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La CEDU su multe ad avvocati islandesi per oltraggio alla Corte e 'criteri Engel'
(CEDU, Grande Camera, sent. 22 dicembre 2020, ric. n. 68273/14 e 68271/14)

La Corte Edu si pronuncia sul caso di due cittadini islandesi, nominati, nel marzo 2012, avvocati difensori di due imputati in un processo penale. Nell'aprile 2013 i due avvocati chiedevano la revoca della loro nomina, sostenendo, tra l'altro, di non essere stati informati in tempo utile del termine per presentare le loro memorie alla Corte, di non aver ricevuto copia delle memorie predisposte dall'accusa e di non aver avuto adeguato accesso a documenti importanti.
Lo stesso giorno, il tribunale distrettuale rifiutava di revocare tali nomine, in quanto il procedimento avrebbe subìto un inevitabile ritardo. In risposta, i ricorrenti informavano la corte che non avrebbero partecipato all'udienza prevista per l'11 aprile 2013. Il giorno dell'udienza gli imputati intervenivano con altri avvocati ed il processo veniva rinviato a data da destinarsi. L'accusa, sostenendo che la rinuncia al mandato dei ricorrenti fosse finalizzata proprio a ritardare il procedimento, aveva chiesto per loro una sanzione per oltraggio alla corte.
Nel dicembre 2013, quando è stata emessa la sentenza del tribunale distrettuale contro i loro ex clienti, i ricorrenti sono stati condannati, in contumacia, a pagare una multa di circa 6.200 euro ciascuno, per oltraggio alla corte e per aver causato un indebito ritardo nel procedimento. I ricorrenti, tuttavia, non erano mai stati convocati, né informati che il tribunale distrettuale stava valutando di irrogare loro una sanzione. Nel maggio 2014 la Corte Suprema ha confermato la sentenza del tribunale distrettuale in merito alle multe inflitte ai ricorrenti, ritenendo, tra l'altro, che il loro comportamento non fosse stato conforme alla legge, né all'interesse dei loro clienti, né a quello degli altri imputati. La Corte Suprema ha ritenuto che, rifiutandosi di difendere i propri clienti, i ricorrenti avessero commesso una grave violazione degli obblighi imposti loro dal *Criminal Procedure Act*. Di qui la scelta di adire la Corte Edu, denunciando la violazione dell'art. 6 §§ 1 e 3 (diritto a un equo processo) della Convenzione europea dei diritti dell'uomo, per essere stati processati e condannati in contumacia dal tribunale distrettuale di Reykjavík, in un contesto di violazioni procedurali cui nemmeno la Corte Suprema aveva posto rimedio. Sotto altro profilo, i ricorrenti hanno lamentato la violazione dell'art. 7 § 1 (nessuna punizione senza legge), affermando di essere stati ritenuti colpevoli di un fatto che non costituiva reato ai sensi del diritto nazionale e che la sanzione loro inflitta non era prevedibile. I ricorsi sono stati presentati alla Corte europea dei diritti dell'uomo il 16 ottobre 2014. Nella sentenza del 30 ottobre 2018, la Corte (sezione II), ha escluso, all'unanimità, la sussistenza delle violazioni denunciate. Il 25 gennaio 2019 i ricorrenti hanno chiesto il rinvio del caso alla Grande Camera ai sensi dell'art. 43 (deferimento alla Grande Camera), richiesta accettata il 6 maggio 2019. Con la sentenza in oggetto, la Grande Camera ha deciso il caso
Sul primo profilo, la violazione dell'art. 6 (diritto a un processo equo), la Corte ha ritenuto che fosse necessario esaminare se il procedimento in questione riguardasse una "accusa penale" contro i

ricorrenti, ai sensi dell'art. 6 della Convenzione o meno. A questo proposito, ha ribadito di dover prendere in considerazione a tal fine tre criteri, comunemente noti come "criteri Engel" (*Engel and Others v. the Netherlands*, 8 giugno 1976, § 82): 1) qualificazione giuridica del reato ai sensi del diritto nazionale; 2) natura del reato; 3) natura e grado di severità della sanzione.

In ordine al primo criterio, la Corte riconosce il riferimento normativo nel Capitolo XXXV, intitolato "Sanzioni procedurali", del *Criminal Procedure Act*. In particolare, la sezione 222 § 1 prevede che lo speciale procedimento, attivabile per oltraggi alla corte, non richieda il coinvolgimento del pubblico ministero: è stato il tribunale adìto in causa che ha inflitto d'ufficio la sanzione. Di conseguenza, la Corte ha ritenuto che non fosse dimostrato che la condotta in questione fosse classificata come "reato penale" dal diritto interno.

In relazione al secondo criterio (natura del reato), i Giudici di Strasburgo osservano che i ricorrenti sono stati accusati di "causare intenzionalmente un indebito ritardo di un caso" e di "offendere la dignità del tribunale con la loro condotta in udienza". La multa inflitta era stata prevista dalla sezione 223 (1), una disposizione che riguardava una specifica categoria di persone in possesso di uno *status* particolare, vale a dire quello di "Procuratore dello Stato, difensore o consulente legale". La Corte ha ribadito che lo *status* specifico degli avvocati, in quanto intermediari tra il pubblico ed i tribunali, ha dato loro una posizione centrale nell'amministrazione della giustizia: i primi per avere fiducia nell'amministrazione della giustizia, devono anche avere fiducia nella capacità degli esercenti la professione legale di fornire una rappresentanza efficace. Ha anche ribadito che norme che consentono a un tribunale di sanzionare la condotta disordinata nei procedimenti dinanzi ad esso, sono presenti in tutti gli ordinamenti giuridici degli Stati contraenti. Le misure disposte dai tribunali in base a tali norme sono volte a garantire il corretto e ordinato funzionamento dei propri procedimenti e, quindi, più simili all'esercizio dei poteri disciplinari, che all'imposizione di una pena per la commissione di un reato.

Infine, in ordine al terzo criterio (natura e grado di severità della sanzione), la Corte ha dovuto interpretare la portata della nozione di "Crimine" nel senso autonomo dell'art. 6 della Convenzione. Nel caso di specie, ha osservato, in primo luogo, che il tipo di comportamento scorretto per il quale i ricorrenti erano stati ritenuti responsabili non poteva essere sanzionato con la reclusione; che le sanzioni in questione non potrebbero essere convertite in privazione della libertà in caso di mancato pagamento; che non sono state registrate nei casellari giudiziari dei ricorrenti. In secondo luogo, ha ritenuto che, sebbene elevata, l'entità delle multe inflitte ai ricorrenti non fosse sufficiente a configurare la sanzione come "criminale" nel significato autonomo dell'art. 6 della Convenzione.

In conclusione, la Corte ha ritenuto che il procedimento in questione non avesse riguardato una "accusa penale" ai sensi dell'art. 6 della Convenzione, disposizione che non trova applicazione ai procedimenti che non afferiscono alla sfera penale. Questa parte della domanda è stata, pertanto, considerata incompatibile *ratione materiae* con le disposizioni della Convenzione ed inammissibile ai sensi dell'art.35 §§ 3 (a) e 4. Analogamente è stato statuito anche in relazione alle allegate violazioni dell'art. 7 (nessuna punizione senza legge).

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

GRAND CHAMBER

CASE OF GESTUR JÓNSSON AND RAGNAR HALLDÓR HALL v. ICELAND

(*Applications nos. 68273/14 and 68271/14*)

JUDGMENT

STRASBOURG

22 December 2020

This judgment is final but it may be subject to editorial revision.

In the case of Gestur Jónsson and Ragnar Halldór Hall v. Iceland,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Ksenija Turković, *President*,
Robert Spano,
Linos-Alexandre Sicilianos,
Angelika Nußberger,
Síofra O'Leary,
Yonko Grozev,
Georgios A. Serghides,
Branko Lubarda,
Georges Ravarani,
Pere Pastor Vilanova,
Alena Poláčková,
Latif Hüseynov,
Jolien Schukking,
Lado Chanturia,
Gilberto Felici,
Darian Pavli,
Raffaele Sabato, *judges*,
and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 9 October 2019, 15 June and 22 October 2020,

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

PROCEDURE

1. The case originated in two applications (nos. 68273/14 and 68271/14) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human

Rights and Fundamental Freedoms ("the Convention") by two Icelandic nationals, Mr Gestur Jónsson and Mr Ragnar Halldór Hall ("the applicants"), on 16 October 2014.

2. The applicants were represented by Mr Geir Gestsson, a lawyer practising in Reykjavik. The Icelandic Government ("the Government") were represented by their Agent, Ms Ragnhildur Hjaltadóttir, Permanent Secretary of the Minister of the Interior.

3. The applicants complained about having been tried in absentia for contempt of court by a first-instance court and alleged that the Supreme Court, acting as an appellate court, had not remedied the procedural violations deriving from it. They also complained of having been found guilty of an offence which did not constitute a criminal offence under national law and that the punishment imposed on them had not been foreseeable.

4. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 2 and 3 March 2016 respectively the President of the First Section decided to give notice of the applicants' complaints to the Government. Subsequently, the applications were allocated to the Second Section of the Court. On 30 October 2018 a Chamber of that Section, composed of Julia Laffranque, Robert Spano, Işıl Karakaş, Paul Lemmens, Jon Fridrik Kjølbro, Stéphanie Mourou-Vikström, Ivana Jelić, judges, and Stanley Naismith, Section Registrar, gave judgment. The Chamber unanimously joined the applications, found that there had been no violation of Articles 6 and 7 of the Convention and that the complaint raised by the applicants under Article 2 of Protocol No. 7 to the Convention was inadmissible.

5. On 25 January 2019 the applicants requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 6 May 2019 the panel of the Grand Chamber granted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicants and the Government each filed observations on the admissibility and merits of the case.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 October 2019.
There appeared before the Court:

(a) for the Government
MrE.K. Hallvarðsson,Agent,
MsF.R. Þorsteinsdóttir,
MsG.S. Arnardóttir,
MsM. Thejll,Deputy Agents;
(b) for the applicants
MrG. Gestsson,Counsel,
MsV.E. Guðmundsdóttir,Adviser.

The Court heard addresses by Mr G. Gestsson and Ms F.R. Þorsteinsdóttir and their replies to questions put by the judges.

THE FACTS

9. The applicants were born in 1950 and 1948 respectively. They live in Reykjavik. Both applicants are lawyers practising in Reykjavik.

10. On 16 February 2012 Y and Z were indicted, along with two other individuals, for participating in fraud and market manipulation. On 7 March 2012, in accordance with Article 31 of the Criminal Procedure Act no. 88/2008 (hereinafter "the CPA"), the first and second applicants were respectively appointed as Y's and Z's defence counsel.

11. The background to the criminal procedure instituted against Y and Z, set out in the judgment Sigurður Einarsson and Others v. Iceland (no. 39757/15, §§ 7 et seq., 4 June 2019), was the acute 2008 global financial crisis which affected the Icelandic financial sector, resulting, among other consequences, in the collapse of Iceland's largest banks.

12. On 7 March 2012 the prosecution's bill of indictment against, inter alios, Y and Z was filed with the District Court of Reykjavik. At a preliminary hearing the defendants pleaded not guilty to the charges against them. From March to December 2012 the prosecutor and the applicants, together with the other defence counsel in the proceedings, repeatedly submitted arguments in further preliminary hearings with regard to various issues, such as the evidence submitted by the prosecution, the deadline for the defence to file pleadings and the defence's request to dismiss the case. The Supreme Court issued three rulings on procedural matters in the case.

13. On 19 December 2012, having consulted the prosecution, the applicants and the other defence counsel, the District Court judge decided that the trial would take place from 11 to 23 April 2013. The second applicant replied to the judge's email on the same date, stating that, although it was reasonable to schedule dates for the trial, the case would not be ready for trial on those proposed dates because the prosecution had not submitted evidence requested from it or issued a witness list. Shortly afterwards the judge replied with the message "Merry Christmas!".

14. At preliminary hearings on 24 January and 7 March 2013 the prosecution submitted further evidence. During the second of these hearings, the applicants and the other defence counsel requested more time to study the evidence and asked that the trial be postponed, on the grounds, inter alia, that the submission of evidence had not been completed. By a decision of the same date the District Court rejected the request.

15. At a preliminary hearing on 21 March 2013, the prosecution and one defence counsel submitted further evidence. The applicants and the other defence counsel requested that the prosecution provide them with certain documentary evidence. At a preliminary hearing on 25 March 2013 the applicants and the other defence counsel again requested that the trial be postponed for 6-8 weeks, to allow them to study the new evidence presented by the prosecution. By decisions of 26 March 2013, the District Court rejected both requests. By a decision of 4 April 2013, the Supreme Court dismissed an appeal against these decisions.

16. On 8 April 2013 each applicant wrote a letter to the District Court judge in the case, arguing that, for reasons of conscience, they were unable to continue to perform their duties as defence counsel for their clients. The applicants stated, inter alia, that they had not been informed about the deadline to submit their pleadings to the Supreme Court before its ruling of 4 April 2013; that the prosecution had neglected to send them a copy of its pleadings; that the defence had not had adequate access to

important documents; that the prosecution had tapped telephone conversations between them and their clients; and that in general the entire procedure had violated their applicants' rights under the Constitution, the CPA and the Convention. Lastly, the applicants stated that their clients' rights had been so grossly violated that they were obliged to withdraw from further participation in the case. They noted that they had discussed the matter with their clients and made it clear that the latter approved their decision. The applicants requested that their appointment as defence counsel for their clients be revoked, in accordance with section 21(6) of the Attorneys' Act no. 77/1998.

17. On the same date the District Court judge replied to the applicants' letters, refusing their requests. The judge referred to Article 34 of the CPA and to section 20(1) of the Attorneys' Act (see paragraphs 37-38 below), noting that the applicants had accepted their appointment and that this acceptance could not be withdrawn if there was a risk that the proceedings would be delayed in consequence, which was the case in the instant situation. The judge therefore decided that the trial would start on 11 April 2013 as previously decided on 19 December 2012. The applicants replied to this letter on the same date, referred to their previous arguments and stated that they would not attend the trial on 11 April 2013. It appears from the record of the hearing of 11 April 2013 that, in this last reply, the first applicant stated that he could not be forced to carry out his defence duties against his will and conscience and that therefore he reiterated his previous statement concerning his decision to cease serving as defence counsel for his client. The second applicant stated that he deemed the judge's refusal to release him from his duties to be unlawful and that he considered himself free from his defence duties in the case.

18. On 11 April 2013 Y and Z attended the scheduled hearing, accompanied by new defence counsel. It was ascertained that the applicants were not in attendance and the content of the applicants' first and second communications of 8 April 2013 was noted. According to the record, it was then clear to the court that the only option was to release the defence lawyers from their duties, despite the presiding judge's refusal to allow them to withdraw. New defence counsel were then appointed for Y and Z and the trial was postponed for an unspecified period. The prosecutor noted that it was clear that the applicants' sole purpose in resigning from the case had been to delay the proceedings and expressed the opinion that, through this conduct, the defence was in breach of their statutory duties. He therefore requested that the applicants be fined for contempt of court.

19. In their appeal before the Supreme Court, as well as before this Court, the applicants submitted that, according to news reports, the presiding judge at this stage explicitly rejected the State Prosecutor's request, stating that the conditions for imposing fines were not met. However, the Government stated that the court record did not indicate whether the presiding judge had taken a position on this point.

20. A trial was held before the District Court from 4 to 14 November 2013. In the meantime, the presiding judge had withdrawn from the case and a new judge had been appointed.

21. By a judgment of 12 December 2013, Y and Z, along with the other two accused, were convicted. The fees awarded to the defence counsel of all the accused amounted to 88,831,252 Icelandic krónur (ISK; approximately 559,000 euros [EUR] at the relevant time). In particular, ISK 10,855,750 (approximately EUR 68,300) were awarded to the first applicant. He was also awarded ISK 90,202 (approximately EUR 570) for the expenses incurred jointly with the second defence counsel. The

District Court awarded the second defence counsel ISK 5,898,500 (approximately EUR 37,000) for his fees.

Furthermore, without having heard the applicants, the District Court imposed a fine of ISK 1,000,000 (approximately EUR 6,200) on each of them under section 223(1) (a) of the CPA, for intentionally causing undue delay in the case, and (d), for being in contempt of court through their conduct. The District Court stated that it found it unavoidable to impose these fines on the applicants for the following reasons. It noted, in particular, that the applicants had been granted ample time to prepare the accused's' defence in a satisfactory manner in the period before the date of the scheduled main hearing, namely 11 April 2013, although further submissions were made in the intervening period. The applicants' decision not to attend the trial on 11 April 2013 had caused unnecessary delay in the case and thus damaged the interests of their clients and the other defendants. In addition, given that the judge had denied their request to be released from their defence duties, the defence lawyers' conduct in failing to appear at the main hearing was such as to constitute contempt of court.

22. On 13 December 2013 the applicants appealed to the Supreme Court as regards the imposition of fines, by way of an appeal lodged by the State Prosecutor at their request. Before the Supreme Court, the applicants primarily requested that the District Court judgment be annulled with regard to the imposition of the fines and, as a subsidiary request, were the Supreme Court to reject the request for annulment, that the fines be reduced.

23. In their submissions to the Supreme Court the applicants claimed, firstly, that they had been penalised without having been given an opportunity to defend themselves against the prosecution's claims or made aware of the court's intention to fine them. This had been a violation of their right to a fair trial under Article 6 §§ 1 to 3 of the Convention and Article 70 of the Constitution. Secondly, the applicants maintained that they had had valid reasons for resigning from the case and that the legal conditions for fining them had not been met.

24. As regards their first claim, the applicants argued that they had at no point been informed that the court was considering imposing fines on them and they had not been invited to defend themselves before the District Court, which was a fundamental part of the right to a fair trial.

25. Concerning the second complaint, the applicants argued, inter alia, that imposing fines on them as defence counsel had not been in accordance with the CPA, in that they had no longer been defence counsel when the District Court judgment was delivered. They argued that, under section 224 of the CPA, they should have been fined immediately as "others". Furthermore, the applicants maintained that the conduct they were criticised for had not occurred during the proceedings, as required by the CPA. In any event, their behaviour could not be considered as contempt of court, given that they had not attended any hearings with the judges who imposed the fines and decided on the merits of the case. The applicants further stated that their actions had been in their clients' interests, and their clients had approved their decisions.

26. The applicants submitted documentary evidence with their submissions to the Supreme Court, including emails and written correspondence between the applicants (and other defence counsel) and the prosecution and the District Court, a letter from the first applicant and another defence counsel to the State Prosecutor concerning access to documents in the main proceedings and the latter's reply, and a news article entitled "Mistake to reject a request of extension" which claimed that the State Prosecutor's proposal to fine the applicants had been rejected by the judge at the

hearing of 11 April 2013. They did not ask to examine witnesses or to give statements in person before the Supreme Court.

27. In his brief of 26 March 2014, the State Prosecutor endorsed the District Court's decision to fine the applicants and underlined that, under section 34 of the CPA, a defence counsel's request to withdraw from a case was to be granted unless there was a risk that the case would be delayed as a consequence, which was the situation in the applicants' case. Moreover, the fact of simply failing to show up at the hearing, notwithstanding the judge's denial of the applicants' request to withdraw and thus snubbing him, clearly involved contempt of court. The State Prosecutor also observed that the applicants had been acting as defence counsel for their clients since the investigation stage of the main proceedings in 2009. The indictment in this case was issued on 16 February 2012 and the case was then filed with the court on 7 March 2012. Fourteen court hearings had taken place by the time the applicants submitted their resignation letter of 8 April 2013, more than one year after the case had been filed. In these circumstances, the State Prosecutor agreed with the District Court that the applicants had had ample opportunity to prepare the defence adequately, despite the fact that, in the interim, further evidence had been presented.

28. The Supreme Court held an oral hearing. No witnesses were heard and the applicants did not give statements before the court.

29. The applicants were represented by two separate defence counsel before the Supreme Court. However, the applicants claimed before this Court that, in view of the limited time available to present the appeal before the Supreme Court, each defence counsel had given arguments on behalf of both applicants.

30. According to the second applicant's summary of the oral pleadings before the Supreme Court, the applicants argued, inter alia, that a decision to impose court fines was an ex proprio motu decision of the relevant court, without the parties' involvement, and could therefore not be quashed and referred back to the first-instance court. Referring the case back to the District Court for a new trial on the grounds of a violation of the CPA and of Article 6 of the Convention could never be legitimate at this stage, as the time-limits for imposing fines had expired. Furthermore, under sections 223 and 224 of the CPA the applicants could only be fined as "defence counsel" in a substantive judgment in the criminal case against their clients, or as "others" during the main trial in the criminal case against their clients. Lastly, the applicants argued that the amount of the fine was ten times higher than the fines imposed in previous cases and that no maximum amount for fines was stipulated in the CPA. Furthermore, the applicants referred to the principle of legality in criminal law (Article 69 of the Constitution) and to the principle of lex certa.

31. By a judgment of 28 May 2014, by a majority of three to two, the Supreme Court confirmed the District Court judgment as regards the fines imposed on the applicants.

32. In its judgment the Supreme Court described the facts in detail. It referred to the obligation incumbent on lawyers under section 20 of the Attorneys' Act to accept an appointment or nomination as defence counsel in criminal proceedings if they fulfilled the statutory requirements. Furthermore, the Supreme Court held that the applicants could not withdraw as defence counsel in a criminal case by referring to section 21(6) of the Attorneys' Act, since that provision applied only to civil cases. Their decision not to attend the trial in spite of the District Court having refused their request to be relieved of their duties as defence counsel had not been in accordance with the law or

in the interest of their clients or the other defendants. Furthermore, their statements in resigning from their positions as defence counsel had been a gross violation of their obligations as defence counsel under section 34(1) and 35(1) of the CPA. The applicants had completely disregarded legitimate decisions taken by the District Court judge, who had had no other option than to revoke their appointment as defence counsel and to appoint others to secure legal representation for the accused.

33. Furthermore, the judgment contained the following reasons:

"Part V

...

The professional duties of a judge include the tasks of appointing defence lawyers, determining whether they should be released from their duties and ensuring that the procedure followed in a case is correct.... The defendants ignored the judge's refusal to release them from their defence duties and did not appear in court on 11 April 2013 when the main hearing was to take place, even though they were still the appointed defence lawyers in the case. This Court agrees with the District Court that the law does not authorise the defendants to behave in this way. Instead, they should have appeared in court and, as appropriate, raised their objections to the procedure in court. The defendants' conduct in this respect was neither in the interests of their clients nor of the other accused. Furthermore, the defendants' statements in the above-mentioned letters of 8 April 2013 to the effect that they were no longer the defence counsel in this case represented a severe failure to discharge their professional duties in their capacity as defence lawyers in a criminal case.... The defendants totally ignored the lawful decisions taken by the judge, leaving him with no option but to release them from their defence duties and to appoint others in their place. This caused a major delay in the case.

Part VI

(1)[1] Chapter XXXV of Act no. 88/2008 contains a provision on fines for contempt of court. The first item of section 222(1) states that a judge, acting on his or her own motion, decides on fines, which are payable to the National Treasury, in accordance with the rules of this Chapter. The second item of the same paragraph states that special proceedings may be launched with regard to offences that are subject to the fines referred to in this Chapter.

(2) Under section 223 of Chapter XXXV a fine may be determined against the prosecutor, the defendant or the legal counsel for the conduct as stated in letters (a) to (d) of the said provision. The actions of intentionally causing undue delay in a case (letter (a)) and otherwise offending the dignity of the court during a hearing (letter (d)) fall under this provision. Paragraph 2 of the said section provides for the possibility of fining the defendant, or other persons testifying before the court, for contempt of court. Paragraph 3 of the same section provides for the possibility of fining persons other than those mentioned in the first two paragraphs, for breaching a ban imposed by the judge with regard to the arrangements for a court hearing, as referred to in section 11(1) and (2) of Act no. 88/2008, for disregarding a judge's order to maintain order during a court hearing, or for otherwise behaving in an inappropriate or indecent manner. Furthermore, section 223(4) states that if a judge deems that paragraphs 1 to 3 have been breached in a minor manner, the judge may decide to reprimand the offender rather than to impose a fine. Section 224(1) states that where a judgment is

delivered in such a case, a fine against the prosecutor, the defendant, the defence counsel or the legal advisor may be imposed therein. If the case is concluded in a different manner, fines against those parties are to be imposed in a ruling. Paragraph 2 of the same section concludes by stating that fines imposed on other parties than those named in the first paragraph of the said section are to be imposed by means of a ruling as soon as the offence occurs.

(3) The amount of a fine for contempt of court, which is determined in accordance with Chapter XXXV of Act no. 88/2008, is not subject to any particular ceiling. The fines which were imposed on the defendants were high. Having regard to both of these factors, it must be deemed that the fines are by nature a penalty, as agreed by the parties during the proceedings before the Supreme Court.

(4) As previously stated, the second sentence of section 222(1) permits the prosecution to instigate proceedings for those offences which are subject to fines pursuant to this Chapter. Pursuant to the general rules, the defendants in question must then be provided with an opportunity to defend themselves. No such opportunity was provided here. On the other hand, as previously stated, it was also possible for the judge in the relevant criminal case to determine fines in accordance with the first sentence [of section 222(1)]. In those circumstances no special claim on behalf of the prosecution was required. There are no grounds to hold that [the applicants] should have enjoyed lesser protection under the law, depending on which of the above-mentioned options were chosen when assessing whether they should be subject to the imposition of fines, which amounted to penalties, cf. Article 70 of the Icelandic Constitution and Article 6 (1) and (3) [of the Convention]...

(5) When it became clear that [the applicants] would not fulfil their duty by attending the trial and the court was considering the imposition of fines, they should have been summoned to a special hearing and given an opportunity to present their case and submit further relevant arguments beyond what had already been clearly raised in their correspondence with the District Court. However, this was not done. Instead [the applicants] were relieved of their duties at the hearing on 11 April 2013 and a decision to impose fines on them was taken in the judgment delivered on 12 December 2013.

(6) As stated in Part V of the judgment the prosecutor lodged an appeal regarding this part of the case. That was done at the request of [the applicants] who, in accordance with the law, were entitled to have the fines imposed by the District Court reviewed by a higher court following an oral hearing. [The applicants'] right to defend themselves on appeal has not therefore been subject to any limitation by law and they were given the opportunity to raise any views in the oral hearing of the case and, as appropriate, to submit statements in person and to present witnesses, cf. section 205(3) [of the CPA], or to instigate special witness proceedings, cf. section 141(1) of the same Act. In the light of these considerations, the applicants' rights have not been impaired by the District Court's failure to hold an oral hearing before deciding to impose the fines. Accordingly, the procedure in question was in accordance with the law and did not violate their rights to a fair trial under Article70 (1) of the Icelandic Constitution and Article 6 (1) and (3) [of the Convention]... For reference, see the judgments [of the European Court of Human Rights] in the case of Weber v. Switzerland, of 22 May 1990, and in the case of T. v. Austria, of 14 November 2000. Accordingly, with reference to the reasoning of the appealed judgment, the decision as to the fines imposed [on the applicants] must be upheld.

..."

34. The minority shared the majority's opinion that the applicants' conduct in failing to attend the trial in the criminal case against their clients had not been in accordance with the law and had been a breach of their duty as defence counsel. The minority also agreed that their conduct had caused a delay in the proceedings and that the imposed fines had constituted criminal punishment. However, the minority further held as follows:

"When it became clear that [the applicants] would not attend the hearing, a hearing should have been convened immediately, in line with the provisions of [Chapter XXXV of the CPA], and [the applicants] given notice of the charges and an opportunity to object to the decision to impose the fines. However, that was not done. Instead [the applicants] were relieved of their duties at the trial on 11 April 2013 and new defence counsel were appointed in their stead. However, the decision to impose fines on [the applicants] was taken in the judgment of 12 December 2013 although they were no longer defence counsel, without notifying them of those intentions and without allowing them to defend themselves, both as regards the decision to impose the fines and the amount.
In view of the above-mentioned considerations, the handling of the case before the District Court was flawed, but no legal provision allows this part of the criminal case to be referred back to the District Court for a fresh hearing. In the light of these circumstances ..., the appealed provision of the District Court's judgment with regard to the ... fines should be annulled."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

i. DOMESTIC LAW MATERIAL

A. The Icelandic Constitution

35. The relevant provisions of the Icelandic Constitution (Stjórnarskrá lýðveldisins Íslands) read as follows:

Article 69

"No one shall be subjected to punishment unless found guilty of conduct that constituted a criminal offence according to the law at the time when it was committed, or is totally analogous to such conduct. The sanctions shall not be more severe than the law permitted at the time of commission."

Article 70

"(1) Everyone shall, for the determination of his rights and obligations or in the event of a criminal charge against him, be entitled, following a fair trial and within a reasonable time, to the resolution of an independent and impartial court of law. A hearing by a court of law shall take place in public, except if the judge decides otherwise as provided for by law in the interest of morals, public order, the security of the State or the interests of the parties.
(2) Everyone charged with criminal conduct shall be presumed innocent until proven guilty."

B. The General Penal Code

36. The relevant Articles of the General Penal Code no. 19/1940, as applicable at the time of the facts of the case, read as follows:

Article 51

"(1) When the amount of a fine is decided, regard shall be given, insofar as appropriate, to the income and assets of the defendant, their financial standing, their obligations towards dependents and other factors affecting their ability to pay, as well as to the financial gain or saving which resulted from, or was intended to result from, the offence.
(2) A decision on the conversion of a fine into a term of imprisonment ... shall be unaffected by the fiscal capacity of the defendant under paragraph 1."

Article 70

"(1) When a punishment is imposed, the following should primarily be taken into account:

1. The importance of the interests against which the offence was perpetrated.
2. The scope of the damage inflicted.
3. The danger which the offence created, especially when considering when, where and how it was perpetrated.
4. The age of the perpetrator.
5. The perpetrator's recent behaviour.
6. The strength of the perpetrator's intent.
7. The purpose of the offence.
8. The perpetrator's behaviour after the perpetration of the offence.
9. Whether the perpetrator has divulged information which has been of substantial assistance in investigating the offence, the involvement of other persons in the offence or other offences.

(2) If the offence has been committed in collaboration [with others], the punishment shall, as a general rule, be increased.
(3) If the offence has been perpetrated against a man, woman or child close to the perpetrator, and their relationship has increased the seriousness of the offence, the punishment shall, as a general rule, be increased."

C. The Criminal Procedure Act no. 88/2008 (Lög um meðferð sakamála)

37. The relevant provisions of the CPA, as in force at the material time, read as follows:

Section 31

"...
(2) Moreover, defence counsel for the defendant must be appointed if there is a main hearing in the case pursuant to Chapter XXV, unless the defendant has chosen defence counsel pursuant to

section 32 and does not wish to have counsel appointed, or if the defendant wishes to represent him/herself, cf. section 29.
(3) The judge may appoint defence counsel for the defendant even if the defendant has not requested such, if the judge deems the defendant to be unable to safeguard his/her interests sufficiently during court proceedings.
..."

Section 34

"(1) If a defendant requests that the appointment or designation of defence counsel be withdrawn and new defence counsel be appointed or designated, said request shall be granted unless there is a risk of the case being delayed as a consequence.
..."

Section 35

"(1) The role of the defence counsel is to set forth any elements in the case that may be grounds for acquittal or to the advantage of the defendant, and to safeguard the interests of the defendant in all respects.
..."

Section 140

"(1) When documents are collected before an Icelandic court, pursuant to the instructions in this Chapter, the provisions of Chapter II and Chapters XVIII-XX shall apply as appropriate. A judge presiding over document collection shall decide and rule on matters concerning such collection.
(2) If circumstances so warrant while documents are being collected before another court, a party can request that additional documents be collected there than had originally been requested. The judge in question shall decide whether such a request is granted."

Section 141

"(1) The provision of section 140 shall be applied, as appropriate, when evidence is gathered before the District Court in connection with court proceedings before the Supreme Court.
..."

Section 171

"...
(2) The stage in the processing of the case at which statements, objections and evidence are presented makes no difference."

Section 196

"(1) With the limits arising from other provisions of this Act, an appeal against a District Court judgment lies to the Supreme Court in order to obtain:
a. a re-examination of the determination of penalties;
b. a re-examination of conclusions based on the interpretation or application of rules of law;
c. a re-examination of conclusions based on the evaluation of the evidentiary value of documentation other than oral statements before the District Court;
d. quashing of the judgment and remittal of the case;
e. dismissal of the case [initially] brought before the District Court.
(2) When a judgment is appealed against, a re-examination may also be sought of rulings and decisions made during court proceedings before the District Court.
(3) If a District Court judgment is appealed against for any of the reasons listed in the first paragraph of this section, revision of the court's conclusions regarding a claim pursuant to Chapter XXVI may also be sought, provided that it has been materially resolved and the defendant or claimant has requested a re-examination. If a District Court judgment is not appealed against pursuant to the above, the defendant and the claimant may both appeal against the court's adjudication on the merits of the claim pursuant to the rules on appeals of judgments in civil proceedings."

Section 204

"(1) The Supreme Court can pronounce a judgment dismissing a case from the Court due to flaws in [the case's] presentation to the Court, without a hearing having previously taken place. Similarly, the Supreme Court may quash a District Court's judgment if there are material flaws in the procedure before the District Court ...
..."

Section 205

"...
(3) The Supreme Court can decide that oral presentation of evidence should be submitted as deemed necessary by the Court if there is reason to believe, in the light of the circumstances, that said presentation of evidence could have an effect on the outcome of the case."

Section 208

"...
(2) The Supreme Court cannot re-evaluate a District Court's conclusion on the evidentiary value of an oral testimony, unless the witnesses in question or the defendant have given oral statements before the Supreme Court.
(3) Should the Supreme Court consider that the conclusion of a District Court concerning the evidentiary value of oral testimony in court may be incorrect so as to materially affect the outcome of the case, and the witnesses or defendant in question have not given oral testimony before the Supreme Court, the Supreme Court may quash the judgment of the District Court as well as its procedure to the extent necessary for oral testimony to be given before the District Court, and for

the case to be resolved anew. Should a District Court judgment be quashed in such a manner, three judges shall deal with the case in a new trial before the District Court and they may not be the same judges as previously dealt with the case."

38. Sections 222 to 224, included in Chapter XXXV of the CPA, entitled "Procedural fines", as in force at the time of the facts, read as follows:

Section 222

"(1) The judge, of his/her own accord, shall determine fines in accordance with the rules laid down in this Chapter; such fines shall be paid to the National Treasury. However, special proceedings may be initiated for offences subject to fines pursuant to this Chapter.
(2) If there is further punishment, pursuant to other laws, for offences subject to the provisions of this Chapter, claims to that effect can be made in a separate case, regardless of rulings on procedural fines."

Section 223

"(1) The prosecutor, defence counsel or legal advisor may be fined for:
a. intentionally causing undue delay in a case;
b. violating a prohibition, under section 11(1) or (2);
c. making indecent written or oral remarks before the court concerning the judge or other parties;
d. otherwise offending the dignity of the court by their conduct during a hearing.
(2) The defendant or other parties testifying before the court may be fined for offences listed in items (b), (c) and (d) above.
(3) A fine may be imposed on parties other than those laid down in the first two paragraphs of this section for violating a prohibition under section 11(1) or (2)[2], for disregarding a judge's order to maintain order during a court's hearing, or for otherwise behaving in an inappropriate or indecent manner.
(4) If the judge deems that the provisions of the first three paragraphs of this section have been violated but that the offence is a minor one, he or she may decide to reprimand the violator instead of imposing a fine.
(5) The Supreme Court may impose a fine on the prosecutor or defence counsel, or both, for making a groundless appeal. Furthermore, the prosecutor, defence counsel or legal advisor may be fined for gross negligence or other misconduct during proceedings before the District Court or preparation or proceedings before the Supreme Court. The provisions of the first four paragraphs of this section shall apply to proceedings before the Supreme Court, as relevant."

Section 224

"(1) Fines in respect of the prosecutor, the defendant, defence counsel or legal advisors shall be determined when a judgment in a case is delivered. If the case is concluded in a different manner, fines against those parties shall be determined in a ruling.

(2) Fines imposed on parties other than those named in the first paragraph of this section shall be determined in a ruling as soon as the offence occurs."

D. The Civil Procedure Act no. 91/1991 (Lög um meðferð einkamála)

39. Chapter XXII of the Civil Procedure Act, entitled "Procedural fines", as in force at the time of the facts, reads as follows:

Section 134

"(1) The judge shall determine fines under the rules of this Chapter on his or her own initiative; the fines are to be paid to the Treasury.
(2) If punishment is also prescribed in other legislative acts for offences covered in this Chapter, this may be imposed in another court action, irrespective of the decision to impose a procedural fine."

Section 135

"(1) Fines may be imposed on parties for:
(a) bringing an action unnecessarily,
(b) placing the opposing parties, without due cause, in a position in which it was necessary for them to bring an action,
(c) intentionally causing unnecessary delay in a case,
(d) knowingly making incorrect demands, assertions or objections,
(e) improper written or oral comments in court about the judge, the opposing party, the opposing party's representative or other persons,
(f) being in contempt of court in other ways through their conduct during a court session.
(2) Fines may be imposed on parties' representatives who are guilty of offences under items (c)-(f) of the first paragraph, either by themselves or together with the parties.
(3) A fine may be imposed on a person who testifies in court for violations of items (e) or (f) of the first paragraph.
(4) Fines may be imposed on parties other than those covered by the first, second and third paragraphs for not obeying orders from the judge aimed at maintaining order in court or for otherwise behaving scandalously or indecently.
(5) Fines may be imposed by a higher court on parties, on their representatives or on both for bringing an appeal without due occasion."

Section 136

"(1) If judgment is delivered in a case, any fines on a party or the party's representative shall be determined therein. If a ruling is delivered on the dismissal of the case from court, any fines on them shall be determined therein. If a case is dropped, a special ruling shall be delivered on any fines against a party or the party's representative.

(2) Fines imposed on other persons shall be determined in a ruling as soon as the violation is committed."

E. The Attorneys' Act No. 77/1998 (Lög um lögmenn)

Section 20

"(1) A lawyer is obligated to accept an appointment or nomination as a defence counsel or a legal rights protector in a criminal case, provided that he or she fulfils the general qualification criteria and does not have incompatible interests relating to himself or herself, his or her relatives or his or her other clients.
..."

Section 21

"...
(6) A lawyer may resign from an accepted task at any time, but has a duty to ensure that this will not damage his client's interest."

II. THE RELEVANT DOMESTIC CASE-LAW

40. The relevant domestic case-law referred to by the applicants (see paragraph 105 below) can be summarized as follows:

A. Case no. 487/2014 – The Prosecution v. Stefán Karl Kristjánsson (hereinafter "Stefán Karl Kristjánsson")

41. By a judgment of 31 March 2015, the Supreme Court upheld the District Court's decision to impose a fine on the respondent, defence counsel, for contempt of court, based on section 223(1) (a) and (d) of the CPA. The fine was lowered from ISK 300,000 (approximately EUR 2,000) to ISK 164,762 (approximately EUR 1,100).
42. The main proceedings in which the respondent had been acting as defence counsel concerned an indictment for selling and cultivating cannabis plants.
43. The Supreme Court considered, in particular, that the fine was not limited to a specific maximum and that it was of a substantial amount; it could therefore be considered as a punishment by its nature. The Supreme Court went on to observe that the fact that there was no specific hearing of the case by the District Court prior to taking its decision did not constitute a breach of the principle of a fair trial, as the respondent's right to present a defence at the appeal level was not subject by law to any restrictions and he had been able to present all his arguments in the proceedings before the Supreme Court.
44. It was also pointed out that, by failing to attend the District Court's hearing on two occasions, despite having been notified of the dates, or to ensure that another competent person would attend on his behalf, the respondent had violated his duties as defence counsel and unnecessarily delayed the case. Therefore, the District Court decision to impose a reprimand on the respondent under on

section 223(4) of the CPA had been justified. By failing to attend the main proceedings in the case, the defence counsel had shown contempt of court and the District Court's decision to impose a fine on him based on section 223(1) (a) and (d) was deemed appropriate.

B. Other Supreme Court cases concerning fines for contempt of court

1. Judgment of 1954, p. 603

45. In a criminal case concerning violations of legal provisions on the sale of alcohol, the defence counsel was fined for improper comments contained in his written submissions to the District Court and concerning, inter alia, certain witnesses. The fine imposed by the District Court, under section 160 of former Criminal Procedure Act no. 27/1951, amounting to ISK 200, was raised to ISK 500 by the Supreme Court (equivalent in May 2014[3] to ca. ISK 18,271, approximately EUR 119). The fine was to be converted into a four-day imprisonment if not paid within four weeks.

2. Judgment of 1958, p. 602

46. In a criminal case concerning traffic violations, the defence counsel was fined under section 160, cf. section 159, of former Criminal Procedure Act no. 27/1951, for highly improper and offensive comments contained in his written submissions to the District Court and concerning both the police officers who testified in the case and the presiding judge. A fine in the amount of ISK 500 was upheld by the Supreme Court (equivalent in May 2014 to ca. ISK 14,266, approximately EUR 93).

3. Judgment no. 42/1959, p. 634

47. In civil divorce proceedings a lawyer was considered to have made offensive comments about one of the parties in his written submissions. The comments in question were declared null and void by the District Court; in addition, the Supreme Court imposed on the respondent a fine of ISK 500 (equivalent in May 2014 to ca. ISK 14,358, approximately EUR 93), under section 188(5) of former Civil Procedure Act no. 85/1936, to be converted into a two-day imprisonment if not paid within four weeks.

4. Judgment no. 86/1959, p. 289

48. In a criminal case concerning traffic violations, the accused was found to have made offensive and unjustified accusatory comments about the investigating police officers in his written submissions. The comments in question were declared null and void and a fine of ISK 400 was imposed (equivalent in May 2014 to ca. ISK 11,457, approximately EUR 74), under section 160, cf. section 159, of former Criminal Procedure Act no. 27/1951, to be converted into a three-day imprisonment if not paid within four weeks.

5. Judgment of 1975, p. 989

49. In a civil case concerning a debt, the appellant was fined ISK 5,000 (equivalent in May 2014 to ca. ISK 13,539, approximately EUR 88) for having introduced a completely pointless appeal before the Supreme Court. The fine, imposed under section 188(1) (2) of former Civil Procedure Act no. 85/1936 and section 58 of former Supreme Court Act no. 75/1973, was to be converted into a two-day imprisonment if not paid within four weeks.

6. Judgment no. 318/2004

50. In a criminal case concerning assault and battery, the defence counsel was considered to have behaved in a reprehensible manner and to have treated the District Court with exceptional disrespect. His behaviour consisted in ignoring the judge's instructions, repeatedly interrupting the witnesses and the judge, putting words in the judge's mouth and interrupting the prosecutor's examination of witnesses. The District Court's fine of ISK 40,000 (equivalent in May 2014 to ca. ISK 70,293, approximately EUR 494 at the time), under section 11(1), cf. sections 11(3), of former Criminal Procedure Act no. 19/1991, was upheld by the Supreme Court.

7. Judgment no. 352/2010

51. In a civil dispute between neighbours, the plaintiff was found to have improperly offended both the defendant, by accusing him of theft in the subpoena, and the first presiding judge, by accusing him of violating the judicial code. The defendant's demand that the comments be declared null and void was not accepted on formal grounds, but the plaintiff was ordered to pay a fine of ISK 80,000 (equivalent in May 2014 to ca. ISK 92,945, approximately EUR 521 at the time), under section 135(e) of Civil Procedure Act no. 91/1991, which was later upheld by the Supreme Court.

8. Judgment no. 292/2012

52. In a civil case concerning damages for an assault, the defendant's lawyer, having imitated and mocked the plaintiff, was fined for inappropriate behaviour in the court room. A court fine of ISK 100,000 (equivalent in May 2014 to ca. ISK 104,464, approximately EUR 582 at the time) was imposed on him by the District Court under section 135(f) of Civil Procedure Act no. 91/1991, and later upheld by the Supreme Court.

9. Judgment no. 710/2012

53. In a case concerning a particularly dangerous assault, an appeal was lodged with the Supreme Court against a ruling by District Court on the defendant's pre-trial detention. In the absence of new evidence and facts, and having regard to previous warnings regarding the futility of appealing against precedent rulings, the Supreme Court stated that the appeal had been completely pointless. A court fine of ISK 100,000 (equivalent in May 2014 to ca. ISK 104,812, approximately EUR 612 at the time) was then imposed on the defence counsel, under section 223(5) of Criminal Procedure Act no. 88/2008.

III. RELEVANT COMPARATIVE-LAW MATERIAL

54. The Court has considered it appropriate to conduct a comparative survey with regard to Member States' domestic law concerning the imposition of sanctions for obstructive conduct by legal representatives.
55. The survey takes into account the domestic law of forty-three Contracting Parties to the Convention (Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, North Macedonia, Ukraine and the United Kingdom).
56. It would appear that the possibility of sanctioning defence counsel for his or her absence from a scheduled hearing in criminal proceedings exists in forty-one of the member States surveyed (with the exception of North Macedonia and San Marino, where no sanction is possible).
57. As for the instance issuing the sanction, sanctioning of a defence counsel's absence from a scheduled hearing by courts is possible in twenty-seven of the member States surveyed and such a sanction can be issued by the relevant Bar Association or other similar specialised regulatory bodies in thirty-three member States. In some of these countries, the sanction can originate by both a court and a bar association.
58. The relevant courts (within the same or a separate set of proceedings) can impose a fine as a sanction for the defence counsel's absence from a scheduled hearing in twenty-three member States.
59. The majority of these systems (twenty member States) have statutory upper limits on the amount of the fines that can be imposed in this context. Such statutory upper limits do not exist in the legal system of two member States (Ireland, Norway), although limits come in these cases from other sources, as for example case-law. In the United Kingdom there are no statutory upper limits for fines in proceedings before appeal courts or crown courts but they do exist in proceedings before magistrates' courts.
60. A fine can be imposed as a sanction by the Bar Association or other similar specialised regulatory bodies in the legal systems of seventeen member States. In some of these countries, the fine can originate by both a Court and a Bar Association. The majority of these systems (fifteen member States) have limitations on the amount of the fines that can be imposed. No upper limit exists in this context in the legal system of one member State (Switzerland). In one member State (Ireland), an upper limit exists in respect of solicitors but not barristers.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

61. The applicants complained that the District Court of Reykjavik had tried and sentenced them in absentia, which in their opinion amounted to a breach of Article 6 §§ 1 to 3 of the Convention. They further maintained that the Supreme Court did not remedy the procedural violations that had occurred before the District Court, and could not, given the terms of domestic law, have done so.
62. Article 6 of the Convention reads as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Applicability of Article 6 of the Convention

1. The Chamber judgment

63. The Chamber found that Article 6 was applicable in the present case under its criminal limb. It underlined that in the Icelandic legal system the rules on the imposition of fines are set out in the Criminal Procedure Act. It noted that no maximum amount for court fines was stipulated in domestic law and that the amount in the case at hand had been substantial.
64. The Chamber also attached weight to the Supreme Court's finding that the fines imposed on the applicants had amounted to a criminal penalty and that this circumstance had not been disputed between the parties. Having regard in particular to the first Engel criterion, i.e. the legal classification of the offence under national law (see Engel and Others v. the Netherlands, 8 June 1976, §§ 82-83, Series A no. 22), the Chamber found no reason to disagree with the Supreme Court on this issue.

2. The parties' submissions

(a) The applicants

65. The applicants maintained that Article 6 was applicable in the present case under its criminal limb, having regard in particular to the fact that the CPA regulating the matter was applicable solely to criminal and not to civil cases. They noted that criminal-procedure rules had been followed, namely sections 198(1), 199(2) and 200(1) of the CPA, providing that fines imposed at first instance

for contempt of court had to reach a certain amount in order to be appealable to the Supreme Court, and that the request for an appeal had to be submitted to the State Prosecutor's Office.

66. The applicants also underlined the Supreme Court's finding that their fines had constituted "by nature" a penalty, both on account of the absence of any statutory ceiling as to their maximum and the substantial amount involved.

67. Finally, they referred to cases in which the Court had found that Article 6 was applicable under its criminal limb (citing Weber v. Switzerland, 22 May 1990, Series A no. 177, and T. v. Austria, no. 27783/95, ECHR 2000-XII) as well as, at domestic level, the case of Stefán Karl Kristjánsson (see paragraphs 41 et seq. above).

(b) The Government

68. Before the Chamber, the Government proceeded on the basis that Article 6 was applicable to the facts of the case under its criminal limb. However, in their memorial to the Grand Chamber, the Government altered their stance on this issue and invited it to hold that Article 6 was inapplicable under its criminal limb. In this regard, they submitted that the Supreme Court had omitted to examine specifically whether the Engel criteria had been met (see paragraph 75 below).

69. As to the first criterion, the legal classification of the offence under Icelandic law, the Government highlighted that Chapter XXXV of the CPA, entitled "Procedural fines", contained specific rules on procedure, which had very little in common with criminal law. The said Chapter dealt solely with offences against the proper conduct of court proceedings, whereas improper behaviour of a more serious character could be considered a criminal offence under the relevant rules of the General Penal Code no. 19/1940.

70. A number of factors indicated that the provisions in Chapter XXXV should not be classified as criminal law. Not only did they not belong to the general criminal law, as embodied in the General Penal Code, or to the special criminal law, to be found in other statutes, but these provisions were indeed also very similar to those contained in Chapter XXII of the Civil Procedure Act. When such conduct as described in Chapter XXII had occurred it was in general for the court sitting in the case to examine – of its own motion and without involvement of the State Prosecutor – whether there had been an offence under the Chapter. Moreover, fines imposed under Chapter XXXV were not to be entered on criminal records and there was no possibility (in the absence of any judicial ruling to this effect) of converting those fines into a term of imprisonment. In contrast, such a possibility had existed in Ravnsborg v. Sweden (judgment of 23 March 1994, Series A no. 283-B), where the applicant had been fined on the basis of an Article of the Swedish Code of Criminal Procedure for an offence against the proper conduct of court proceedings.

71. As to the nature of the offence, or the second Engel criterion, the Government observed that only the State Prosecutor, a defence counsel or a legal advisor could be fined under section 223(1) of the CPA, a provision which was not aimed at a general category of person. It was for the court sitting in the particular proceedings in which the misconduct had occurred to examine, of its own motion, whether the misconduct fell foul of the provisions in Chapter XXXV of the CPA.

72. As for the third of the Engel criteria, the Government maintained that the amount of the fines, admittedly higher than those in previous judgments, should be examined in the light of the

importance of the proceedings in which the applicants' clients had been accused. The defence fee ordered in the case before the District Court had amounted to approximately EUR 559,000. Courts fees were rarely so high, except in cases such as the one at issue, which arose in the exceptional context of the global financial crisis of 2008.

3. The Court's assessment

(a) Preliminary remarks

73. The Court notes that it is not alleged that the applicants' "civil rights and obligations" were at issue; the only question is whether the proceedings related to a "criminal charge" against them within the meaning of Article 6. The Supreme Court had found that the fines imposed on the applicants constituted "by nature" a penalty (see paragraph 33 above, Part VI (3)). Before the Chamber the applicants argued, and the Government did not contest, that Article 6 was applicable under its criminal limb. As already indicated above, the Government subsequently altered their stance in this respect and requested that the Grand Chamber hold that Article 6 was inapplicable.

74. The content and scope of the "case" referred to the Grand Chamber is delimited by the Chamber's decision on admissibility, meaning that the Grand Chamber cannot examine those parts of the application which the Chamber has declared inadmissible (see, for example, Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, § 100, 4 December 2018; Blečić v. Croatia [GC], no. 59532/00, § 65, ECHR 2006-III; and Ilias and Ahmed v. Hungary [GC], no. 47287/15, § 173, 21 November 2019, with further references). Thus, whether Article 6 was applicable clearly falls within the "case" referred to the Grand Chamber, which will accordingly proceed to examine the issue.

(b) General principles

75. The Court reiterates that the assessment of the applicability of Article 6 under its criminal limb is based on three criteria, commonly known as the "Engel criteria" (see Engel and Others, cited above, § 82). The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring (see as a recent example Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, § 122, 6 November 2018). In the latter connection, the Court has also considered the nature of the penalty (see, for example, Öztürk v. Germany, 21 February 1984, § 50, Series A no. 73; Weber, cited above, § 34, and Ravnsborg, cited above, § 35).

76. As to the autonomy of the concept of "criminal", it should be reiterated that the Convention without any doubt allows the States, in the performance of their function as guardians of the public interest, to maintain or establish a distinction between criminal law and disciplinary law, and to draw the dividing line, but only subject to certain conditions. The Convention leaves the States free to designate as a criminal offence an act or omission not constituting the normal exercise of one of the rights that it protects. This is made especially clear by Article 7. Such a choice, which has the effect of rendering applicable Articles 6 and 7, in principle escapes supervision by the Court. The converse choice, for its part, is subject to stricter rules. If the Contracting States were able at their discretion to classify an offence as disciplinary instead of criminal, or to prosecute the author of a

"mixed" offence on the disciplinary rather than on the criminal plane, the operation of the fundamental clauses of Articles 6 and 7 would be subordinated to their sovereign will. A latitude extending thus far might lead to results incompatible with the purpose and object of the Convention. The Court therefore has jurisdiction under Article 6 and even without reference to Articles 17 and 18, to satisfy itself that the disciplinary does not improperly encroach upon the criminal (see Engel, cited above, § 81).

77. Thus, with regard to the first criterion mentioned above, the Court will enquire whether the provision(s) defining the offence charged belong, under the legal system of the respondent State, to criminal law. In examining, next, the nature of the offence and, finally, the nature and degree of severity of the penalty that the person concerned risked incurring, the Court will have regard to the object and purpose of Article 6, to the ordinary meaning of the terms of that Article and to the laws of the Contracting States (Öztürk, cited above, § 50).

78. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, among other authorities, Jussila v. Finland [GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV, and Ezeh and Connors v. the United Kingdom [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X; Ramos Nunes de Carvalho e Sá, cited above, § 122). The fact that an offence is not punishable by imprisonment is not by itself decisive for the purposes of the applicability of the criminal limb of Article 6 of the Convention since, as the Court has stressed on numerous occasions, the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see Ramos Nunes de Carvalho e Sá, cited above, § 122).

79. The Court has, in a variety of cases, examined the applicability of the criminal limb of Article 6 to contempt-of-court proceedings or proceedings concerning legal professionals' misconduct and has attached weight to those three different criteria depending on the facts of each case.

80. In some of these cases, the Court has found that Article 6 was not applicable under its criminal limb on the ground that the Engel criteria were not met. In particular, when considering the first Engel criterion, the Court has for instance attached weight to the fact that the pecuniary penalty imposed was set out in certain provisions of the national Code of Criminal Procedure or the Courts Act, taken together with the Code of Civil Procedure, rather than any provisions of the Criminal Code; that in cases classified as criminal under the Criminal Code, the Code of Criminal Procedure provided for a separate procedure; and that the penalty in question had not been entered on the criminal record (see Putz v. Austria, 22 February 1996, Reports 1996-I, § 32; see similarly Ravnsborg, cited above, § 33; and Žugić v. Croatia, no. 3699/08, § 65, 31 May 2011). Another example is where the pecuniary penalty imposed was based on a domestic Disciplinary Punishment Act conferring on administrative and judicial authorities the power to maintain discipline in the proceedings before them (see Kubli v. Switzerland (dec.), no. 50364/99, 21 February 2002).

81. In finding that the second criterion had not been fulfilled, the Court has given particular weight to its finding that the offence was of a disciplinary nature falling within the "indispensable power of a court to ensure the proper and orderly functioning of its own proceedings" (see Ravnsborg, cited above, § 34; Putz, cited above, § 33; Kubli, cited above; Balyuk v. Ukraine (dec.), no. 17696/02, 6 September 2005; and Žugić, cited above, § 66).

82. In considering that the third criterion did not bring the matter into the "criminal" sphere, the Court has had regard to factors such as the following: that the amount imposed as a fine had not been substantial (see Ravnsborg, cited above, § 35; Kubli, cited above; and Balyuk, cited above) or had corresponded to the minimum provided for by domestic law (see Žugić, cited above, § 68); that, although the size of the potential fine (approximately EUR 36,000) was such that it must be regarded as having a punitive effect, the severity of this sanction did not bring the matter into the criminal sphere (see Müller-Hartburg v. Austria, no. 47195/06, § 47, 19 February 2013, and Ramos Nunes de Carvalho e Sá, cited above, § 127); that a ceiling had been provided for by domestic law (see Ravnsborg, cited above, § 35); that the fines were not entered in the criminal record, and the court could only convert them into a prison sentence if they were unpaid (see Ravnsborg, cited above, § 35, and Putz, cited above, § 37); that an appeal lay against such decisions (ibid.); or that the penalty could only be converted into a prison sentence in limited circumstances and then subject to the defendant being summoned to appear before the court for an oral hearing in separate proceedings (see Ravnsborg, cited above, § 35).

83. In other cases on contempt of court proceedings, the Court has found that Article 6 was applicable under its criminal limb.

In Kyprianou, the Court was satisfied that all three Engel criteria had been met. The offence was classified in domestic law as criminal, it was not confined to the applicant's status as a lawyer, the maximum possible sentence was one month's imprisonment and the sentence actually imposed on the applicant was 5 days' imprisonment (see Kyprianou v. Cyprus, no. 73797/01, § 31, 27 January 2004).

In Zaicevs, cited above, the Court found that, the second and third criteria, but not the first, had been fulfilled. As regards the second criterion, distinguishing the case from Ravnsborg and Putz, both cited above, where Article 6 was found not to apply, it observed that disciplinary sanctions were generally designed to ensure that members of a particular group comply with the specific rules governing their conduct, which was not the situation in that particular case. Whilst, in general, provisions addressing incidents occurring at a court hearing and the sanctions that a judge could impose on the spot were included in the laws governing the procedure and organisation of the courts, in that particular case the relevant provision on contempt of court was included in a statutory provision of general application. Moreover, from the applicable provision it appeared that it concerned not only parties to the proceedings or a person having a particular status in these proceedings, but that it was applicable to any other person, even on account of conduct outside a hearing. On the third Engel criterion, the Court in Zaicevs, comparing with Ravnsborg and Putz, both cited above, and taking into account T. v. Austria (no. 27783/95, §§ 63-67, ECHR 2000-XII), noted that the deprivation of liberty imposed on the applicant had not merely been an alternative measure whereby an unpaid fine was converted into imprisonment but had constituted the principal means of punishment. Whereas the maximum sentence was fifteen days' imprisonment, the applicant had been sentenced to three days. This was sufficiently severe to bring the sanction within the "criminal" sphere.

In T. v. Austria (cited above), where the maximum fine was 400,000 Austrian Schilling (ATS, corresponding to approximately 30,000 euros) and the fine imposed amounted to ATS 30,000 (approximately 2,000 euros), the Court, having regard to the punitive nature and high amount of the

penalty at stake, and the possibility of converting it into a prison term without the guarantee of a hearing, also found that what was at stake for the applicant was sufficiently important to warrant considering the offence as "criminal" within the meaning of Article 6 § 1.

(c) Application of those principles to the present case

(i) The first criterion: the legal classification of the offence in domestic law

84. In the case under review, the Court has taken note of the finding of the Icelandic Supreme Court that the fines imposed on the applicants were "by nature" a penalty, having regard to the absence in the relevant contempt-of-court provisions of an express upper limit on such fines and to the size of the fines imposed in the instant case. It does not appear from its reasoning that it regarded offences of the type in question as being classified as criminal under national law. According to the Government, the provisions of Icelandic law defining those offences do not belong to criminal law.
In the first place, the offence in question was set out in Chapter XXXV, entitled "Procedural fines", of the Criminal Procedure Act and not in any provision of the General Penal Code, or in specialised criminal law found in other statutes (see, Putz, cited above, § 32, and Žugić, cited above, § 65). Moreover, these provisions were indeed also very similar to those contained in Chapter XXII of the Civil Procedure Act (see paragraph 39 above). Although section 222 § 1, second sentence, of the Criminal Procedure Act provided that special proceedings might be initiated for contempt-of-court offences, the Court notes that, as observed by the Government, the examination of such conduct, as described in Chapter XXXV of the said Act, did not as a general rule require the involvement of the State Prosecutor. A fine was to be levied by the court sitting in a case on its own motion (see section 222 § 1, first sentence, of the Act).
That being noted, it has not been demonstrated that the offence in question was classified as "criminal" under domestic law.
85. However, the first of the Engel criteria is of relative weight and serves only as a starting-point (see Weber, cited above, § 31; and A. Menarini Diagnostics S.R.L. v. Italy, no. 43509/08, § 39, 27 September 2011).

(ii) The second criterion: the nature of the offence

86. As regards the second criterion, which is a factor of greater weight (see, Engel, § 82; and Öztürk, § 52, both cited above), the Court observes that the imposition of the fines on the applicants was based on section 223(1), sub-paragraphs "a. intentionally causing undue delay of a case" and "d. otherwise offending the dignity of the court with their conduct during a hearing". Pursuant to section 223(2) such conduct as described in "d." could also be sanctioned if carried out by a defendant or other parties testifying before the court. This could be viewed as encompassing members of the whole population, were they to participate in court proceedings, a factor that in previous cases examined by the Court has militated in favour of considering an offence as being of a "criminal" nature for the purposes of Article 6 of the Convention (see, for example, Kyprianou and Zaicevs, both cited above).

87. However, it is to be noted that the fine imposed on each of the applicants was on account of one offence under section 223(1), which provision addressed a specific category of people possessing a particular status, namely that of a "State Prosecutor, defence counsel or legal advisor" (see paragraph 38 above). Unlike sub-paragraph d., it does not appear that sub-paragraph a., which was here applied in combination with the former, applied outside the circle of people covered by section 223(1). It was for the court sitting in the particular proceedings in which the misconduct had occurred to examine of its own motion whether the misconduct fell foul of section 223(1).

88. In this context, it is noteworthy that the Court has frequently referred to the fact that the specific status of lawyers gives them a central position in the administration of justice, as intermediaries between the public and the courts, and has pointed to the fact that, in order for members of the public to have confidence in the administration of justice, they must have confidence in the ability of the legal profession to provide effective representation (see, mutatis mutandis, Kyprianou, Kyprianou v. Cyprus [GC], no. 73797/01, § 173, ECHR 2005-XIII and Correia de Matos v. Portugal [GC], no. 56402/12, § 139, 4 April 2018). Also, the "special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct, which must be discreet, honest and dignified" (ibid., § 140).

89. Regard should further be attached to the fact that rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of legal systems of the Contracting States. Such rules and sanctions derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence. It is, of course, open to States to bring what are considered to be more serious examples of disorderly conduct within the sphere of criminal law (see Ravnsborg, cited above, § 34).

90. In the specific circumstances of the present case, the Supreme Court considered that the applicants' deliberate refusal to appear at the scheduled hearing entailed a severe violation of their professional duties in their capacity as defence counsel in a criminal case. The fact that they totally ignored the judge's lawful decisions, leaving him with no option but to discharge them and to appoint others in their place had caused a major delay in the case. However, the Supreme Court did not specifically refer to the nature of the applicants' misconduct as a reason for considering it to be criminal (see paragraph 33, Part V above).

91. Against this background, despite the seriousness of the breach of the professional duties in question, it is not clear whether the applicants' offence is to be considered criminal or disciplinary in nature. It is therefore necessary to examine the matter under the third criterion, namely the nature and degree of severity of the penalty that the applicants risked incurring.

(iii) The third criterion: the nature and degree of severity of the penalty

92. Whilst the Supreme Court did not specifically refer to the offence as being classified as "criminal" under domestic law (the first Engel criterion) or to the nature of the applicants' misconduct as a reason for considering it "criminal" (the second criterion), it held that the fines imposed on them were "by nature a penalty", thus seemingly relying on the third criterion. As already mentioned above, in reaching this conclusion the Supreme Court had regard to the absence

in the relevant contempt-of-court provisions of "any particular ceiling" on the amount of fines and to the amount of the fines imposed on the applicants in this specific case, corresponding to approximately EUR 6,200 – which, according to the Supreme Court, was "high". In these circumstances, it found no grounds for affording the applicants lesser protection under the law with regard to their having an opportunity to defend themselves. Holding that Article 6 was applicable under its criminal limb, the Supreme Court proceeded to review the issue of compliance with this provision.

93. Nonetheless, in view of the considerations set out in paragraphs 76 and 77 above, when it comes to interpreting the scope of the concept of "crime" in the autonomous sense of Article 6 of the Convention, as it is called upon to do when examining the second and third of the Engel criteria, the Court will have to appraise the matter for itself (Articles 19 and 32 of the Convention). That said, nothing prevents the Contracting States from adopting a broader interpretation entailing a stronger protection of the rights and freedoms in question within their respective domestic legal systems (Article 53 of the Convention).

94. In the instant case, the Court notes, in particular, that the kind of misconduct for which the applicants were held liable could not be sanctioned by imprisonment, in contrast to those previous contempt-of-court cases in which Article 6 was found applicable, notably on account of the nature and severity of the sanction at issue (see Kyprianou and Zaicevs, both cited above).

95. Moreover, the fines at issue could not be converted into deprivation of liberty in the event of non-payment, unlike in Ravnsborg and Putz, both cited above. In the latter cases the existence of such a possibility, subject to certain fair hearing guarantees (see paragraph 82 above), was an important consideration, even if not sufficient in those circumstances to attract the application of Article 6 under its criminal head. The Court also observes that in T. v. Austria (cited above) it was the punitive nature and the high amount of the penalty at stake, together with the possibility of converting it into a prison term without the guarantee of a hearing, that warranted considering the matter as "criminal". However, no such possibility existed in the present case. In addition, in the applicants' situation the fines were not entered on their criminal record (see paragraph 80 above).

96. Albeit high, the size of the fines imposed on the applicants and the absence of an upper statutory limit do not in the Court's view suffice to deem the severity and nature of the sanction as "criminal" in the autonomous sense of Article 6 (see Müller-Hartburg, cited above, § 47, where the size of the potential fine - approximately EUR 36,000 - , though having a punitive effect, was not so severe as to bring the matter within the "criminal" sphere; see, similarly, Ramos Nunes de Carvalho e Sá, §§ 25, 71, 126, 217, where the maximum penalty was ninety day-fines and the fine imposed on the applicant was twenty day-fines, which allegedly corresponded to EUR 43,750; compare also with the scale of the fines at issue in Mamidakis v. Greece, no. 35533/04, § 21, 11 January 2007, Grande Stevens and Others v. Italy, nos. 18640/10 and 4 others, § 99, 4 March 2014, and Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia, no. 47072/15, §§ 10 and 45, 23 October 2018, where the Court considered that the penalties applied were criminal in nature).

97. In the light of the above, the Court considers that the nature and degree of severity of the sanction do not bring the offence into the criminal sphere of Article 6 § 1 of the Convention.

(iv) Conclusion

98. Having regard to the above considerations, the Court finds that the proceedings in question did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention and that this provision did not apply to those proceedings under its criminal limb. It follows that the applicants' complaint is incompatible ratione materiae with the Convention provisions. The Court also reiterates that under Article 35 § 4 of the Convention, it may dismiss applications which it considers inadmissible "at any stage of the proceedings" and that, therefore, subject to Rule 55 of the Rules of Court, the Grand Chamber may reconsider a decision to declare an application admissible (see, for example, Ilias and Ahmed, cited above, §§ 80 and 250, with the references therein). The Court thus holds that this part of the application must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

99. The applicants complained that their conviction on account of acts carried out when they were no longer "defence counsel" and the unforeseeability of the amount of the penalty imposed on them entailed a violation of Article 7 of the Convention. 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."

A. The Chamber judgment

100. The Chamber found that it was clear from the Supreme Court's judgment that section 223(1) (a) and (d) had been applied in the applicant's case. In the Chamber's view, the wording of section 223 did not exclude the imposition of a fine on a defence counsel who had been replaced or had resigned from his or her duties. Hence, it considered that the domestic interpretation of national law did not contravene the very essence of the offence.
101. Concerning the second aspect of the applicants' complaint, namely the unforeseeability of the severity of the fines, the Chamber held that the mere fact that a provision of domestic law did not stipulate the maximum amount of a fine did not, as such, run counter to the requirements of Article 7. Considering that the case at issue was the first of its kind and that Article 7 could not be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, the amount of the fines was not unforeseeable in the applicants' case.

B. The parties' submissions

1. The applicants

102. The applicants observed that they were held guilty of facts which did not constitute a criminal offence under national law. At the time when the contested contempt of court occurred, namely at the District Court hearing of 11 April 2013, they had been relieved of their duties and were thus no longer "defence counsel", as required by section 223(1) of the CPA. In their view, the said section only applied to active conduct taking place during a hearing and not to a situation, such as the one in issue, where defence counsel had failed to appear.
103. The applicants also submitted that the penalty imposed on them, namely fines amounting to ISK 1,000,000 (approximately EUR 6,200 at the material time) each, had not been foreseeable. Indeed, the applicable law did not specify any range for the sum to be imposed as a fine and the amount imposed was out of proportion when compared to similar cases decided by the Supreme Court.
104. In their written memorials before the Grand Chamber, the applicants pointed out that both the offence and the relevant penalties had to be clearly defined by law (they referred to Del Río Prada v. Spain [GC], no. 42750/09, § 79, ECHR 2013). They stated in particular that the absence in domestic law of a maximum ceiling of the fines imposed on them further contributed to the unforeseeability of the penalty and thus increased the obligation on the Icelandic courts to ensure that the amount to be determined did not depart dramatically from what had been decided in the domestic case-law precedents.
105. The applicants also emphasised that the fines levied against them had been ten times higher than the highest fine previously imposed in Icelandic legal history for contempt of court. They referred to nine domestic judgments pronounced between 1954 and 2012 in which fines for contempt of court ranged from ISK 400 to ISK 100,000 (equivalent in May 2014 to about EUR 74 to EUR 681, see paragraphs 45 et seq. above) and explained that, although they had increased slightly over time, these amounts had been consistent and never arbitrary. In this context, the applicants referred to the case of Stefán Karl Kristjánsson, in which the respondent, a defence counsel, had neglected to attend three court hearings and was ultimately sentenced to a fine of only ISK 50,000 (about EUR 340 at the time).

2. The Government

106. The Government maintained that no violation of Article 7 of the Convention had occurred in the present case. They observed that the requirement of foreseeability was satisfied when an individual could know from the wording of the relevant provision and, if need be, with the assistance of the court's interpretation and through informed legal advice, what acts and omissions would entail his or her criminal liability. In this case, the offence, imputed to the applicants and which had led to the imposition of fines, was clearly established by law, namely section 223 of the CPA, which the applicants, as highly experienced lawyers, could have foreseen.
107. Moreover, even if they did not attend the hearing of 11 April 2013, under section 223(1) of the CPA the applicants were still the appointed defence lawyers in the case when the offence in question was committed. Thus, the criterion laid down by the said provision, namely the circumstance of being "defence counsel", was fulfilled in the applicants' case. As to the type of offence which had occurred in this case, the Government submitted that section 223(1) (d) did not exclude instances where the impugned conduct had consisted of an omission, such as absence from a hearing.

108. Regarding the amount of the penalty, the Government agreed with the position taken by the Chamber (see paragraph 101 above). Furthermore, the size of the fines was justified by the scope and importance of the proceedings to which the applicants' case related and by the gravity of their behaviour.
109. The Government also noted that it was the task of the domestic courts to determine the amount of the fines to be imposed. In this case domestic courts had been called upon for the first time to interpret the relevant provision to a set of facts such as those in the present case, and they had done so in such a way that the punishment was consistent with the essence of the offence.
110. It had been the experience in Icelandic judicial life that counsel respected the courts and behaved accordingly. This explained why so few Supreme Court judgments concerning judicial fines for contempt of court had been pronounced by the Supreme Court over the six decades from 1954 to 2014. Only two of these cases had concerned the failure of counsel to attend the main hearing, namely, the case of Stefán Karl Kristjánsson v. Iceland (see paragraphs 41-44 above) and that of the applicants. The former differed from the latter in that the absence at issue had not been deliberate but due to an alleged mistake.
111. Lastly, the Government underlined that the criminal case in which the applicants were acting as defence counsel was complex and involved several accused persons, who faced serious charges and were liable to many years of imprisonment. Thus, the applicants could have foreseen that the fines imposed on them would be higher than in previous cases.

C. The Court's assessment

112. The Court has already held that the proceedings in question did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention and that this provision did not apply to those proceedings under its criminal limb. In these circumstances and for reasons of consistency in the interpretation of the Convention taken as a whole, the Court does not find that the fines complained of under Article 7 are to be considered a "penalty" within the meaning of this provision (see Kafkaris v. Cyprus [GC], no. 21906/04, §§ 137-142, ECHR 2008, Del Río Prada, cited above, § 81, and Ilnseher, cited above, § 203, which accordingly did not apply.
113. Against this background, and having regard to the reasoning in paragraph 98 above, the Court finds that this part of the application is also incompatible ratione materiae with the Convention provisions. The Court thus holds that this complaint too must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4.

FOR THESE REASONS, THE COURT,

1. Holds, by a majority, that the application is incompatible ratione materiae with the provisions of the Convention and accordingly declares it inadmissible.

Done in English, and notified in writing on 22 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. {signature_p_2}

Søren Prebensen — Deputy to the Registrar

Ksenija Turković — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Spano;
(b) Concurring opinion of Judge Turković;

(c) Joint dissenting opinion of Judges Sicilianos, Ravarani and Serghides.

K.T.U.
S.C.P.

CONCURRING OPINION OF JUDGE SPANO

1. In his concurring opinion in Dickson v. the United Kingdom ([GC], no. 44362/04, 4 December 2007, ECHR 2007-V), Judge Bratza opined that "[an] unsatisfactory feature of Protocol No. 11 to the Convention, which ushered in the permanent Court in Strasbourg, is that a national judge who has already been party to a judgment of a Chamber in a case brought against his or her State is not only entitled but, in practice, required to sit and vote again if the case is referred to the Grand Chamber". Previously, in his partly dissenting opinion in Kyprianou v. Cyprus ([GC], no. 73797/01, ECHR 2005-XIII), Judge Costa described the position of the national judge in such circumstances as "disconcerting", the judge having to decide whether to adhere to his or her initial opinion on the case or "with the benefit of hindsight [to] depart from or even overturn [that] opinion".
2. Where a case has already been fully argued and discussed at Chamber level and no new information or arguments have been advanced before the Grand Chamber, national judges have, unsurprisingly, normally adhered to their previous opinion, as Judge Bratza pointed out in Dickson (cited above), although not necessarily to the precise reasoning which led to that opinion in the Chamber. When a case is referred to the Grand Chamber, and arguments on a legal question are presented for the first time, it is more readily incumbent on the national judge to examine the issue afresh in the light of the Parties' arguments before the Grand Chamber.
3. In the present case, the question whether the criminal limb of Article 6 § 1 of the Convention is applicable to the applicants' complaints was not disputed before the Chamber, the Government not adducing any arguments against the position of the applicants on this matter (see paragraph 73 of the present Grand Chamber judgment). Although considering the issue borderline, I therefore agreed, on balance, with the Chamber's finding that the criminal limb of this provision was applicable, having regard to the reasoning of the Icelandic Supreme Court and the Parties' position on the matter. However, before the Grand Chamber, the Government now explicitly object to the position that the criminal limb of Article 6 § 1 is applicable and the issue has been fully argued by both Parties. It must be made clear that the Government is not estopped from objecting to the admissibility of the applicants' complaints on this ground for the first time in the Grand Chamber,

as it goes to the Court's jurisdiction ratione materiae (differently from a claim for non-exhaustion of domestic remedies under Rule 55 of the Rules of Court; see paragraph 98 of the judgment).

4. Having now had the benefit of full argumentation and pleadings by the Parties before the Grand Chamber, I have come to the conclusion that there are stronger legal arguments in favour of the contrary conclusion. I therefore concur in the Court's finding to dismiss the applicants' complaints ratione materiae, both under Articles 6 § 1 and 7, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

CONCURRING OPINION OF JUDGE TURKOVIĆ

1. I agree with the dissenting judges that, had the Grand Chamber found that the Engel criteria had been met, the two questions related to Article 7 of the Convention would be of real interest in the present case. First, whether a provision which defines an offence and a type of punishment but omits to set a maximum penalty is compliant with the requirement for lex certa under Article 7 of the Convention. Second, whether the punishment actually imposed in the present case, based on such a provision, was foreseeable. The Court has not so far had an opportunity to deal with these questions. Since the Chamber addressed this important matter only briefly, in just one paragraph, without any deeper analyses (see Gestur Jónsson and Ragnar Halldór Hall v. Iceland, nos. 68271/14 and 68273/14, § 94, 30 October 2018), and Grand Chamber did not have an opportunity to deal with it, I should like merely to flag the principles that, in my opinion, should guide the Court in deciding these complicated issues.

2. Both of these principles, nullum crimen sine lege, which addresses the punishability of the conduct in question, and nulla poena sine lege, which deals with the legality of the actual punishment or penalty itself, are at the core of the principle of legality and both rely on the same requirements: nullum crimen, nulla poena sine lege certa, stricta, and praevia (see Del Río Prada v. Spain [GC], no. 42750/09, § 91, ECHR 2013). However, there are some distinctions between the two which might be of importance when these requirements are interpreted, and for this reason direct, uncritical transposition of the general principles developed in the Court's case-law concerning nullum crimen to nulla poena might not always be warranted. While it is perfectly sound to accept that provisions defining criminal offences, however clearly defined, would inevitably require judicial interpretation and elucidation of doubtful points and gradual clarification consistent with the essence of the offence, and thus that in defining crimes only the maximum possible clarity could be required (see Vasiliauskas v. Lithuania, [GC], no. 35343/05, § 155, ECHR 2015, with further references), the same is not true with regard to determination of the maximum sentence. Here, greater clarity and precision are both possible and achievable; in fact, the maximum penalty can be laid down in law with absolute clarity.[4] The query is whether failure to do so is compliant with Article 7 of the Convention.

3. Indeed, in most legal systems lex certa is interpreted as requiring both the law authorising the type of punishment a judge may impose on a convicted person (e.g. imprisonment, fines, community service) and the maximum severity of the sentence applicable to different crimes (degree of punishment) to be specific, definite, and clear, that is, certain and unambiguous. It also requires that the law of penalties distinguish between different forms of participation in criminal conduct, such

as commission, attempted commission, or aiding and abetting, and the different degrees of criminal responsibility, such as intent, recklessness, or negligence with which an offence is committed, as well as whether the crime is completed or inchoate. The majority of States, regardless of whether they belong to the common or civil legal system, follow this approach in their domestic legal systems. This approach as a rule includes the practice of articulating a specific maximum penalty for each criminal offence.[5]

4. Under the principle of legality, there are four central functions to a maximum penalty. First, to restrict judicial discretion in sentencing a person who has committed an offence and to set clear limits on the action that the State may lawfully take against an offender in punishing or rehabilitating a convicted person. Second, to provide fair notice to potential offenders by indicating the highest punishment they will face if they commit a particular offence. Both of these aspects flow from the rule-of-law principle, whose central tenant is transparency and predictability or, in the language of the Court, foreseeability (see Žaja v. Croatia, no. 37462/09, § 93, 4 October 2016). Third, to indicate the relative seriousness of the offence compared with other criminal offences, that is, to rank offences according to their degree of gravity. Fourth, to provide adequate 'space' when sentencing the worst examples of the offence. The last two aspects flow from the principle of proportionality or just punishment (just deserts) which requires that the punishment fit the crime, restraint on excessive punishment, and punishment of equal severity for equally blameworthy conduct. The key focus in setting the level of maximum punishment should be the relative gravity of each offence compared with other offences, measured by the harm caused or risked by the offending conduct, and the culpability of the offender in committing the crime. The development of a consistent framework of maximum penalties for all offences in a particular legal system, which ultimately guarantees the equality of all before the law, is an inherently difficult task that can hardly be accomplished through incremental development by courts deciding individual cases.

5. In order to equip judges to determine proportionality in individual cases adequately, the boundaries within which they may act, in particular the maximum penalty, should be clearly and unambiguously set down in advance. The maximum penalty provides a legislative guide to judges as to the relative seriousness of an offence, without transgressing the separation of powers by entering the domain of the administration of justice, which in criminal matters is the exclusive preserve of the courts. The legislature merely states the general rule and the application of that rule lies with the courts. The judge is free to exercise sentencing discretion, in choosing the nature and degree of the sentence within the range provided for by the statutory maximum and minimum sentences. The maximum penalty is only one of the sentencing factors the judge must take into consideration when individualising the sentence in a particular case. Other factors include current sentencing practices (the actual sentences given for past examples of the offence), the nature and gravity of the offence, the offender's level of responsibility and moral culpability for the offence, the offender's previous character, and any aggravating or mitigating circumstances. However, these other factors could hardly be applied adequately if the range within which judges have the freedom to apply them is not clearly and precisely determined in advance. Furthermore, only with a clearly defined maximum penalty can the authorities comply with the requirements of lex praevia,

prohibiting retroactive application of the more stringent law and determining which provision was the more lenient one (see Del Río Prada, cited above, §§ 112 and 114).

6. In short, requiring absolute clarity by laying down the maximum penalty in advance protects the rights of the defendants and their interest in legal certainty, and achieves justice, equal treatment, and consistency in sentencing. Moreover, determining clearly and precisely the maximum penalty in advance and, more generally, applying nulla poena sine lege not only limits unwarranted judicial discretion, but actually safeguards judicial independence and thus its authority, as well as the integrity of criminal justice, by preventing current events, immediate public opinion, prejudice or real or perceived political pressure from influencing the sentence. In the long run, coherent sentencing policy and consistency in sentencing preserve confidence in criminal prosecution and uphold the justice system in the eyes of the public.

JOINT DISSENTING OPINION OF JUDGES SICILIANOS, RAVARANI AND SERGHIDES

1. With regret, we cannot agree with the majority's finding that Article 6 of the Convention under its criminal limb is inapplicable in the present case.

2. The Chamber judgment. The Chamber based its judgment on the applicability of the criminal limb of Article 6 and ultimately found that the said provision had not been violated. It noted that no maximum amount for court fines was provided for in domestic law and that the amount in the case at hand had been substantial. The Chamber also attached weight to the Icelandic Supreme Court's finding that the fines imposed on the applicants had amounted to a criminal penalty and that this circumstance had not been disputed between the parties. Having regard in particular to the first Engel criterion, i.e. the legal classification of the offence under national law, the Chamber found no reason to disagree with the Supreme Court on this issue.

3. While it is true that the applicability of Article 6 had not been challenged by the Icelandic Government, the Chamber could have examined the question of its own motion, as this was a question of applicability ratione materiae of the Convention.[6]

4. The majority's findings. In their memorial to the Grand Chamber, the Government, with reference to the Engel criteria, argued that Article 6 was inapplicable under its criminal limb and that none of the three criteria were met.

5. The majority has now endorsed the Government's position as to its substance, finding that, although the application of the first two Engel criteria (classification under domestic law; nature of the offence) was inconclusive, the third (severity of the sanction) was definitely not met.

6. A different story can be told. It is true that such reasoning has its merits and can be followed. However, in the present case, where there is no absolute truth, a totally different story could likewise have been convincingly told. The application of the Engel criteria is not an exact science; much depends on where the emphasis is placed.

7. The following paragraphs are aimed at showing that a reasonable application of the Engel criteria, without overstretching their meaning, could also – and should have – led to the conclusion that the fines imposed on the applicants were of a criminal nature and that Article 6 was applicable.

8. The first Engel criterion. The judgment underlines that "the Convention without any doubt allows States ... to maintain or establish a distinction between criminal and disciplinary law, and to draw a dividing line" and "leaves the States free to designate as a criminal offence an act or omission not constituting the normal exercise of one of the rights that it protects" (see § 76 of the judgment). It stresses that "such a choice in principle escapes supervision by the Court" (ibid.) whereas the converse, i.e. the classification of an offence as disciplinary is obviously subject to stricter rules because otherwise the fundamental clauses of Articles 6 and 7 would be subordinated to the States' sovereign will, which would be incompatible with the purpose and object of the Convention. The Court wants to ensure that the "criminal" is "not improperly encroached upon". The judgment even underlines that "nothing prevents the Contracting States from adopting a broader interpretation entailing a stronger protection of the rights and freedoms in question within their respective domestic legal systems (Article 53 of the Convention)" (see § 93 of the judgment).

9. The philosophy behind the Court's approach thus seems clear: no interference if a domestic system qualifies an offence as criminal, stricter scrutiny if it qualifies it as disciplinary. This makes perfect sense, as in order to ensure that the protection of Article 6 remains effective, in doubtful situations the balance should lean towards the applicability of the said provision.[7]

10. It is then surprising, to say the least, given that Icelandic law as authoritatively interpreted by the Icelandic Supreme Court qualified the offence at stake as criminal, to read in the subsequent developments that the Court "will enquire whether the provision(s) defining the offence charged belong, under the legal system of the respondent State, to criminal law" (see § 77 of the judgment). At a later stage, the judgment returns to this issue and repeats that, in view of the considerations set out in paragraph 77, "when it comes to interpreting the scope of the concept of 'crime' in the autonomous sense of Article 6 of the Convention ... the Court will have to appraise the matter for itself."

11. Until now the Court has called into question the classification of an offence only when the latter was qualified as non-criminal under domestic law. It is disconcerting to note that in the present case it engages in the opposite exercise. What is being called into question in this case is the domestic law's qualification of an offence as criminal, authoritatively interpreted as such by the highest judicial body of the country concerned.

12. The Court's case-law as relied on by the majority relates, without exception, to situations where the criminal nature of a penalty imposed on an applicant was disputed by the national government. Even more strikingly, in all of the judgments cited in support of the statement that the first of the Engel criteria is of relative weight and serves only as a starting-point (see § 85 of the judgment) Article 6 was ultimately found to be applicable. The "relative weight" attached to domestic law consequently led the Court to disregard the national law that qualified a sanction as not being criminal. In the present case, the situation is just the reverse.

13. It is inopportune – and even contrary to Article 53 of the Convention – to ultimately grant lower protection in respect of the fairness of proceedings than the domestic authorities were prepared to do.

14. The second Engel criterion. As to the very nature of the offence, the applicants were fined for contempt of court. In the part of the judgment dealing with general principles, reference is made to various findings in Court's case-law to the effect that the second criterion had not been fulfilled

because the offence was not punished by the Criminal Code but by other laws, such as the Code of Criminal Procedure, or because the offence was disciplinary in nature, falling within the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings (see § 81 of the judgment). Referring to the applicable domestic law, the majority, while acknowledging that the law on contempt of court "could be viewed as encompassing members of the whole population when participating in court proceedings" (see § 86 of the judgment), noted however that the fine imposed on the applicants was on account of a provision which addressed a "specific category of people possessing a particular status, namely that of a 'State Prosecutor, defence counsel or legal advisor'". It underlined that lawyers occupy a central position in court proceedings and that the public must have confidence in the ability of the legal profession to provide effective representation. It added that contempt-of-court rules and sanctions form the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings and that measures ordered under such rules "are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence" (see §§ 86-89 of the judgment).

15. However, the majority adds an important qualification which brings the whole problem back to the first criterion, stating that "it is, of course, open to States to bring what are considered more serious examples of disorderly conduct within the sphere of criminal law" (see § 89 in fine of the judgment). This should or at least could have lead the majority to simply endorse the Supreme Court's findings that the applicants' behaviour was of a criminal nature, as it acknowledges that the said court considered that it "entailed a severe violation of their professional duties" (see § 90 of the judgment).

16. The conclusion under the second criterion is however inconclusive: stating very ambiguously that "the Supreme Court did not specifically refer to the nature of the applicants' misconduct as a reason for considering it to be criminal" (see § 90 of the judgment), the judgment concludes that "despite the seriousness of the breach of the professional duties in question, it is not clear whether the applicants' offence is to be considered criminal or disciplinary in nature" (see § 91 of the judgment).

17. After having underlined that it is open to States to bring what are considered more serious examples of disorderly conduct within the sphere of criminal law and that the behaviour of the applicants constituted a serious violation of their professional duties, it would have been much easier and straightforward to conclude, together with the Supreme Court, that the offence for which the applicants had been punished was criminal in nature.

18. The third criterion. As to the seriousness of the punishment, the majority refers to a series of elements taken from the Court's case-law, such as the possibility to incur imprisonment, to have the fine converted into deprivation of liberty or the inclusion of the fine in one's criminal record, none of these elements being present in the case before us. On the other hand, they acknowledge that the fine imposed – approximately EUR 6,200 – was high and that there was no statutory upper limit but they consider that this does not suffice "to deem the severity and nature of the sanction as 'criminal' in the autonomous sense of Article 6" (see § 96 of the judgment).

19. Unfortunately, the reasoning under the third criterion is no more convincing than that under the first two. Regard should have been had – once more – to the Supreme Court's reasoning in holding that the fine was "high" and emphasising that no explicit ceiling was provided for by law. It can be

seen from the Icelandic case-law, as referred to in paragraphs 45 et seq. of the judgment, that the fine imposed on the applicants was ten times higher than any fine imposed previously. The fine was consequently high not only in absolute, but also and even more pertinently in relative terms. Such a fine clearly had a deterrent and, moreover, a specifically punitive character.

20. Furthermore, it is important to repeat that in deciding whether a sentence comes within the "criminal" sphere, is not only the actual amount of the fine imposed that has to be taken into consideration, but the absence of a ceiling provided for by domestic law. The majority acknowledges this in paragraph 82 of the judgment.[8] In the present case, there was no such ceiling.

21. The Grand Chamber should therefore have reached the conclusion that Article 6 under its criminal limb was applicable, and could have done so easily.

22. The consequences of the inapplicability of Article 6. One should never forget what it means not to fall under the umbrella of Article 6: nothing other than being deprived of the guarantees of fair proceedings. This can be seen in particular, in the field of disciplinary proceedings, but not only there. Huge interests can be at stake, and such proceedings can lead to extremely heavy sanctions. People can lose their jobs[9], be subject to salary cuts or promotion bans[10] or even to arrest[11]. The prospect of not enjoying the guarantees of fair proceedings (adversarial, before independent and impartial judges, etc.) is not a very attractive one...

23. A missed opportunity. By holding that Article 6 is inapplicable, the Grand Chamber avoided addressing the real issue of interest in this case, namely the question of compliance with the requirements of Article 7 of the Convention, and more specifically the legality of the penalty imposed on the applicants in the absence of an explicit statutory ceiling.

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[1] Paragraph numbering has been inserted in this text for the purpose of cross referencing.

[2] Section 11 of the CPA concerns the special arrangements imposed by a judge for court hearings. It provides for a general ban on sound recording and taking photographs during the hearings and for the possibility of allowing exceptions in special circumstances (paragraph 1). The second paragraph of this section establishes the possibility for the judge to proscribe the disclosure of information on the events of in camera proceedings.

[3] May 2014 is the month in which the Supreme Court judgment in the applicants' case was delivered.

[4]The same does not necessarily apply to other factors determining the sentence, such as aggravating and mitigating circumstances. There, gradual clarification might be warranted (see Alimucaj v. Albania, no. 20134/05, §§ 154-62, 7 February 2012).

[5]This was confirmed in the internal research report prepared for this case. See also William A. Shabas, An Introduction to the International Criminal Court, p. 162, (2001), and Prosecutor v. Tadić, Case No. IT-94-1-A & IT-94-1-Abis, Judgments, Separate opinion of Judge Cassese, paragraph 4 (26 January 2000).

[6]See, among many other authorities, Trubić v. Croatia (dec.), no. 44887/10, 2 October 2012.

[7]It is striking to read in § 19 of the Guide on Article 6 (criminal limb) published on the Court's website (Hudoc) that "[t]he 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 substantive reality of the procedure in question."

[8]With reference to Ravnsborg v. Sweden, 23 March 1994, Series A no. 283-B, where the presence of a ceiling was an element taken into account in finding that the fine was not criminal in nature (§ 35).

[9]Moullet v. France (dec.), no. 27521/04, 13 September 2007

[10]R.S. v. Germany (dec.), no. 19600/15, 28 March 2017

[11]Engel and Others v. the Netherlands, 8 June 1976, Series A no. 22