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Leiden
The Netherlands

EHRM 8 oktober 2020, AB 2022/27, m.nt. T. Barkhuysen & M.L. van Emmerik

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Citation

Barkhuysen, T., & Emmerik, M. L. van. (2022). EHRM 8 oktober 2020, AB 2022/27, m.nt. T. Barkhuysen & M.L. van Emmerik. *Ab Rechtspraak Bestuursrecht*, 2022(4), 251-258. Retrieved from <https://hdl.handle.net/1887/3564906>

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Note: To cite this publication please use the final published version (if applicable).

AB 2022/27

EUROPEES HOF VOOR DE RECHTEN VAN DE MENS

8 oktober 2020, nr. 67334/13

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Art. 4 Protocol 7 EVRM

NJB 2021/285

ECLI:CE:ECHR:2020:1008JUD006733413

Ne bis in idem. Dodelijke verkeersovertreding. Eerst beboet voor de snelheidsovertreding. Vervolgens bestraft voor het veroorzaken van een verkeersongeval met dodelijke afloop. Niet dezelfde feiten in de zin van artikel 4 Zevende Protocol. Afdoende materieel en temporeel verband. Geen excessieve last voor klager door procedures. Geen misbruik van recht van staat om straf op te leggen. Geen schending artikel 4 Zevende Protocol EVRM.

Klager is een Kroatische man genaamd Sanjin Bajcic. In oktober 2004 heeft klager de maximumsnelheid overschreden. Dit heeft geresulteerd in een verkeersongeval waarbij een persoon om het leven is gekomen. Aan klager is een boete opgelegd door de 'Rijeka Minor Offences Court' (hierna: 'Minor Offences Court') wegens het overtreden van de snelheidslimiet, het rijden met een defect voertuig en het verlaten van de plaats van het ongeval zonder de politie te informeren. Tevens legde de rechtbank voor lichte vergrijpen aan klager een rijverbod op voor zes maanden en voegde zij vijf (straf)punten toe aan het rijbewijs van klager. In juni 2005 heeft 'the Rijeka State Attorney's Office' klager aangeklaagd voor het veroorzaken van een dodelijk verkeersongeval. Klager werd in 2011 door de 'Rijeka Municipal Court' veroordeeld tot een gevangenisstraf van een jaar en zes maanden. Hiertegen ging klager in beroep, hij stelde zich op het standpunt dat hij al was gestraft door de Minor Offences Court. De hoger beroepsrechter ging hier niet in mee. De rechter kwam tot dit oordeel, omdat het misdrijf dat klager heeft begaan niet als een licht vergrijp wordt aangemerkt. Zodoende wordt klager dus materieel niet van dezelfde feiten beschuldigd. Ook het Hof van Cassatie en het Constitutionele Hof gingen niet mee in het betoog van klager.

Klager stapt naar het Europese Hof voor de Rechten van de Mens en voert aan dat sprake is van een schending van artikel 4 lid 1 Zevende Protocol EVRM omdat hij tweemaal zou zijn berecht en bestraft vanwege hetzelfde feit. Het Europees Hof herhaalt dat het doel van artikel 4 Zevende Protocol

EVRM is om te voorkomen dat iemand tweemaal wordt veroordeeld en/of bestraft voor hetzelfde strafbare feit. Hierbij wordt opgemerkt dat het verbod specifiek ziet op het vervolgen en/of berechten van een tweede overtreding voor zover deze overtreding voortvloeit uit dezelfde feiten of feiten die in wezen hetzelfde waren. Het Hof komt tot het oordeel dat het hier niet gaat om dezelfde feiten of feiten die in wezen hetzelfde zijn. Alhoewel het in beide procedures ging om het overschrijden van de maximumsnelheid, ging het niet in beide procedures over het rijden in een defecte auto en het verlaten van de plaats van het ongeval zonder de politie te informeren. Klager werd alleen door de Minor Offences Court bestraft voor deze laatste feiten en niet door de Rijeka Municipal Court. Verder oordeelt het Hof dat de procedures complementair zijn. De procedure voor de Minor Offences Court was gericht op het bestraffen van klager voor het overtreden van de snelheidslimiet en de procedure voor de Rijeka Municipal Court was juist gericht op het bestraffen van klager voor het gevolg van het overtreden van de snelheidslimiet, te weten een dodelijk verkeersongeval. Klager had ook kunnen voorzien dat hij in twee verschillende procedures zou worden bestraft. Het is onder Kroatisch recht gebruikelijk om enerzijds een procedure te voeren voor de niet-naleving van verkeersregels en anderzijds voor het gevolg; in casu het veroorzaken van een dodelijk verkeersongeval. Onder Kroatisch recht kan iemand immers niet worden vervolgd voor het veroorzaken van een dodelijk verkeersongeval bij de rechter voor de Minor Offences Court.

Dergelijke 'dubbele' procedures zijn onder artikel 4 Zevende Protocol EVRM toegestaan, zo lang deze procedures 'inhoudelijk en temporeel voldoende nauw met elkaar zijn verbonden' om een geïntegreerde en coherente aanpak van het strafbare gedrag te bewerkstelligen. Het Hof oordeelt dat de procedures in onderhavig geval inhoudelijk en temporeel nauw met elkaar zijn verbonden. De procedures zijn namelijk ongeveer gelijktijdig aangevangen. Dat de procedures voor het veroorzaken van een verkeersongeval met dodelijk afloop zes jaar en tien maanden langer duurde dan de procedure voor de Minor Offences Court zorgde er volgens het Hof niet voor dat deze procedures niet meer temporeel verbonden waren. Ook is er afdoende interactie geweest tussen de rechtbanken in de procedures en is er bij de bestraffing in de strafrechtelijke procedure in voldoende mate rekening gehouden met de boete die al was opgelegd aan klager. Klager werd in de strafrechtelijke procedure namelijk veroordeeld tot anderhalf jaar gevangenisstraf, terwijl de maximumstraf vijf jaar was. Ook waren de procedures, zoals eerder genoemd, complementair. Het Hof komt in het licht van het voorgaande tot het oordeel dat geen sprake is van misbruik van het

recht voor de staat om straffen op te leggen en dat klager geen excessieve last heeft moeten dragen door deze twee procedures. Hiermee komt het Hof tot de conclusie dat artikel 4 Zevende Protocol EVRM niet is geschonden.

Bajcic,
tegen
Kroatië.

The Law

I. Alleged violation of article 4 of protocol no. 7 to the convention

15. The applicant complained that he had been tried and punished twice for the same offence. He relied on Article 4 § 1 of Protocol No. 7 to the Convention, which reads as follows:

“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

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

B. Merits

1. The parties' submissions

17. The applicant argued that in both the minor-offence proceedings and the proceedings on indictment, he had been tried and punished in respect of the same event of 13 October 2004.

18. The applicant pointed out that, since the Rijeka Minor Offences Court had expressly found him guilty of, *inter alia*, hitting a pedestrian while driving, his conviction for a minor offence encompassed the consequences of his failure to comply with traffic regulations. This showed that both sets of proceedings had been conducted with the same purpose, namely ensuring road-traffic safety, including for road users and pedestrians alike. Moreover, when the authorities competent for bringing charges had included the consequences of the applicant's behaviour in the factual description of the minor offence with which he had been charged, it could not have been foreseen that the applicant would be subject to both sets of proceedings.

19. Furthermore, the taking of evidence had indicated that the same decisive facts – such as whether the applicant had violated road-traffic

regulations and whether the speeding had caused the pedestrian's fatal injuries – had been established in both proceedings. In the applicant's view, the criminal court had failed to take into consideration the penalty that had been imposed on him in the minor-offence proceedings.

20. Finally, the applicant pointed out that the temporal connection between the two sets of proceedings had not been sufficiently strong, as there had been an excessive delay in the conduct of the criminal proceedings.

21. The Government argued that the minor offence for which the applicant had been punished referred to speeding, operating a defective vehicle and not going to the aid of the victim of a road accident; however, the offence for which he had been punished in the proceedings on indictment referred to reckless driving which had resulted in a road accident and another person's death.

22. The Government further submitted that the minor-offence and criminal proceedings in the present case had been sufficiently closely connected in substance and in time to form a coherent whole. Firstly, as emphasised by both the Rijeka County Court and the Supreme Court, the purpose of the two sets of proceedings had differed: the nature of the former was to act as a general deterrent with the principal aim of ensuring that traffic rules were obeyed by everyone bearing in mind the potential danger, whereas the latter proceedings had been conducted owing to the serious consequences of the applicant's failure to comply with the traffic rules.

23. Moreover, the Government submitted that in cases of traffic accidents resulting in a fatality, neither the domestic law nor the relevant case-law left any room for doubt that the perpetrator might, and as a general rule would, be subject to both minor-offence and criminal proceedings. The foreseeability requirement had therefore been fulfilled. The Government further pointed out that the collection and assessment of evidence had not been duplicated to the extent possible, considering the inherent differences between the two sets of proceedings. For instance, the record of the on-site inspection and the applicant's blood analysis had first been used in the minor-offence proceedings and then in the criminal proceedings. The criminal court had also inspected the minor-offence proceedings case file. Finally, in the minor-offence proceedings the applicant had only been fined, whereas in the criminal proceedings he had been sentenced to imprisonment.

24. As regards the connection in time, the Government pointed out that the criminal proceedings had been instituted less than six months

after the minor-offence proceedings and had been conducted concurrently until 31 July 2006. The period that had elapsed thereafter was a necessary and natural consequence of the greater complexity of criminal proceedings.

2. The Court's assessment

(a) General principles

25. Article 4 of Protocol No. 7 to the Convention is 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 (see *Sergey Zolotukhin v. Russia* GC, no. 14939/03, § 82, ECHR 2009; *Marguš v. Croatia* [GC], no. 4455/10, § 114, ECHR 2014; and *A and B v. Norway* GC, nos. 24130/11 and 29758/11, § 108, 15 November 2016).

26. In cases raising an issue under Article 4 of Protocol No. 7, it should be determined whether the specific national measure complained of entails, in substance or in effect, double jeopardy to the detriment of the individual or whether, in contrast, it is the product of an integrated system enabling different aspects of the wrongdoing to be addressed in a foreseeable and proportionate manner forming a coherent whole, so that the individual concerned is not thereby subjected to injustice (see *A and B v. Norway*, cited above, § 122). The object of Article 4 of Protocol No. 7 is to prevent the injustice of a person's being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an 'integrated' approach to the social wrongdoing in question, in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes (*ibid.*, § 123).

(b) Application of the principles in the present case

(i) Whether both sets of proceedings were criminal in nature

27. In comparable cases against Croatia involving minor offences, the Court has held, on the basis of the 'Engel criteria' (see *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22), that minor-offence proceedings were 'criminal' in nature for the purposes of Article 4 of Protocol No. 7 (see *Maresti v. Croatia*, no. 55759/07, § 61, 25 June 2009; *Tomasović v. Croatia*, no. 53785/09, § 25, 18 October 2011; and, in the context of an Article 6 complaint, *Marčan v. Croatia*, no. 40820/12, § 33, 10 July 2014).

28. Noting that the parties did not dispute this, the Court sees no reason to depart from the conclusion reached in those previous cases and

holds that both sets of proceedings in the present case concerned a 'criminal' matter within the autonomous meaning of Article 4 of Protocol No. 7.

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

29. The notion of the 'same offence' – the *idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – was clarified in *Sergey Zolotukhin* (cited above, §§ 78–84). Following the approach adopted in that judgment, it is clear that the determination as to whether the offences in question were the same (*idem*) depends on a facts-based assessment (*ibid.*, § 84), rather than, for example, a formal assessment consisting in comparing the 'essential elements' of the offences. The prohibition in Article 4 of Protocol No. 7 to the Convention concerns the prosecution or trial of a second 'offence' in so far as the latter arises from identical facts or facts which are substantially the same (*ibid.*, § 82). In the Court's view, statements of fact concerning both the offence for which the applicant has already been tried and the offence of which he or she stands accused are an appropriate starting-point for its determination of the issue whether the facts in both proceedings were identical or substantially the same (see, in this connection, *Sergey Zolotukhin*, cited above, § 83). The Court's inquiry should therefore focus on those facts which constitute a set of concrete factual circumstances involving the same defendant and inextricably linked together in time and space, the existence of which must be demonstrated in order to secure a conviction or institute criminal proceedings (*ibid.*, § 84).

30. In the present case, there is no doubt that both the minor-offence proceedings and the criminal proceedings on indictment concerned a road accident in Draga Brig which took place at about 11.20 a.m. on 13 October 2004 (see paragraphs 5 and 8 above).

31. In the minor-offence proceedings the applicant was punished for various offences under the Road Traffic Safety Act, namely speeding contrary to section 53(1), driving a defective vehicle contrary to section 239(1) and failing to fulfil the duties of road users in the event of an accident contrary to section 176(1) and (3), such as staying at the scene, providing aid to victims, removing any hazards, preserving evidence and informing the nearest police station (see paragraph 12 above). In the proceedings on indictment, the applicant was punished under Article 272 §§ 1, 2 and 4 of the Criminal Code, which refers to recklessly causing a road accident by violating the regulations on road-traffic safety, as a result of

which a person sustains serious bodily injury or dies (see paragraph 13 above).

32. The Court notes that, of the three minor offences in question, only speeding (see paragraph 7 above) was alleged and subsequently found to have been causally linked to the road accident which resulted in a person's death, which was precisely the offence for which the applicant was prosecuted and punished in the criminal proceedings (see paragraph 8 above). Thus, the Court considers that the minor-offence proceedings related to a number of facts – in particular driving a vehicle with worn out tyres and not providing assistance to a victim of a road accident, not informing the police and not waiting for the arrival of a person authorised to carry out an on-site inspection – which were not covered by the subsequent criminal charges (compare *Hauser-Sporn v. Austria*, no. 37301/03, § 43, 7 December 2006).

33. Moreover, the facts for which the applicant had been convicted under section 176(1) and (3) of the Road Traffic Safety Act could not have formed part of the offence of recklessly causing a traffic accident under Article 272 of the Criminal Code, since they covered the applicant's conduct after the accident had taken place. It cannot therefore be said that the facts for which the applicant was punished in the minor-offence proceedings under sections 239(1) and 176(1) and (3) of the Road Traffic Safety Act can be regarded as substantially the same as the facts for which he was subsequently punished in criminal proceedings (see, *mutatis mutandis*, *Ramda v. France*, no. 78477/11, §§ 87–94, 19 December 2017). No issue under Article 4 of Protocol No. 7 thus arises in this regard.

34. Accordingly, the Court will not examine further the applicant's complaint relating to sections 239(1) and 176(1) and (3) of the Road Traffic Safety Act as no issue under Article 4 of Protocol No. 7 to the Convention arises in that respect.

35. On the other hand, the Court notes that speeding was central to the applicant's conviction under section 53(1) of the Road Traffic Safety Act in the minor-offence proceedings and formed an important part of his criminal charge and conviction in criminal proceedings (see paragraphs 5 and 8 above). Consequently, in the present case the Court considers that, in relation to speeding, the *idem* element of the *ne bis in idem* principle is present (compare *Gradinger v. Austria*, 23 October 1995, § 55, Series A no. 328-C).

36. The Court would further note that in the present case the overlap between the facts which were the subject of both the minor-offence proceedings and the criminal proceedings on indictment was only partial. Indeed, the conviction for

the minor offence of speeding did not to any extent include the causing of a road accident which resulted in another person's death. In fact, section 53(1) of the Road Traffic Safety Act is a lesser offence which is absorbed by the greater offence of causing a traffic accident as provided for in Article 272 of the Criminal Code, covering all the facts included in the lesser offence as well as some additional facts.

37. The Court reiterates at this juncture that the Convention does not prohibit the separation of the sentencing process in a given case into different stages or parts, such that different penalties may be imposed, successively or in parallel, for an offence that is to be characterised as 'criminal' within the autonomous meaning of that notion under the Convention. States should be able legitimately to choose complementary legal responses to socially offensive conduct (such as non-compliance with road-traffic regulations or non-payment/evasion of taxes) through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned (see *A and B v. Norway*, cited above, §§ 120 and 121). In fact there might be good reasons for trying traffic offences before minor-offence courts or special traffic courts under a simplified procedure, effectiveness being one of them.

38. In the present case the applicant contended that his prior conviction for a logically lesser offence barred his subsequent prosecution for a greater offence (see paragraph 36 above). However, the Court notes that if the criminal court were not to be permitted to convict the applicant of a greater offence, which encompassed facts for which he had not, and could not have, been convicted in minor-offence proceedings, the applicant would not be punished for the entirety of his conduct, taking into consideration all the facts and the overall level of his guilt. At the same time, even when the overlap in facts was only partial, the bifurcation of proceedings carried a risk of 'double counting' of punishment and vexatious re-prosecution, both of which are contrary to the principle of *ne bis in idem*. Thus, even in such cases the Court must be satisfied that there has been, even if only partially, no duplication of trial or punishment (*bis*), as proscribed by Article 4 of Protocol No. 7 to the Convention.

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

39. As the Grand Chamber explained in *A and B v. Norway* (cited above, § 130), Article 4 of Protocol No. 7 does not preclude the conduct of

dual proceedings, provided that certain conditions are fulfilled. In particular, for the Court to be satisfied that there is no duplication of trial or punishment (*bis*) as proscribed by Article 4 of Protocol No. 7, the respondent State must demonstrate convincingly that the dual proceedings in question were 'sufficiently closely connected in substance and in time'. In other words, it must be shown that they were combined in an integrated manner so as to form a coherent whole. This implies not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (*ibid.*, § 130). As regards the conditions to be satisfied in order for dual criminal and administrative proceedings to be regarded as sufficiently connected in substance and in time and thus compatible with the *bis* criterion in Article 4 of Protocol No. 7, the material factors for determining whether there was a sufficiently close connection in substance include:

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

– whether the duality of proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (*idem*);

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

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

Combined proceedings will more likely meet the criteria of complementarity and coherence if the sanctions to be imposed in the proceedings not formally classified as 'criminal' are specific for the conduct in question and thus differ from 'the hard core of criminal law' (*ibid.*, § 133).

40. In the present case, in 2006 the applicant was fined in the minor-offence proceedings for speeding. Before those proceedings were finalised, in 2005 the applicant was indicted under Article 272 of the Criminal Code for causing a road accident in which another person had died as a consequence of reckless driving. He was ultimately sentenced in those proceedings to a prison sentence in 2011.

41. Assessing the connection in substance between the minor-offence and criminal proceedings in the present case – as well as the different sanctions imposed on the applicant – the Court notes that the purpose of the minor-offence proceedings was to address the applicant's failure to comply with road-traffic regulations, notably speeding, in order to ensure the smooth flow of traffic and prevent conduct endangering public safety (see paragraph 5 above). As the Government explained, this minor offence is aimed at discouraging all drivers from disregarding speed limits, irrespective of whether or not their conduct causes a road-traffic accident. The subsequent criminal proceedings against the applicant, on the other hand, were conducted precisely with the aim of addressing the consequence of his failure to comply with the speed limit, that is, to penalise his conduct which caused the death of a pedestrian (compare and contrast *Gradinger*, cited above, § 54). The Court therefore accepts that the two sets of proceedings pursued complementary purposes in addressing different aspects of the failure to respect road-traffic safety regulations, criminal proceedings being limited to offences which are particularly serious, such as reckless driving resulting in serious bodily injury or death (see paragraph 13 above).

42. The applicant asserted that the minor offences court had also punished him for the death of the pedestrian. While it is true that the Rijeka Minor Offences Court included the death of the pedestrian in the description of the facts of the case, it is clear from the text of its decision that the actual minor offences of which the applicant was found guilty related only to speeding (see paragraph 5 above). Under Croatian law, causing a death in a road-traffic accident cannot be prosecuted in minor-offence proceedings; instead, it is dealt with as a criminal offence that is subject to public prosecution by the State Attorney in criminal proceedings. Moreover, at the material time, dual-track punitive proceedings combining minor-offence proceedings and criminal proceedings formed part of the actions commonly taken to impose sanctions in accordance with clear and precise rules for failure to comply with road-traffic safety regulations and for reckless driving causing

a fatal road-traffic accident (see paragraphs 12, 13 and 23 above). Therefore, the Court cannot accept the applicant's contention that the dual proceedings and penalty had been an unforeseeable consequence of his conduct.

43. As to the manner of conducting the proceedings, the Court notes that the criminal court not only used certain evidence adduced before the Rijeka Minor Offences Court, but also inspected the case file from the minor-offence proceedings in its entirety (see paragraph 8 above). It can therefore be concluded that the interaction between the two courts was adequate and that the two sets of proceedings formed a coherent whole (see, *a contrario*, *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, §§ 65–74, 30 April 2015, where the applicants had first been acquitted in criminal proceedings, and later on imposed with severe administrative fines for the same conduct). Consequently, the applicant has not suffered a disadvantage associated with the duplication of proceedings, beyond what was strictly necessary.

44. The Court further notes that, while the Rijeka Minor Offences Court issued the applicant with a fine in the amount of EUR 95 for speeding (see paragraph 5 above), the criminal court imposed a custodial sentence on him for reckless driving causing a fatal road-traffic accident. Although the criminal court did not expressly refer to the fine previously imposed by the Rijeka Minor Offences Court, the Court observes that it sentenced the applicant to one and a half years' imprisonment, whereas at the material time the Criminal Code prescribed a maximum sentence for such an offence of up to five years' imprisonment (see paragraph 31 above). In the Court's view, when taken together the penalties imposed did not exceed what was strictly necessary in relation to the seriousness of the offences concerned. It cannot therefore be said that the applicant was made to bear an excessive burden (see the relevant criteria set out in *A and B v. Norway*, cited at paragraph 39 above). Rather, only once punishment for speeding had been complemented by the punishment for causing a fatal road-traffic accident did the applicant in the present case receive an effective, proportionate and dissuasive punishment for his conduct. In any event, the sole fact that the criminal court did not refer *expressis verbis* to the sanction imposed in the minor-offence proceedings might not of itself be sufficient to conclude that the proceedings were not interconnected in substance.

45. Finally, turning to the connection in time between the two proceedings, the Court notes that the minor-offence proceedings were instituted by the Rijeka police on 25 November 2004

(see paragraph 5 above), whereas the criminal indictment was filed by the Rijeka State Attorney's Office some seven months later, on 9 June 2005 (see paragraph 7 above). Although the Court does not have in its possession the exact date of the commencement of the criminal investigation in respect of the applicant, it is clear from the bill of indictment that the applicant and a number of other witnesses had already been questioned prior to the lodging of the indictment. In other words, the two sets of proceedings must have been initiated at practically the same time (contrast *Jóhannesson and Others v. Iceland*, no. 22007/11, § 54, 18 May 2017, where the applicants had been indicted only 15 and 16 months after the decision of the tax authorities had been taken in their cases). The two sets of proceedings were then conducted in parallel for almost another fourteen months, when the Rijeka Minor Offences Court's penalty notice became final, without an appeal having been lodged against it. The criminal proceedings against the applicant thereafter lasted another six years and ten months at four levels of jurisdiction, a period which, in the Court's view, cannot of itself suffice to disconnect in time the minor-offence and the criminal proceedings (see, *mutatis mutandis*, *A and B v. Norway*, cited above, § 151; and contrast *Kapetanios*, cited above, § 67, where the delay between the conclusion of the two sets of proceedings had amounted to between 9 and 14 years; and *Nodet v. France*, no. 47342/14, §§ 52–53, 6 June 2019, where the Court found no sufficiently close substantive or temporal link between the two sets of proceedings). In particular, the additional lapse of time before the criminal courts cannot be considered disproportionate, abusive or unreasonable, taking into consideration that the penalty notice had been issued as a result of summary minor-offence proceedings, whereas the criminal proceedings, which by their nature are more complex, had been conducted before four court instances. In the above circumstances, the Court is satisfied that the two proceedings were sufficiently connected in time.

46. In conclusion, in the Court's opinion, the aims of punishment, whereby different aspects of the same conduct are addressed, ought to be considered as a whole and have in the present case been realised through two foreseeable complementary sets of proceedings, which were sufficiently connected in substance and in time, as required by the Court's case-law, to be considered to form part of an integral scheme of sanctions under Croatian law for failure to comply with road-traffic safety regulations and causing a traffic accident as a consequence. There was an adequate level of interaction between the two courts

in these proceedings, and the punishments imposed, taken together, did not make the applicant bear an excessive burden, but were limited to what was strictly necessary in relation to the seriousness of the offence. In the light of the foregoing, the Court finds no abuse of the State's right to impose a punishment (*ius puniendi*), nor can it conclude that the applicant suffered any disproportionate prejudice resulting from the duplication of proceedings and penalties. Rather, those proceedings and penalties formed a coherent and proportionate whole (see, *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 112, 130 and 147).

47. There has accordingly been no violation of Article 4 of Protocol No. 7 to the Convention.

For these reasons, the court, unanimously,

1. Declares the application admissible;
2. Holds that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

Noot

1. De uitspraak is opgenomen niet zozeer omdat zij iets echt nieuws onder de zon brengt maar nu zij illustreert dat er verschillende straffen kunnen volgen op hetzelfde feit zonder dat hiermee in strijd wordt gehandeld met het verbod van bis in idem van artikel 4 Zevende Protocol. Het Hof verwijst hierbij ook naar zijn standaardarrest over deze materie, namelijk de zaak A. en B. tegen Noorwegen (15 november 2016, AB 2017/188, m.nt. Barkhuysen & Van Emmerik).

2. In deze zaak beging de klager, de heer Bajcic, een snelheidsovertreding en door het hierdoor veroorzaakte ongeluk kwam een persoon om het leven. De klager werd door de rechtbank die kleine vergrijpen behandelde in 2005 veroordeeld tot zes maanden rijontzegging en er werden vijf (straf)punten op zijn rijbewijs bijgezet. Even later wordt hij aangeklaagd voor de strafrechter en uiteindelijk, inmiddels spreken we 2011, veroordeeld tot een jaar gevangenisstraf vanwege het veroorzaken van een dodelijk ongeval. Het Hof overweegt dat het in beide procedures strikt genomen niet om precies dezelfde feiten gaat. Weliswaar draaide het in beide procedures om het overschrijden van de maximumsnelheid maar in de lichte procedure kwamen daar nog bij het rijden in een defecte auto en het verlaten van de plaats van het ongeval zonder de politie te informeren. Daar komt verder nog bij dat in de tweede (strafrechtelijke) procedure het veroorzaken van een dodelijk ongeval centraal stond.

3. Hoe dit ook zij, het Hof past de A- en B-criteria toe om te bepalen of het hier gaat om een geoorloofde samenloop van twee procedures

volgens op (min of meer) hetzelfde feitencomplex. Dat lijkt ons overigens terecht, nu de feiten erg dicht tegen elkaar aan liggen. Volgens het Hof in de zaak A en B moeten voor een geoorloofde samenloop beide procedures voldoende inhoudelijk en temporeel met elkaar zijn verbonden. Het gaat dan om één geïntegreerde en coherente benadering van de strafrechtelijke gedraging in kwestie. Dit houdt onder meer in dat de procedures complementaire doelen moeten dienen en niet alleen in abstracto maar ook in concreto verschillende aspecten van hetzelfde 'sociale wangedrag' adresseren. Verder dient de cumulatie van sancties bij wet voorzienbaar te zijn. En de laatste eis is dat het totale sanctiepakket evenredig is en de verschillende actoren bij de straftoemeting rekening kunnen houden met elkaars sancties.

4. Opvallend is dat het Hof in het lange tijdsverloop van de strafrechtelijke procedure, die immers zo'n zes jaar liep terwijl de lichte procedure uiteindelijk al lang was afgerond, geen reden ziet om aan te nemen dat er onvoldoende temporeel verband was tussen beide procedures. De strafprocedure heeft immers zo'n vijf jaar zelfstandig voortgeduurd, hetgeen op zijn minst een aanwijzing is dat wel sprake is van een verboden bis in idem. Aan de andere kant maakt het Hof wel veel werk van het bezien of er in totaliteit een evenredig sanctiepakket is opgelegd en dat lijkt ons een goede zaak.

5. Voor Nederland heeft deze uitspraak geen directe betekenis, nu Nederland geen partij is bij het Zevende Protocol. Wel zou de Straatsburgse jurisprudentie over de band van artikel 50 EU-grondrechtenhandvest kunnen doorwerken. En overigens misstaat het sowieso niet deze EHRM-rechtspraak in de gaten te houden. Voor de bestuurlijke boetes geldt het verbod van artikel 5:43 Algemene wet bestuursrecht op grond waarvan niet twee boetes voor hetzelfde feit kunnen worden opgelegd. Een vergelijkbare bepaling bestaat als het gaat om samenloop van een bestuurlijke boete en een OM-strafbeschikking voor hetzelfde feit met beboeting in het strafrecht (zie art. 243, tweede lid van het Wetboek van Strafvordering) en er bestaat ook een zogenaamde una via-regeling (over de verhouding tussen de bestuurlijke procedure en de strafrechtelijke in geval een zelfde feit zowel bestuurlijk beboetbaar als strafbaar is). Voor andere bestraffende bestuurlijke sancties bestaat (nog) geen regeling over samenloop. In de zaken over het alcoholslot achtte de Hoge Raad de samenloop tussen een alcoholslot en strafrechtelijke sanctie verboden want in strijd met de beginselen van de goede procesorde (HR 3 maart 1015, AB 2015/159, m.nt. Stijnen).

6. In Nederland zouden zich onder meer op het terrein van het verkeersrecht nog andere dubbelingen kunnen voordoen als gaat om een bestuursrechtelijke reactie op hetzelfde verkeersfeit. Daarbij zal zeker niet altijd sprake zijn van een bestaande bestuurlijke sanctie (en daarmee in strikte zin geen ne bis in idem-kwestie aan de orde zijn), zoals bij de (tijdelijke) intrekking van een rijbewijs. Ook dan lijkt het ons gepast te kijken naar de vraag of het totale sanctiepakket evenredig is. Een en ander past ook in de lijn van de conclusie van Wattel en Widdershoven van afgelopen zomer (ECLI:NL:RVS:2021:1468) over het evenredigheidsbeginsel in het bestuursrecht, waar de volheid van de rechterlijke toetsing op evenredigheid niet langer wordt gekoppeld aan de vraag of een maatregel een criminal charge is maar aan de ingrijpendheid van de gevolgen van deze maatregel (of het totale maatregelenpakket, voegen wij daar aan toe).

T. Barkhuysen en M.L. van Emmerik

AB 2022/28

HOF VAN JUSTITIE VAN DE EUROPESE UNIE

24 juni 2021, nr. C-559/19

(J.-C. Bonichot, R. Silva de Lapuerta, M. Safjan, P. G. Xuereb, N. Jääskinen)

m.nt. H.F.M.W. van Rijswijk en K. Bastmeijer*

Art. 258 VWEU; art. 4 lid 1 onder b), en i), art. 5, art. 11 lid 1, lid 3 onder a), c), en e), lid 4 Richtlijn 2000/60/EG (KRW); art. 6 lid 2 Richtlijn 92/43/EEG (Habitatrichtlijn)

ECLI:EU:C:2020:987

ECLI:EU:C:2021:512

Geen achteruitgang en beschermings- en verbeterdoelstelling grondwatertoestand. Bij schattingen grondwatergebruik rekening houden met illegale wateronttrekking, toerisme en de wateronttrekking voor stedelijke bevoorrading. KRW-maatregelenprogramma moet maatregelen bevatten om verstoring van beschermde habitattypen als gevolg van de grondwateronttrekking te voorkomen. Niet voldaan aan verplichtingen uit de Habitatrichtlijn door geen passende maatregelen te nemen tegen aanzienlijke verstoringen van beschermde habitattypen veroorzaakt door grondwateronttrekking in het beschermde natuurgebied.

In (art. 4 lid 1 onder b) KRW) zijn twee afzonderlijke maar intrinsiek met elkaar verbonden verplichtingen neergelegd (...) – een verplichting om de achteruitgang van de toestand van alle grondwaterlichamen te voorkomen, en (...) een verplichting om die toestand te verbeteren – (die) (...) eens dwingend karakter hebben (...) (en) dwingende gevolgen sorte(ren) in elke fase van de procedure die door die richtlijn wordt voorgeschreven (...). (De uitzondering termijnverlenging geldt) immers enkel voor de verplichting tot verbetering in punt ii) van die bepaling, en niet voor de verplichting tot voorkoming van achteruitgang in punt i) ervan (...).

(Art. 4 KRW) veronderstelt het in die bepaling gehanteerde begrip “achteruitgang” in de context van grondwater dat al in slechte staat verkeert, dat het reeds bestaande tekort nóg toeneemt en dat er dus méér overexploitatie is dan voordien. Dat er geen evenwicht tussen onttrekking en aanvulling van het grondwater is, betekent daarbij dat een grondwaterlichaam niet in een goede kwantitatieve toestand verkeert (...), maar vormt op zich niet een achteruitgang in de zin van artikel 4, lid 1, onder b), i), van deze richtlijn. De vaststelling van de noodzakelijke maatregelen om dat evenwicht en dus een goede grondwatertoestand te bereiken, (...), behoort tot de verbeteringsverplichting (...).

Wat de achteruitgang van het oppervlaktewater en van de ecosystemen betreft, moet (...) worden opgemerkt dat deze verslechtingen aanwijzingen kunnen vormen voor een slechte kwantitatieve toestand van het betrokken grondwaterlichaam, maar niet voor verdere verslechtingen van die toestand.

Spanje (heeft) niet (...) voldaan aan zijn verplichtingen uit hoofde van artikel 5 (...) door in het stroomgebiedsbeheerplan (...) niet (...) te hebben vastgesteld dat er gevaar bestond dat voor de wattervoerende laag Almonte-Marismas de doelstellingen van deze richtlijn niet zouden worden bereikt, en door vervolgens geen nadere karakterisering (...) te hebben ingediend. (Er moet) een nauwkeurigere beoordeling van de omvang van het betrokken gevaar – met name illegale onttrekkingen en onttrekkingen voor drinkwaterproductie – worden gemaakt om uit te maken welke maatregelen er krachtens artikel 11 van deze richtlijn moeten worden genomen. (...) (D)e toestand van het grondwaterlichaam (kan) zonder een dergelijke beoordeling niet juist worden ingeschat, en kan dus moeilijk worden uitgemaakt of de maatregelen die zijn vastgesteld om een goede kwantitatieve toestand van het betrokken grondwater tot stand te brengen, en in het bijzonder om illegale wateronttrekking te bestrijden, volstaan.

Door maatregelenprogramma's (o.b.v. art. 11 KRW) dienen lidstaten (...) niet alleen de in die richtlijn neergelegde milieudoelstellingen voor water (te)

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