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Supreme Administrative Court of Finland

ECtHR case Boman v. Finland, 17 February 2015

This case concerns the Independent Åland Island. According to the Independence Act of Åland the legislative powers are exercised by the Åland Province in certain areas, inter alia, matters relating to road transport. Any way the road traffic acts in Åland and in the mainland are with the same contents.

Domestic Criminal proceedings

On 26 March 2010 the applicant was charged with, inter alia, causing a serious traffic hazard and operating a vehicle without a licence both acts having been committed on 5 February 2010. The prosecutor requested that, in relation to the charge of causing a serious traffic hazard, a driving ban be imposed.

On 22 April 2010 the District Court convicted the applicant as charged and sentenced him to 75 day-fines, amounting to 450 euros (EUR). A driving ban was also imposed until 4 September 2010 on the basis of section 44 of the Driving License Act of the Province of Åland. No appeal was made against the judgment and it became final.

Domestic Administrative proceedings

On 28 May 2010 the police imposed a new driving ban on the applicant from 5 September to 4 November 2010 on the basis of section 46 §§ 1 (c) and 3 of the Driving License Act of the Province of Åland. In their decision the police referred to the fact that on 5 February 2010 the applicant had been driving a vehicle without a license and that the District Court had convicted him for this by final judgment on 22 April 2010.

By letter dated 22 June 2010 the applicant appealed to the Åland Administrative Court claiming that he had been tried and convicted twice in the same matter. He referred to Article 4 of Protocol No. 7 to the Convention.

On 20 July 2010 the Åland Administrative Court rejected the applicant's appeal and upheld the driving ban. The court found that the District Court had imposed the driving ban for causing a serious traffic hazard whereas the police had imposed it for operating a vehicle without a licence. Therefore, the applicant was not punished twice for the same offence and his rights protected by Article 4 of Protocol No. 7 to the Convention were not violated.

By letter dated 12 August 2010 the applicant appealed to the Supreme Administrative Court reiterating the grounds of appeal already presented before the Administrative Court. He stressed that both the criminal and the administrative proceedings had related to the same facts which had taken place on 5 February 2010.

On 19 January 2011 the Supreme Administrative Court upheld the Administrative Court's decision. It found that the District Court had imposed the driving ban for causing a serious traffic hazard whereas the police had imposed it for operating a vehicle without a license. Article 4 of Protocol No. 7 to the Convention had therefore not been violated. The decision was not unanimous and one of the judges expressed a dissenting opinion. In her opinion, it was not to be ruled out that a driving ban

constituted a criminal sanction. Referring to the case Zolotukhin v. Russia, she considered that after the applicant's final conviction by the District Court, a new driving ban based on the same facts on the basis of which he had already been convicted could no longer be imposed. Therefore, she would have quashed the police decision as well as the Administrative Court's decision.

ECtHR´s judgement

The ECtHR evaluated the case with four criterions to find out if there was a violation of Article 4 of Protocol n. 7 to the Convention.

1) Criminal nature of the proceedings

The Court noted that it is clear that the criminal proceedings against the applicant before the District Court were criminal in nature. As to the criminal nature of driving ban, the Court reiterates that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of ne bis in idem 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 incompatible with the object and purpose of the Convention. The notion of "penal procedure" in the text of Article 4 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" in Articles 6 and 7 of the Convention respectively.

The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (Engel and Others v. the Netherlands, 8 June 1976, Series A no. 22), to be considered in determining whether or not there was a "criminal charge". 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. This, however, does not rule out a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge.

The Court considers that the second driving ban issued by the police in the administrative proceedings is to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention.

2) Whether the offences for which the applicant was prosecuted were the same (idem)?

The Court referred to the Zolotukhin case. In that case the Court acknowledged the existence of several approaches to the question of whether the offences for which an applicant was prosecuted were the same. The Court presented an overview of the existing three different approaches to this question. It found that the existence of a variety of approaches engendered legal uncertainty incompatible with the fundamental right not to be prosecuted twice for the same offence. It was against this background that the Court provided in that case a harmonised interpretation of the notion of the "same offence" for the purposes of Article 4 of Protocol No. 7. In the Zolotukhin case the Court thus found that an approach which emphasised the legal characterisation of the two offences was too restrictive on the rights of the individual. If the Court limited itself to finding that a person was prosecuted for offences having a different legal classification, it risked undermining the guarantee enshrined in Article 4 of Protocol No. 7 rather than rendering it practical and effective as required by the Convention. Accordingly, the Court took the view that Article 4 of Protocol No. 7 had to be understood as prohibiting

the prosecution or trial of a second "offence" in so far as it arose from identical facts or facts which were substantially the same. It was therefore important to focus on those facts which constituted a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which had to be demonstrated in order to secure a conviction or institute criminal proceedings.

In the Boman case the Court considered that both sets of proceedings arose from the same facts, namely from the applicant's driving on 5 February 2010. There is no other set of facts which could have constituted the basis for the police's decision to impose the second driving ban. On the contrary, the police specifically relied in its decision on the events of 5 February 2010 and referred to the fact that the applicant had been convicted for these events by the District Court by a final judgment. The Court therefore considers that the two impugned sets of proceedings constituted a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same.

3) Whether there was a final decision?

According to the Court a decision is final if, according to the traditional expression, it has acquired the force of res judicata. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them.

In the Boman case the applicant did not appeal against the District Court judgment of 22 April 2010. The applicant thus permitted the time-limit to expire without exhausting the ordinary remedies. His conviction therefore became "final", within the autonomous meaning given to the term by the Convention, on 22 April 2010.

4) Whether there was a duplication of proceedings (bis)?

The Court repeats that Article 4 of Protocol No. 7 prohibits the repetition of criminal proceedings that have been concluded by a "final" decision. Article 4 of Protocol No. 7 is not only confined to the right not to be punished twice but extends also to the right not to be prosecuted or tried twice. Were this not the case, it would not have been necessary to add the word "punished" to the word "tried" since this would be mere duplication. Article 4 of Protocol No. 7 applies even where the individual has merely been prosecuted in proceedings that have not resulted in a conviction. The Court reiterates that Article 4 of Protocol No. 7 contains three distinct guarantees and provides that no one shall be (i) liable to be tried, (ii) tried or (iii) punished for the same offence.

The Court notes that Article 4 of Protocol No. 7 clearly prohibits consecutive proceedings if the first set of proceedings has already become final at the moment when the second set of proceedings is initiated.

As concerns parallel proceedings, Article 4 of Protocol No. 7 does not prohibit several concurrent sets of proceedings. In such a situation it cannot be said that an applicant is prosecuted several times "for an offence for which he has already been finally acquitted or convicted". There is no problem from the Convention point of view either when, in a situation of two parallel sets of proceedings, the second set of proceedings is discontinued after the first set of proceedings has become final. However, when no such discontinuation occurs, the Court has found a violation.

However, the Court has also found in its previous case-law that although different sanctions (suspended prison sentences and withdrawal of driving licences) concerning the same matter (drunken driving) have been imposed by different authorities in different proceedings, there has been a sufficiently close connection between them, in substance and in time. In those cases the Court found that the applicants were not tried or punished again for an offence for which they had already been finally convicted in breach of Article 4 § 1 of Protocol No. 7 to the Convention and that there was thus no repetition of the proceedings.

In the Boman case the Court notes that both the use of criminal proceedings and the imposition of a driving ban by the police in the administrative proceedings form part of the sanctions under both Finnish and Ålandic law for traffic offences. A driving ban is considered to be both an administrative security measure as well as a criminal sanction. Even if the different sanctions are imposed by two different authorities in different proceedings, there is nevertheless a unity between them, in substance and in time. This is illustrated by the fact that, according to the wording of the relevant legislation, namely section 46 § 1 (c) of the Driving Licence Act of the Province of Åland, the imposition of a driving ban on the basis of that provision presupposes that a person has already been found guilty of a traffic offence or of operating a vehicle without a licence. In the present case, the police decision, shortly after the judgment in the criminal proceedings, to impose the second driving ban was directly based on the applicant's final conviction by the District Court for traffic offences and thus did not contain a separate examination of the offence or conduct at issue by the police. Therefore, it must be said that, under the Ålandic system, the two proceedings, namely the criminal proceedings against the applicant and the proceedings to impose a driving ban, were intrinsically linked together, in substance and in time, to consider that these measures against the applicant took place within a single set of proceedings for the purpose of Article 4 of Protocol No. 7 to the Convention. In conclusion the Court found that the applicant was not convicted twice for the same matter in two separate sets of proceedings.

The Court decided by six votes to one that there has been no violation of Article 4 of Protocol No. 7 to the Convention.