate of Tax Investigation reported the matter to the National Police Commissioner (*Ríkislögreglustjóri*) and its unit for investigation and prosecution of economic crimes, according to Section 110 (4) of the Income Tax Act. As the Directorate did not have authorisation to search the applicant's premises, it considered it necessary to refer the case to the police for investigation at this point as the information and answers provided by the applicant in response to the tax authorities' request were inadequate, and more information on the applicant's credit card use was needed. The Directorate forwarded the documents it had already collected to the police and asked the police to keep it informed about the investigation and its conclusion.

20. On 3 November 2009, after the issue of a court order, a police search was conducted at the applicant's home and a computer and documents related to the matter were seized.

21. On 9 November 2009 the applicant was questioned as a suspect by the police. The applicant informed the police that her former partner paid her credit card bills. She denied any ownership of foreign companies or having any foreign income. The police informed the applicant that the investigation was in its early stages and that it would be continued in cooperation with the Directorate of Tax Investigation.

22. On 24 November 2009 the National Police Commissioner referred the case back to the Directorate of Tax Investigation (see paragraph 9 above).

23. On 14 November 2011, the Directorate of Tax Investigation reported the matter to the Special Prosecutor, responsible for investigating economic crimes at this time. Its reports, letters and decisions were also

forwarded to the Special Prosecutor. The Special Prosecutor was informed that the tax re-assessment had not been finalised and that the tax authorities wished to be informed about the investigation (the State Internal Revenue Board issued its final decision on 17 October 2012, see paragraph 17 above).

24. In a letter of the same day, the applicant was informed about this and that the case and any decisions regarding further criminal procedure were in the hands of the Special Prosecutor.

25. On 26 April 2012 the applicant was interviewed by the police for the second time. The applicant was asked about her tax returns, Visa card use and information collected by the tax authorities.

26. On 13 July 2012 the Special Prosecutor indicted the applicant for aggravated tax offences. The Special Prosecutor made two claims in the indictment. Under the principal claim, the applicant was indicted for aggravated tax offences for having under-declared her income for the years 2005 to 2008 in her tax returns of 2006 to 2009. This included the failure to declare income from her limited company, Miko Valley, in the Bahamas, in the form of credit card withdrawals and foreign interest receivables from her bank account in Jersey received from 2005 to 2008. Under the secondary claim the applicant was indicted for aggravated tax offences for having under-declared her income for the years 2005 to 2008 in her tax returns of 2006 to 2009. This included the failure to declare dividend payments from her limited company, Miko Valley, and foreign interest receivables received from 2005 to 2008.

27. On 5 September 2012 the case was filed with the District Court of Reykjavík. At the request of the applicant, the case was postponed to 29 November 2012, or until the Internal Revenue Board issued its final decision.

28. In a preliminary hearing on 29 November 2012 the applicant informed the court that the Internal Revenue Board's final decision had been issued on 17 October 2012. In the light of the outcome of the Board's decision, the prosecution withdrew its primary claim, maintaining only its secondary claim.

29. In a preliminary hearing on 12 December 2012 the applicant's defence counsel requested the dismissal of the case. The applicant claimed that she would not enjoy a fair trial as no proposal had been made to terminate the case administratively by means of a fine payable to the tax authorities, instead of issuing an indictment. In a ruling of 8 February 2013 the District Court rejected the request. The court referred to the Income Tax Act and a regulation on the taxation and tax investigation and stated that, according to the authority granted to the tax authorities under the law, they had decided that the case should have been referred to the police. It was then for the prosecution to decide whether there was reason to prosecute and issue an indictment. The court concluded that the decision to issue an

indictment in the case was part of the power granted to the prosecution authorities by law and that decision could not be subject to judicial review.

30. By judgment of 24 April 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, as she had not declared her income, in the form of dividend payments, and she had given misleading information to the authorities until a year after the investigation had started and a police search had been carried out at her home. The applicant was convicted of the charges against her. The court sentenced her to four months' imprisonment, suspended for two years, and the payment of a fine of 8,800,000 Icelandic *krónur* (ISK; approximately 58,000 euros (EUR) at the material time). Furthermore, the applicant was ordered to pay legal costs. The court noted that the delay in the investigation would not influence the sentencing as the applicant had not cooperated during the investigation and that the police had had to search her home, since it had not been possible to obtain documents any other way.

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

32. By judgment of 23 January 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 and upheld the applicant's conviction and the imposed penalty. Furthermore, the court found that the applicant had acted with gross negligence as she had, from the start, concealed her ownership of the company from the authorities and had submitted incorrect tax returns four years in a row.

B. Relevant domestic law and practice

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

Section 94

"It is the obligation of all parties, both those that must file tax returns as well as others, to submit to the tax authorities, for free and on the form requested, all necessary information and documents called for and which can be submitted. It does not matter in this context whether the information directly applies to the party of whom the information is requested, or to the business of other parties with that party on which he can provide information and pertaining to the taxation of such parties or to an inspection or investigation thereof. If an entity, directly or indirectly, holds at least half of a company, or has managerial control over a subsidiary or branch in other countries, that entity is also obliged to give information about the business of the subsidiary or branch with entities taxable in accordance with Chapter I as well as on companies, funds and institutions in low-tax countries, to which paragraph 1 of Article 57 (a) of this Act applies. Tax authorities, according to this Article, means the Director of Internal Revenue and the Director of Tax Investigations.

Due to tax investigations in accordance with this Act, the Director of Internal Revenue and persons, to whom have been given tasks regarding tax investigation, can demand that entities obliged to file tax returns provide them with their accounting and books for inspections as well as any other documentation relevant to the business, letters and contracts included. These parties are furthermore to have access to the aforenoted data and access to the offices of entities obliged to file tax returns, as well as to their warehouses, and are granted permission to question anyone who may be able to supply the tax authorities with relevant information. The same powers of action rest with the Directorate of Tax Investigations because of inquiries in accordance with Article 103. The Director of Tax Investigations can, for the purposes of investigating a case, seek the authority of a district court for the search and seizure of documents in homes and other places not covered by the first sentence.

The tax authorities also have the powers noted in paragraph 2 of this Article towards those entities that are not obliged to file tax returns.

Financial institutions, auditors, lawyers and other entities are to keep a special record of those clients to whom they provide tax consultancy services or other services, regarding the control or direct or indirect ownership of the clients of companies, funds or institutions that are registered out of the country or offshore assets. They are obliged, on request, to hand over the said record of clients to the tax authorities.

The provisions of other Acts concerning confidentiality and secrecy take second place to the provisions of this Article.

Should the obligations of entities in accordance with this Article become a matter of dispute, the Director of Internal Revenue or the Directorate of Tax Investigations can call for a court order regarding that dispute before a district court. The cases of parties who do not comply with their obligations to hand over information can be submitted to a police enquiry."

Section 103

"The Directorate of Tax Investigations is to carry out investigations according to this Act and acts on other taxes and dues levied by the Director of Internal Revenue or entrusted to him for implementation.

The Directorate of Tax Investigations can, of its own initiative or after an appeal, initiate an investigation on any point relevant to taxes levied according to this Act or other taxes and dues, as noted in paragraph 1 of this Article. It is to carry out investigations in cases assigned to the office, as noted in paragraph 6 of Article 96 ...

The Directorate of Tax Investigations, when conducting investigations in accordance with this Article, is to have access to all tax returns and reports held by the Director of Internal Revenue and it can demand any information and documents deemed necessary from ... the Director of Internal Revenue and parties referred to in Article 94.

The Directorate of Tax Investigations is permitted to assign specific investigation tasks to a statutory auditor.

The police are obliged to give the Directorate of Tax Investigations necessary aid in investigations, if a taxable entity avoids delivering data from its books or when there is danger of damage to a case because of the suspected evasion of documents. The police are also obliged to escort a person to the Directorate of Tax Investigations for reporting if they have, without due cause, disregarded petitions to attend.

When the actions of the Directorate of Tax Investigations give cause for the re-assessment of taxes, the Director of Internal Revenue is to carry out the re-assessment as noted in Article 96 and 97.

In the carrying out of investigations by the Directorate of Tax Investigations, regard shall be had to the provisions of the Act on Criminal Procedure, as applicable, especially concerning the rights of suspects during investigations."

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 wrong, 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."

34. Section 22 of the Act on Municipal Tax Revenues (*Lög um tekjustofna sveitarfélaga* no. 4/1995) provides the following:

"The Directorate of Internal Revenue is responsible for the levy of municipal taxes.

The provisions of Chapters VIII – XIV of the Act No. 90/2003 on income tax apply to municipal taxes, as applicable, except as otherwise provided in this Act."

35. 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."

COMPLAINT

36. The applicant complained that, through the imposition of tax surcharges and the subsequent criminal trial and conviction for aggravated tax offences, she had been tried and punished twice for the same offence. She argued that the two sets of proceedings had been based on identical facts

THE LAW

A. Alleged violation of Article 4 of Protocol no. 7 to the Convention

37. The applicant complained that, through the imposition of tax surcharges and the subsequent criminal trial and conviction for aggravated tax offences, she had been tried and punished twice for the same offence. She argued that the two sets of proceedings had been based on identical facts. She relied on Article 4 of Protocol No. 7 to the Convention, the relevant parts of which read 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.
>
> ..."

38. The Government contested that argument.

1. Admissibility

(a) The parties' submissions

(i) The applicant

39. The applicant maintained that the material facts of her case were the same as in the case of *Johannesson and Others v. Iceland* (no. 22007/11, 18 May 2017). She claimed that the proceedings resulting in the imposition of tax surcharges had constituted criminal proceedings. Furthermore, the applicant argued that the proceedings had been repetitive, unforeseeable, unconnected in substance and time and entirely disproportionate.

40. The applicant maintained that the tax investigation had started on 27 May 2009 and ended on 17 October 2012 with the issuing of the State

Internal Revenue Board's decision. The relevant police investigation had started on 14 November 2011 and ended with a final judgment of the Supreme Court on 23 January 2014. Therefore, there had only been an overlap of 11 months between the sets of proceedings.

(ii) The Government

41. The Government rejected the applicant's submissions that the facts of the present case were in all material respects the same as in the case of *Johannesson and others v. Iceland* (cited above). Although the applicable legislation had been the same in the two cases, the proceedings had been performed differently, especially the order in which they were conducted and the timeline in the two cases.

42. The Government acknowledge that the tax proceedings had been criminal in nature and that the two sets of proceedings had been separate. However, it maintained that the police proceedings had been complementary or supplementary to the tax proceedings, that the procedures had been foreseeable, both as to the imposition of the surcharge by the tax authorities and the conviction by the domestic courts, which were both part of actions and sanctions applied for violations of tax law. Furthermore, it argued that the proceedings had been sufficiently connected in substance and time, they had been conducted in parallel and interconnected and that the Supreme Court had taken the imposed surcharges into account when determining the fine in the criminal case.

43. The Government submitted that the criminal case had begun with a house search by the police on 3 November 2009 and had ended with the Supreme Court's judgment of 23 January 2014. The tax proceedings had started on 17 February 2010, when the Directorate of Tax Investigation had notified the applicant of its investigation, and it had been concluded with the State Internal Revenue Board's decision of 17 October 2012. The Government also pointed out that the applicant's request for postponement of the case and her demand for the dismissal of the case had resulted in delays in the proceedings.

(b) The Court's assessment

44. 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).*

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

45. In comparable cases involving the imposition of tax surcharges, the Court has held, on the basis of the "Engel criteria" (see *Engel and others v. the Netherlands*, 8 June 1976, § 82, 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).

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

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

47. 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 the prosecution or conviction of a second "offence" in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 78-84, ECHR 2009).

48. 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.

49. 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.

(iii) Whether there was a final decision

50. 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 *Johannesson and others v. Iceland,* cited above, § 48).

(iv) Whether there was a duplication of the proceedings (bis)

51. 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."

52. 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.

53. In the case of *A and B v. Norway* (cited above) the Court found that the conducting 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 were 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.

54. 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.

55. In the present case the Court has to determine the timeframe to be taken into account, as the parties differ as to when the police proceedings and the tax proceedings were initiated.

56. A "criminal charge" exists from the moment when 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). Therefore, the Court finds that the police investigation started on 3 November 2009, when a search was carried out at the applicant's home and the applicant was affected (see paragraph 19 above). Consistently, the Court finds that the tax investigation started on 27 March 2009 when the Directorate of Internal Revenue notified the applicant that it was referring her case for investigation to the Directorate of Tax Investigation (see paragraph 5 above).

57. On 27 May 2009 the Directorate of Internal Revenue referred the matter to the Directorate of Tax Investigation. Without initiating a formal investigation, the latter Directorate reported the matter to the National Police Commissioner on 2 October 2009. On 3 November 2009 the police conducted a house search at the applicant's home and on 9 November 2009 the applicant was interviewed by the police for the first time (see paragraphs 20-21 above). On 24 November 2009 the National Police Commissioner referred the case back to the Directorate and the applicant was questioned by the tax authorities on 8 June 2010 (see paragraphs 9 and 11 above). The tax investigation was finalised with the issuing of a report on 17 December 2010. On 14 November 2011 the Directorate reported that matter to the Special Prosecutor. On 26 April 2012 the applicant was interviewed by the police again and on 13 July 2012 an indictment in the criminal case was issued (see paragraphs 25-26 above). The State Internal Revenue Board's decision was issued on 17 October 2012 and became final six months later. By judgment of 24 April 2013 the District Court convicted the applicant for aggravated tax offences after the applicant had requested suspension of the case, awaiting the final decision by the State Internal Revenue Board (see paragraph 27 above). On 23 January 2014 the Supreme Court upheld the applicant's conviction. Thus, the overall length of the two sets of proceedings, from the start of the tax proceedings until the Supreme Court gave its final ruling, was almost 4 years and ten months.

58. 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 – at the outset the Court accepts that they pursued a complementary purpose in addressing the issue of taxpayers' 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.

59. As has been noted above, the tax authorities and the police in charge of the criminal investigation shared all documents, information and reports collected during the police investigation and the tax audit (see paragraphs 9, 19 and 23). Furthermore, the tax authorities explicitly referred the case to the police for investigation on 2 October 2009 due to lack of information from the applicant needed for a further investigation (see paragraph 19 above). The tax authorities initiated a formal investigation against the applicant when they had received this information and the documents collected by the police. Moreover, in his letter the National Police Commissioner explicitly stated that the police investigation was still on-going, the tax investigation should be undertaken in close cooperation with the police and the case should be referred back to the police if necessary (see paragraphs 9 above). In addition, after the State Internal Revenue Board issued its ruling, the prosecution amended its claims before the District Court in accordance with its conclusion. Thus, from the moment the tax authorities reported the matter to the police in October 2009 until the decision to impose the tax penalty was taken in October 2012, the criminal proceedings and the tax proceedings were interconnected.

60. The District Court, as confirmed by the Supreme Court, imposed a four-month suspended sentence and ordered the applicant to pay a fine (see paragraphs 30 and 32 above). In the domestic courts' judgments there are no exact calculations for determining the fine or a reference to the tax surcharges imposed by the tax authorities. Therefore, it appears that the sanctions imposed on the applicant in the tax proceedings were not taken into account in the sentencing in the criminal proceedings.

61. Nevertheless the Court finds that, overall, the applicant's conduct and liability under different provisions of tax and criminal law were examined by different authorities and courts in proceedings which were interconnected.

62. Turning to the connection in time between the two sets of proceedings, the court notes that the overall length of proceedings was about four years and ten months. During that period, the proceedings were in effect progressing concurrently between 3 November 2009, when the police instigated its investigation, and 17 October 2012 when the State Internal Revenue Board issued its decision upon the applicant's appeals,

confirming her obligation to pay tax surcharges (see paragraph 17 above). The proceedings were thus conducted in parallel for about 3 years and 11 months. Moreover, the applicant was indicted on 13 July 2012, about 3 months before the mentioned tax decision had been taken and about 9 months before it acquired legal force. The criminal proceedings then continued alone for about 15 months: the District Court convicted the applicant on 24 April 2013, about 6 months after the decision of the State Internal Revenue Board, and then the Supreme Court judgment was pronounced on 23 January 2014, 9 months later. This stands in contrast to the case of *Johannesson and others v. Iceland* (cited above), where the total length of proceedings against the applicant amounted to approximately nine years and three months and the criminal proceedings continued on their own for several years after the tax decisions acquired legal force. In that case, integration between the criminal proceedings was lacking because the indictments against the applicants were issued after the tax authorities' decisions to amend their tax assessments had been taken and the District Court convicted them more than four years after those tax decisions (see *Johannesson and others v. Iceland,* cited above, § 54).

63. Furthermore in the present case, as noted by the District Court and confirmed by the Supreme Court, the length of the proceedings was partly the applicant's fault for failing to cooperate during the investigation (see paragraph 30 above). Moreover, as pointed out by the Government, upon the applicant's request there had been a postponement of the criminal proceedings pending a final decision by the State Internal Revenue Board (see paragraphs 27 and 43 above).

64. On the facts before it, the Court finds no indication that the applicant suffered any disproportionate prejudice or injustice as a result of the impugned integrated legal response to her failure to declare income and pay taxes. Consequently, having regard to the circumstances of the case, in particular the overlap in time and cooperation between the tax authorities and the police and prosecution authorities in the collection and assessment of evidence, the Court finds that, while different sanctions were imposed by two different authorities, there was nevertheless a sufficiently close connection, both in substance and in time, for them to be compatible with the *bis* criterion in Article 4 of Protocol No. 7.

65. For the reasons set out above, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 17 January 2019.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President