



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

FIRST SECTION

CASE OF GOULANDRIS AND VARDINOIANNI v. GREECE

(Application no. 1735/13)

JUDGMENT

Art 4 P7 • Right not to be tried or punished twice • Duplication of proceedings, through administrative fine and criminal proceedings for constructing stone walls in breach of building permit, not sufficiently linked in substance and time to form part of a coherent and proportionate whole • Criminal proceedings sufficiently separate from another administrative annual fine for continuing the infringement • Administrative fines criminal in nature, given potential severity, lack of upper limit and element of punishment

STRASBOURG

16 June 2022

FINAL

16/09/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Goulandris and Vardinogianni v. Greece,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 1735/13) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Greek nationals, Mr Georgios Goulandris and Ms Christianna Vardinogianni (“the applicants”), on 12 December 2012;

the decision to give notice of the application to the Greek Government (“the Government”);

the parties’ observations;

Having deliberated in private on 17 May 2022,

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

INTRODUCTION

1. The case concerns the imposition of urban-planning administrative fines on the applicants relating to two stone walls constructed on their property without the requisite building permit, and their trial and punishment in criminal proceedings resulting in a sentence of seven months’ imprisonment. The applicants alleged that this infringed their right not to be tried and punished twice for the same offence, provided in Article 4 of Protocol No. 7 to the Convention.

THE FACTS

2. The applicants were born in 1958 and 1964 respectively and live in London. They were represented before the Court by Mr G. Antonopoulos, a lawyer practising in Athens.

3. The Government were represented by their Agent, Ms Georgia Papadaki, Senior Advisor at the State Legal Council.

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

5. The applicants are husband and wife. On 17 September 2003 they purchased a plot of land in a coastal area located in Korakia near Kranidi in

the prefecture of Argolida. In an on-site inspection report (*έκθεση αυτοψίας*) issued on 5 October 2004, the urban-planning authority, mentioning the name of the first applicant as the owner, stated that a surrounding stone wall with a length of 119.5 metres and a height of 1.9 metres and a second wall with a length of 99.4 metres and a height of 1.8 metres had been constructed on the property without the requisite building permit.

6. The on-site inspection report declared the constructions unlawful, calculated on the basis of their size and value and imposed a fine of 18,102 euros (EUR) for their unlawful construction (“the construction fine”) and an annual fine of EUR 1,802 for each year that the wall was kept in place (“the preservation fine”). The report was received by Mr S.V., an employee of the applicants, on 4 November 2004. No complaints were raised against the fines.

7. In order to ensure the recovery by the State of the amounts owing, the urban-planning service of the municipality of Ermionida issued notice no. 591 on 18 March 2005 requesting the competent tax office of Kranidi to recover the sum of EUR 7,241, following the application of a reduction, for the payment of the construction fine by the first applicant as owner of the property. On the same date the first applicant paid EUR 7,414.78, corresponding to the fine (EUR 7,241) in addition to fees of EUR 173.78 relating to stamp duties. On 24 November 2011 the urban-planning service of the municipality of Ermionida issued notice no. 2222 requesting the same tax office to recover the sum of EUR 5,379.80 from the first applicant and EUR 5,379.80 from the second applicant, as co-owners of the property with a share of 50% each, in respect of the payment of the preservation fine. On 29 November 2011 the first applicant paid the total amount of EUR 10,759.60.

8. The on-site inspection report was sent to the public prosecutor’s office at the Nafplio Criminal Court of First Instance on 21 January 2005. A bill of indictment against the two applicants was issued on 5 July 2006. On 17 September 2008 they were sentenced by judgment no. 631/2008 of the one-member Nafplio Criminal Court of First Instance to seven months’ imprisonment on account of having jointly and intentionally constructed, as co-owners of the property, the above-mentioned two stone walls, despite the fact that the relevant building permit (no. 54/2008) authorised only a 0.6 metre high fence; the sentence took into account the severity of the offence and the applicants’ personality. Regard being had also to the applicants’ financial situation, the court converted the prison sentence into a pecuniary penalty of EUR 10 per day.

9. The applicants appealed to the three-member Nafplio Court of Appeal, contending that they had been victims of duplication of proceedings in breach of the *ne bis in idem* principle. They argued that, since the administrative fines had been of a criminal nature and their conviction had become final by way of the payment of the administrative fines, their prosecution or trial should be

prohibited under Article 4 of Protocol No. 7 to the Convention and also under Article 57 of the Code of Criminal Procedure and the binding effect of *res judicata*, and that the court should therefore discontinue the criminal proceedings.

10. On 16 December 2011 the Nafplio Court of Appeal heard the case and, by judgment no. 3211/2011, dismissed the applicants' plea that the criminal prosecution was inadmissible, giving the following reasons: (i) civil court judgments and administrative acts did not have the effect of *res judicata* for criminal courts and accordingly could not prohibit a criminal conviction; (ii) the fines in respect of the unlawful constructions were not criminal sanctions, but constituted compelling administrative measures which sought to ensure rigorous and rapid compliance with the relevant legal provisions, namely the legalisation of the unauthorised constructions where this was allowed; and (iii) the imposition of the fines did not constitute a final conviction, but rather administrative sanctions in the course of an administrative procedure which was to be concluded by the demolition of the unauthorised constructions or, where this was allowed, their legalisation or a demolition-exemption decision which complies with the effective protection of the natural environment.

11. The Court of Appeal further held that the evidence taken during the hearing showed that the appointed engineers had constructed the surrounding stone walls, in accordance with the applicants' decisions and instructions, without the required building permit. The applicants had been aware of the unlawfulness of the constructions and had not taken any action to legalise them. The court referred to the construction and preservation fines that had been imposed and noted that the constructions were located in a coastal area of natural beauty near Kondyli beach in the municipality of Ermionida, and that, on account of their height, they had adversely affected the natural landscape, interrupting visual continuity. It concluded that the applicants should therefore be convicted under Article 17 § 8 of Law no. 1337/1983, while the value of the constructions and the degree of environmental degradation should be taken into consideration. The court took account of the severity of the offence (in particular the damage caused, the nature of any fault on the applicants' part, the nature, type and object of the offence and the circumstances in which it had been committed) and the applicants' personality (in particular, their motives, aims, character, behaviour before and after the offence, and family and financial situation) and upheld the seven-month prison sentence. The court suspended the sentence for three years because the applicants had not been convicted with final effect and given a custodial sentence of more than one year.

12. On 4 June 2012 the applicants appealed on points of law on grounds including, *inter alia*, a breach of Article 4 of Protocol No. 7 to the European Convention on Human Rights, complaining that they had been prosecuted and punished twice in respect of the same offence. Their prosecution or trial

should have been prohibited under Article 4 of Protocol No. 7 to the Convention as well as under Article 57 of the Code of Criminal Procedure and the binding effect of *res judicata*. The appellate court should have found that the criminal proceedings against the applicants had no legal effect and discontinued them, rather than rule on the merits of the case and uphold the sentence.

13. On 4 September 2012 a public hearing took place in the Court of Cassation (criminal law chamber). On 11 September 2012, by judgment no. 1077/2012, the court dismissed the applicants' appeal on points of law, holding that, under Article 57 of the Code of Criminal Procedure, the binding effect of *res judicata* applied to criminal courts in respect of other final criminal courts' judgments. It added that criminal sanctions were imposed by criminal courts, their purpose was to deliver criminal justice and their imposition was accompanied by constitutional guarantees, whereas administrative sanctions related to exercising the function of administration. Any sanction which was expressed as the legal order's disapproval of an unjust act constituted a penalty to be imposed by the ordinary criminal courts, whereas an administrative sanction did not exactly constitute punishment as it did not demonstrate particular disapproval of the offender but was aimed exclusively at forcing the liable party to perform a required action or omission. The *ne bis in idem* principle was provided for in Article 57 of the Code of Criminal Procedure and repeated in Article 4 of Protocol No. 7. Administrative sanctions could not be considered criminal punishment for the purposes of Article 4 of Protocol No. 7 and thus the cumulative imposition in the present case of administrative fines by an administrative authority and criminal sanctions by a judicial authority was not contrary to the principle of *ne bis in idem*, and even less so to *res judicata*.

14. On 8 November 2013 the applicants' constructions at issue were submitted for inclusion in the regularisation scheme provided for by Law no. 4178/2013, and the regularisation of the unlawful constructions, regarding the surrounding stone walls together with other irregularities, was completed on 25 October 2017.

RELEVANT DOMESTIC LEGAL FRAMEWORK

I. URBAN-PLANNING LEGISLATION AND RELEVANT CASE-LAW

15. Article 17 of Law no. 1337/1983, as in force at the relevant time (amended by Law no. 3212/2003), read as follows:

“1. Unlawful buildings or constructions ... shall be demolished by their owners or co-owners ...

2. Apart from demolition, the following fines shall be imposed:

(a) a fine for the construction of the unlawful buildings or constructions;

(b) a fine for the preservation of the unlawful buildings or constructions.

3. The fine under point (a) of the previous paragraph shall be imposed once. The fine under point (b) of paragraph 2 shall be imposed and shall be due for the entire period during which the unlawful building or construction exists, from its construction until its demolition. For the first year ... this fine shall be calculated and confirmed on the basis of the value of the building or construction ..., and for each subsequent year it shall be reconfirmed after it has been readjusted with a 20% increase in relation to the fine from the previous year. The rate of the increase may be modified every two years ... It shall not be lower than 2%.

4. All the owners or co-owners of the unlawful buildings or constructions shall be liable for the payment of the fines and each of them shall be liable for the payment of the entire fine ...

8. The owners ... shall be punished by at least six months' imprisonment and a penalty of EUR 5,000 to EUR 50,000, depending on the value of the construction and the degree of the degradation of the natural or cultural environment. ... In the event that they acted with negligence, they shall be punished by a maximum of one year's imprisonment and a penalty of EUR 2,000 to EUR 10,000 ..."

16. Article 1 of Presidential Decree no. 267/1998 reads as follows:

"1. The finding and classification of a building or construction as unlawful ... shall be done following an inspection by an employee of the local competent urban-planning service, who shall draft the relevant report while on the premises ...

2. The report shall include the location of the unlawful building or construction accompanied by a road diagram where necessary, a summary description with an illustration, the dimensions [of the construction] and the provisions of urban-planning legislation which have been violated. The same report shall contain the calculation of the value of the unlawful building or construction and the imposition of the fines laid down in paragraph 2 of Article 17 of Law no. 1337/1983 as in force. A reference shall be included to the right of any interested party to lodge, within thirty days from the date when the report was posted [*τοιχοκόλληση*], either a complaint or an application and declaration that he or she unreservedly accepts the report and any adjustments introduced by the authorities in the calculation of the fine. ... there shall be a notification that upon the expiry of the time-limit, the unlawful building or construction shall be demolished, the fines imposed shall become final [*οριστικά*] and they shall be confirmed [*βεβαιώνονται*] at the competent income-tax office of the persons liable ..."

17. Article 23 § 6 of Law no. 2300/1995 reads as follows:

"6. ... the fines provided for in paragraph 2 of Article 17 of Law no. 1337/1983 may be reduced by 30% ... : (aa) ... if the person concerned, instead of lodging a complaint [*ένσταση*], ... submits ... an application with a calculation of the construction and preservation fines, ... and a declaration that he or she unreservedly accepts the report and any adjustments ... in the calculation of the fines."

18. Article 22 of Law no. 1577/1985 (General Building Code), as in force at the relevant time, read as follows:

"3. Any construction executed (a) without the building permit ... or (b) in excess of the building permit, or (c) on the basis of a building permit which has been revoked, or (d) violating the relevant provisions, shall be considered unlawful and shall be subject to the relevant rules in respect of unlawful buildings or constructions set out in Law no. 1337/1983 as in force. ...

Any unlawful construction referred to in the previous sub-paragraph which does not violate the urban-planning provisions in force or those in force at the time of the construction may be legalised by issuing or revising the building permit. ... After the issuance or revision of the building permit, the construction does not have to be demolished and only the fines provided for in paragraph 2 of Article 17 of Law no. 1337/1983, as in force, shall be imposed. The preservation fine shall be imposed for a period which runs from the date when ... the construction of the building began until the issuance of the building permit. ... ”

19. Article 24 of Law no. 4014/2011, as in force at the relevant time, read as follows:

“1. (a) The imposition of sanctions shall be suspended for thirty years following the payment of a single special fine, ...

6. (a) The alleged owner ... shall pay a single special fine, which shall be calculated on the basis of the surface area of the construction multiplied by the rate corresponding to the zone in which the building is situated ..., multiplied by a 15% coefficient and then multiplied by the coefficients laid down in the table in the Annex ... depending on the category and type of the unlawful construction. ...

11. ... Any construction and preservation fines ... as well as other special preservation fines which have been paid, shall be offset against the amount of the single special fine. [as inserted by Law no. 4030/2011, published on 25 November 2011, amending Law no. 4014/2011]

15. Cases concerning offences relating to unlawful construction, provided that no final judgment has been given, shall be discontinued by an act of the competent body following an application submitted by the interested party and a document issued by the urban-planning service certifying that the unlawful construction has been declared and the fine has been paid in accordance with the provisions of the present Article.”

20. On 15 February 2013 the plenary of the Supreme Administrative Court held a public hearing in three cases brought on 5 October 2011, 24 April 2012 and 22 June 2012, raising the question of the constitutionality of the provisions of Law no. 4014/2011 on the regularisation procedure for unlawful constructions. By judgment no. 3341/2013 of 27 September 2013, the plenary declared void joint ministerial decisions nos. 41498/26.9.2011 and 41525/27.9.2011, adopted by delegation of the power conferred by Article 24 of Law no. 4014/2011 in order to specify and regulate the details of the implementation of the provisions of that Article which govern unlawful construction. The court held that those rules, which provided for the possibility of the suspension of sanctions, allowed, in essence, for the long-term preservation of constructions and uses which infringed the urban-planning provisions applicable at any time. Moreover, Law no. 1337/1998 had reformed the urban-planning system in accordance with the Constitution and distinguished old constructions from new ones, in providing that, under certain circumstances, old constructions could be exempted from demolition. Contrary to that, the possibility of the suspension of sanctions under Law no. 4014/2011 also applied to constructions built after Law no. 1337/1998

had entered into force. The Supreme Administrative Court further held as follows:

“18. The ... rules ... result in reversing or at least distorting rational urban planning, which is a requirement under Article 24 of the Constitution, impairing the functioning of cities and causing the deterioration of residents’ living conditions, given that the suspension can be applied by the mere submission by the interested party of an application and the relevant documents and the payment of a fine, without the requirement of an expert opinion by the competent body in respect of each unlawful construction following an assessment of urban-planning and building criteria ...”

The court thus concluded that the impugned ministerial decisions should be declared void because they had been adopted by delegation of the power conferred by Article 24 of Law no. 4014/2011 and the latter was contrary to Article 24 of the Constitution on the protection of the environment.

21. In two other judgments, nos. 1118/2014 and 1119/2014, published on 21 March 2014, the plenary of the Supreme Administrative Court adopted the same position.

II. CODE OF CRIMINAL PROCEDURE

22. Article 57 of the former Code of Criminal Procedure (Presidential Decree no. 258/1986) read as follows:

“1. If a person has been convicted with final effect or acquitted or a prosecution brought against him or her has been discontinued, that person cannot be prosecuted again in respect of the same act, even if that act is given a different legal classification.

3. If, despite the above-mentioned prohibition, a prosecution has been brought, it shall be declared null and void on the basis of *res judicata*.”

THE LAW

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

23. Complaining of a violation of the *ne bis in idem* principle, the applicants relied on Article 4 of Protocol No. 7 to the Convention, the relevant part of which reads as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

A. Admissibility

1. *Non-exhaustion of domestic remedies*

(a) The parties' submissions

24. The Government took the view that the applicants had failed to exhaust domestic remedies since they had not taken any action to regularise the unlawful constructions, as they had done for other unlawful constructions on their property. By the date of the trial, namely 16 December 2011, legislation had already been enacted introducing regularisation schemes for unlawful constructions. In particular, Law no. 4014/2011, published on 21 September 2011 and followed by Laws nos. 4178/2013 and 4495/2017, laid down, in Article 24, the documents to be submitted and the procedure to be followed for the payment of the single special fine. Cases involving criminal offences would thus be discontinued by an act of the competent body upon the submission of a specific application and of a certificate that the unauthorised construction had been declared under the scheme and the fine had been paid. Had the applicants used that opportunity before the hearing in the Court of Cassation on 4 September 2012, the prosecution brought against them would have been declared null and void. The present application should therefore be declared inadmissible.

25. The applicants disagreed, observing that in accordance with Article 23 § 6 of Law no. 2300/1995, a complaint (*ένσταση*) against the fines could be lodged within thirty days from the date on which the parties were notified of the fines. In the event of the unconditional acceptance of the fines, they would be reduced by 30%. Provided that a complaint had been lodged, the person concerned could apply to the administrative courts (*προσφυγή*) to challenge the decision dismissing the complaint. The applicants had waived their right to contest the fines before the administrative authorities or before the courts and had paid the reduced administrative fines, additionally benefiting from a certain administrative reduction.

26. The applicants also argued that they had raised all the grievances set out in their application in both their appeal to the Nafplio Criminal Court of Appeal and their appeal on points of law to the Court of Cassation. In judgment no. 1077/2012 the latter court had dismissed their appeal on points of law on 11 September 2012 and they had been unable to lodge further appeals against that decision or submit a request for a rehearing in that connection. They had thus exhausted all domestic remedies available in this matter.

(b) The Court's assessment

27. The general principles concerning the rule of exhaustion of domestic remedies were restated in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). The

Court reiterates in particular that applicants are only obliged to exhaust domestic remedies which are accessible, capable of providing redress in respect of their complaints and offer reasonable prospects of success. Discretionary or extraordinary remedies are not considered effective remedies within the meaning of Article 35 § 1 of the Convention and thus need not be used (see *Šimkus v. Lithuania*, no. 41788/11, § 33, 13 June 2017). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see in detail *Vučković and Others v. Serbia*, cited above, § 77).

28. In this instance, it appears from paragraph 1 of Article 24 of Law no. 4014/2011, taken in conjunction with paragraphs 10, 11 and 15 of that Article, that as regards certain unlawful constructions, following an application submitted by the interested party and a document issued by the urban-planning service certifying that the unlawful construction has been declared under the scheme and that the relevant single fine has been paid, cases concerning offences relating to unlawful construction would be discontinued, provided that no final judgment had been given (see paragraph 19 above). The previously imposed construction and preservation fines would be suspended for thirty years while the fines which have been paid would be offset against the amount of the single fine imposed for the purposes of regularisation of the construction.

29. The Government did not produce before the Court any evidence relating to cases where the submission of an application under the particular scheme set out in Law no. 4014/2011, under the aforementioned conditions in respect of unlawful constructions similar to those in the applicants' case, had led to the discontinuation of cases involving criminal offences. The Court accordingly finds that the Government have failed to support their argument concerning the sufficiency and effectiveness of the proposed remedy at the material time and to show, with reference to demonstrably established consistent practice in cases similar to that of the applicants, that the suggested procedure could have provided redress.

30. Moreover, since the applicants complained that the criminal proceedings against them had continued after they had been given an administrative penalty for the same offence, the Court cannot accept the Government's position to the effect that avoiding the duplication of proceedings and ensuring compliance with the *ne bis in idem* principle was the applicants' own responsibility, rather than that of the domestic authorities (see, *mutatis mutandis*, *Šimkus*, cited above, § 34).

31. Lastly, the Court observes that Law no. 4014/2011, providing for the regularisation procedure referred to by the Government and applicable at the material time, entered into force on 21 September 2011. The Supreme Administrative Court found in three cases that Article 24 of that Law and other relevant provisions were contrary to the Constitution. As regards the

first of these cases to be brought before the Supreme Administrative Court, that court's President referred it on 8 November 2011 to the plenary for examination because of its importance. By judgment no. 3341/2013 of 27 September 2013, the plenary of the Supreme Administrative Court declared void two ministerial decisions adopted by delegation of the power conferred by Article 24 of Law no. 4014/2011. It held, in particular, that the rules provided for in that Article relating to the suspension of sanctions undermined or distorted rational urban planning, which was a requirement under Article 24 of the Constitution on the protection of the environment. They also impaired the functioning of cities and caused the deterioration of the residents' living conditions, given that the suspension could be applied by the mere submission of an application and the relevant documents as well as the payment of a fine, without an expert opinion by the competent body in respect of each unlawful construction following an assessment of urban-planning and building criteria. The Supreme Administrative Court ruled in the same way in judgments nos. 118/2014 and 1119/2014 (see paragraphs 20-21 above for details).

32. For those reasons the Court concludes that the application cannot be rejected for failure to exhaust domestic remedies. It therefore dismisses the Government's objection.

2. The second applicant's victim status relating to the construction fine

33. The Government did not raise any objections as to the victim status of the second applicant in relation to the imposition of the construction fine. The applicants maintained that, although the construction fine had initially been addressed to the first applicant and paid by him, the authorities had considered both applicants liable for the fines as co-owners of the property. The second applicant was thus entitled to the protection of the *ne bis in idem* principle, since the authorities, by the time of the criminal prosecution, had been aware of the duplication of proceedings.

34. The Court has already held that it is not prevented from examining of its own motion an applicant's victim status since it concerns a matter which goes to the Court's jurisdiction (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, 5 July 2016, and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 117, 14 December 2017).

35. In the present case, the on-site inspection report was issued in the name of the first applicant and, according to the notice for payment of the construction fine, the tax office was requested to recover the construction fine from the first applicant in his capacity as owner of the property. By contrast, according to the notice for payment of the preservation fine, the tax office was requested to recover it both from the first applicant and from the second applicant as co-owners of the property, specifying their share of liability at 50% and the corresponding amount of the fine (see paragraph 7 above). The Court cannot accept the applicants' argument that although the construction

fine was initially addressed to the first applicant and paid by him, the authorities considered both applicants liable for the fines as co-owners of the property. Although the Court notes that it was not disputed that the second applicant was co-owner of the property and does not disregard the fact that Greek legislation establishes joint and several liability for co-owners of unlawful constructions (see paragraph 15 above), what is crucial for the present case is that the construction fine was at no stage of the procedure imposed to the detriment of the second applicant. The second applicant was never determined as the person liable for the construction fine, while its issuance in the name of the first applicant was never contested.

36. For the above reasons, the complaint in respect of the imposition of the construction fine on the second applicant is incompatible *ratione personae* and must be rejected as being inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. Conclusion as to admissibility

37. The complaint in respect of the construction and preservation fines imposed on the first applicant is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. The same applies for the remaining complaint in respect of the preservation fine imposed on the second applicant. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

38. The applicants argued that the urban-planning authorities' decision to impose the fine of EUR 7,241 for the unlawful construction of the stone walls and the fine of EUR 10,759.60 in total for their preservation had constituted a "criminal conviction" within the meaning of Article 4 of Protocol No. 7 to the Convention. The domestic law classification of the procedure as administrative was not decisive and both the administrative and criminal sanctions had derived from the same legal provision of Article 22 of Law no. 1577/1985 read together with Article 17 of Law no. 1337/1983 and not from legal measures in distinct areas of law. They were parallel versions of the same measure.

39. As regards the second *Engel* criterion established by the Court's case-law (see paragraph 52 below), the fact that, in respect of the administrative fines, no custodial sentence could have been imposed, was not decisive for the criminal character of the fines. As regards the third *Engel* criterion, the applicants asserted that the fines were higher than many criminal fines, calculated on the basis of the value of the unlawful constructions, which

could result in fines amounting to hundreds of thousands or millions of euros. The fines were applicable to all citizens, rather than a group possessing a special status and they were intended to punish and deter. This was particularly evident with respect to the amount and duration of the preservation fine, which was imposed on a yearly basis for an indefinite duration.

40. The applicants disputed the Nafplio Court of Appeal's conclusion that the imposition of the fines had not constituted a "final conviction" but rather administrative sanctions in the course of an administrative procedure. They relied on the judgment in *Nikitin v. Russia* (no. 50178/99, ECHR 2004-VIII), arguing that in that case, the Court had held that a decision was final if it had acquired the force of *res judicata*. This was the case when it was irrevocable, that is to say, where no further ordinary remedies were available or where the parties had exhausted the remedies or they had permitted the time-limit to expire without availing themselves of them (*ibid.*, § 37). As the report had been received by Mr S.V., an employee of the applicants, on 4 November 2004, the decision relating to the construction fine had become "final" thirty days later, on 5 December 2004, when the time-limit for lodging a complaint had expired. As regards the decision imposing the preservation fine, the time-limit for lodging a complaint had expired on 26 December 2011 but the decision had already become final on 29 November 2011, when the applicants had paid the relevant fine.

41. The applicants also contested the Court of Cassation's finding that the fines were aimed exclusively at forcing the liable party to perform a required action or omission. The demolition of the unlawful constructions was the duty of the authorities and the fines continued to be imposed despite the demolition.

42. They further submitted that the prosecution and the fines imposed had arisen from the same legal provision and had been entirely based on the same facts: the execution of construction work without the required building permit. The difference between the two had been the requirement of fault under the criminal sanction. The same legal interest had been protected, namely the natural and cultural environment. The different legal characterisation, procedures and bodies which had imposed the penalties and their different nature did not preclude the application of the *ne bis in idem* principle.

(b) The Government

43. The Government submitted that, in accordance with the *Engel* criteria, the initially calculated construction fine of EUR 18,102 and annual preservation fine of EUR 1,810 had been administrative fines which by their nature could not be considered "criminal sanctions". The on-site inspection report classifying the constructions as unlawful had concerned the property in question (*πραγματοπαγής πράξη*) and had been issued irrespective of any

fault on the part of the owner, the criminal acquittal of whom had no bearing on the procedure for imposing the fines. Those fines had been aimed at forcing the liable party to take the necessary measures for the issuance of the requisite building permit or for the demolition, thus ending the disturbance to the civil and natural environment.

44. The Government asserted that the fines had therefore been merely pecuniary, based on the value of the work carried out, and of minor severity in comparison with criminal-law penalties, namely imprisonment together with pecuniary penalties. The fines had been imposed in the context of an administrative procedure, they had been payable in instalments and, as regards the preservation fine, they could cease to be imposed at any time, provided that the person concerned complied with the legal instructions issued by the authorities. The construction and preservation fines thus could not be considered “criminal” and the principle of *ne bis in idem* was not applicable, and the relevant complaint was therefore manifestly ill-founded.

45. The Government further submitted, in the alternative, that Article 4 of Protocol No. 7 did not preclude the conduct of dual proceedings if the sanction imposed in the proceedings which had become final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden. In the present case, the administrative and criminal sets of proceedings had been closely connected in time and in substance. In particular, the on-site inspection report had been issued on 5 October 2004 and sent to the public prosecutor’s office at the Criminal Court of First Instance on 21 January 2005, and had formed the basis on which the bill of indictment had been issued on 5 July 2006. The fines had been paid on 18 March 2005 and 29 November 2011. The criminal proceedings had been running in parallel, and on 17 September 2008 judgment no. 631/2008 had been given by the one-member Nafplio Criminal Court of First Instance, and on 16 December 2011, judgment no. 3211/2011 had been given by the three-member Nafplio Court of Appeal. Nine months after the full payment of the fines, on 11 September 2012, judgment no. 1077/2012 had been given by the Court of Cassation.

46. The combination of administrative and criminal penalties, each procedure serving a different objective, formed part of the same mechanism in national law so that, firstly, the disturbance of the civil and natural environment ended and secondly, the conduct of the liable offender was punished. There was a permissible combination of penalties in such a way that the application of the *ne bis in idem* principle and of Article 4 of Protocol No. 7 was precluded.

47. The Government further submitted that the element of “*bis*” was absent in the present case as the fines had been imposed by acts of the administrative authorities which could not have had the force of *res judicata*. Moreover, the administrative proceedings had not been final, as the applicants had not exhausted all possibilities provided for under Law no. 4014/2011 to

regularise the unlawful constructions. In addition, it stemmed from the reasoning of judgment no. 3211/2011 of the Criminal Court of Appeal that that court had taken into account the fines imposed in ruling on the criminal penalties to be imposed.

48. The Government contended that the element of “*idem*” was not present, as the administrative penalties served as a deterrent and pursued a compensatory aim in respect of the protection of the environment, whereas the criminal penalties were aimed at the legal, moral and social disapproval of the offender’s behaviour and thus served a genuinely punitive purpose. The fines were imposed irrespective of any fault, they were not calculated on the basis of subjective criteria, unlike criminal penalties, and they were not contrary to the principle of proportionality because they were aimed at ensuring compliance with the provisions regulating legal construction. The subsequent issuance of a building permit did not have *ex tunc* effect going back to the time of the construction, but applied only for the future. The fines already issued thus continued to be valid and to have legal effects.

2. The Court’s assessment

(a) General principles

49. Article 4 of Protocol No. 7 to the Convention is understood as prohibiting the prosecution or trial of a second “offence” in so far as it arises from identical facts or facts which are substantially the same (see *Sergey Zolotukhin*, [GC], no. 14939/03, § 82, ECHR 2009; *Marguš v. Croatia* [GC], no. 4455/10, § 114, ECHR 2014; and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 108, 15 November 2016).

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

51. The legal characterisation of a sanction under national law cannot be the sole criterion of relevance for the applicability of the *ne bis in idem* principle under Article 4 § 1 of Protocol No. 7. Otherwise, the application of this provision would be left to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of

the Convention. The notion of “penal procedure” in the text of Article 4 § 1 of Protocol No. 7 must be interpreted in the light of the general principles concerning the corresponding words “criminal charge” and “penalty” in Articles 6 and 7 of the Convention respectively (see *Igor Tarasov v. Ukraine*, no. 44396/05, § 24, 16 June 2016, and the case-law cited therein).

52. The Court’s established case-law sets out three criteria, commonly known as the “*Engel* criteria”, to be considered in determining whether or not there was a “criminal charge” for Convention purposes. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the degree of severity of the penalty that the person concerned risks incurring (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *A and B*, cited above, §§ 105-07). The second and third criteria are alternative and not necessarily cumulative. This does not, however, rule out 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 *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284, and *Garyfallou AEBE v. Greece*, 24 September 1997, § 33, *Reports of Judgments and Decisions* 1997-V).

53. The Court established in *Mihalache v. Romania* ([GC], no. 54012/10, §§ 93-95, 8 July 2019) that judicial intervention was unnecessary for a decision to be regarded as a “final acquittal” or a “conviction” under Article 4 of Protocol No. 7. It clarified when a decision is final for the purposes of Article 4 of Protocol No. 7 in *Sergey Zolotukhin*, (cited above, §§ 107 and 108, with further references) and in particular, as regards situations where an administrative decision imposes fines, in *Tsonyo Tsonev v. Bulgaria* (no. 2) (no. 2376/03, §§ 53, 54 and 56, 14 April 2010).

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

- whether the different proceedings pursued complementary purposes and thus addressed, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;
- whether the duality of the proceedings concerned was a foreseeable consequence, both in law and in practice, of the same impugned conduct (*idem*);
- whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any additional disadvantages resulting from duplication of proceedings and in particular duplication in the collection as well as the assessment of the evidence, notably through adequate interaction between the various competent authorities to ensure that the establishment of the facts in one set of proceedings was replicated in the other;
- and, above all, whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned from being in the end made to bear an excessive burden; this latter risk is least likely to be present where there is in place an offsetting mechanism designed to ensure that the overall amount of any penalties imposed is proportionate (*ibid.*, §§ 131-32).

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

55. In determining whether dual criminal and administrative proceedings are sufficiently connected in time, that requirement should not be interpreted as meaning that the two sets of proceedings have to be conducted simultaneously from beginning to end (*ibid.*, § 134). However, the connection in time must be sufficiently close to protect the individual from being subjected to uncertainty and delay and from proceedings becoming protracted over time. The weaker the connection in time, the greater the burden on the State to explain and justify any such delays as may be attributable to its conduct of the proceedings (see *Bragi Guðmundur Kristjánsson v. Iceland*, no. 12951/18, § 57, 31 August 2021).

(b) Application of those principles in the present case

- (i) *Whether the proceedings as regards the administrative fines were criminal in nature*

56. Under Greek law as in force at the material time, the owners or co-owners of a property who had committed the offence of unlawful construction as laid down in Article 17 of Law no. 1337/1983 had to pay, in accordance with paragraph 2 of that Article, (i) a construction fine for having carried out the unlawful construction and (ii) a preservation fine for every year that the construction was kept in place. They would also be punished, in

accordance with paragraph 8 of that Article as in force at the material time, by at least six months' imprisonment and a pecuniary penalty of EUR 5,000 to EUR 50,000, depending on the value of the construction and the degree of the degradation of the natural or cultural environment. In the Greek legal order, the construction and preservation fines were imposed by the urban-planning authorities and they were considered "administrative" penalties.

57. It is clear from the wording of Article 17 of Law no. 1337/1983 (see paragraph 15 above) that the administrative fines were imposed on the owners or co-owners together with and independently from the obligation to demolish the unlawful constructions. In respect of the construction fine, it follows from Article 17 § 3 of Law no. 1337/1983 and Article 22 § 3 of Law no. 1577/1985 (see paragraph 18 above) that this fine was payable even if the construction was thereafter demolished or was legalised by means of the issuance or the revision of the building permit, as the Government also admitted (see paragraph 48 above). It is evident that this fine was not dependent on the restoration of lawfulness and of the *status quo ante*. It thus could not be intended as pecuniary compensation for the damage caused, but rather as a form of punishment of offenders. It had a deterrent character, as the Government also acknowledged (see paragraph 48 above), as well as a punitive one.

58. As regards the preservation fine, this was calculated for every year that the construction was kept in place. It follows from Article 17 § 3 of Law no. 1337/1983 (see paragraph 15 above) and Article 22 § 3 of Law no. 1577/1985 (see paragraph 18 above) that in the event of the subsequent demolition or legalisation of an unlawful construction, the preservation fine calculated from the date of the construction until the date of demolition or legalisation was still due. As the Government also acknowledged, any eventual legalisation would only apply for the future and not *ex tunc* (see paragraph 48 above). The preservation fine would thus cease to apply only after those events had occurred. The Court takes note of the Government's argument that the fine in question was aimed at forcing the liable party to take the necessary measures for the legalisation of the unlawful constructions by way of the issuance of the requisite building permit or their demolition so that the disturbance of the civil and natural environment would end. The fine was indeed intended to force the persons concerned to comply with urban-planning legislation. However, the demolition or legalisation would not cancel the fine due at that time. The Court cannot accept that it involved only indirect enforcement or that it was intended solely as pecuniary compensation. Through its yearly imposition and its progressive increase every year, it was also intended to punish those responsible for constructing without the required building permit and to deter others from doing likewise.

59. Furthermore, the construction and preservation fines were directed at all citizens in their capacity as owners of unlawful buildings or constructions, rather than at a group possessing a special status.

60. As to the severity of the measure, the Court reiterates that it is determined by reference to the maximum potential penalty provided for in the relevant law. While the actual penalty imposed on the applicant is relevant to the determination, it cannot diminish the importance of what was initially at stake (see *Sergey Zolotukhin*, cited above, § 56). In the present case, a fine of EUR 7,414 was imposed on the first applicant for the construction of the stone walls and a fine of EUR 5,379.80 was imposed on each of the two applicants for the preservation of the constructions. The fines were calculated on the basis of the value of the unlawful constructions, which could result in considerably high fines, as the value of immovable property can be particularly high. In particular, as regards the preservation fine, this was imposed in accordance with Article 17 § 3 for an indefinite duration and it was readjusted every year by a 20% increase in relation to the fine from the previous year. The rate of increase could be modified every two years, but it could not be lower than 2% (see paragraph 15 above). Thus, although the urban-planning fines were not classified as “criminal” under domestic law, they could be potentially severe, they did not have an upper limit and they undoubtedly included an element of punishment, which is sufficient to establish the criminal nature of the proceedings relating to the imposition of the fines at issue, within the meaning of Article 4 of Protocol No. 7.

61. The Court observes that the Government did not substantiate their argument that the fines were of minor severity in comparison with ordinary criminal penalties. In respect of their argument that the administrative offence was not punishable by imprisonment, this is not in itself decisive and cannot deprive the offence of its inherently criminal character (see *Nicoleta Gheorghe v. Romania*, no. 23470/05, § 26, 3 April 2012). The same applies as regards their argument that the fines could be paid in instalments.

62. Lastly, the Court notes that the present case is to be distinguished from *Inocêncio v. Portugal* (no. 43862/98, ECHR 2001-I), where it held that as regards an administrative fine for having carried out work on a house without obtaining the relevant permit, Article 6 was not applicable and the case had not concerned a “criminal charge” but the fine should instead be regarded as a means of controlling the use of property for the purposes of a balanced town-planning policy. In the above-mentioned case, having regard to all aspects of the *Engel* criteria taken as a whole, the Court held that they were not significant enough for the measure imposed on the applicant to qualify as a “criminal” penalty. In particular, as regards the severity of the penalty, the fine imposed amounted to 500,000 Portuguese escudos (PTE – approximately EUR 2,493). The maximum fine that could be imposed was PTE 20,000,000 (approximately EUR 99,760). In contrast, as already noted above, in the

present case the fines were calculated on the basis of the value of the constructions and did not have an upper limit.

63. Accordingly, the Court concludes that the administrative proceedings relating to the construction and preservation fines can be regarded as “criminal” for the purposes of Article 4 § 1 of Protocol No. 7 to the Convention.

(ii) *Whether the administrative fines constituted a “final conviction”*

64. In *Mihalache v. Romania* ([GC], no. 54012/10, §§ 93-95, 8 July 2019) the Court clarified that judicial intervention was unnecessary for a decision to be regarded as a “final acquittal” or a “conviction” under Article 4 of Protocol No. 7. The Court considered the two authentic versions – English and French – of Article 4 of Protocol No. 7 and noted a difference in the wording of the two texts, as the English version did not specify that the acquittal or conviction should take the form of a “*jugement*” as the French version did. In view of the crucial role played by Article 4 of Protocol No. 7 in the Convention system and the aim of the right which it secures, the Court held that the use of the word in the French version of this Article could not justify a restrictive approach to the concept of a person who had been “acquitted or convicted” and that the fact that a decision did not take the form of a judgment could not call into question the person’s acquittal or conviction.

65. The Court has consistently adopted a similar approach in determining the effects of a legal situation in ascertaining whether proceedings defined as administrative under domestic law produced effects requiring them to be classified as “criminal” within the autonomous Convention meaning of the term (see, among many other authorities, *A and B v. Norway*, cited above, §§ 139 and 148, and *Sergey Zolotukhin*, cited above, §§ 54-57). A decision is final for the purposes of Article 4 of Protocol No. 7 if it has acquired the force of *res judicata* (see *Sergey Zolotukhin*, cited above, §§ 107 and 108, with further references). As regards situations where an administrative decision imposes fines, the decision is final when it is irrevocable, that is to say, when no further ordinary remedies are available, or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them (see *Tsonyo Tsonev v. Bulgaria (no. 2)*, no. 2376/03, §§ 53, 54 and 56, 14 April 2010, where the Court found that the mayor’s decision to impose an administrative fine on the applicant, which had not been challenged in the courts and was enforceable, constituted a final decision).

66. In the instant case, as referred to in Article 1 § 2 of Presidential Decree no. 267/1998 (see paragraph 16 above) and as also mentioned in the on-site inspection report, a complaint could have been lodged within thirty days from the date on which the report on the unlawful constructions was posted. No specific details were included in the on-site inspection report as regards where the report was posted. Moreover, the applicants argued that the time-limit for lodging a complaint had started to run from 4 November 2004, when Mr S.V.,

the applicants' employee, had received the report. The receipt of the report was not contested by the Government, and it is also confirmed by a note written on the report to that effect. The Court concludes that the time-limit of thirty days for lodging a complaint started from the day following the receipt of the report by Mr S.V. and ended on 4 December 2004. As the applicants did not contest the fines, the administrative decision imposing the fines became "final" for the purposes of Article 4 of Protocol No. 7 on 5 December 2004, and not when the fines were paid.

67. It follows that the "conviction" by way of the construction fine and the "conviction" by way of the preservation fine became "final" for the purposes of Article 4 of Protocol No. 7 before the institution of criminal proceedings on 5 July 2006, when the bill of indictment was issued (as explained in paragraph 79 below). The Court cannot therefore accept the Government's argument that the administrative acts imposing the fines could not constitute *res judicata* and that the administrative proceedings had not been final.

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

68. The notion of the "same offence" – the *idem* element of the *ne bis in idem* principle in Article 4 of Protocol No. 7 – is to be understood as a second "offence" arising from identical facts or facts which are substantially the same (see *Sergey Zolotukhin*, cited above, §§ 78-84).

69. In the present case, the facts which gave rise to the administrative construction fine and to the applicants' prosecution and criminal conviction were the construction of two surrounding stone walls contravening the relevant building permit. The facts in the two sets of proceedings differed in only one element – that of fault on the applicants' part – which had not been mentioned in the first set of proceedings but is not relevant for the purposes of Article 4 of Protocol No. 7 (see *Ruotsalainen v. Finland*, no. 13079/03, § 56, 16 June 2009). The facts of these two offences must therefore be regarded as substantially the same. The Court is of the view that the criminal offence encompassed the elements of the construction fine in their entirety and that, conversely, the imposition of the construction fine was not based on any elements not contained in the criminal offence, for the purposes of Article 4 of Protocol No. 7.

70. The Court notes that the preservation fine arose from the fact that the unlawfully constructed stone walls had been kept in place. In the criminal proceedings the applicants were accused and convicted because they had unlawfully constructed the stone walls exceeding the requirements of the building permit. The preservation fine was imposed for preserving the unlawful constructions and continuing to infringe the urban-planning legislation, and this constituted an important factual element of the administrative proceedings which did not form part of the applicants' conviction for unlawful construction. The facts underlying the criminal

prosecution and conviction were not the same or substantially the same as those which led to the imposition of the preservation fine in the administrative proceedings.

71. The two impugned sets of proceedings, inasmuch as they concerned the preservation fine, did not constitute a single set of concrete factual circumstances arising from identical facts or facts which were substantially the same (compare and contrast *Jóhannesson and Others v. Iceland*, no. 22007/11, § 47, 18 May 2017). The facts in the subsequent criminal proceedings were not even partly identical to the facts in the preservation-fine proceedings (compare and contrast *Galović v. Croatia*, no. 45512/11, § 112, 31 August 2021). The Court therefore considers that the criminal proceedings did not concern the same offence and the same period of time as regards the imposition of the preservation fine. In these circumstances, the two sets of proceedings in question were sufficiently separate to conclude that there has been no violation of Article 4 of Protocol No. 7 to the Convention in this respect.

72. The Court will continue the examination of the question whether there was a duplication of proceedings as regards the administrative proceedings relating only to the construction fine and in respect of the first applicant.

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

73. As regards the time frame to be taken into account, the Court reiterates that a “criminal charge” exists from the moment that an individual is officially notified by the competent authority of an allegation that he or she has committed a criminal offence, or from the point at which his or her situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him or her (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, 13 September 2016, with further references).

74. The Court further observes, assessing the connection in substance between the construction fine and the criminal proceedings, as well as the different sanctions imposed on the first applicant, that the objectives of both penalties were deterrence and punishment. The urban-planning construction fine imposed in administrative proceedings, however, was specific for the conduct in question and thus differed from “the hard core of criminal law”, as it did not have stigmatising features. The Court therefore accepts that the two sets of proceedings pursued complementary purposes in addressing the issue of unlawful construction and failure to comply with the statutory urban-planning requirements (see, *mutatis mutandis*, *Galović*, cited above, § 118, *Jóhannesson*, cited above, § 51).

75. Furthermore, as regards the foreseeability in law and in practice of the consequences of the applicant’s conduct, the Court notes that both the imposition of an administrative fine and the criminal conviction had the same legal basis, namely two paragraphs of Article 17 of Law no. 1337/1983 (see

paragraph 15 above). The Court observes that the on-site inspection report did not notify the first applicant of any additional criminal liability for the unlawful constructions. Also, he was not informed that the matter had been referred to the prosecutor for criminal investigation on 21 January 2005. However, the Court is of the opinion that the applicant should have been aware that the criminal prosecution and the imposition of a fine was possible, or even likely, on the facts of the case, as this formed part of the sanctions imposed under Greek law for failure to comply with urban-planning legislation (see, *mutatis mutandis*, *Galović*, cited above, § 119, *Jóhannesson*, cited above, § 51).

76. As to the manner of conducting the proceedings, the Court observes that one main element of evidence was the same in both sets of proceedings: the on-site inspection report by the urban-planning authorities, which found the irregularities and imposed the urban-planning fines. It also constituted the indispensable condition for the applicants' eventual prosecution, and the criminal proceedings were based on the findings of the urban-planning official set out therein. However, a hearing took place in the Criminal Court of First Instance and another one took place in the Criminal Court of Appeal, at which the prosecutor made submissions and a witness was examined. The criminal and the administrative sanctions were thus imposed by different authorities and both sets of proceedings followed their own separate course in the Greek legal system and became final independently of each other. The criminal courts collected and assessed evidence and criminal penalties were decided independently of the imposition of the urban-planning fine.

77. The appellate court referred in its judgment to the administrative fines previously imposed for unlawful constructions adversely affecting the natural landscape and went on to hold that, therefore, the applicants had to be convicted and a sentence should be imposed taking into consideration the value of the constructions and the degree of environmental degradation, as provided for in the relevant legal provision. The elements taken into account by the court in upholding the seven-month prison sentence were the severity of the offence and the applicants' personality (see paragraph 11 above). The Court of Appeal thus had regard to the imposition of the previous fine not as a reason to lower the criminal penalty, but as an element which confirmed the applicant's criminal liability. The Court of Cassation also held a hearing in the case and did not recognise a binding effect of the administrative fines in relation to criminal proceedings.

78. As regards the proportionality of the overall punishment inflicted, the judgment of the Criminal Court of First Instance did not make any reference to the fact that the applicant had already been fined. The fact that the appellate court, in fixing the sentence, took into account, among other things, the applicants' financial situation in general, does not mean that the previous administrative fines were taken into account for that purpose, and it is not sufficient to conclude that there was a mechanism in criminal proceedings to

ensure the proportionality of the overall penalties. Moreover, the decision to suspend the sentence was a result of the applicants' not having been criminally convicted with final effect and given a custodial sentence of more than one year (see paragraph 11 above).

79. Assessing the connection in time between the proceedings, the Court notes that the overall length of proceedings was about seven years and 11 months. The construction fine was imposed in the on-site inspection report of 5 October 2004 and the relevant decision may be considered "final" as of 5 December 2004 (see paragraph 66 above). As regards the time frame of the criminal proceedings, the Court does not take into account the date when the matter was referred to the prosecutor for criminal investigation (21 January 2005), as it does not appear from the case file that the applicant was notified of this (compare and contrast *Bragi Guðmundur Kristjánsson*, cited above, § 73). The bill of indictment was issued on 5 July 2006, that is, one year and seven months after the decision in the first set of proceedings had become final. The applicant was convicted at first instance by the one-member Nafplio Criminal Court on 17 September 2008, that is, more than three years and nine months after the administrative fine had become "final". Criminal proceedings passed through all stages following the applicants' appeal and appeal on points of law and they were finally concluded by the Court of Cassation on 11 September 2012, approximately seven years and nine months after the first set had become final (see *Nodet v. France*, no. 47342/14, § 52, 6 June 2019, for illustrative purposes *Ragnar Thorisson v. Iceland* [Committee], no. 52623/14, § 49, 12 February 2019). The criminal proceedings were thus not pending concurrently with the administrative proceedings relating to the construction fine, but were initiated a substantial amount of time after the administrative "conviction". This lapse of time cannot be attributed to the applicant and it cannot be considered that the connection in time between the two sets of proceedings was sufficient to avoid a duplication of the proceedings.

80. Having regard to the above circumstances, the Court finds that, notwithstanding their complementary purposes and the foreseeability of the consequences of the applicant's conduct, the two sets of proceedings were not sufficiently linked in substance and in time, as required under the Court's case-law, to be considered to have formed part of an integrated scheme of sanctions in respect of unlawful construction under Greek law as in force at the material time. On the contrary, having been punished twice for the same conduct, the first applicant, in the Court's view, suffered disproportionate prejudice resulting from the duplication of proceedings and penalties, which did not form a coherent and proportionate whole in his case (see, *mutatis mutandis*, *A and B v. Norway*, cited above, §§ 112, 130 and 147).

81. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention as regards the first applicant.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage and costs and expenses

83. The applicants claimed 3,785.94 euros (EUR) in respect of pecuniary damage corresponding to the expenses of their legal representatives before the domestic courts. They submitted invoices for legal fees of an amount of EUR 1,947.44 paid by the first applicant, bearing dates between December 2011 and September 2012.

84. The Government objected, arguing that the amounts were not supported by the invoices submitted, which did not relate to the proceedings in question.

85. The Court observes that the amounts claimed in respect of pecuniary damage are in fact costs and expenses. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant the sum of EUR 1,947.44, which is supported by the invoices submitted, in respect of costs under all heads, plus any tax that may be chargeable to the applicant.

B. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, the application admissible (i) in respect of the construction and preservation fines imposed on the first applicant and (ii) in respect of the preservation fine imposed on the second applicant and inadmissible in its remainder;
2. *Holds*, that there has been no violation of Article 4 of Protocol No. 7 to the Convention in respect of the criminal conviction of the applicants following the imposition of the preservation fine;

3. *Holds*, that there has been a violation of Article 4 of Protocol No. 7 to the Convention in respect of the criminal conviction of the first applicant following the imposition of the construction fine;
4. *Holds*,
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,947.44 (one thousand nine hundred and forty-seven euros and forty-four cents), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses*, the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 16 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President