



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

Legal summary

July 2026

Jesus Pinhal v. Portugal [GC] - 48047/15 and 2276/20

Judgment 9.7.2026 [GC]

Article 4 of Protocol No. 7

Right not to be tried or punished twice

Three sets of proceedings initiated by criminal-law authorities, Securities Market Commission and Banco de Portugal for various criminal and administrative offences committed by applicant as Vice-Chairman of Board of Directors of Banco Comercial Português bank: *no violation*

Facts – The case concerned three sets of proceedings initiated against the applicant by the criminal-law authorities, the Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – CMVM) and the Banco de Portugal (BdP) for various criminal and administrative offences committed while he was Vice-Chairman of the Board of Directors of the Banco Comercial Português bank.

With regard to the BdP proceedings, in April 2010 the administrative authorities found the applicant guilty on two counts of the administrative offence of reporting false or incomplete information and on four counts of the administrative offence of false accounting. He was ordered to pay an overall administrative fine of 425,000 euros (EUR) and two ancillary sanctions were imposed. In June 2015, the Lisbon Court of Appeal, ruling at last instance, found that the prosecution had become time-barred in respect of the acts committed prior to 9 June 2007 on two counts of the administrative offence of reporting false or incomplete information to the BdP. It decided to acquit the applicant of the remaining accusations against him.

As to the criminal proceedings, in May 2014 the Lisbon District Court decided to acquit the applicant of the offence of forgery and use of forged documents and to convict him of market manipulation, sentencing him to two years' imprisonment – which could be suspended upon payment of EUR 300,000 to a charity –, together with an ancillary sanction. Ruling at last instance, the Lisbon Court of Appeal upheld that judgment in February 2015.

Regarding the CMVM proceedings, in July 2010 that authority found the applicant guilty of having failed to comply with the duty to submit quality information, ordering him to pay an overall administrative fine of EUR 800,000, accompanied by ancillary sanctions. At second instance, the Lisbon Court of Appeal found in March 2014 that the prosecution had become time-barred on two counts of the administrative offence of which the applicant stood accused – in respect of acts committed in 2004 and 2005 respectively – and ordered him to pay an overall administrative fine of EUR 700,000 on the four remaining counts, in respect of acts committed in 2006 and 2007. In July 2019 the Lisbon Court of Appeal, ruling at last instance, upheld a decision reducing the overall administrative fine to EUR 480,000 after the prosecution had been declared time-barred on one of the four counts of the administrative offence in question.

In a [judgment](#) delivered on 8 October 2024 a Chamber of the Court found, unanimously, that there had been no violation of Article 4 of Protocol No. 7, as the sets of proceedings complained of were sufficiently closely connected in both substance and time to be regarded as forming a coherent whole.

On 17 March 2025 the case was referred to the Grand Chamber at the applicant's request.

Law –

Scope of the case – In its judgment, the Chamber had decided to examine applications nos. 48047/15 and 2276/20 jointly, having regard to their similar subject matter. However, it had declared inadmissible all the complaints which the applicant had raised in application no. 2276/20. In the light of its case-law, the Court therefore considered it appropriate to disjoin application no. 2276/20 from application no. 48047/15 and to examine the latter alone.

Article 4 of Protocol No. 7:

(1) *Portugal's declaration regarding Article 4 of Protocol No. 7* – In the instrument of ratification of Protocol No. 7, Portugal had made a "declaration" by which the Court considered that it had meant to exclude from the scope of Articles 2 and 4 of Protocol No. 7 any proceedings in respect of offences which were not classified as criminal domestically. By making the application of Articles 2 and 4 of Protocol No. 7 conditional on their being interpreted in a particular manner, the aim pursued had indeed been to produce a legal effect on their domestic application. The declaration by Portugal was therefore to be treated as a "reservation" within the meaning of Article 57 of the Convention and of Articles 2 and 21 of the Vienna Convention on the Law of Treaties.

Having regard to its content, the Grand Chamber considered that the declaration was incompatible with the object and purpose of Article 4 of Protocol No. 7, which sought precisely to protect every individual against double jeopardy on the basis of an absolute right admitting of no derogation. It followed that the declaration was invalid.

Furthermore, the Grand Chamber found that, in the absence of a "brief statement" of the law then in force in Portugal which, at the time when Protocol No. 7 to the Convention had been signed or its instrument of ratification deposited, had been incompatible with the provision mentioned in the declaration, the formal requirements laid down by Article 57 § 2 of the Convention had not been complied with either. The reservation made by Portugal was therefore invalid in that regard as well.

The Court concluded that it had jurisdiction *ratione materiae* to examine the applicant's complaint under Article 4 of Protocol No. 7.

(2) *Merits –*

(a) *New approach to be followed in relation to the ne bis in idem principle –*

(i) *The concept of "criminal proceedings" within the meaning of Article 4 of Protocol No. 7* – It was appropriate to maintain the approach based on the *Engel* criteria in order to determine whether proceedings were "criminal" in nature such that they fell within the scope of Article 4 of Protocol No. 7. It was necessary to take into account (1) the classification of the offence at issue in the proceedings under domestic law, (2) the very nature of the offence and (3) the degree of severity of the penalty that the person concerned risked incurring – the second and third criteria being alternative, and not necessarily cumulative, whilst a cumulative approach was not excluded.

(ii) *The concept of "offence" within the meaning of Article 4 of Protocol No. 7 (idem)* – For the "*idem*" condition to be satisfied, the material facts alleged against the same defendant in two or more sets of proceedings had to be identical. Where two or more sets of facts were not similar in all respects (from a substantive or chronological standpoint), or if they differed on minor points, the "*idem*" condition could be regarded as being fulfilled, provided that the facts pertaining to the essential elements of the offence coincided. The starting point for this examination was to compare the statements of the facts in respect of which the defendant had stood accused in the separate sets of proceedings, as reflected in the formal accusations or indictments, or in the relevant domestic decisions.

Where the applicant had not been prosecuted for the same acts, and therefore for the same "offence", in the dual sets of proceedings, in other words, where there was no double identity – of the offender and of the material facts – then there was no "duplication of proceedings", as proscribed by Article 4 of Protocol No. 7 to the Convention. The question whether a decision was "final" would not arise in this case; nor would the question whether there had been a combination of proceedings forming part of an integrated punitive system.

(iii) *The criteria for determining whether there was a combination of proceedings forming part of an integrated punitive system (bis)* – In the event that the same defendant had been prosecuted for the same "offence" in different sets of proceedings, the "calibrated" approach established in *A and B v. Norway* remained applicable.

The criteria to be satisfied in order for the proceedings in issue to be regarded as sufficiently connected in substance and in time were as follows: (i) whether the sets of proceedings in question were intended to address different protected legal interests; (ii) whether the multiplicity of proceedings was provided for by domestic law and had been foreseeable; (iii) whether domestic law laid down clear and effective rules to ensure coordination in the conduct of the sets of proceedings, in a manner respectful of defence rights, and the imposition of an overall sanction that was proportionate to the seriousness of the offending acts; (iv) whether the sets of proceedings in question had been conducted in a coordinated manner, while respecting the rights of the defence, and, above all, whether the overall sanction imposed was proportionate to the seriousness of the offending acts, such that the individual concerned had not been made to bear an excessive burden at the end of the last set of proceedings in issue and the *res judicata* effects of a previous final acquittal had not been called into question; and (v) whether the sets of proceedings in question had been sufficiently closely connected in time to protect the individual concerned from being subjected to uncertainty and delay.

If these criteria were satisfied, dual sets of proceedings against the same defendant in respect of identical facts could be regarded as forming part of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable, proportionate and coherent manner, so that the individual concerned was not thereby subjected to injustice. There would thus be no "duplication of proceedings" as proscribed by Article 4 of Protocol No. 7.

(b) *Application of that approach to the present case* –

(i) *Whether the proceedings at issue in the present case were criminal in nature* – It was evident that the proceedings brought against the applicant by the Lisbon public prosecutor's office had been criminal in nature.

With regard to the CMVM proceedings, the Court had previously held in *Costa Santos v. Portugal* (dec.) that such proceedings concerned a "criminal charge", such that Article 6 of the Convention was applicable under its criminal head. The Court found that the reasoning followed in that instance could be applied to the present case for the

purposes of its examination under Article 4 of Protocol No. 7. Firstly, in its capacity as the supervisory and regulatory authority for the securities market, the CMVM imposed sanctions in this connection in order to ensure that it was able, in the general interest, to fulfil its mandate to ensure the proper functioning of the financial markets, but also to punish acts liable to disrupt that functioning. The Court concluded that the purposes pursued by the applicant's prosecution on the counts of the administrative offence in question had been both deterrent and punitive, as were all criminal proceedings in the classic sense. Secondly, the imposition of an administrative sanction presupposed a finding of guilt and took account of the threat or damage to investors and the securities market, together with the *ad hoc* or repeated nature of the offence. Sanctions imposed by the CMVM were therefore not directed solely at a specific group of natural or legal persons. Thirdly, an administrative fine could reach up to EUR 2,500,000 and be accompanied by an ancillary sanction. Although the administrative fine could not be replaced by a prison sentence in the event of non-payment, the Court found that the severity of the sanctions potentially incurred by the applicant was undeniable.

As to the BdP proceedings, the applicant had been prosecuted for offences which, like any criminal offence, pursued both deterrent and punitive aims, namely, to prevent further offences, having regard to the BdP's mandate in the general interest as the Portuguese central bank entrusted with ensuring the stability of the financial system so as to avoid any systemic effects. Nor was there any doubt as to the severity of the penalties potentially incurred by the applicant, as he had been liable to an administrative fine of up to some EUR 100,000 for each count of the administrative offence, a fine to which ancillary sanctions could be added.

Having regard to the foregoing observations, the Court concluded that the offences of which the applicant had stood accused were criminal in nature within the autonomous meaning of Article 4 of Protocol No. 7. The proceedings initiated against him by the BdP and the CMVM had amounted to criminal proceedings for the purposes of that provision.

(ii) *Whether the offences were the same (idem)* – The criminal-law authorities had prosecuted the applicant for submitting false information to the BdP and the CMVM, acts for which these authorities had also initiated proceedings against him. The material facts pertaining to the essential elements of the offences for which the applicant had been prosecuted in the criminal proceedings and the BdP proceedings, on the one hand, and in the criminal proceedings and the CMVM proceedings, on the other, were identical. Having applied the double identity test – identity of the offender and of the material facts – the Court found, accordingly, that the "*idem factum*" requirement was met.

The domestic courts dealing with the proceedings against the applicant had found that the offences for which he had been prosecuted in the parallel sets of proceedings were not the same, since the protected legal interests which these offences had been defined to address were different. That approach, which relied on the well-established case-law of the Constitutional Court and the Supreme Court, was not the same as that of the Court's case-law since the *Sergey Zolotukhin v. Russia* [GC] judgment, according to which the "*idem*" condition was based on an "*idem factum*" requirement – an approach which the Grand Chamber intended to confirm in the present judgment.

(iii) *Whether the three sets of proceedings formed part of an integrated punitive system (bis)* – It was necessary to ascertain whether the three sets of proceedings in question were connected in substance and in time in the light of the newly established revised criteria.

(a) *Whether the sets of proceedings were intended to punish the impugned acts for impairing different protected legal interests* – The protected legal interests which the three sets of proceedings were intended to address – namely, in the case of the criminal-law authorities, safeguarding public confidence in the validity of the information available

to guide financial investment choices; in the case of the BdP, the stability of the banking industry and the national economy; and in the case of the CMVM, the proper functioning and integrity of the securities market as a whole – were separate.

(β) *Whether the multiplicity of proceedings was provided for in domestic law and had been foreseeable* – The proceedings initiated by the criminal-law authorities for forgery and use of forged documents had been brought under Article 256 of the Criminal Code, which was applicable to any citizen who committed fraudulent acts of that type. Moreover, the Court found that, in his capacity as a member and as vice-chairman of the board of directors of a share-issuing bank, it had been the applicant's duty to know what was required of him by the BdP under the provisions of the General Regulation on Credit Institutions and Financial Firms ("RGICSF") and by the CMVM under those of the Securities Code. He could therefore have foreseen that he risked incurring criminal and administrative sanctions on account of his conduct.

(γ) *Whether domestic law laid down clear and effective rules to ensure coordination in the conduct of the proceedings, in a manner respectful of defence rights, and the imposition of an overall sanction that was proportionate to the seriousness of the offending acts* – Both the RGICSF and the Securities Code provided for cooperation and the exchange of information between the criminal-law authorities, the BdP and the CMVM.

Every defendant in administrative proceedings had a constitutional right to defend himself or herself with regard to evidence obtained through the exchange of information between various authorities. Moreover, it seemed acceptable for there to be duplication in the hearing of evidence by the various authorities in the context of dual sets of proceedings, in so far as this was to ensure that defence rights were respected.

As to the combination of sanctions, the domestic legislation contained a set of specific rules which ensured the effective imposition of an overall sanction that was proportionate to the seriousness of the offending acts.

(δ) *Whether the sets of proceedings were conducted in a coordinated manner, while respecting defence rights; whether the overall sanction imposed was proportionate to the seriousness of the offending acts; and whether or not the res judicata effects of a previous final acquittal were called into question by later decisions* – Although the first set of administrative proceedings against the applicant, conducted by the BdP, had begun within no more than a few days of the criminal proceedings, it had ended well before the latter. The second set of administrative proceedings, which, for the most part, were conducted by the CMVM at the same time as the two others, had ended much later. The issue of coordination between these different sets of proceedings had been a constant concern of the domestic authorities, which had sought to ensure at each stage, in a thorough and careful manner, that they did not impair the applicant's right not to be tried or punished more than once for the same offence.

The criminal-law and administrative authorities had regularly exchanged information on the progress of their respective sets of proceedings. They had taken the other authorities' formal accusations into account and the criminal courts had heard officials from the CMVM and the BdP. While it was true that the courts dealing with the case had often established the facts by examining the same witnesses, the Court found that such duplication had taken place at the applicant's request and had been necessary to secure his defence rights in each set of proceedings.

In the light of the domestic courts' reasoning in support of their decisions, the Court found that the applicant's acquittal in the BdP proceedings had not been called into question subsequently. Moreover, having regard to the seriousness of the accusations against the applicant in these sets of proceedings, the Court was of the view that the

overall sanctions imposed on him had not been disproportionate to the damage he had caused to the securities market and the national economy. Accordingly, the applicant had not been subjected to excessive, still less arbitrary, punishment.

(ε) *Whether the sets of proceedings in issue were sufficiently closely connected in time to protect the individual concerned from uncertainty and delay* – The three sets of proceedings had been instituted within a proximate time frame and had been for the most part conducted in parallel. The Court took the view that even though they had not concluded at the same time, the connection in time between them had been sufficiently close: the criminal-law and administrative authorities had been careful to exchange information regularly on the progress of their respective sets of proceedings and had taken the other authorities' formal accusations into account. The complex nature of the facts in each set of proceedings and the duplication of some of the evidence taken to satisfy the applicant's requests could reasonably justify prolonging certain sets of proceedings in order to secure his defence rights in each of them. On the whole, there had been no delays which had prolonged the proceedings excessively, and there was nothing in the manner in which they had gradually unfolded to suggest that the applicant had been subjected to uncertainty. It was therefore established that there had been a connection in time between the different sets of proceedings.

(iv) *Conclusion* – The foregoing observations demonstrated that the three sets of proceedings in issue in the present case had formed part of an integrated system of proceedings intended to punish various aspects of the impugned acts of reporting false information to the BdP and the CMVM. These proceedings had enabled different aspects of the acts in question to be addressed in a foreseeable and proportionate manner, thus forming a coherent whole which had not subjected the applicant to any injustice. They therefore had not amounted to duplication of proceedings.

Conclusion: no violation (fifteen votes to two).

(See *Sergey Zolotukhin v. Russia* [GC], 14939/03, 10 February 2009, [Legal Summary](#); *A and B v. Norway*, 24130/11 and 29758/11, 15 November 2016, [Legal Summary](#); *Costa Santos v. Portugal* (dec.), [64144/14](#), 19 September 2023; [Vienna Convention on the Law of Treaties](#) adopted on 23 May 1969)

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