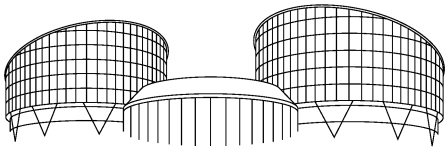

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 2 of Protocol No. 7 to the European Convention on Human Rights

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Right of appeal in criminal matters

Updated on 28 February 2025

COUNCIL OF EUROPE
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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 2 of Protocol No. 7 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this Guide was published are marked with an asterisk (*).

Introduction

1. Article 2 of Protocol No. 7 complements the guarantees relating to a fair trial enshrined in Article 6 of the Convention[1] by recognising a right of appeal to a higher tribunal against a conviction or sentence imposed by a first-instance court. In this connection, it should be noted that Article 6 does not guarantee a right to appeal from a decision of first instance (*Lalmahomed v. the Netherlands*, 2011, § 35). Where, however, domestic law provides for a right of appeal, the appeal proceedings will be treated as an extension of the trial process and accordingly will be subject to Article 6 of the Convention (*Evrenos Önen v. Turkey*, 2007, § 28).

2. The right of a person convicted of a criminal offence to have his or her case reviewed by a higher court is not absolute: it may be limited if it falls under one of the exceptions contained in Article 2 § 2 of Protocol No. 7.

I. Right of appeal in criminal matters: Article 2 § 1 of Protocol No. 7

Article 2 of Protocol No. 7 to the Convention

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

HUDOC keywords

Conviction (P7-2) - Criminal offence (P7-2) - Competent court (P7-2) - Review of conviction (P7-2) - Review of sentence (P7-2) - Higher tribunal (P7-2)

National law (P7-2): Minor offences (P7-2) - Trial at first instance by the highest tribunal (P7-2) - Conviction following appeal against acquittal (P7-2)

A. Applicability of the right of appeal

3. Subject to the exceptions permitted by paragraph 2, the right of appeal guaranteed by Article 2 of Protocol No. 7 applies to decisions which: (1) concern a "criminal offence"; (2) consist of a "conviction" or "sentence"; and (3) are taken by a "tribunal".[2]

1. "Criminal offence"

4. According to the Court's case-law, the concept of "criminal offence" in Article 2 § 1 of Protocol No. 7 corresponds to that of "criminal charge" in Article 6 § 1 of the Convention (*Gurepka v. Ukraine*, 2005, § 55; *Zaicevs v. Latvia*, 2007, § 53; *Kamburov v. Bulgaria*, 2009, § 22; *Stanchev v. Bulgaria*, 2009, § 44; *Kindlhofer v. Austria*, 2021, § 30; *Grosam v. the Czech Republic* [GC], 2023, §§ 111 and

[1] See further *Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb)*.

[2] See further *Explanatory Report* to the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1984, §§ 17-21.

140). Accordingly, the classification of proceedings as "criminal" for the purposes of Article 6 of the Convention would be equally pertinent to the classification under Article 2 of Protocol No. 7.

5. Thus, in cases where the Court finds that Article 6 is applicable to the proceedings at hand, it consequently concludes that Article 2 of Protocol No. 7 also applies (*Engel and Others v. the Netherlands*, 1976, §§ 82-83; *Gurepka v. Ukraine*, 2005, § 59; *Zaicevs v. Latvia*, 2007, § 53; *Galstyan v. Armenia*, 2007, § 120).

6. To interpret the concept of "criminal offence" in Article 2 of Protocol No. 7, the Court has used the ''Engel criteria'', developed in *Engel and Others v. the Netherlands*, 1976, in relation to Article 6 § 1 of the Convention. Thus, the applicability of Article 2 of Protocol No. 7 is assessed on the basis of three criteria: (a) the classification of the offence under domestic law; (b) the nature of the offence; and (c) the degree of severity of the penalty which the offence carries (*Kamburov v. Bulgaria*, 2009, § 22; *Saquetti Iglesias v. Spain*, 2020, § 22). In this context, the classification of the offence in the domestic law of the respondent State has only a relative value (*Engel and Others v. the Netherlands*, 1976, § 82; *Zaicevs v. Latvia*, 2007, § 55; *Stanchev v. Bulgaria*, 2009, § 44; *Saquetti Iglesias v. Spain*, 2020, § 22), while the very nature of the offence in question is a factor of a greater importance (*Engel and Others v. the Netherlands*, 1976, § 82; *Galstyan v. Armenia*, 2007, § 58).[3]

2. Decision consisting of a "conviction" or "sentence"

7. Article 2 of Protocol No. 7 applies in the case of a "conviction" or a "sentence". This provision does not guarantee the right of appeal against an acquittal or any other decision, which does not constitute a formal finding of guilt or imposition of a penalty: the existence of a formal finding of guilt ending in a conviction or a sentence is a precondition for the application of the guarantees of Article 2 of Protocol No. 7. Such a finding must be the object and result of the proceedings and may not always entail the imposition of penalty. As a rule, it must be mentioned in the operative part of a verdict. In any event, the decisive factor must be whether a particular decision was aimed at finding a person guilty of a crime (*Rybka v. Ukraine* (dec.), 2009). However, in the circumstances of a particular case, an applicant may complain alternatively about his or her "conviction" or some aspects of the "conviction" (for instance, *Rostovtsev v. Ukraine*, 2017, § 30) or about the "sentence", including the modalities of its execution (for instance, *Tsvetkova and Others v. Russia*, 2018, §§ 179-191; and *Martynyuk v. Russia*, 2019, §§ 37-43).

3. Decision by a "tribunal"

8. In order for the right of appeal under Article 2 of Protocol No. 7 to apply, the conviction or sentence must be issued by a "tribunal". According to the Explanatory Report to Protocol No. 7, the term "tribunal" has been used in the wording of Article 2 of Protocol No. 7 to clarify that the scope of this Article does not extend to offences tried by bodies that are not tribunals within the meaning of Article 6 of the Convention.[4]

9. The Court has found, for instance, that an administrative district authority issuing fines for administrative offences could not be considered a "tribunal" within the meaning of Article 6 § 1 so that it was not a "tribunal" for the purpose of Article 2 of Protocol No. 7 (*Hubner v. Austria* (dec.), 1999). Where a decision has indeed been issued by a "tribunal", Article 2 § 1 of Protocol No. 7 would therefore require that it is reviewed by a "higher tribunal" (*Grecu v. Romania*, 2006, §§ 83-84).

[3] For more details on the notion of criminal charge, see Section II of the *Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb)*.

[4] Explanatory Report, cited above, § 17. See further Section IV.A of the *Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb)*.

B. Organisation of the system of appeal

1. The review body: a "higher tribunal"

10. Article 2 of Protocol No. 7, where applicable, guarantees a review of the conviction or sentence by a "higher tribunal".

11. The "higher tribunal" must exercise full jurisdictional control and must be considered a "tribunal" within the meaning of Article 6 § 1 of the Convention[5] (*Grecu v. Romania*, 2006, § 83) so that a the meaning of "tribunal" is the same for Article 6 and Article 2 of Protocol No. 7 (*Saquetti Iglesias v. Spain*, 2020, § 53).

12. In *Zaicevs v. Latvia*, 2007, § 54, the Court has found that the possible remedies in the form of a third-party application to the public prosecutor or an application to the president of the higher court to revoke the order did not satisfy the requirements of Article 2 of Protocol No. 7 as not being considered a "higher tribunal" within that domestic system of appeal.

13. Similarly, in *Gurepka v. Ukraine*, 2005, §§ 60-61, the Court found that the extraordinary appeal procedure, which could only be initiated by a prosecutor or by a motion of the president of the higher court, could not be considered adequate from the perspective of Article 2 of Protocol No. 7.

14. The Court came to a similar conclusion in *Grecu v. Romania*, 2006, §§ 83-86, where there was no appeal against the first instance decision examining the decisions of the prosecutor. The Court has held that due to the lack of national regulation of remedies against the decision of the court of first instance competent to examine the complaint against a prosecutor's order, the applicant had been deprived of the right to have his criminal case examined by a tribunal, which was in violation of Article 2 of Protocol No. 7. Furthermore, the Court noted that the public prosecutor's office was not a "tribunal" within the meaning of Article 6 of the Convention.

15. In *Saquetti Iglesias v. Spain*, 2020, §§ 52-57, with reference to the Explanatory report to Protocol No. 7, the Court reiterated that while courts of appeal or cassation may qualify as providing a "review by a higher tribunal" for the purposes of Article 2 of Protocol No. 7, that was not clear as regards the constitutional courts. In that case, the Court examined whether the role of the Spanish Constitutional Court regarding *amparo* proceedings, met the requirements of the "right of appeal". In the light of the parameters of the Spanish Constitutional Court's jurisdiction – which were limited to the issue of compatibility of the administrative or judicial decisions with the relevant fundamental rights guaranteed under the Constitution, without a possibility of any further scrutiny of the courts' actions – the Court found that the role of the Constitutional Court in providing the required second instance of jurisdiction was inadequate, and concluded that the Constitutional Court could not be regarded as a higher tribunal for the purposes of Article 2 of Protocol No. 7.

2. Margin of appreciation in organising the system of appeal

16. The Court has reiterated that States in principle enjoy a wide margin of appreciation in determining how the right secured by Article 2 of Protocol No. 7 is to be exercised (*Krombach v. France*, 2001, § 96; *Gurepka v. Ukraine*, 2005, § 59; *Galstyan v. Armenia*, 2007, § 125; *Natsvlishvili and Togonidze v. Georgia*, 2014, § 96; *Shvydka v. Ukraine*, 2014, § 48; *Ruslan Yakovenko v. Ukraine*, 2015, § 76; *Rostovtsev v. Ukraine*, 2017, § 27; *Y.B. v. Russia*, 2021, § 40). In other words, Article 2 of Protocol No. 7 leaves the modalities of the right, and the grounds upon which it may be exercised, to be determined by domestic law.[6]

[5] For more details on the notion of tribunal, see Section IV of the *Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb)*.

[6] *Explanatory Report*, cited above, § 18.

17. States may therefore, on the one hand, determine that the scope of the higher tribunal's review of a conviction or sentence would encompass both points of fact and law, or be confined solely to points of law (*Krombach v. France*, 2001, § 96; *Müller v. Austria*, 2006, § 25; *Shvydka v. Ukraine*, 2014, § 49; *Rostovtsev v. Ukraine*, 2017, § 27; *Y.B. v. Russia*, 2021, § 40). Furthermore, a defendant wishing to appeal may sometimes be required to seek permission to do so and, in certain cases, the application for leave to appeal itself may be regarded as an adequate form of review within the scope of Article 2 of Protocol No. 7[7]. However, any restrictions contained in domestic legislation on the exercise of the right enshrined in Article 2 of Protocol No. 7 must, by analogy with the right of access to a court guaranteed by Article 6 § 1, pursue a legitimate aim and not infringe the very essence of that right (*Krombach v. France*, 2001, § 96; *Gurepka v. Ukraine*, 2005, § 59; *Galstyan v. Armenia*, 2007, § 125; *Shvydka v. Ukraine*, 2014, § 49; *Ruslan Yakovenko v. Ukraine*, 2015, § 78; *Rostovtsev v. Ukraine*, 2017, § 27; *Y.B. v. Russia*, 2021, § 40).

18. Thus, for instance, in *Saquetti Iglesias v. Spain*, 2020, §§ 60-61, the Court found that limiting the applicant's possibility to challenge his conviction only before the Constitutional Court (which could not be considered a "higher tribunal" within the meaning of Article 2 of Protocol No. 7) prevented the applicant from having the decision against him reviewed by a higher tribunal and undermined the very essence of the right secured by Article 2 of Protocol No. 7, thereby exceeding the margin of appreciation afforded to the State.

3. Effectiveness of the review

19. Article 2 of Protocol No. 7 mostly regulates institutional matters, such as accessibility of the court of appeal or the scope of the review exercised by such court (*Shvydka v. Ukraine*, 2014, § 49; *Ruslan Yakovenko v. Ukraine*, 2015, § 77; *Fırat v. Greece*, 2017, § 37).

20. Where the right to a review under Article 2 of Protocol No. 7 exists, it should be effective (*Shvydka v. Ukraine*, 2014, § 50): in order for the review to be effective, it must be independent of any discretionary action by the authorities and must be directly available to those concerned (*Gurepka v. Ukraine*, 2005, § 59).

21. In *Kamburov v. Bulgaria*, 2009, § 24, the Court held that the review procedure did not meet the requirements of Article 2 of Protocol No. 7, since it was not directly accessible to the applicant. In *Gurepka v. Ukraine*, 2005, §§ 57-61, the applicant complained that he had no effective remedy for his complaint about his sentence to administrative arrest and detention. Considering that the appeal procedure had not been directly accessible to the applicant and had not been initiated upon the applicant's own motion, the Court held that the mere fact that such review procedure had had some positive, albeit temporary, impact on the applicant's situation (the suspension of his sentence) was not in itself sufficient to conclude that the appeal in question was an effective remedy satisfying the requirements of Article 2 of Protocol No. 7.

22. The Court has also reached similar conclusions in two further cases on the matter, *Galstyan v. Armenia*, 2007, §§ 124-127, and *Kakabadze and Others v. Georgia*, 2012, §§ 97-98, where the domestic extraordinary review procedure depended on the domestic authorities' discretionary power and lacked a clearly defined procedure or time-limits. The Court did not consider that this constituted an effective avenue for the purposes of Article 2 of Protocol No. 7.

23. The Court has found that an Article 2 of Protocol No. 7 review must provide for the possibility to put right any shortcomings at the trial or sentencing stages once these have resulted in a conviction. Thus, an appeal in the context of criminal proceedings must have a suspensive effect (*Shvydka v. Ukraine*, 2014, §§ 51-53). In the cited case, the Court found a violation of Article 2 of Protocol No. 7 on the basis that the applicant's appeal against the district court's judgment had no suspensive effect, which had resulted in the immediate execution of the sentence and consequently the

[7] *Ibid.*, § 19.

appellate review took place only after the detention sentence was imposed on the applicant and after she had served her sentence in full. Similarly, in *Tsvetkova and Others v. Russia*, 2018, §§ 188-191, the appeal had no suspensive effect and was only considered after the applicant had served his sentence, which amounted to a violation of Article 2 of Protocol No. 7.

24. In this context, where the appeal did not have a suspensive effect, the Court did not consider that a retrospective and purely compensatory remedy in case of a quashing of the first-instance conviction, could be regarded as a substitute of the right to a review embedded in Article 2 of Protocol No. 7. The Court stressed that to hold otherwise would run contrary to the well-established principle of its case-law that the Convention was intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (*Shvydka v. Ukraine*, 2014, § 54; *Tsvetkova and Others v. Russia*, 2018, § 189).

25. By contrast, in *Fırat v. Greece*, 2017, §§ 39-46, where the applicant, a Turkish national who had been charged with smuggling irregular migrants, had no ties with Greece and had not been resident in that country, the Court did not consider that the mere lack of a suspensive effect of the appeal against the first-instance judgment was counter to Article 2 of Protocol No. 7. The Court noted that by the operation of domestic law, the applicant would have been entitled to conditional release after the appeal court judgment and provided that he had served a certain portion of his sentence, which was not the case in the present case. The Court therefore concluded that the applicant's exercise of his right to appeal did not come at the cost of his liberty. The Court therefore found no violation of Article 2 of Protocol No. 7 to the Convention.

26. According to the Court's case-law, the exercise of the right of appeal cannot be hindered by attaching any *de facto* adverse effects to an accused for exercising his or her right of appeal (*Ruslan Yakovenko v. Ukraine*, 2015, §§ 79-83). In the cited case, the domestic courts considered it necessary to keep the applicant in detention as a preventive measure until the first-instance court's judgment became final, even after the prison sentence imposed on him by that judgment had already expired. In the absence of an appeal, the period in question lasted for twelve days. Had the applicant decided to appeal, this would have delayed his release for an unspecified period of time after the judgment became final. In these circumstances, the Court found that the applicant's exercise of his right to appeal would have come at the cost of his liberty, particularly as the length of his detention during the appeal would have been uncertain, therefore infringing the very essence of his right in violation of Article 2 of Protocol No. 7 to the Convention.

II. Exceptions to the right of appeal: Article 2 § 2 of Protocol No. 7 to the Convention

Article 2 § 2 of Protocol No. 7 to the Convention

> "2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

27. Paragraph 2 of Article 2 of Protocol No. 7 permits three exceptions to the right of review by a higher tribunal:

1) for offences of a minor character, as prescribed by law;
2) in cases in which the person concerned has been tried in the first instance by the highest tribunal; and
3) where the person concerned was convicted following an appeal against acquittal.[8]

A. Offences of a minor character

28. The first exception is permitted under paragraph 2 of Article 2 of Protocol No. 7 for the category of ''offences of a minor character''.

29. In accordance with the Explanatory Report,[9] the Court has recognised that, in deciding whether an offence is of a minor character, an important criterion is whether the offence is punishable by imprisonment or not (*Grecu v. Romania*, 2006, § 82; *Zaicevs v. Latvia*, 2007, § 55; *Kamburov v. Bulgaria*, 2009, § 25; *Stanchev v. Bulgaria*, 2009, § 47; *Kindlhofer v. Austria*, 2021, § 30). In making this assessment, the Court has to take into account the particular circumstances of the case (*Kindlhofer v. Austria*, 2021, § 42).

30. Accordingly, the Court has held that an offence for which the law prescribes a custodial sentence as the main punishment cannot be described as "minor" within the meaning of the second paragraph of that Article (*Zaicevs v. Latvia*, 2007, § 55; *Kamburov v. Bulgaria*, 2009, § 26; *Stanchev v. Bulgaria*, 2009, § 48, *Zhelyazkov v. Bulgaria*, 2012, § 43).

31. The Court did not consider that the following offences were of a "minor" character:

- In *Grecu v. Romania*, 2006, § 82, the offence was punishable by a term of imprisonment of between six months and five years; and
- In *Zaicevs v. Latvia*, 2007, § 55; *Kamburov v. Bulgaria*, 2009, § 26; and *Stanchev v. Bulgaria*, 2009, § 48, the offences were punishable by detention of up to fifteen days.

32. By contrast, in *Luchaninova v. Ukraine*, 2011, § 72, where the applicant was convicted of petty theft not punishable by imprisonment, the Court concluded that it was of a minor character, falling within the exceptions. Moreover, the Court examined this matter irrespective of the fact that the Government did not comment on that aspect of the case.

33. In *Kindlhofer v. Austria*, 2021, §§ 38-42, the Court dealt with, for the first time, the question of whether an offence, for which the law prescribed a term of up to two weeks' imprisonment in default of payment of the financial penalty, could be considered "minor". In that case, a fine of

[8] *Explanatory Report*, cited above, § 20.
[9] *Ibid*., § 21.

EUR 200, or four-days' imprisonment in default of payment, was imposed on the applicant for a breach of the road traffic regulations. The Court considered that the key question was whether it was likely that the imprisonment in default would actually be enforced, which required the Court to examine the legal framework for the enforcement of imprisonment in default in the domestic legal order. In the case at issue, the Court found that imprisonment in default of payment constituted an exceptional measure under domestic law, the enforcement of which was subject to a number of procedural safeguards (the convicted person must be clearly made aware of this risk and given the appropriate means to avoid it). In these circumstances, the Court considered that the measure in question was substantially different from imprisonment as the primary sanction and therefore did not prevent the offence of which the applicant had been convicted from being regarded as minor within the meaning of Article 2 § 2 of Protocol No. 7. The Court further noted the following elements: neither the amount of the fine actually imposed, nor the maximum fine the applicant risked incurring, appeared sufficiently high in themselves for the offence to be regarded as not minor; within the domestic administrative criminal system, the underlying offence was not considered to be of a serious nature; and the applicant did not claim that he could not pay the fine or that the amount of the fine imposed did not sufficiently take into consideration his financial situation. The Court therefore concluded that, despite the absence of appeal against the conviction, there had been no violation of Article 2 of Protocol No. 7 to the Convention.

34. In *Saquetti Iglesias v. Spain*, 2020, §§ 36-45, the Court has explained that the absence of a penalty of imprisonment is neither a determining factor nor the only criterion to be taken into account when determining whether an offence is of a minor character. For the Court, the relative lightness of the penalty at stake cannot deprive an offence of its inherently criminal character. For failing to declare a sum of money on passing through customs at an airport, the applicant was liable to a fine of between EUR 600 and twice the value of the means of payment used, and was ultimately required to pay the entirety of the sum seized (EUR 153,800). Having regard to the circumstances of the case (confiscation of virtually the whole amount discovered, equivalent to total personal savings, not originating in practices linked to money laundering, the amounts having been declared on return to Spain by the applicant, who had no police record) and reiterating that the penalty should match the seriousness of the infringement noted (failure to honour the obligation of declaration), the Court concluded that the offence would not be considered "minor" within the meaning of Article 2 of Protocol No. 7 so that the exception was not applicable. The Court also noted that the domestic authorities had not conducted any assessment of proportionality, even though such an assessment was required under the domestic law.

B. Trial in the first instance by the highest tribunal

35. The second exception concerns cases where, for whatever reason under the relevant domestic law, the person concerned has been tried in the first instance by the highest tribunal. The examples provided in the Explanatory Report for such trials are, due to the applicant's position as a minister, judge or other holder of high office, or due to the nature of the offence.[10]

36. In *Saquetti Iglesias v. Spain*, 2020, § 46, the Court considered that the exception under Article 2 § 2 of Protocol No. 7 did not apply where an appeal might lie to a higher court forming part of the ordinary hierarchy of courts (in that case, owing to the high value of the claim).

[10] *Explanatory Report*, cited above, § 20.

C. Convictions following an appeal against acquittal in the first-instance proceedings

37. The third exception to the right to review by a higher tribunal concerns convictions following an appeal against acquittal in the first-instance proceedings.[11] This may also concern instances where the appeal court imposes a sanction not imposed by the first-instance tribunal (*Fortum Oil And Gas Oy v. Finland* (dec.), 2002) or where the appeal court alters the charges examined by the first-instance court (*Landgren v. Finland* (dec.), 2009).

[11] *Ibid*.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

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