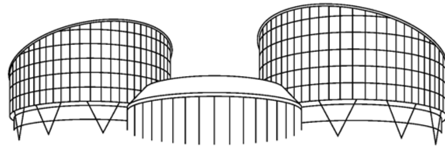

FOURTH SECTION

CASE OF VASILE SORIN MARIN v. ROMANIA

(Application no. 17412/16)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Duplication of proceedings, through administrative fine and criminal proceedings for socially offensive conduct that disturbed public order, not combined in an integrated manner such as to form a coherent whole and not proportionate • Administrative fine criminal in nature, given elements of punishment and deterrence • Facts constituting the two offences substantially the same • Administrative fine constituted a "final conviction" • Proceedings sufficiently connected in time • Duality of proceedings did not pursue complementary purposes or constitute a foreseeable consequence for the same impugned conduct

STRASBOURG

3 October 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Vasile Sorin Marin v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Sebastian Răduleţu, *judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 17412/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Vasile Sorin Marin ("the applicant"), on 23 March 2016;

the decision to give notice to the Romanian Government ("the Government") of the complaint concerning Article 4 of Protocol No. 7 to the Convention;

the parties' observations;

Having deliberated in private on 12 September 2023,

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

INTRODUCTION

1. The case concerns the applicant's allegation that he was punished twice, firstly with a fine and subsequently with a criminal conviction, for the same act, in breach of his right not to be tried and punished twice for the same offence under Article 4 of Protocol No. 7 to the Convention.

THE FACTS

2. The applicant was born in 1981 and lives in Bacău. He was represented by Mr G.-B. Pocovnicu, a lawyer practising in Bacău.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. INCIDENT OF 24/25 SEPTEMBER 2011

5. On the night of 24/25 September 2011 several hundred people attended an entertainments event in K. Club (hereinafter "the Club"), located in the C.P. shopping centre in Bacău. Among the people were two groups, one comprising four individuals (including a certain R.C.), the other,

six individuals (including the applicant). In view of various conflicts between the two groups, the Club let them sit in different areas, namely, one close to the door, the other close to the back of the club.

6. At around 3.40 a.m. the applicant got up from his seat, and, holding a bottle in his hand, rushed towards the door, pushing several individuals to the side. The other members of his group accompanied him.

Since the manager of the Club was aware of a previous clash between the applicant and R.C., he intervened by trying to prevent the applicant from assaulting R.C. The applicant then fell over and shortly thereafter got up and continued his way towards R.C., whom he tried to hit.

7. This created a skirmish, during which the members of the two groups pushed one another, climbed onto the tables and sofas, and broke several bottles and glasses. R.C. used teargas, spraying it in the direction where the skirmish was taking place. Several members of the security staff intervened and forced the applicant and the members of his group out of the Club.

8. A certain I.S., who had also been present in the Club and who had had previous clashes with the members of the applicant's group, rushed towards the applicant and started a quarrel, pushing him at the same time. A new skirmish broke out, during which those involved were verbally abusive and made threatening gestures. I.S. was eventually hit on the head by one of the members of the applicant's group; he ran off, and was followed by the applicant and some of his friends. I.S. then re-entered the Club, where, as held by the domestic courts (see proceedings described under Chapter IV below),"probably in order to unwind after being hit by P.F., P.D. and the applicant", he hit and pushed a certain V.S.A. In the meantime R.C. continued to be in a state of agitation, and threw a bottle at the bar. I.S., R.C. and other members of R.C.'s group together made their way towards the Club's exit and then out of the building, clearly intent on confronting their adversaries again, namely the applicant's group.

9. The conduct was such that many of those inside the Club decided to leave the shopping centre altogether.

II. COMPLAINTS BY THE THIRD PARTIES

10. On 25 September 2011 the manager of the Club notified the criminal investigative authorities that in the early hours of that same day, two groups of people had caused mayhem (*scandal*), in which property was damaged and many clubgoers had fled the scene. No civil claim was attached to the complaint. On an unspecified date the complaint was later withdrawn.

11. On the same day I.S. filed a criminal complaint against P.F. and the applicant about their hitting him in the Club. He later withdrew his complaint.

12. On 27 September 2011 a certain L.D.B. and P.F. notified the criminal investigative authorities of having been hit inside the Club by I.S. and T.C.I.,

and by I.S., respectively, and of public order having been disturbed on that occasion. On an unspecified date L.D.B. withdrew his complaint.

III. PENALTY NOTICE AND THE FINE IMPOSED ON THE APPLICANT FOR DISORDERLY ACTS DISTURBING PUBLIC ORDER

13. On 28 September 2011 a penalty notice was issued. On the basis of Article 3 point 24 of the Law no. 61/1991 on the punishing of acts breaching certain norms of social coexistence and public order and peace (see paragraph 29 below), the applicant was fined 200 Romanian lei (RON – approximately 50 euros) for a non-criminal minor offence (*contravenţie*) committed on the night of 24/25 September 2011 relating to disorderly acts causing public disorder. According to the notice:

> “while in K. Club, he caused and, together with I.S., R.C. and S.M., engaged in mayhem (*a provocat si participat la scandal*), provoking public outrage.”

14. The notice, which specified that it was subject to judicial review within fifteen days after being served on the offender, was never challenged by the applicant, who paid the fine at an unknown later date.

IV. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT FOR DISORDERLY AND VIOLENT CONDUCT IN A PUBLIC PLACE

15. On 25 September 2011 criminal proceedings were also initiated in relation to the incident of 24/25 September 2011 (see paragraphs 5-9 above), against several individuals, including the applicant, who were accused of having committed the offence set forth in Article 321 § 2 of the Criminal Code in force at the time (hereinafter “the old CC” – see paragraph 28 below).

The evidence adduced in the case consisted of, *inter alia*, witness statements taken between September and December 2011, photographs and security camera footage.

16. The applicant was indicted on 22 March 2012 for the offence set out in Article 321 § 2 of the old CC for having

> “... caused mayhem in the C.P. shopping centre in Bacău, following which various goods inside Club K. were destroyed, the programme of entertainment was interrupted and some two hundred clubgoers left the place, shocked and terrified by the anti-social behaviour displayed by the applicant [and the others] ...”

17. The applicant challenged the indictment by raising before the Bacău District Court an objection of *res judicata*, arguing that he had already been punished for the same act by the penalty notice of 28 September 2011 (see paragraph 13 above), and that according to the *ne bis in idem* principle, he could not be criminally prosecuted, again, for the same acts.

18. In the judgment given on 19 March 2015, the court dismissed his argument, holding that in so far as the penalty notice had not been challenged

before a court (see paragraph 14 above), there was no final judgment to be taken into account in the application of the *res judicata* principle. A penalty notice and its findings could not be regarded as comparable to the findings of a court in a final judgment.

19. Furthermore, according to the District Court, the act that was subject to punishment by the penalty notice was different from the act for which the applicant had been indicted. The penalty notice referred to the applicant's participation in "mayhem", which meant "participat[ion] in a verbal conflict, shouting, quarrel, alarm"; however, the criminal proceedings pending before the court referred to the act of disturbing public order, which, as of 1 November 2014, when the new Criminal Code (hereinafter, the "CC"), with its lesser penalty (*lex mitior*), entered into force, was set forth in Article 371, punishing "acts committed in public and with violence against persons or property, or threats or serious injury to dignity, which disturb public order and peace" (see paragraph 28 below). At the same time, a fine as low as RON 200 could not be regarded as a criminal punishment.

20. The first-instance court convicted the applicant of the offence provided for in Article 371 of the CC and sentenced him to a term of one year's imprisonment, having regard to the applicant's criminal record and to his contribution to "the initiation, the spreading and the fuelling of the conflict" ("*nașterea, propagarea și alimentarea conflictului*").

21. The applicant lodged an appeal with the Bacău Court of Appeal. He reiterated his two main arguments: firstly, that he had been convicted in breach of the *ne bis in idem* principle; and secondly, that he had not struck or destroyed property or threatened anyone to warrant being charged with the offence provided for in Article 371 of the CC.

22. He relied on the judgment of the Court of Justice of the European Union of 11 February 2003 in *Gözütok and Brügge* (Joined Cases C-187/01 and C-385/01, EU:C:2003:87, paragraph 31), stating that a "final judgment" was a court decision which remained final, but also any final decision taken by an authority in a "criminal" case, within the meaning of the Convention.

23. Also, while referring to *Engel and Others v. the Netherlands* (8 June 1976, Series A no. 22), *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, ECHR 2009), and *Tsonyo Tsonev v. Bulgaria (no. 2)* (no. 2376/03, 14 January 2010), he argued that the act described in the penalty notice and the one described in the indictment were identical in substance, that is, he was charged twice with having caused mayhem in public which provoked outrage and indignation. He indicated that on 21 May 2015, the same appellate court had decided in a similar case to discontinue the criminal proceedings against an accused as *res judicata*, based on the fact that the *ne bis in idem* principle had been breached by the imposition of a fine and subsequently of a criminal sentence for the same act.

24. The applicant further argued that according to the Romanian dictionary, the word "mayhem" ("*scandal*") designated a violent reaction in

the form of protest, a quarrel often accompanied by a fight, destruction of property and so on, or the noise created by such a fight; by no means did the word refer exclusively to "verbal abuse", as held by the first-instance court.

25. Lastly, he emphasised that he personally had not been indicted for any act of hitting or threatening a person or of destroying property, the footage on the camera serving as proof that he did not commit such acts.

26. On 15 December 2015 the appellate court confirmed the applicant's conviction. Its judgment was notified to the applicant on 14 January 2016. In reply to the *ne bis in idem* argument submitted by the applicant, the appellate court, distinguishing the present case from the Court's relevant case-law relied on by the applicant, found that the applicant had initially been punished for causing mayhem in public, while subsequently being indicted for acts which exceeded the degree of gravity of a minor offence, namely "for severe disturbance of public peace and order in the context of committing violent acts, threats and property destruction".

The first-instance court had correctly established that the applicant, together with several other co-accused, had caused mayhem, as a consequence of which various goods were damaged, all of which made more than two hundred clubgoers leave the venue, terrified and outraged.

27. The court further decided to stay the execution of the sentence of imprisonment imposed on the applicant, noting, among other things, that in respect of his previous convictions, rehabilitation had been completed. Several probationary measures had been taken in respect of him, including the obligation to carry out one hundred days of community service.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

28. Article 321 of the old CC and Article 371 of the CC as in force at the material time provided as follows:

Article 321 – Indecent assault and disorderly conduct

> "(1) The act of a person who, in public, commits acts or gestures, utters words or expressions, or indulges in any other manifestations by which public morals are offended or mayhem (*scandal*) in public is caused or public peace and order is otherwise disturbed shall be punished by imprisonment for a term of between one and five years.
>
> (2) If, by the act referred to in paragraph 1, public peace and order have been severely disturbed, the penalty shall be imprisonment for a term of between two and seven years."

Article 371 – Disturbing public order

> "The act of a person who, in public, by violence committed against persons or property or by threats or serious injury to the dignity of persons, disturbs public order and peace (*liniștea publică*) shall be subject to a prison sentence of between three months and two years or to a fine."

29. The relevant provisions of Law no. 61/1991 on the punishing of acts breaching certain norms of social coexistence and public order and peace, as in force at the relevant time, read as follows:

Article 1

"In order to ensure the climate of public order and peace necessary for the normal development of economic and socio-cultural activity and to promote civilised relations in everyday life, citizens are obliged to behave in a civic, moral and responsible manner, in the spirit of the laws of the country and the rules of social coexistence."

Article 3

"Committing any of the following acts amounts to a minor offence (*contraventie*), unless they are committed in circumstances constituting a criminal offence pursuant to criminal law:

...

(24) provoking or actually participating in mayhem (*scandal*) in public places or premises; ..."

According to the law, the punishment imposed for the act described in Article 3, point 24 was a fine ranging from RON 200 to RON 1,000.

THE LAW

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

30. The applicant complained that he had been tried and convicted twice for the same offence in breach of his rights protected by Article 4 of Protocol No. 7 to the Convention, which, in so far as relevant, 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.

..."

A. Admissibility

31. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

32. The applicant essentially reiterated the arguments he had put forward before the domestic courts (see paragraphs 21-24 above): the notion of "final decision" was wide, and included a penalty notice such as the one that led to his being fined; the two forms of punishment in question were criminal in nature, the minor offence being applicable to the general public, and both had a preventive and a repressive function; the word "mayhem" did not refer exclusively to verbal abuse, but possibly also to physical assault. He alleged that both sets of proceedings had concerned the same facts.

(b) The Government

33. The Government argued that the applicant's complaint was one of a fourth-instance nature: the arguments that he had brought before the Court had already been thoroughly assessed and correctly dismissed by the domestic courts.

34. Firstly, the two punishments had been based on facts that were not identical, as explained by the domestic courts, which had made a clear distinction between the two acts of which the applicant had been accused of and for which he had been punished. They considered that the notion of "mayhem" (mentioned in the definition of the minor offence) necessarily referred to a verbal conflict, while the criminal charge related to violent and aggressive physical behaviour.

35. Secondly, the fine could not be considered "criminal" within the meaning of the Court's case-law: the domestic law defined the offence as a minor one, the fine imposed was minimal and the punishment could not be replaced with imprisonment (the Government relied on the recent decision in *Prina v. Romania* ((dec.), no. 37697/13, 8 September 2020), inadmissible in so far as the fine imposed on the applicant in that case had been considered not to be a criminal punishment).

36. Moreover, the two punishments had been imposed by different authorities: the fine had been imposed as a result of the assessment that the police officer had carried out at the scene, while the criminal proceedings (which had resulted in the applicant's conviction) had been initiated only after several criminal complaints had been filed, claiming that the applicant's actions on the relevant night had amounted to criminal offences. The two procedures were therefore complementary, and not duplicated; the subsidiary nature of the minor-offence liability in relation to criminal liability was an important element to be considered in the present case.

37. Lastly, the fine could not be considered to amount to a "final" conviction, as there had been no final decision on the matter – the applicant

had not contested the fine before a court, and the penalty notice could not be regarded as a final decision.

2. *The Court's assessment*

(a) General principles

38. The relevant principles concerning the protection against duplication of criminal proceedings are summarised in *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, §§ 79-84, ECHR 2009), *A and B v. Norway* ([GC], nos. 24130/11 and 29758/11, §§ 105-34, 15 November 2016) and *Mihalache v. Romania* ([GC], no. 54012/10, §§ 47-49, 53-54, 67 and 88-116, 8 July 2019).

39. Under Article 4 of Protocol No. 7, which enshrines the *ne bis in idem* rule, the Court has to determine whether the two sets of proceedings were criminal in nature, whether they concerned the same facts and offence ("*in idem*"), whether the administrative fine constituted a "final conviction", and whether there was any duplication of proceedings ("*bis*" – see, for instance and *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 136-47).

(b) Application of those principles in the present case

(i) Whether the proceedings were criminal in nature

40. It is not contested between the parties that the proceeding which led to the applicant's conviction for "disturbing public order", an offence punished by Article 371 of the CC, were criminal in nature. The Court does not see any reasons to hold otherwise.

41. It remains to be established whether the proceedings relating to the imposition of an administrative fine on the applicant pursuant to Law no. 61/1991 were criminal in nature. In doing so the Court will rely on the "*Engel* criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22): the first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative and not necessarily cumulative. However, this does not exclude a cumulative approach in cases where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, among many other authorities, *Sergey Zolotukhin*, cited above, § 53, and the cases cited therein).

42. As regards the first criterion, it is clear that the impugned fine was administrative under Law no. 61/1991, which provides for minor offences (see paragraph 29 above). However, this element alone cannot be decisive; indeed, the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the *ne bis in idem* principle under Article 4 § 1 of Protocol No. 7, otherwise the application of

this provision would be left to the discretion of the Contracting States to a degree that might lead to results that are incompatible with the object and purpose of the Convention (see *Muslija v. Bosnia and Herzegovina*, no. 32042/11, § 25, 14 January 2014).

43. As to the second criterion, the relevant domestic provisions were applicable, in accordance with Article 1 of Law no. 61/1991 (see paragraph 29 above), to all citizens rather than to a group possessing a special status (contrast *Prina*, cited above, §§ 53-54). The sanction laid down for the offence defined in Article 3 of the Law was a fine, which was aimed at punishing and deterring behaviour liable to undermine the social values safeguarded by law; these elements are recognised as characteristic features of criminal penalties.

44. Regarding the third criterion, namely the degree of severity of the measure, the Court observes that even though the fine imposed in the present case was not of a substantial amount (being approximately EUR 50), the maximum fine prescribed by the law for such conduct being itself rather low (approximately EUR 250), nevertheless it was punitive in nature, as already mentioned in paragraph 43 above, the purpose of the fine being not to compensate for the damage caused by the applicant, but rather to deter him from committing the offence again (see, *mutatis mutandis*, *Sancaklı v. Turkey*, no. 1385/07, § 30, 15 May 2018). Indeed, the fact that the maximum potential penalty for the breach of public order the applicant was accused of did not include imprisonment is not decisive, it being sufficient that the offence in question is by its nature criminal for the purposes of the Convention (see, *mutatis mutandis*, *Tsonyo Tsonev v. Bulgaria (no. 2)*, no. 2376/03, § 49, 14 January 2010).

45. In the light of the above considerations, the Court concludes that the nature of the offence for which the applicant was fined by the police on 28 September 2011 was such as to bring it within the ambit of the expression "penal procedure" used in Article 4 of Protocol No. 7.

*(ii) Whether the facts of the offences were the same in nature ("*in idem*")*

46. The notion of the "same offence" – the *in idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – is to be understood as a second "offence" arising from identical facts or facts which are substantially the same (see *Sergey Zolotukhin*, cited above, §§ 78-84).

47. In the present case, the facts which gave rise to the administrative fine and to the applicant's prosecution and criminal conviction were essentially the causing of mayhem that generated public outrage and disturbed public order and peace, in breach of the relevant legal provisions set out in Law no. 69/1991, on the one hand, and those in the Criminal Code, on the other. This recapitulation of the events demonstrates that what is at issue is the same conduct on the part of the same defendant and within the same time frame; what remains to be established is whether the facts of the offence for which

the applicant was fined and those of the criminal offence by reason of which he was indicted were identical or substantially the same (see, *mutatis mutandis*, *Ruotsalainen v. Finland*, no. 13079/03, § 53, 16 June 2009).

48. The established facts in the two sets of proceedings referred to a single incident in the K. Club on the night of 24/25 September 2011, which provoked outrage and/or indignation. Their legal classification apparently differed in one respect, as pointed out by the domestic authorities: the degree of severity of the disturbance. The act punished by the penalty notice as a minor offence was lower on the scale of severity, whereas the act that the applicant had been charged with in the criminal proceedings was more serious. In other words, as suggested by the domestic authorities, while the first act referred to the causing of mayhem without any element of physical violence, in so far as the word "mayhem" implied mere verbal abuse, the criminal act was more contextualised, being described as a "severe disturbance of public peace and order in the context of committing violent acts, threats and property destruction" (see paragraphs 19 and 26 above).

49. While noting that no separate accusations for the destruction of property or physical assault were brought against the applicant (see paragraphs 15-16 above), the Court cannot overlook the fact that the concept of "mayhem", in so far as it is not specifically defined in the relevant domestic criminal law, must be interpreted in accordance with its common meaning, which, as also argued by the applicant, suggests a certain idea of violence, whether verbal or physical, directed against people and/or property (see paragraph 24 above)[1].

50. In view of the above factors, the Court must conclude that the criminal charges brought against the applicant comprised the facts of the administrative offence in its entirety, and, conversely, the facts of the administrative offence did not contain any elements that were not present in the criminal offence with which the applicant was charged (see, *mutatis mutandis*, *Sergey Zolotukhin*, § 97; *Tsonyo Tsonev*, § 52; and *Ruotsalainen*, §§ 50 and 56, all cited above).

51. The facts constituting the two offences must therefore be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7.

(iii) Whether the administrative fine constituted a "final conviction"

52. The Court established in *Mihalache* (cited above, §§ 93-95) that judicial intervention was unnecessary for a decision to be regarded as a "final acquittal" or a "conviction" under Article 4 of Protocol No. 7. It clarified what was meant by a final decision for the purposes of Article 4 of Protocol No. 7

[1] According to an online dictionary (https://www.dex.ro/scandal) the word "scandal" may be defined as: "violent reaction of protest against something unworthy, shameful, unacceptable, etc. 2. quarrel often accompanied by fighting, damage to objects, etc.; (e.g.) noise, loud noise produced by such a quarrel"

in *Sergey Zolotukhin* (cited above, §§ 107 and 108, with further references) and in particular, as regards situations where an administrative decision imposed fines, as in *Tsonyo Tsonev* (cited above, §§ 53, 54 and 56).

53. Having regard to the above-mentioned well-established principles as relevant to the present case and noting that the applicant did not challenge the penalty notice and paid the fine at some subsequent moment (see paragraph 14 above), the administrative decision imposing that fine became "final" for the purposes of Article 4 of Protocol No. 7.

Even though the date when that decision became final cannot be established with sufficient precision, in the absence of accurate information concerning the date when the penalty notice was issued to the applicant or at least the date when the fine was paid, what cannot be disputed is that at the time when the applicant was indicted and brought before the first-instance court, he raised a *res judicata* objection (see paragraph 17 above), thus arguing that the previous decision was final. The first-instance court confirmed at the time of its judgment that the fine had been paid and that the report had not been challenged (see paragraph 18 above).

*(iv) Whether there was a duplication of proceedings ("*bis*")*

54. As regards the conditions to be satisfied in order for dual sets of criminal and minor-offence proceedings to be regarded as sufficiently connected in substance and in time and thus compatible with the "*bis*" criterion in Article 4 of Protocol No. 7, it is necessary to ascertain for example:

– whether the different sets of proceedings pursued complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;

– whether the dual sets of proceedings concerned constituted a foreseeable consequence, both in law and in practice, of the same impugned conduct ("*in idem*");

– whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any additional disadvantages resulting from duplication of proceedings, and in particular in the collection and assessment of the evidence, notably through adequate interaction between the various competent authorities to ensure that the establishment of the facts in one set of proceedings was replicated in the other;

– and, above all, whether the punishment imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden; this risk being least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall quantum of any penalties imposed is proportionate (see *A and B v. Norway*, cited above, §§ 131-32).

Lastly, combined proceedings will more likely meet the criteria of complementarity and coherence if the sanctions to be imposed in the proceedings not formally classified as "criminal" are specific for the conduct in question and thus differ from "the hard core of criminal law" (*Bajčić v. Croatia*, no. 67334/13, § 40, 8 October 2020).

55. In the instant case, the criminal proceedings were initiated against the applicant on 25 September 2011 (see paragraph 15 above); on 28 September 2011, in parallel with the criminal proceedings, the police issued the notice punishing the applicant with an administrative fine (see paragraph 13 above). That fine remained final for some time while the criminal proceedings were still pending before the investigative authorities (see paragraph 14 above). Those proceedings concluded on 15 December 2015 with the applicant being convicted in a final judgment and sentenced to a term of imprisonment, the execution of which was stayed (see paragraphs 26-27 above).

56. Noting that according to its established case-law, the two sets of proceedings do not necessarily have to be conducted simultaneously from beginning to end, the Court considers that the dual sets of proceedings were sufficiently connected in time within the meaning of its case-law (see *A and B v. Norway*, cited above, § 134, and *Velkov v. Bulgaria*, no. 34503/10, § 77, 21 July 2020).

57. In its assessment of the connection in substance between the two sets of proceedings, the Court reiterates what it has already established, namely that both sets were criminal in nature (see paragraph 45 above) and concerned the same reprehensible conduct on the part of the applicant, manifested within the same time frame (see paragraph 47 above).

58. While the objectives of both penalties were deterrence and punishment, the Court notes that the fine imposed in administrative proceedings was specific for the conduct in question and thus differed from "the hard core of criminal law", as it did not have stigmatising features (see, *mutatis mutandis*, *Goulandris and Vardinogianni v. Greece*, no. 1735/13, § 74, 16 June 2022). The Court nevertheless observes that the conduct amounted to a one-off incident rather than a pattern of such behaviour. Moreover, the criminal proceedings were initiated against the applicant even before the administrative fine was imposed on him (see paragraphs 15 and 13 above). The Court concludes therefore the criminal proceedings cannot be regarded as a complementary response to the applicant's unlawful behaviour, aimed at addressing an ongoing situation of violence in a comprehensive manner, once it was found that the behaviour had reached a certain level of severity (contrast *Galović v. Croatia*, no. 45512/11, §§ 117-18, 31 August 2021). It follows that the two sets of proceedings did not pursue complementary purposes in addressing the issue of socially offensive conduct that disturbs public order by causing mayhem in a public place.

59. Furthermore, as regards the foreseeability in law and in practice of the consequences of the applicant's conduct, the Court reiterates that the

impugned conduct corresponded to a single incident, described similarly both in the administrative penalty notice (see paragraph 13 above) and in the indictment as the act of causing mayhem which had provoked public outrage, the indictment referring also to a further consequence, namely that of entailing the destruction of some goods (see paragraph 16 above), without however incriminating the applicant for destruction of property.

60. Noting that duplication of proceedings and penalties may be allowed only under conditions provided for and exhaustively defined by clear and precise rules allowing individuals to predict which acts or omissions were liable to be subject to such duplication, thereby ensuring that the right guaranteed by Article 4 of Protocol No. 7 is not called into question as such and legal certainty is preserved (see *Galović*, cited above, § 119), the Court considers that in the instant case the applicant had no reason to foresee that his conduct could have entailed consequences such as the institution of minor-offence proceedings for a particular individual incident as well as criminal proceedings for the same incident.

61. As to the manner of conducting the proceedings, the Court observes that the criminal court disregarded the previous minor-offence proceedings against the applicant. Both domestic courts considered those proceedings as irrelevant for the assessment of the *res judicata* argument raised by the applicant, in so far as there had been no final judgment rendered in the minor-offence proceedings, which, in their view, had not entailed a punishment of a criminal nature, having regard to the low quantum of the fine (see paragraphs 18-19 and 26 above). The two penalties imposed on the applicant, one of which entailed a deprivation of liberty, even though its execution was ultimately stayed, were not combined or integrated in any manner. Consequently, the applicant may be regarded as having suffered a disadvantage associated with the duplication of proceedings, beyond what was strictly necessary.

62. Having regard to those factors, the Court finds that the two sets of proceedings were not combined in an integrated manner such as to form a coherent whole, thus falling foul of the "*bis*" criterion under Article 4 of Protocol No. 7 (see, *mutatis mutandis*, *Mihalache*, cited above, § 85).

(v) Conclusion

63. The applicant was fined in minor-offence proceedings which are to be assimilated to "criminal proceedings" within the autonomous Convention meaning of "criminal". The subsequent proceedings against the applicant, classified as criminal under domestic claw, concerned essentially the same offence as that for which he had already been fined by the police with final effect.

64. Notwithstanding their connection in time, it has not been established that the two sets of proceedings pursued complementary purposes, or that they were combined in an integrated manner such as to form a coherent

whole; in any event, as a consequence the applicant has been punished twice for the same conduct and has sustained disproportionate prejudice resulting from the duplication of proceedings and penalties, which in his case did not form a coherent whole and was not proportionate.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

68. The Government contested the claim.

69. Having regard to the nature of the violation found and to the circumstances of the present case, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

70. As the applicant did not claim costs and expenses, the Court is not called upon to make any award under this head.

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* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 3 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President