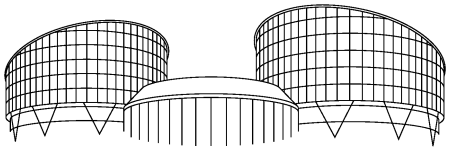

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ŠIMKUS v. LITHUANIA

(Application no. 41788/11)

JUDGMENT

STRASBOURG

13 June 2017

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

In the case of Šimkus v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 2 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 41788/11) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Raimundas Šimkus ("the applicant"), on 7 June 2011.

2. The applicant was represented by Mr A. Venckus, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged that he had been tried in criminal proceedings for the same offence for which he had been given an administrative penalty, contrary to the *ne bis in idem* principle enshrined in Article 4 § 1 of Protocol No. 7 to the Convention.

4. On 25 April 2016 the complaint concerning Article 4 § 1 of Protocol No. 7 to the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Tauragė.

A. Events of 23 July 2006

6. On 23 July 2006 officers of the State Border Guard Service were patrolling the border between Lithuania and Russia in the Jurbarkas Region, by the river Nemunas. At around 2 a.m. the officers noticed several cars approaching the river and heard the sound of a boat in the water. The officers approached one of the cars and found cartons of cigarettes inside, which they suspected had been smuggled from Russia. The three individuals who had been in the car, K.B., E.L. and M.G., were arrested. During the arrests K.B. received a gunshot wound and the officers took him to a hospital in Jurbarkas (hereinafter "the hospital").

7. At around 3.30 a.m. E.L.'s mobile telephone began to ring and a border officer answered it. The caller stated that he would "find and shoot" the officer who had injured K.B. A subsequent forensic examination identified the caller's voice as probably (*tikėtinai*) that of the applicant.

8. At around 4 a.m. the applicant arrived at the hospital and approached the border officers guarding K.B. The applicant used various swearwords towards the officers, demanded that they release K.B. and said that he would beat them up or kill them. It appears that no physical altercation occurred between the applicant and the officers and that the applicant subsequently left the hospital.

B. Proceedings concerning the applicant

9. On the same day the State Border Guard Service opened a pre-trial investigation against the applicant and several other individuals. The applicant was suspected, among other things, of threatening to murder or seriously injure law enforcement officers and obstructing and verbally abusing them in the exercise of their official duties, under Articles 145 § 1 and 231 § 2 of the Criminal Code (see paragraphs 21-22 below).

10. On 5 December 2006 the Jurbarkas district prosecutor (hereinafter "the prosecutor") discontinued the pre-trial investigation against the applicant for lack of evidence. As to the words and statements used by the applicant in his interaction with the border officers (see paragraphs 7 and 8 above), the prosecutor noted that the applicant could have committed the administrative offence of minor hooliganism under Article 174 of the Code of Administrative Offences (see paragraph 26 below). The prosecutor's decision was forwarded to the State Border Guard Service, instructing them to decide whether administrative proceedings against the applicant should be instituted. However, three days later a senior prosecutor annulled that decision and reopened the pre-trial investigation.

11. On an unspecified date administrative proceedings were instituted against the applicant; the information available to the Court does not indicate which authority was in charge of them. On 18 December 2006 the Jurbarkas District Court held that the applicant had committed the

administrative offence of minor hooliganism when he had used swearwords in the presence of border officers in the hospital (see paragraph 8 above). He was given a warning. The decision was not appealed against and became final after the expiry of the ten-day time-limit for appeal.

12. On 6 August 2008 the prosecutor charged the applicant with threatening to murder or seriously injure law enforcement officers, and insulting them in the exercise of their official duties, under Articles 145 § 1 and 290 of the Criminal Code (see paragraphs 21 and 24 below). The indictment alleged that the applicant had committed the offences in the hospital on 23 July 2006 (see paragraph 8 above). The case was transferred to the Jurbarkas District Court for examination on the merits but in June 2009, at the prosecutor's request, the case was returned for additional investigation.

13. On 23 October 2009 the prosecutor discontinued the pre-trial investigation, stating that the applicant's actions had not amounted to the criminal offence of threatening to murder or seriously injure the officers because there had not been any objective circumstances indicating that he could have carried out those threats. The prosecutor also held that the applicant could not be prosecuted for insulting the officers because he had already been given an administrative penalty for the same conduct (see paragraph 11 above) – continuing the criminal proceedings against him would be in breach of the *ne bis in idem* principle.

14. On 11 June 2010 the Prosecutor General's Office annulled the prosecutor's decision and reopened the investigation, noting that the administrative penalty given to the applicant "did not automatically preclude" the criminal proceedings against him.

15. The applicant appealed against that decision to a senior prosecutor at the Prosecutor General's Office but on 30 June 2010 his appeal was dismissed. The senior prosecutor held that, in line with the case-law of the domestic courts, an administrative penalty did not preclude the institution of subsequent criminal proceedings concerning the same conduct; however, in order to comply with the *ne bis in idem* principle, if a person was found guilty in the criminal proceedings, the previous administrative penalty had to be annulled or, if that was impossible, it had to be taken into account during sentencing. Accordingly, the prosecutor considered that the administrative penalty given to the applicant did not preclude the continuation of the criminal proceedings against him.

16. On 2 November 2010 the Jurbarkas District Court upheld the applicant's appeal and overruled the prosecutor's decision of 30 June 2010. It held that criminal proceedings against the applicant could be continued only after the administrative penalty had been annulled, but since that had not been done, any further proceedings concerning the same conduct would be in breach of the *ne bis in idem* principle. However, on 8 December 2010 the Kaunas Regional Court quashed the lower court's decision, reiterating

the reasoning of the prosecutor's decision of 30 June 2010 (see paragraph 15 above). That decision was not subject to any further appeal.

17. In June 2011 the case was transferred to the Jurbarkas District Court for examination on the merits. The amended indictment alleged that the applicant had committed the offences set out in Articles 145 § 1 and 290 of the Criminal Code because of the words and statements which he had used when speaking to the border officers on the telephone (see paragraph 7 above) and in the hospital on 23 July 2006 (see paragraph 8 above).

18. On 6 September 2011 the Jurbarkas District Court terminated the criminal proceedings against the applicant as time-barred. That decision was not appealed against and became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional and statutory provisions

1. Constitution

19. Article 31 of the Constitution of the Republic of Lithuania reads:

"...

Punishment may be imposed or applied only on the grounds established by law.

No one may be punished for the same crime a second time.

..."

2. Criminal Code

20. Article 2 § 6 of the Criminal Code reads:

"No one shall be punished for the same crime twice."

21. At the material time, Article 145 § 1 read:

Article 145. Threatening to kill or seriously injure a person, or terrorising a person

"1. Anyone who threatens to kill [or seriously injure] a person, if there are sufficient grounds to believe that such a threat can be carried out, shall be punished by community service, a fine, restriction of liberty, detention or imprisonment of up to two years."

22. At the material time, Article 231 read:

Article 231. Obstructing the duties of a judge, prosecutor, pre-trial investigation officer, lawyer or bailiff

"1. Anyone who in any way obstructs a judge, prosecutor, pre-trial investigation officer, lawyer or official of the International Criminal Court in the exercise of their duties relating to an investigation or examination of a criminal, civil or administrative case, or obstructs a bailiff in the enforcement of a court judgment, shall be punished by community service, a fine, restriction of liberty or imprisonment of up to two years.

2. Anyone who commits the acts set out in paragraph 1 ... by using violence or any other type of coercion shall be punished by a fine, detention or imprisonment of up to four years."

23. At the material time, Article 284 read:

Article 284. Disturbing public order

"1. Anyone who in a public place by defiant conduct, threats, taunts or acts of vandalism shows disrespect to others or the environment and disturbs public order and peace shall be punished by community service, a fine, restriction of liberty, detention or imprisonment of up to two years.

2. Anyone who in a public place disturbs public order and peace by using offensive language or by indecent conduct shall be considered to have committed a minor criminal offence and shall be punished by community service, a fine, restriction of liberty or detention."

24. At the material time, Article 290 read:

Article 290. Insulting a civil servant or a person performing a public function

"Anyone who insults a civil servant or person performing a public function in the exercise of their duties shall be punished by a fine, detention or imprisonment of up to two years."

3. Code of Administrative Offences

25. At the material time, the relevant part of Article 9 read:

"...

Administrative liability for the offences set out in this Code shall arise where such offences do not invoke criminal liability in accordance with laws in force."

26. At the material time, Article 174 read:

Article 174. Minor hooliganism

"Minor hooliganism, [that is to say] profane words or gestures in public places, insulting harassment of others or other similar conduct which breaches public order and peace, shall be punished by a fine of between 100 and 300 Lithuanian litai or up to thirty days' administrative detention."

27. At the material time, Article 21 listed the penalties which could be imposed when a person committed an administrative offence, a warning being the mildest available penalty. Article $30^{(1)}$ provided that a penalty milder than that set out in the relevant Article of the Code could be imposed where there were mitigating circumstances or it was reasonable and fair to do so.

B. Domestic court practice

28. In a ruling of 10 November 2005 the Constitutional Court held:

"...

> Paragraph 5 of Article 31 of the Constitution sets out the principle of *ne bis in idem*. This constitutional principle means a prohibition on [being punished] twice for a single deed that is contrary to the law – that is to say, for the same criminal offence, as well as for the same violation of a law which is not a criminal offence ...
>
> The above-mentioned constitutional principle does not mean that different kinds of liability may not be applied to a person in respect of a violation of the law ... In itself, the constitutional principle of *ne bis in idem* does not remove the possibility of applying more than one sanction of the same kind (that is to say, defined by the norms of the same branch of law) to a person for the same violation – such as the main and additional punishment, or the main and additional administrative penalty.
>
> The constitutional principle of *ne bis in idem* also means, *inter alia*, that if a person who has committed a deed which is contrary to the law has been held administratively but not criminally liable – that is to say, he or she has incurred a sanction (a penalty not for a crime but for an administrative violation of the law) – then he or she cannot be held criminally liable for that deed.
>
> It should also be mentioned that the constitutional principle of *ne bis in idem* may not be construed to mean that it does not allow a person to be prosecuted and punished for a violation of the law in respect of which the prosecution of that person was started but terminated on grounds which, under the procedure established by law, were later recognised as without foundation and/or unlawful and the person was not held liable – no sanction (imposed punishment or penalty) was applied to him or her.
>
> In itself, the exemption of a person from one kind of liability on the grounds and [under the] procedure established by law cannot be an obstacle to ... him or her [being subject to] liability of another kind on the grounds and under the procedure established by law.
>
> ..."

29. In a ruling of 12 June 2012 in criminal case no. 2K-335/2012 the Supreme Court, relying on its previous case-law (ruling of 13 November 2007 in criminal case no. 2K-686/2007 and ruling of 4 March 2008 in criminal case no. 2K-102/2008), held:

> "The court rejects [the argument] that after convicting [the accused] ... the previous administrative penalties would be annulled and thus the principle of *ne bis in idem* would not be breached. Such legitimisation of the criminal proceedings would only be possible if the administrative penalty had been ordered due to an error or if [at the time of ordering the penalty] not all the circumstances relevant to the classification of the activity had been identified ... In the present case, the penalty for an administrative offence was given in accordance with the law and thus cannot be considered an error caused by the ignorance of relevant circumstances."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 4 § 1 OF PROTOCOL No. 7 TO THE CONVENTION

30. The applicant complained that he had been tried in criminal proceedings for the same offence for which he had been given an

administrative penalty, contrary to the *ne bis in idem* principle. He relied on Article 4 § 1 of Protocol No. 7 to the Convention, which reads:

> "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."

A. Admissibility

31. The Government submitted that the duplication of the criminal and administrative proceedings could have been avoided by the annulment of the administrative penalty, but the applicant had not availed himself of the opportunity to have it annulled. They firstly submitted that he had failed to appeal against the Jurbarkas District Court's decision of 18 December 2006 ordering the administrative penalty (see paragraph 11 above). They secondly contended that, even after failing to appeal on time, the applicant could have applied to have the administrative proceedings reopened, because the Jurbarkas District Court had breached domestic law by ordering an administrative penalty while the criminal proceedings were ongoing. The Government argued that, in line with domestic law, the district court's error had warranted the reopening of the administrative proceedings and an annulment of the penalty (see paragraph 29 above), and provided examples of domestic case-law in which individuals had succeeded in having their administrative penalties annulled. Therefore, the Government asked the Court to declare the application inadmissible for failure to exhaust domestic remedies.

32. The applicant submitted that he fully accepted administrative liability for his conduct but not criminal liability, so the Government's suggestion that he should have acted to his own detriment and sought to have the administrative penalty annulled was illogical. He also submitted that, had the Jurbarkas District Court's decision of 18 December 2006 been in breach of domestic law, it had been the responsibility of the State authorities which had instituted those administrative proceedings to apply to have the proceedings reopened and the penalty annulled.

33. The Court reiterates that applicants are only obliged to exhaust domestic remedies which are accessible, capable of providing redress in respect of their complaints and offer reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 45-46, ECHR 2006-II). Discretionary or extraordinary remedies, such as applying to have proceedings reopened, are not considered effective remedies within the meaning of Article 35 § 1 of the Convention and thus need not be used (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 36, 24 October 2002).

34. Turning to the circumstances of the present case, the Court observes that the applicant did not dispute that the administrative proceedings against him had been justified. The core of his complaint, which was raised before the prosecutors and the courts examining the criminal case, was that the

criminal proceedings against him continued after he had been given an administrative penalty for the same offence (see paragraphs 15-16 above). The Court considers that an application to have the administrative penalty annulled, as suggested by the Government, not only constitutes an extraordinary remedy which the Court does not require applicants to use, but also would not have provided the applicant with redress in respect of his complaint. Furthermore, the Court cannot accept the Government's position that avoiding a duplication of proceedings and ensuring compliance with the *ne bis in idem* principle was the applicant's own responsibility, rather than that of the domestic authorities.

35. For those reasons the Court concludes that the applicant did not need to avail himself of the remedy suggested by the Government and that the application cannot be dismissed for failure to exhaust domestic remedies. It therefore rejects the Government's objection.

36. The Court further notes that this application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

37. The applicant submitted that the administrative penalty given to him by the Jurbarkas District Court on 18 December 2006 and the criminal proceedings which had lasted from 23 July 2006 to 6 September 2011 had concerned the same facts – words and statements which he had used in the presence of border officers in the hospital on 23 July 2006 (see paragraphs 8, 11, 12 and 17 above). He submitted that after the administrative penalty had become final, any subsequent criminal prosecution for the same offence violated the *ne bis in idem* principle.

(b) The Government

38. The Government firstly submitted that the administrative and criminal proceedings against the applicant had concerned different offences with distinct legal characteristics. On the one hand, the administrative offence of minor hooliganism was aimed at protecting public order and peace, and its essential element was swearing in a public place (see paragraph 26 above). On the other hand, the criminal offence of threatening to murder or seriously injure a person was aimed at protecting that person's physical and mental health, and its essential element was a threat which might be carried out (see paragraph 21 above), whereas the criminal offence of insulting a civil servant or person performing a public function was aimed at protecting the official duties of those officers, and its essential

element was an insult directed at officers in the exercise of their official duties (see paragraph 24 above).

39. The Government also submitted that the administrative and criminal proceedings against the applicant had concerned different facts. They stated that the applicant had incurred administrative liability for the use of swearwords and offensive language, but that the use of such language would not in itself lead to criminal liability under Articles 145 § 1 and 290 of the Criminal Code. According to the Government, another provision of that Code addressed breaches of public order similar to minor hooliganism (Article 284 § 2 – see paragraph 23 above) and that demonstrated that Articles 145 § 1 and 290 could not have addressed the same conduct. They also submitted that the crimes set out in Articles 145 § 1 and 290 of the Criminal Code had been committed as he had used threats and insults, which were not covered by the administrative offence of minor hooliganism. The Government also stated that the criminal charges included not only the applicant's actions in the hospital but also the telephone conversation that night (see paragraph 7 above) and thus there was "no complete temporal and spatial unity" between the applicant's acts constituting the administrative and criminal offences.

40. Lastly, the Government submitted that it had been necessary to continue the criminal proceedings against the applicant in order to investigate additional facts which had not been taken into account when the administrative penalty had been ordered. They argued that the administrative penalty had been given to the applicant without an adequate examination of all the relevant circumstances, so discontinuing the criminal proceedings would have led to impunity. They submitted that if the applicant had been convicted in the criminal proceedings, the administrative penalty would have been annulled and he would not have been punished twice.

2. The Court's assessment

(a) Whether the proceedings for minor hooliganism were criminal in nature

41. 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 *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 incompatible with the object and purpose of the Convention. The notion of "penal procedure" in the text of Article 4 § 1 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 (see *Igor Tarasov v. Ukraine,* no. 44396/05, § 24, 16 June 2016, and the case-law cited therein).

42. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria", to be considered in determining whether or not there was a "criminal charge" for Convention purposes. 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 (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 105-07, 15 November 2016, ECHR 2016).

43. Under Lithuanian law, the offence of minor hooliganism under Article 174 of the Code of Administrative Offences was characterised as "administrative". Nonetheless, the Court is of the view that its nature can be regarded as criminal within the meaning of Article 4 § 1 of Protocol No. 7. As submitted by the Government, punishment for minor hooliganism served to protect public order and peace (see paragraph 38 above) – values and interests which often fall within the sphere of protection of criminal law (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 55, ECHR 2009). Furthermore, that provision of the Code of Administrative Offences was directed towards all citizens rather than towards a group possessing a special status, and its primary aims were punishment and deterrence, which are recognised as characteristic features of criminal penalties (see *Sergey Zolotukhin*, *ibidem*, and *Milenković v. Serbia*, no. 50124/13, § 35, 1 March 2016). The Court also observes that the reference to the "minor" nature of the act does not in itself exclude its classification as "criminal" in the autonomous sense of the Convention, as there is nothing in the Convention to suggest that the criminal nature of an offence necessarily requires a certain degree of seriousness (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 104, ECHR 2003-X, and *Sergey Zolotukhin*, *ibidem*).

44. As to the severity of the measure, the Court reiterates that it is determined by reference to the maximum potential penalty provided for in the relevant law. Where that penalty involves the loss of liberty, there is a presumption, which can be rebutted entirely exceptionally, that the charges against the applicant are "criminal". While the actual penalty imposed on the applicant is relevant to the determination, it cannot diminish the importance of what was initially at stake (see *Sergey Zolotukhin*, cited above, § 56). In the present case, Article 174 of the Code of Administrative Offences provided for thirty days of detention as the maximum penalty (see paragraph 26 above). Thus, irrespective of the fact that the applicant was given a warning (see paragraph 11 above), the Court considers that the maximum potential penalty for the offence of minor hooliganism was of sufficient severity to make those proceedings "criminal" within the meaning of Article 4 § 1 of Protocol No. 7 (see *Milenković*, cited above, § 36). The Court also observes that the Government did not submit any arguments to the contrary.

45. Accordingly, the Court concludes that the administrative proceedings against the applicant concerning minor hooliganism fell within the ambit of "penal procedure" for the purposes of Article 4 § 1 of Protocol No. 7 to the Convention.

(b) Whether there was a duplication of proceedings (*bis*)

46. The Court reiterates that the aim of Article 4 § 1 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a "final" decision, that is to say a decision which has acquired the force of *res judicata* and against which no further ordinary remedies are available (see *Gradinger v. Austria*, 23 October 1995, § 53, Series A no. 328-C; *Franz Fischer v. Austria*, no. 37950/97, § 22, 29 May 2001; and *Sergey Zolotukhin*, cited above, §§ 107-08).

47. In the present case, the administrative proceedings against the applicant were concluded when he was given a penalty on 18 December 2006. That decision of the Jurbarkas District Court was not appealed against and became final within ten days (see paragraph 11 above). Meanwhile the criminal proceedings against him, which had been opened on 23 July 2006 (see paragraph 9 above), continued until 6 September 2011, before being terminated as time-barred (see paragraph 18 above). Thus, the two sets of proceedings coincided in time, and the criminal proceedings continued after the decision ordering the administrative penalty had become final. The Court observes that the domestic authorities acknowledged on multiple occasions that the applicant had already been given an administrative penalty, although they eventually decided that it did not preclude the continuation of the criminal proceedings (see paragraphs 13-16 above; compare and contrast *A and B v. Norway*, cited above, §§ 121-34 and 144-47). Accordingly, it finds that the domestic authorities permitted the duplication of proceedings against him in the full knowledge of his previous administrative penalty. In this connection the Court also observes that, contrary to the Government's submissions (see paragraph 40 above), it is immaterial that the criminal proceedings did not end in conviction because Article 4 § 1 of Protocol No. 7 contains not only the right not to be punished twice but also extends to the right not to be prosecuted or tried twice (see *Sergey Zolotukhin*, cited above, § 83, and *Kapetanios and Others v. Greece*, nos. 3453/12 et al., § 63, 30 April 2015).

(c) Whether the offences for which the applicant was prosecuted were the same (*idem*)

48. The Court reiterates that Article 4 § 1 of Protocol No. 7 prohibits the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin*, § 82, and *A and B v. Norway*, § 108, both cited above). The Court has also held that the approach which emphasises the legal characterisation of the two offences is too restrictive on the rights of the individual and risks

undermining the guarantee enshrined in Article 4 § 1 of Protocol No. 7 (see *Sergey Zolotukhin*, cited above, § 81, and *Boman v. Finland*, no. 41604/11, § 33, 17 February 2015). Accordingly, it cannot accept the Government's argument (see paragraph 38 above) that the duplication of proceedings in the present case was justified by the distinct legal characteristics of the administrative and criminal offences (see also *Rivard v. Switzerland*, no. 21563/12, § 26, 4 October 2016).

49. The Court notes that in the administrative proceedings the applicant was punished for using swearwords in the presence of law enforcement officers, and in the criminal proceedings he was charged with threatening to murder or seriously injure law enforcement officers and with insulting those officers. Both proceedings referred to the words and statements spoken by the applicant in the hospital on the night of 23 July 2006 in the presence of the border officers guarding K.B. (see paragraphs 8, 11, 12 and 17 above), while the criminal charges additionally included the telephone conversation between the applicant and an officer on that same night (see paragraph 7 above).

50. The Government submitted that the administrative offence of minor hooliganism was committed when a person used swearwords in a public place, irrespective of whether those swearwords were threatening or insulting to anyone in particular, whereas the criminal offences with which the applicant had been charged consisted of threats and insults directed at other persons but did not require the use of swearwords (see paragraphs 38-39 above). The Court observes, however, that the administrative and criminal proceedings against the applicant addressed the same words and statements spoken in the hospital on the same night in the presence of the same officers – it was alleged that the swearwords had contained threats and insults towards those officers. It cannot therefore be said that the applicant was given an administrative penalty for some of his statements and charged with criminal offences for some other statements (see, *mutatis mutandis*, *Sergey Zolotukhin*, cited above, § 97; *Butnaru and Bejan-Piser v. Romania*, no. 8516/07, §§ 37-38, 23 June 2015; and *Milenković*, cited above, §§ 40-41; contrast with *Dungveckis v. Lithuania*, no. 32106/08, § 44, 12 April 2016). Furthermore, although the criminal charges also included additional facts, namely the telephone conversation between the applicant and an officer (see paragraphs 7 and 49 above), that does not change the fact that the criminal charges embraced the facts of the administrative offence of minor hooliganism in their entirety and that, conversely, the administrative offence did not contain any facts not contained in the criminal charges (see, *mutatis mutandis*, *Sergey Zolotukhin*, cited above, § 97, and *Khmel v. Russia*, no. 20383/04, § 65, 12 December 2013).

51. Accordingly, the Court concludes that the facts which constituted the basis for the administrative and the criminal proceedings against the

applicant were substantially the same for the purposes of Article 4 § 1 of Protocol No. 7.

(d) Conclusion

52. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was tried twice for the same offence. It stresses in this respect that neither the text of Article 4 of Protocol No. 7 nor the Court's case-law allows for any exceptions to the *ne bis in idem* principle. While it is in the first place for the Contracting States to choose how to organise their legal systems, including their criminal justice procedures (see *A and B v. Norway*, cited above, § 120), the system chosen must not contravene the principles set forth in the Convention (see *Taxquet v. Belgium* [GC], no. 926/05, § 83, ECHR 2010, and the case-law cited therein). In this connection the Court also observes that Lithuanian law appears unambiguous in stating that a person who has been held administratively liable cannot be held criminally liable for the same offence (see paragraph 28 above) and that the annulment of a previous administrative penalty after a criminal conviction would not render the proceedings in compliance with the *ne bis in idem* principle (see paragraph 29 above). The Court therefore cannot accept the Government's submission (see paragraph 40 above) that the duplication of proceedings against the applicant for the same offence was justified.

53. There has accordingly been a violation of Article 4 § 1 of Protocol No. 7 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government argued that that claim was excessive and unsubstantiated.

57. The Court considers that in the circumstances of the present case the finding of a violation of Article 4 § 1 of Protocol No. 7 to the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

58. The applicant also claimed EUR 2,634 for costs and expenses incurred before the Court, consisting of:

(a) EUR 1,748 for lawyer's fees;

(b) EUR 575 for the translation of documents from English into Lithuanian;

(c) EUR 311 for the translation of documents from Lithuanian into English.

He provided invoices for all the above expenses.

59. The Government submitted that, according to the invoices, some of the costs had been paid by the applicant's wife, so they could not be considered as having been incurred by the applicant.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court observes in particular that the applicant did not submit any documents which had been translated from English into Lithuanian, and the only documents translated from Lithuanian into English were the invoices. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,800 covering costs under all heads.

C. Default interest

61. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 4 § 1 of Protocol No. 7 to the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight

hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ganna Yudkivska
Registrar	President