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**(CEDU, sez. I, sent. 19 novembre 2020, ric. n. 2953/14)**
**Solo la legge può definire un crimine e prescrivere una pena**

La CEDU si è pronunciata sull'art. 7 Conv. (*Nulla poena sine lege*). Il ricorrente, ai sensi di questo articolo, si è lamentato di esser stato condannato per la detenzione di un fucile subacqueo, non dichiarato alle autorità, atto che di fatto non costitutiva reato ai sensi della legge sulle armi. In particolare ha sostenuto che, ai sensi della Sez. 4 della legge sulle armi, i fucili subacquei erano stati esclusi dalla nozione stessa di arma.
Il governo ha sostenuto che il ricorrente era stato condannato a causa di un atto che costituiva reato minore del diritto interno. Ha ritenuto infatti che, ai sensi della succitata legge, il ricorrente aveva l'obbligo di dichiarare la detenzione del suo fucile alle autorità competenti.
La Corte per prima cosa ha sostenuto il principio secondo cui solo la legge può definire un crimine e prescrivere una pena. Nel caso di specie per la Corte hanno assunto rilevanza decisiva i seguenti elementi: le armi subacquee, destinate alla pesca, erano escluse dalla nozione di arma, come definita dalla legge sulle armi; il governo non ha contestato che il fucile era stato trovato nell'auto insieme ad altre attrezzature da spiaggia, il che suggerisce che era effettivamente destinato alla pesca; il ricorrente ha argomentato che per la detenzione di tali fucili non era richiesto alcun permesso, contrariamente necessario per le armi.
Tutti questi elementi sono stati sufficienti per consentire alla Corte di concludere che i tribunali nazionali *contra legem*, e quindi imprevedibilmente, hanno interpretato le disposizioni della legge a discapito del ricorrente. Per questo motivo vi è stata una violazione dell'art. 7 della Convenzione.

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

FIRST SECTION

**CASE OF PANTALON v. CROATIA**
*(Application no. 2953/14)*

JUDGMENT

Art 7 • *Nullum crimen sine lege* • Criminal offence • Conviction and a fine for minor offence pursuant to the Weapons Act for failing to declare a diving speargun at the border, although not considered a weapon under the relevant domestic law • A criminal offence in light of nature and

severity of the fine and notwithstanding domestic classification • Unforeseeable construction of domestic regulation and failure at national level to address applicant's arguments in this regard • Rejection of argument that applicant should have declared speargun at border in case of doubt, as no person should be forced to speculate whether their conduct is prohibited or be exposed to unduly broad discretion of authorities

STRASBOURG

19 November 2020

*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 Pantalon v. Croatia,**

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

Krzysztof Wojtyczek, *President,*

Ksenija Turković,

Linos-Alexandre Sicilianos,

Alena Poláčková,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the application (no. 2953/14) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Đani Pantalon ("the applicant"), on 18 December 2013;

the decision to give notice of the application to the Croatian Government ("the Government");

the parties' observations;

Having deliberated in private on 20 October 2020,

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

INTRODUCTION

1. The case concerns the applicant's conviction for a minor offence of failing to declare a weapon, specifically a diving speargun, at border control even though diving spearguns were expressly excluded from the definition of a weapon under the relevant domestic law.

THE FACTS

2. The applicant was born in 1964 and lives in Zadar. He was represented by Ms S. Miličević, a lawyer practising in Zadar.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 14 September 2009 the applicant, who was on his way back to Croatia from Bosnia and Herzegovina, was stopped by the Croatian border police while crossing the border between the two States. The police searched the applicant's car and found in the luggage compartment, together with beach equipment, a diving speargun. The police temporarily seized the speargun and on the same day instituted minor-offence proceedings (*prekršajni postupak*) by

indicting the applicant before the Imotski Minor Offences Court (*Prekršajni sud u Imotskom*) for the minor offence of failing to declare a weapon when crossing the State border as defined in subparagraph 27 of section 92(1) in conjunction with section 4(1) of the Weapons Act (see paragraph 12 below).

6. Further to a request for legal assistance by the Imotski Minor Offences Court, on 2 February 2010 the applicant was heard before the Zadar Minor Offences Court (*Prekršajni sud u Zadru*). At the hearing the applicant stated as follows:

"It is true that ... at the border crossing ... in reply to the customs official's question whether I had anything to declare, I forgot to mention, out of ignorance, that is, without any intention to mislead, that in the luggage compartment [of my car] I had a used speargun ... I had no intention of not declaring the speargun because I already had it with me when entering Bosnia and Herzegovina ..."

7. By a judgment of 30 April 2010, the Imotski Minor Offences Court found the applicant guilty of the minor offence in question, fined him 1,000 Croatian kunas (HRK) and ordered him to pay HRK 120 in respect of the costs of the proceedings. It also imposed a protective measure (*zaštitna mjera*), confiscating the applicant's speargun. The relevant part of the judgment reads as follows:

"Based on the accused's explicit confession, this court finds it proven beyond doubt that the accused committed the offence [mentioned] in the operative part of this judgment. He must therefore be found guilty and punished accordingly."

8. The applicant appealed, arguing (a) that under section 4 of the Weapons Act, spearguns were expressly excluded from the notion of a weapon as defined in that Act (see paragraph 12 below), and (b) that the first-instance court had not assessed his guilt at all or provided any reasons as regards the constituent element of the offence. As regards the issue of guilt, the applicant submitted that the first-instance court had not taken into account at all the fact that the incident in question had occurred in late summer (in September), when he had regularly kept all his beach equipment, including the speargun, in the luggage compartment of his car, and he had not considered it necessary to remove the equipment when travelling to a short, two-hour long, business meeting in Bosnia and Herzegovina.

9. By a judgment of 17 October 2012, the High Minor Offences Court (*Visoki prekršajni sud Republike Hrvatske*) dismissed the applicant's appeal and upheld the first-instance judgment. It held that spearguns were bowstring weapons and thus weapons within the meaning of the Weapons Act, and that the applicant had therefore been obliged to declare his speargun at the border. The relevant part of that judgment reads as follows:

"... the argument in the appeal that ... a speargun is not a weapon is ill-founded.

Section 5 of the Weapons Act [defines] certain terms used in the Act. In subparagraph 16 it provides that 'bowstring weapons [such as] bows, crossbows and other devices which by force of a taut bowstring shoot an arrow or other projectile' are also considered weapons.

Spearguns [fall into the category of] other devices which by force of a taut bowstring shoot an arrow or other projectile ... The mere fact that this speargun is intended exclusively for fishing does not mean that it is not a weapon ..."

10. The applicant then lodged a constitutional complaint, arguing, *inter alia*, that the minor-offences courts' judgments had been in breach of his right to fair proceedings and of his right not

to be convicted of an act which did not constitute an offence, as guaranteed by Article 29 § 1 and Article 31 § 1 of the Croatian Constitution respectively. He also relied on Article 6 § 1 of the Convention. He reiterated the argument he had made before the appellate court that spearguns were not weapons and that he had therefore been convicted on account of an act which had not constituted an offence under domestic law (see paragraph 8 above). In addition, he criticised the position of the High Court for Minor Offences (see paragraph 9 above) that spearguns were bowstring weapons and thus weapons within the meaning of the Weapons Act. Specifically, he submitted that a mere visual examination of the speargun confiscated from him would have revealed that it was band-powered rather than bowstring-powered, and that it was exclusively intended for fishing.

11. In a decision of 9 May 2013, the Constitutional Court (*Ustavni sud Republike Hrvatske*) examined the applicant's case under Article 29 § 1 of the Constitution alone, that is, from the perspective of the right to fair proceedings, and dismissed his constitutional complaint as ill-founded. That decision was served on the applicant on 24 June 2013.

RELEVANT LEGAL FRAMEWORK

12. The relevant provisions of the Weapons Act (*Zakon o oružju*, Official Gazette no. 63/07 with further amendments), which was in force from 1 September 2007 until 31 October 2018, provide as follows:

**Section 3(1)**

"A weapon, within the meaning of this Act, is a device made or adapted so that it shoots, under the pressure of air, gunpowder gas or other gases or other propellant, a bullet, pellet, round shot or other projectile, or disperses gas or liquid, as well as other devices intended for self-defence, hunting or sports."

**Section 4**

"For the purposes of this Act, the following shall not be considered a weapon: ... spearguns and other implements which, by force of a spring, taut rubber-bands or compressed gas [that is, spring, pneumatic or band-powered implements] shoot spears or harpoons which are exclusively intended for fishing (underwater weapons) ..."

**Section 5(1)**

"Certain notions used in this Act have the following meaning:

...

16. *Bowstring weapons* are bows, crossbows and other devices which by force of a taut bowstring shoot an arrow or other projectile."

**Section 54**

"(1) When crossing the State border, Croatian nationals and foreigners are obliged to declare weapons and ammunition to the border police and customs.

(2) The border police shall temporarily confiscate weapons and ammunition from a Croatian citizen or foreigner who, when crossing the State border, did not declare weapons and ammunition at the border crossing, and [shall] store them until the conclusion of the [minor-offence] proceedings."

**Section 92**

"(1) Natural persons shall be fined between 3,000 and 15,000 kunas for a minor offence:

...
27. if they do not declare a weapon and ammunition to the border police and customs when crossing the State border (section 54(1));
...
(2) For the minor offences referred to in paragraph (1) of this section, save for the offences referred to in subparagraphs 1, 9 and 10, the protective measure of confiscation of the weapon and the ammunition shall be imposed."

THE LAW

ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

13. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had erred in their interpretation of the relevant domestic law when finding him guilty in the minor-offence proceedings. He also complained, under Article 7 of the Convention, that he had been convicted on account of an act which had not constituted an offence under the Weapons Act.

14. Being master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), and having regard to its case-law (see, for example, *Korbely v. Hungary* [GC], no. 9174/02, ECHR 2008, and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, ECHR 2015), the Court considers that these complaints fall to be examined exclusively under Article 7 of the Convention (see, for example, *Žaja v. Croatia*, no. 37462/09, § 64, 4 October 2016, and *Nadtochiy v. Ukraine*, no. 7460/03, § 31, 15 May 2008).

This provision reads as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

**Admissibility**

*Submissions by the parties*

**(a) The Government**

15. The Government disputed the admissibility of this part of the application on two grounds. They argued that the applicant could not claim to be a victim of the violations complained of, and that in any event he had not suffered a significant disadvantage on account of the violations alleged.

16. As regards the lack of victim status, the Government submitted that the applicant had pleaded guilty (see paragraph 6 above) in the minor-offences proceedings complained of, and the domestic courts had acknowledged that plea as valid (see paragraph 7 above). He thus could not claim to be a victim of the violations alleged.

17. In the alternative, the Government argued that the applicant had not suffered a significant disadvantage. This was because the fine imposed on him (HRK 1,000) had been very modest and

well below the statutory threshold (see paragraph 7 above, and section 92(1) of the Weapons Act in paragraph 12 above). Together with the HRK 120 he had been ordered to pay in respect of the costs of the proceedings, the total amount of HRK 1,120 the applicant had had to pay corresponded to some 160 euros (EUR) (see paragraph 7 above).

18. The Government pointed out that in similar cases the Court had declared applications inadmissible for lack of significant disadvantage. They referred to *Škubonja v. Croatia* ((dec.), no. 27767/13, 19 May 2015), where the relevant amount had been approximately EUR 260; *Rinck v. France* ((dec.), no. 18774/09, 19 October 2010), where the relevant amount had been EUR 172; and *Fernandez v. France* ((dec.), no. 65421/10, 17 January 2012), where the relevant amount had been EUR 157.

19. The Government further emphasised that the applicant was a salesman by profession and that the data in the domestic case file suggested that his monthly income was some HRK 4,000, which corresponded to the average monthly income of people in his profession in Croatia at the time. This further meant that the fine and the costs he had been ordered to pay in the minor-offence proceedings in question had amounted to less than half of his monthly income.

20. In the Government's view, the fact that the applicant had not asked to pay the amounts due in several instalments – a possibility existing under domestic law – further suggested that the fine had not had a significant financial impact on him.

21. Lastly, the Government argued that respect for human rights as defined in the Convention and the Protocols thereto did not require an examination of this part of the application on the merits, and that the applicant's case had been duly considered by the domestic courts at three levels of jurisdiction.

**(b) The applicant**

22. As regards his victim status (see paragraph 16 above) the applicant submitted in response that:

– the Government had confused the admission of relevant facts with pleading guilty, those being two different notions under criminal and minor-offences law;

– under domestic law, the courts had to establish whether an offence had been committed even if the accused had pleaded guilty;

– under domestic law, an accused could plead guilty only in reply to the court's explicit question to that effect.

23. He clarified that what he had admitted before the domestic courts was the fact that he had not declared to the border police the speargun he had had in his car (see paragraph 6 above). Admitting that had not meant that he had pleaded guilty as he had defended himself by relying on the argument that the speargun was not a weapon and he had thus not been obliged to declare it when crossing the State border (see paragraphs 8 and 10 above). In view of this, the applicant submitted that he could claim to be a victim of the violations complained of.

24. As regards the Government's objection regarding the alleged lack of significant disadvantage (see paragraphs 17-21 above), the applicant submitted that the domestic courts had breached one of the most important principles of a democratic society, that of *nullum crimen sine lege*, and that the financial loss he had suffered had not consisted only of the fine and the costs he had had to pay – which had amounted to one-third of his monthly income – but also of his speargun, which had

been permanently confiscated (see paragraph 7 above). The applicant estimated the total financial loss suffered at around HRK 4,000.

*The Court's assessment*

**(a) Applicability**

25. Even though the Government did not contest the applicability of Article 7 to the facts of the present case, the Court nevertheless considers that it must examine this issue of its own motion.

26. Article 7 of the Convention is applicable if an applicant was found guilty of a "criminal offence", or if the sanction imposed amounted to a "penalty", within the meaning of that provision.

27. The Court has held on many occasions, the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see, among many other authorities, *Marguš v. Croatia* [GC], no. 4455/10, § 133, ECHR 2014 (extracts), and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 133, 15 November 2016). In keeping with this principle of harmonious interpretation of the Convention, the Court has held, for example, that the notion of "penal procedure" in the text of Article 4 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" in Articles 6 and 7 of the Convention respectively (see, for example, *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 52, ECHR 2009).

28. The notion of "criminal offence" in Article 7 thus corresponds to the notion of "criminal charge" in Article 6 of the Convention and has an autonomous meaning. Therefore, the three criteria set out in the case of *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22 (and subsequently reaffirmed in *Jussila v. Finland* [GC], no. 73053/01, § 30, ECHR 2006-XIV), initially developed for assessing whether a charge is "criminal" and whether Article 6 of the Convention is applicable under its "criminal head", are equally pertinent for assessing whether an offence is "criminal" and for determining the applicability of Article 7 (see *Nadtochiy*, cited above, § 32, and *Žaja*, cited above, § 86).

29. It follows that, in order to ascertain whether Article 7 is applicable, in the present case the Court must examine whether the offence for which the applicant was convicted was "criminal" within the meaning of that Article. In so doing, the Court will, as indicated above (see paragraph 28), have regard to the three alternative criteria laid down in *Engel* (see *Engel and Others*, cited above, § 82, and *Jussila*, cited above, §§ 30-31): (a) the classification of the offence under domestic law, (b) the nature of the offence, and (c) the nature and degree of severity of the penalty that the person concerned risks incurring (see *Žaja*, cited above, § 86). The first criterion is of relative weight and serves only as a starting-point. If domestic law classifies an offence as criminal, then this will be decisive. Otherwise the Court will look behind the national classification and examine the offence in the light of the second and/or third criteria. Any other approach would leave the application of this Article to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of the Convention (see, *mutatis mutandis*, *Engel and Others*, cited above, § 81)

30. As to the legal classification of the offence under domestic law, the Court notes that the behaviour for which the fine was imposed on the applicant is formally classified as a minor offence rather than a criminal offence under Croatian law. This follows from the fact that the fine was

imposed on the applicant pursuant to subparagraph 27 of section 92(1) in conjunction with section 4(1) of the Weapons Act (see paragraphs 7 and 12 above) and not on the basis of any provision of the Criminal Code; that such a fine is not entered in a person's criminal record; and that its amount does not depend on income, as in criminal law. However, since the classification of the offence under domestic law is of relative value only, the Court must further examine the offence in question in the light of the second and third criteria mentioned above (see paragraph 29 above).

31. As to the nature of the offence in question, the Court notes that the offence for which the applicant was fined was defined in the Weapons Act (see paragraph 12 above), that is to say in legislation that applied to the whole population and not just to a particular group. What is more, the fine imposed on the applicant was punitive in nature as it was intended to serve as a penalty to deter reoffending. The Court finds these elements sufficient for a conclusion that the minor offence in question was of a criminal character and thus attracted the guarantees of Article 7 of the Convention (see, *mutatis mutandis*, *Nadtochiy*, cited above, §§ 21-22, and *Jussila*, cited above, § 38).

32. This conclusion is further reinforced by the fact that the maximum penalty the applicant risked incurring was sufficiently severe (HRK 15,000 – see section 92(1) of the Weapons Act in paragraph 12 above), it being understood that the actual penalty imposed on the applicant (see paragraph 7 above) is relevant but cannot diminish the importance of what was initially at stake (see, for example, *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 120, ECHR 2003-X).

33. In the light of the foregoing (see paragraphs 29-32 above), the Court finds that Article 7 is applicable to the present case.

**(b) As regards the applicant's victim status and the lack of significant disadvantage**

34. The Court notes that the applicant never, either before the domestic courts or before the Court, contested the fact that he had been carrying a speargun in the luggage compartment of his car when crossing the State border on 14 September 2009 and that he had not declared it to the border police (see paragraphs 5-6, 8, 10 and 23 above). His complaint before the domestic courts and the Court was that spearguns were not considered weapons under the relevant legislation, and that his omission to declare his speargun at the border crossing had not been a minor offence under domestic law (see paragraphs 8, 10 and 12 above). In these circumstances the Court considers that the applicant can claim to be a victim of the violations complained of even though he admitted the facts which, in the view of the domestic courts, were constituent elements of the offence of which they convicted him.

35. The Court further notes that as well as imposing a fine of HRK 1,000 and ordering the applicant to pay HRK 120 in respect of costs, the domestic courts also confiscated the speargun he had failed to declare at the border (see paragraph 7 above). The applicant's pecuniary loss was thus not limited only to the fine and the costs of the proceedings, as the Government suggested (see paragraph 17 above). The applicant estimated the total financial loss resulting from his conviction at around HRK 4,000. The Government in their comments in reply to the applicant's observations did not call that amount into question. Since that amount, according to the Government, corresponded to the applicant's monthly income (see paragraph 19 above), the Court considers that it cannot be said that the applicant did not suffer a significant disadvantage on account of the violation complained of.

36. It follows that the Government's preliminary objections regarding the applicant's victim status and the lack of significant disadvantage must be dismissed.

**(c) Conclusion as regards admissibility**

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

**Merits**

*Submissions by the parties*

**(a) The applicant**

38. The applicant reiterated the arguments he had raised before the domestic authorities to the effect that he had been convicted on account of an act which had not constituted an offence under domestic law (see paragraphs 8 and 10 above). Specifically, he submitted

– that under section 4 of the Weapons Act, spearguns had been expressly excluded from the notion of a weapon as defined in that Act (see paragraph 12 above), and

– that spearguns were not bowstring weapons, as the High Court for Minor Offences had mistakenly held (see paragraph 9 above).

39. As regards the second point, the applicant also reiterated that the fact that spearguns were not bowstring weapons could easily have been established in his case by a mere visual inspection of his speargun, which was evidently rubber-band-powered rather than bowstring-powered (see paragraph 10 above). Yet the domestic courts had not examined his speargun or the photographs of it.

40. The applicant further submitted that under domestic law, an individual who wanted to buy a weapon could not do so without a permit. However, a speargun could be purchased in any fishing-equipment shop without a permit, and even a child could buy one. In his view, that was further proof that spearguns were not weapons as defined in the Weapons Act.

**(b) The Government**

41. The Government submitted that the applicant's complaint was of a "fourth-instance" nature, as he was actually requesting the Court to remedy errors of fact and law allegedly committed by the domestic courts and to substitute their interpretation as to whether spearguns constituted a weapon or not with its own, which would be contrary to the principle of subsidiarity.

42. The Government further submitted that the applicant had been convicted on account of an act which, pursuant to the Weapons Act, constituted a minor offence under domestic law, and that convicting him of that offence could not be seen as arbitrary or unlawful.

43. The Government maintained that the Weapons Act, the text of which had been published in the Official Gazette (see paragraph 12 above), had defined what constituted a weapon, had provided for the obligation to declare weapons to the relevant authorities when crossing the State border, and had provided that the failure to do so constituted a minor offence punishable by a fine. The Act had therefore been accessible to everyone and its provisions foreseeable.

44. Lastly, according to the Government, even if the applicant had been uncertain whether spearguns had constituted weapons within the meaning of the Weapons Act, he should have informed the authorities when crossing the border that he had a speargun in the luggage compartment of his car. Had he done so, the authorities would have informed him that

the speargun was indeed a weapon and that it had to be declared. In that way he would also have complied with his obligation to declare the weapon and no offence would have been committed.

*The Court's assessment*

45. The relevant principles emerging from the Court's case-law under Article 7 of the Convention are summarised in *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, §§ 60-62, 29 May 2020, as well as in *Vasiliauskas* (cited above, §§ 153-55), *Rohlena v. the Czech Republic* ([GC], no. 59552/08, §§ 50-53, ECHR 2015) and *Dragotoniu and Militaru-Pidhorni v. Romania* (nos. 77193/01 and 77196/01, §§ 33-38, 24 May 2007).

46. At the outset the Court finds it important to emphasise that Article 7 is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege* – see, for example, *Vasiliauskas*, cited above, § 154). As a corollary of the principle that only the law can define a crime and prescribe a penalty, the provisions of the criminal law are to be strictly construed (see *Dragotoniu and Militaru-Pidhorni*, cited above, § 40). Article 7 thus also embodies the principle of *lex stricta* according to which the criminal law must not be extensively construed to an accused's detriment to an extent amounting to analogy (see, for example, *Vasiliauskas*, cited above, § 154).

47. In view of the Government's argument that the applicant's complaint is of a fourth-instance nature (see paragraph 41 above), the Court first reiterates that it is not its task to substitute itself for the domestic courts as regards the assessment of the facts and their legal classification, provided that these are based on a reasonable assessment of the evidence. More generally, the Court points out that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is thus confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for example, *Rohlena*, cited above, § 51, and the cases cited therein).

48. However, the Court's powers of review must be greater when the Convention right itself, Article 7 in the present case, requires that there was a legal basis for a conviction and sentence. Article 7 § 1 requires the Court to examine whether there was a contemporaneous legal basis for the applicant's conviction and, in particular, it must satisfy itself that the result reached by the relevant domestic courts was compatible with Article 7 of the Convention. To accord a lesser power of review to the Court would render Article 7 devoid of purpose (ibid., § 52). Accordingly, in such circumstances the Court must have jurisdiction to decide whether the relevant provision of criminal law has been complied with, as its application to an act not covered by that provision would directly result in a conflict with Article 7 of the Convention (see *Žaja*, cited above, § 92).

49. In view of the above-mentioned principles concerning the scope of its supervision (see paragraphs 47-48 above), the Court notes that it is not called upon to rule on the applicant's individual criminal responsibility, that being primarily a matter for assessment by the domestic courts (see, for example, *Navalnyye v. Russia*, no. 101/15, § 58, 17 October 2017).

50. Rather, having regard to the nature of the applicant's complaint under Article 7 of the Convention (see paragraph 13 above), the Court's function is to consider, from the standpoint of Article 7 § 1 of the Convention, whether the applicant's act fell within the definition of the minor offence of which he was convicted and, consequently, whether it was foreseeable that his act could constitute such an offence (ibid., §§ 58 and 62). More specifically, its task is to examine whether, by holding that the applicant's speargun constituted a weapon and convicting him of the minor offence of failing to declare it at the border, the domestic courts unforeseeably construed the relevant provisions of the Weapons Act to his detriment.

51. In this connection the Court finds the following elements to be of decisive importance:

– section 4 of the Weapons Act expressly excluded underwater weapons intended for fishing, including spearguns, from the notion of a weapon as defined in that Act (see paragraph 12 above);

– the Government did not contest that the speargun the applicant had failed to declare when crossing the State border had been found in the luggage compartment of his car together with other beach equipment (see paragraphs 5 and 8 above), which suggests that it was indeed intended for fishing;

– underwater weapons (including spearguns) and bowstring weapons were defined differently in the Weapons Act, in that underwater weapons were defined as implements shooting spears or harpoons by force of a spring, taut rubber-bands or compressed gas, whereas bowstring weapons were defined as bows, crossbows and other devices shooting arrows or other projectiles by force of a taut bowstring (see section 4 and subparagraph 16 of section 5(1) in paragraph 12 above);

– the Government did not contest the applicant's argument that the domestic courts had not examined his speargun or the photographs of it (see paragraph 39 above) in order to establish what propulsion mechanism it used;

– the Government provided no copies of other domestic judgments in which the domestic courts had considered spearguns to constitute weapons within the meaning of the Weapons Act or any similar legislation (see, *mutatis mutandis*, *Dragotoniu and Militaru-Pidhorni*, cited above, § 43, and *Parmak and Bakır v. Turkey*, nos. 22429/07 and 25195/07, § 66, 3 December 2019); and

– the applicant's argument (see paragraph 40 above) that spearguns did not require a permit, which would normally be required for weapons under the Weapons Act, was not even addressed, less still contested, by the Government.

52. These elements are sufficient to enable the Court to conclude that the domestic courts *contra legem* and thus unforeseeably construed the relevant provisions of the Weapons Act to the applicant's detriment (compare, *mutatis mutandis*, *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 42, ECHR 1999-IV).

53. As regards the Government's argument that if the applicant had been in doubt as to whether spearguns were considered weapons under domestic law, he should have informed the authorities at the border and thus prevented the commission of the minor offence (see paragraph 44 above), the Court reiterates that no person should be forced to speculate, at peril of conviction, whether his or her conduct is prohibited or not, or to be exposed to unduly broad discretion of the authorities (see *Žaja*, cited above, § 105).

54. There has accordingly been a violation of Article 7 of the Convention.

ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION

55. The applicant also complained, under Article 13 of the Convention, that he had not had an effective domestic remedy in respect of his Convention complaints.

56. The Court, being master of the characterisation to be given in law to the facts of the case (see paragraph 14 above), and having regard to its case-law (see, for example, *Gurepka v. Ukraine*, no. 61406/00, § 51, 6 September 2005), considers that this complaint falls to be examined under Article 2 of Protocol No. 7 to the Convention, which reads as follows:

"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."

57. The Government submitted that an appeal and a constitutional complaint had been available to the applicant to challenge his conviction for the minor offence in question. He had availed himself of those remedies (see paragraphs 8 and 10 above). The High Court for Minor Offences had decided his appeal on the merits and the Constitutional Court had decided on the merits of his constitutional complaint (see paragraphs 9 and 11 above). The fact that those remedies had not resulted in a favourable outcome for the applicant did not mean that they had been ineffective.

58. The applicant submitted that the remedies in question had been ineffective because they had not remedied the violations complained of.

59. The Court notes that the applicant had at his disposal an appeal against the first-instance judgment finding him guilty of the minor offence in question, and that he did appeal against that judgment (see paragraph 8 above). The High Court for Minor Offences examined his appeal on the merits and dismissed it (see paragraph 9 above). The applicant thus had his conviction and sentence reviewed by a higher tribunal, as required by Article 2 of Protocol No. 7. The fact that the outcome of the appellate proceedings was not in the applicant's favour cannot be seen as a breach of that Article. Additionally, the Court observes that the High Court for Minor Offences' judgment was subject to further review by the Constitutional Court (see paragraphs 9-11 above), which reinforced the applicant's right to a judicial review of the judgment.

60. It follows that the remainder of the application is inadmissible under Article 35 § 3 (a) of the Convention as being manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

**Damage**

62. The applicant claimed 3,920 Croatian kunas (HRK) in respect of pecuniary damage, corresponding to the fine and the costs of the proceedings he had been ordered to pay and to the value of the confiscated speargun (see paragraphs 7 and 24 above). He also claimed 9,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government contested the claim in respect of pecuniary damage as unsubstantiated and the claim in respect of non-pecuniary damage as excessive.

64. The Court has found that the applicant's conviction for the minor offence in question was in breach of Article 7 of the Convention (see paragraphs 52 and 54 above). Therefore, there is a sufficient causal link between the alleged pecuniary damage and the violation found. The Court therefore accepts the applicant's claim in respect of pecuniary damage and awards him EUR 520 under this head – equivalent to the sum sought by the applicant – plus any tax that may be chargeable on that amount.

65. The Court also considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,500 under that head, plus any tax that may be chargeable on that amount.

**Costs and expenses**

66. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

67. The Government contested the claim as unsubstantiated, as the applicant had not submitted itemised particulars of his claim or any supporting documents.

68. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,660 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

**Default interest**

69. 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,

*Declares* the complaint under Article 7 of the Convention admissible and the remainder of the application inadmissible;

*Holds* that there has been a violation of Article 7 of the Convention;

*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, the following amounts to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 520 (five hundred and twenty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,660 (one thousand six hundred and sixty 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Renata Degener Krzysztof Wojtyczek
Deputy RegistrarPresident