



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

THIRD SECTION

CASE OF LOIZIDES v. CYPRUS

(Application no. 31029/15)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Sufficiently reasoned dismissal of criminal appeal, consequent on a tie vote, based on applicant's failure to discharge his burden of proof as required by domestic law • Tied vote not constituting *per se* a violation of Art 6

STRASBOURG

5 July 2022

FINAL

14/11/2022

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

In the case of Loizides v. Cyprus,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma,

Frédéric Krenc, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 31029/15) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Andreas Loizides (“the applicant”), on 16 June 2015;

the decision to give notice to the Cypriot Government (“the Government”) of the complaints concerning the applicant’s right to a fair trial under Article 6 § 1, the right to be presumed innocent under Article 6 § 2, the right to an effective remedy under Article 13, and the right of appeal in criminal matters under Article 2 of Protocol No. 7, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 22 March 2022 and 7 June 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the fairness of criminal appeal proceedings, owing to the alleged failure of the Supreme Court to render a reasoned judgment which was sufficiently clear as to its outcome, in view of that court’s tied vote.

THE FACTS

2. The applicant was born in 1958 and lives in Nicosia. The applicant was represented by Mr A. Demetriades and Mr A. Korfiotis, lawyers practising in Nicosia.

3. The Government were represented by their Agent, Mr G. Savvides, Attorney-General of the Republic of Cyprus.

4. The facts of the case may be summarised as follows.

5. Following an explosion at a naval base in Cyprus which led to the death of thirteen people and numerous casualties, the Attorney General brought

criminal proceedings (no. 4904/2012) against six high-ranking officials before the Larnaca Assize Court. The applicant was the sixth defendant.

6. At the material time, the applicant was serving as Chief of the Special Unit for Disaster Response (*Ειδική Ομάδα Αντιμετώπισης Καταστροφών*).

7. On 9 July 2013 the Assize Court convicted him of causing death by a rash, reckless or dangerous act. Of the remaining defendants, some were acquitted and others were convicted of the offences charged.

8. On 2 August 2013 the Assize Court sentenced him to two years' imprisonment, which he subsequently served.

9. On 9 August 2013 the applicant lodged an appeal with the Supreme Court, challenging his conviction and sentence (appeal no. 145/2013).

10. Other defendants lodged similar appeals (nos. 154/13, 155/13 and 156/13). The Attorney-General also lodged counter appeals (nos. 157/13-163/13). All appeals were joined and were heard together.

11. On 3 April 2014, at the beginning of the appeal hearing, the President of the Supreme Court informed the parties that Judge D.H. would not form part of the bench owing to his upcoming retirement in June.

12. On 19 December 2014 the Supreme Court, sitting in a twelve-judge formation, delivered three judgments in relation to the applicant's appeal. Specifically, the introductory part of the judgments provided to the parties stated as follows:

“Concerning the appellant in Criminal Appeal no. 145/2013, LOIZIDES v. THE REPUBLIC, three judgments will be delivered (*θα δοθούν τρεις αποφάσεις*). One by the President [M.N.], with which Judge S.N. agrees. Judges [G.E.], [P.P.], [A.L.] and [K.S.] agree with the result, but with different reasoning, which will be given by Judge [P.P.]. Judges [A.P.], [L.P.], [D.M.], [M.C.] and [Y.Y.] agree with the third judgment of Judge [C.P.]”

13. The judgment delivered by Judge C.P., with which Judges A.P., D.M., L.P., M.C. and Y.Y. agreed, concluded as follows:

“For all the above reasons, all three appeals against the conviction are dismissed (*απορρίπτονται*).

...

As a result of all the above, the appeals against the sentence are dismissed as unfounded (*ανεδαφικές*).”

14. The judgment of the President of the Supreme Court, Judge M.N., with which Judge S.N. agreed, concluded as follows:

“As a result, Criminal Appeal no. 145/13 would succeed, and we would acquit the appellant of all charges (*Κατά συνέπεια η Ποινική Έφεση 145/13 θα επιτύγχανε και θα αθωώναμε τον εφεσεύοντα από όλες τις κατηγορίες*).”

15. The judgment delivered by Judge P.P., in agreement with Judges G.E., A.L. and K.S., concluded as follows:

“... We would also allow this appeal and ... quash appellant Loizides' conviction on all charges. We do not however agree with all of the President's reasoning ...”

16. On 19 December 2014 the three judgments concerning the applicant, and the judgments concerning the remaining appeals and counter appeals (see paragraph 10 above) were read out in open court. The relevant parts of the verbatim transcript drawn up the same day concerning the applicant's appeal stated as follows:

"President N.:

Judges C.P. and D.M. are absent from the Court's bench today for health reasons.

Judge A.P. will announce, in short, the decisions of Judge C.P. Owing to the complexity of the issues, Judge A.P. will first speak on behalf of Judge C.P. and will read, in short, the decisions for the ... sixth defendant ... Next, I will speak concerning the fourth, second, fifth and sixth defendants.

Judge P.P. will add her own decision concerning the sixth defendant ...

At the end of the procedure, with my own statement from the bench, the summary result will be provided (*από έδρας με δική μου δήλωση θα δοθεί συνοπτικά το αποτέλεσμα*), so that there is no misunderstanding (*παρεξήγηση*), owing to the complexity of the decisions, and an official announcement will be issued by the Supreme Court for the press, so that the judgments are not misinterpreted (*να μη γίνει παρερμηνεία των αποφάσεων*). Right after the summary announcement (*συνοπτική ανακοίνωση*), all interested parties will be given a bundle with all the judgments ..."

17. After the judgments were pronounced, the President of the Supreme Court made a separate announcement concerning, *inter alia*, the summary of the applicant's appeal, as follows:

"... The Criminal Appeal of the sixth defendant, Andreas Loizides, is dismissed, because there was a tie vote of 6-6 concerning the outcome of his appeal and he did not discharge the burden of proving (*δεν απέσεισε το βάρος απόδειξης*) that the first-instance decision and sentence were incorrect."

18. On the same day, the Supreme Court issued a press release with a similar statement.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

19. Article 30 § 2 of the Constitution provides, where relevant, the following:

"2. In the determination of any criminal charge against him ..., every person is entitled to a ... hearing ... by [a] ... court Judgment shall be reasoned ..."

II. ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) LAW OF 1964 (LAW No. 33/1964)

20. Under section 3, the Supreme Court has thirteen members, one of whom acts as president. All judges have equal powers and jurisdiction.

21. Under section 11(1), the jurisdiction, competence or powers vested in the Supreme Court are exercised, subject to the provisions of subsections (2) and (3), by the full court.

22. Section 11(3) provides that the appellate jurisdiction of the Supreme Court is exercised by at least three or five judges nominated by the court.

23. Under section 16, the Supreme Court is deemed to be duly constituted during and notwithstanding any vacancy in its membership (*Το Δικαστήριο λογίζεται προσηκόντως συγκεκροτημένον και εάν έτι χηρεύη οιαδήποτε θέσις μεταξύ των μελών αυτού*).

III. THE COURTS OF JUSTICE LAW OF 1960 (LAW No. 14/1960, AS AMENDED)

24. The basic principles concerning appeals to the Supreme Court under section 25 of Law 14/1960 are set out in *Kyprianou v. Cyprus* ([GC], no. 73797/01, § 32, ECHR 2005-XIII).

25. Section 27(2) provides that when a court is comprised of an even number of judges who reach a tie vote, the judgment will be issued against the party who has the burden of proof.

IV. CRIMINAL PROCEDURE LAW (CAP. 155)

26. Section 77(3) of Cap. 155 provides that in deciding the sentence to be imposed, where the first-instance criminal court consists of more than one judge and there is an equality of votes, the president of that court has an additional or casting vote.

27. The powers of the Supreme Court on appeal under section 145 of Cap. 155 are summarised in *Kyprianou* (cited above, § 34).

V. DOMESTIC CASE-LAW AND PRACTICE

A. Burden of proof in criminal appeals

28. According to domestic case-law, “the burden of quashing the conviction rests with the appellant”, while the prosecution has the burden of satisfying the appellate court that, despite an error in the trial court judgment, it should dismiss the appeal if it considers that no substantial miscarriage of justice has occurred (see *S.S. and V.V.M. v. The Republic of Cyprus*, Criminal Appeal no. 147/2016, 20 November 2019, and *Yiannis Antoniou Vouniotis v. The Republic of Cyprus* (1975) 2 C.L.R. 34).

B. Requirement that judgments be reasoned

29. The requirement that a judgment be reasoned has been interpreted domestically to consist of three main elements: analysis of the evidence

adduced in light of the issues as arising and defined by the pleadings; concrete findings of the court and a clear judicial pronouncement indicating the outcome of the case. There is no predefined structure for a court decision and the manner of its drafting is left to the discretion of the judge (see, *inter alia*, *Theodora Ioannidou v. Charilaos Dikeos* (1969) 1 C.L.R. 235; *Pioneer Candy Ltd v. Tryfon Sons* (1981) 1 C.L.R. 540). The form, extent and content of reasoning may vary with the subject of the judgment; the sufficiency of the reasoning depends largely on the circumstances of each case (*Ellinas v. The Republic* (1989) 1 CLR 17; *Hambou and Others v. Michael and Another* (1981) 1 C.L.R. 618).

C. Case-law concerning tied votes

30. In the case of *Nicolaou and another v. Nicolaou and another* (No. 2) (1992) 1 A.A.D. 1338, which concerned the constitutionality of a law, the Supreme Court came to a tie vote of five to five. The judgment noted the following:

“In view of the tie, the answer to the legal question that was referred to the Supreme Court by the Family Court is that the Laws under examination are constitutional because the presumption of constitutionality of the laws was not reversed.

...

The laws under examination were considered constitutional”

THE LAW

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

31. Relying on Article 6 § 1 of the Convention the applicant complained that the dismissal of his appeal consequent on a tie vote was in breach of his right to have a fair trial, referring to various alleged irregularities in the proceedings.

32. That provision reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

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

B. Merits

1. *The parties' submissions*

34. The applicant argued that he had not had a fair trial. He claimed that his appeal had been dismissed on the mere fact of the tied vote, presumably by virtue of section 27(2) of Law 14/1960. As a result, the applicant argued that the above section did not respect the principle for the presumption of innocence as the balance should tilt in his favour. In this connection, he claimed that the appellate court had been deprived of the power to decide and overrule his conviction, in violation of Article 6 of the Convention.

35. The applicant further claimed that the three judgments did not contain any reference to section 27(2). Nor did they contain reasoning about the application and consequences of the said section in criminal appeals, even though this had been the first criminal appeal raising such a novel issue and there had been no precedent on the matter. In addition, the alleged “summary result” as announced by the President of the Supreme Court on the day of the delivery of the judgments had not formed part of the written judgments that had been given to the parties and recited in open court, nor had it contained any reference to section 27(2) of Law 14/1960 to allow the parties, even on that day, to express their arguments. His lawyer had overall not been afforded the opportunity to address this serious matter which determined the applicant’s imprisonment.

36. The Government maintained that the applicant had had a fair hearing in accordance with Article 6 § 1 of the Convention. The domestic law did not preclude the possibility of cases to be tried by an even number of judges when necessary and the Court’s case law did not indicate that a tie vote was *per se* in breach of Article 6 § 1 of the Convention. The final determination of the appeal had been based on well-settled domestic procedural rules concerning the burden of proof (see paragraphs 25 and 28 above); the dismissal of the applicant’s appeal on account of the tied vote had therefore been a foreseeable outcome.

37. The Government further argued that after all judgments had been recited and delivered, the President of the Supreme Court had pronounced the summary result, stating, regarding the applicant’s appeal that it had been dismissed. He had further explained the reasons for such dismissal despite the tied vote. Similarly, the formal press release had stated that the Supreme Court decided to dismiss the appeal. According to the Government, the result of the Supreme Court’s judgment had been clear as the wording of the judgments allowing the appeal had used hypothetical language (see paragraphs 14 and 15 above), as opposed to the judgment issued by Judge C.P., which had expressly stated that the appeal was dismissed (see paragraph 13 above).

2. The Court's assessment

38. Taking note of the entirety of the applicant's complaints and the arguments raised, the Court considers that they essentially pertain to the Supreme Court's failure to produce a properly reasoned judgment with sufficient clarity as to its outcome and as to the application and consequences of section 27(2) of Law 14/1960 on account of the tied vote.

(a) General principles

39. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A, and *Higgins and Others v. France*, 19 February 1998, §§ 42-43, *Reports of Judgments and Decisions* 1998-I). The extent to which the duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to consider, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States in statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments (*García Ruiz*, cited above, § 29).

40. The Court further reiterates that in proceedings conducted before professional judges, the accused's understanding of his conviction stems primarily from the reasons given in judicial decisions. In such cases, the national courts must indicate with sufficient clarity the grounds on which they base their decisions (see *Hadjianastassiou v. Greece*, no. 12945/87, 16 December 1992, § 33, Series A no. 252). Reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence (see *Taxquet v. Belgium* [GC], no. 926/05, § 91 ECHR 2010).

(b) Application to the present case

41. The Court notes that domestic law does not preclude the occurrence of a tie vote. Notwithstanding any vacancy in its membership, the Supreme

Court is deemed to be duly constituted (see paragraph 23 above). The President of the Supreme Court does not have a casting vote (see paragraph 20 above).

42. Section 27(2) of Law 14/1960 provides that where the Supreme Court is comprised of an even number of judges who reach a tie vote, the judgment will be issued against the party who has the burden of proof (see paragraph 25 above). The Court observes that according to the case-law provided by the Government, which is not contested by the applicant, the burden of quashing a conviction in criminal appeals rests with the appellant, while the burden of showing that there has not been a substantial miscarriage of justice despite an error in the trial court judgment, rests with the prosecution (see paragraph 28 above).

43. The Court has not interpreted a tied vote to constitute *per se* a violation of Article 6 of the Convention nor can it find in the circumstances of the present case that section 27(2) is *per se* contrary to Article 6 of the Convention. However, it is still necessary for the Court to establish, whether, in the particular circumstances of the present case, the Supreme Court's judgments resulting in the dismissal of the applicant's appeal were reasoned enough to allow the applicant to understand why the dismissal was the result of the operation of section 27(2), and whether that decision was clear enough as to its conclusion and outcome.

44. The Court notes that at the beginning of the trial the parties were informed that Judge D.H. would not form part of the bench (see paragraph 11 above). The possibility of a tie vote was therefore evident to the applicant who was represented by a lawyer and did not raise any concerns regarding the court's formation.

45. The Court also notes that the three judgments that were issued concerning the applicant's appeal contained both reasons for allowing and for dismissing the appeal with sufficient substantiation. No issue thus arises with regards to the Supreme Court's examination of the merits of the case and issues pertaining to the correctness of the first instance decision.

46. The Court reiterates that the requirement that judgments of courts should adequately state the reasons on which they are based may vary according to the nature of the decision (see paragraph 39 above). While it is true that the said judgments did not contain any reference to section 27(2), the dismissal of the applicant's appeal was the inevitable result of the tie vote. Hence, the degree of legal debate required on the matter was significantly reduced. In this connection, the Court cannot ignore the fact that the wording of the judgments allowing the appeal had used hypothetical language, whereas the judgment issued by Judge C.P., expressly stated that the appeal was dismissed.

47. In addition, despite the silence of the written judgments provided to the parties on the matter of the tie vote, the President of the Supreme Court orally announced the result of the judgments ensuring that the applicant

understood that the appeal was dismissed given his failure to discharge his burden of proof, thus eliminating the possibility of a misunderstanding (see paragraph 17 above). Moreover, the Supreme Court, issued separately a press release explaining the outcome of the case to the public (see paragraph 18 above).

48. Despite the absence of express reference to section 27(2) in the Supreme Court's decisions, considering the applicant's submissions before this Court (see paragraph 34 above), there is no doubt that the applicant understood that his case was dismissed on account of the operation of that provision.

49. While it might have been suitable that the Supreme Court had included a correspondingly short reasoning on the matter and a brief conclusion as to the outcome of the case in the written judgments (compare for example the domestic case of *Nicolaou and another v. Nicolaou and another*, paragraph 30 above), the Court does not consider that the absence of such reasoning in the particular circumstances of the case infringed the requirements of Article 6 § 1 of the Convention.

50. In conclusion, there has been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Relying on Article 6 § 2 of the Convention the applicant complained that owing to the tie vote, his right to be presumed innocent had been breached and the burden of proof in his criminal appeal had been reversed. Moreover, relying on Article 2 § 1 of Protocol No. 7 he complained that as a result of the tie vote his appeal had been dismissed depriving him of the right to have his conviction reviewed fairly. Finally, relying on Article 13 of the Convention he complained that he had not had access to an effective remedy in respect of the above complaints.

52. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3(a) and 4 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, by a majority, the complaint concerning Article 6 § 1 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds*, by four votes to three, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 5 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
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) Dissenting opinion of Judge Serghides;
- (b) Joint dissenting opinion of Judges Pavli and Krenc.

G.R.
M.B.

DISSENTING OPINION OF JUDGE SERGHIDES

1. One of the main procedural irregularities complained of by the applicant (see paragraph 31 of the judgment) was the lack of access to a court as a result of section 27(2) of the Courts of Justice Law 1960 (Law 14/1960), as amended, and the Supreme Court’s inability to decide on the merits of his appeal and to overrule his conviction (see paragraph 34 of the judgment). In view of the applicant’s complaints, a question concerning the right of access to a court was, *inter alia*, communicated to the parties.

2. The majority in the Chamber turned their attention to the issue of the absence of sufficient reasoning, or rather the lack of a reasoned judgment, and did not genuinely address the issue of access to a court, simply considering that section 27(2) of Law 14/1960 was not *per se* contrary to Article 6 of the Convention (see paragraph 43 of the judgment). I respectfully disagree with the judgment (point 2 of its operative part) that there has been no violation of Article 6 § 1. In this connection, I consider that the main issue raised in this case is whether the dismissal of the applicant’s appeal as a result of a tie vote was in breach of his right of access to a court and therefore in breach of his right to a fair trial under Article 6 of the Convention, for the reasons I will explain below. In forming this opinion, I took into account the parties’ observations regarding the issue of access to a court, including the Court’s existing case-law on the matter (see paragraph 6 of this opinion).

3. In *Maresti v. Croatia* (no. 55759/07, § 33, 25 June 2009), the Court reiterated that Article 6 of the Convention did not compel the Contracting States to set up courts of appeal or of cassation, but where such courts did exist, the guarantees of Article 6 had to be complied with, for instance in that it secured to litigants an effective right of access to the courts.

4. According to the principle of effectiveness¹, which applies to every Convention provision including Article 6, the right of access to a court must be “practical and effective”, not theoretical and illusory. The effectiveness of access to a court presupposes that an individual has a clear and concrete opportunity to challenge an act constituting an interference with his or rights². Equally, the right of access to a court includes not only the right to institute

¹ On this principle, see D. Rietiker, “The Principle of ‘Effectiveness’ in the Recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and Its Consistency with Public International Law – No Need for the Concept of Treaty *sui generis*”, *Nordic Journal of International Law* 79, 2010, pp. 245-277; and Georgios A. Serghides, *The Principle of Effectiveness and its Overarching Role in the Interpretation and Application of the ECHR: The Norm of all Norms and the Method of All Methods*, Strasbourg, 2022, *in passim*.

² See *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016.

proceedings, but also the right to obtain a determination of the dispute by a court³.

5. In my humble view, there has been a violation of Article 6 since the applicant did not have access to a court owing to the tie vote reached by the Supreme Court, sitting as an appeal court. In my opinion there has been no final determination of the applicant’s criminal rights. That was, firstly, due to the automatic mechanism of section 27(2) of Law 14/1960 which, as a result of the tie vote, did not allow the Supreme Court to reach a final determination on the merits of the case; and, secondly, due to the fact that the Supreme Court allowed itself to be composed of an even number of judges. Consequently, the applicant’s right of access to a court was curtailed to such an extent as to impair its very essence.

6. The proposed view is consonant with and is supported by the established case-law of the Court. In *Marini v. Albania* (no. 3738/02, § 122, 18 December 2007), the Court held:

“The Constitutional Court’s failure to reach a majority on the proposals before it left the applicant without any final determination on his case and accordingly restricted the essence of his right to access to a court. On that account there has been a breach of Article 6 § 1 of the Convention.”

Similarly, in *Avdić and Others v. Bosnia and Herzegovina* (nos. 28357/11, 31549/11, 39295/11), the Court, “see[ing] no reason to depart from its line of reasoning in the *Marini* case”, found that there had been a violation of Article 6 § 1 of the Convention” (§ 39). As the Court observed, the Constitutional Court, failing to reach a majority, declined to determine the applicants’ civil rights and obligations (§ 37). As the Court also held in *Avdić*, referring to *Marini*, “[w]hen there is no *real* ‘determination’ of civil rights and obligations, the right of access to court remains illusory” (*ibid.*, emphasis added).

7. The *ratio decidendi* of the present case and the above two cases are in effect the same, namely, that if there is no *real* determination of rights (whether criminal or civil or constitutional) by the domestic courts due to a rule preventing them from determining the rights in question, this amounts to having no access to a court and therefore to a violation of Article 6. It is immaterial, in my view, whether this rule is in nature an evidential rule (e.g. regulating the result of a tie vote), as in the present case, or a procedural rule (e.g. regulating failure to reach the required majority), as in the other two cases. The important common issue in all three cases is that due to the existence of such a rule and the consequential lack of *real* determination of the rights concerned, the right of access to a court is not practical and effective, but has become theoretical and illusory. To my mind, a *real* determination of the applicant’s rights cannot be the dismissal of his appeal

³ *Lupeni Greek Catholic Parish and Others*, cited above, § 86, and *Deweere v. Belgium*, 27 February 1980, § 48, Series A no. 35.

and the non-reversal of the first instance court’s decision on the basis of a tie vote and the automatic mechanism and operation of an evidential rule. Furthermore, it would be futile and also dissuasive for an applicant in general to make an appeal against a decision sentencing him or her to prison and be burdened with all the necessary legal and other costs of doing so, if the appeal court were not really to determine the merits of his appeal and instead to dismiss it with costs, due to an evidential formality.

8. Having decided that the applicant did not have access to a court in the present case, I conclude that there has been violation of Article 6 § 1 of the Convention, and I therefore respectfully disagree with point 2 of the operative part of the judgment finding that there has been no violation of that provision.

9. Regarding the complaint of no reasoned judgment, I consider it to be *ratione materiae* inadmissible by virtue of Article 35 §§ 3(a) and 4 of the Convention. That is so since access to a court is a *sine qua non* requirement for the guarantee of a reasoned judgment, and a finding of a violation of Article 6 for lack of access to a court renders the guarantee of a reasoned judgment immediately and automatically devoid of object and existence. Similarly, in my partly dissenting opinion in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, 1 December 2020), having found that there had been a violation of Article 6, given that there was “no tribunal established by law”, I proposed, by employing the principle of effectiveness, that the complaints concerning the “independence” and “impartiality” guarantees of Article 6 should be regarded as automatically inadmissible *ratione materiae*, as opposed to the mere finding in the judgment that there was no need to examine those complaints.

10. Turning now to the applicant’s complaints that there has been a violation of: (a) his right to an effective remedy under Article 13 of the Convention, and (b) his right of appeal in criminal cases under Article 2 of Protocol No. 7 to the Convention, following the case-law of the Court, I consider that they raise no separate issues. According to the case-law, Article 6 § 1 is a *lex specialis* in relation to the provisions of Article 13 and Article 2 of Protocol No. 7, the latter two being absorbed by the former⁴. I therefore disagree with point 1 of the operative part of the judgment, finding these complaints inadmissible rather than considering them as not raising separate issues.

11. Regarding now the applicant’s complaint that his right to be presumed innocent under Article 6 § 2 of the Convention had been breached, I consider it manifestly ill-founded, pursuant to Article 35 §§ 3(a) and 4 of the Convention and, in this regard, I agree with point 1 of the operative part of the judgment. In my view, the applicant mistakenly considered that he had to prove his innocence on appeal. This is so because the presumption of

⁴ See, respectively, *Menesheva v. Russia*, no. 59261/00, §§ 105, 107, ECHR 2006-III; *Kakabadze and Others v. Georgia*, no. 1484/07, §§ 99-100, 2 October 2012.

innocence had continued to apply up to the end of appeal proceedings against the conviction (in the present case, until 19 December 2014 when the applicant's appeal was dismissed by the Supreme Court)⁵.

12. I would award the applicant legal costs and an amount for non-pecuniary damage; however, being in the minority, I do not see any need to specify the amounts I would award.

⁵ See *Nölkenbockhoff v. Germany* [GC], 10300/83, 25 August 1987; Commission's report of 9 October 1985, DR 31, p. 12, § 4 I; and *Konstas v. Greece*, no. 53466/07, §§ 35-36, 24 May 2011.

JOINT DISSENTING OPINION OF JUDGES PAVLI AND KRENC

1. We regret that we are unable to share the majority’s conclusion that the lack of reasoning in the matter of the tie vote and the absence of any clear conclusion on the applicant’s appeal did not infringe the requirement of Article 6 § 1 of the Convention that judgments must give sufficient reasons.

2. Section 27(2) of Cypriot Law 14/1960 provides that where the Supreme Court is comprised of an even number of judges who reach a tie vote, the judgment will be issued against the party who has the burden of proof (paragraph 25 of the judgment). According to the case-law provided by the Government, the burden of quashing a conviction in criminal appeals rests with the appellant, while the burden of showing that there has not been a substantial miscarriage of justice despite an error in the trial court judgment rests with the prosecution (paragraph 28 of the judgment).

3. As the majority rightly stressed (paragraph 43 of the judgment), the Court had to establish in the present case whether the Supreme Court’s judgments resulting in the dismissal of the applicant’s appeal contained sufficient reasons to allow the applicant to understand why the dismissal was the result of the operation of section 27(2), and whether that decision was clear enough as to its conclusion and outcome.

4. In the present case, three separate “judgments” were issued. We must say at the outset that, while perhaps uncommon, we do not consider that the existence of three separate and apparently co-equal judgments infringes *per se* Article 6 § 1 of the Convention. We also concur with the majority that a tie vote situation in appeals before an apex court does not *per se* raise any issues of access to court under the same Convention provision.

5. In our opinion, Article 6 § 1 of the Convention has been violated in the present case, as none of these three judgments contained, not even in brief terms, any reasoning explaining the operation of section 27(2) in relation to the tie vote, or a clear conclusion as to the outcome of the case (compare with the domestic case of *Nicolaou and another v. Nicolaou and another* (No. 2), paragraph 30 of the judgment). No reference whatsoever was made, in the judgments provided to the parties, to the said section of the 1960 Law, or to the fact that the appeal was dismissed because of the tie vote, not even in the simplest of terms. We find these omissions rather perplexing.

6. We wish to recall that the main purpose of providing reasoned decisions is to enable an accused person to *understand* the reasons for his or her conviction or, as in the present case, the dismissal of his or her appeal against a conviction. A reasoned decision prevents any doubt about arbitrariness. One should not lose sight of the fact that the applicant’s appeal concerned a serious prison term imposed by the lower court.

7. We also note that domestic case-law provides that a reasoned judgment must include a clear judicial pronouncement indicating the outcome of the case (paragraph 29 of the judgment).

8. In this regard, we observe that the Supreme Court was aware of the possibility of a “misunderstanding” or “misinterpretation” of the multiple judgments handed down in the applicant’s case. This transpires from the President’s announcement and the subsequent press release.

9. In our view, neither the oral announcement by the President of the Supreme Court that the appeal was dismissed as a consequence of the tie vote, nor the issuing of a press release, can be considered sufficient for the purposes of the requirement under Article 6 § 1 of the Convention that judgments must give sufficient reasons. To our knowledge, this is the first time that the Court has made such an assertion, which can be viewed as weakening the guarantee of properly reasoned decisions. Judgments should be able to speak for themselves, rather than having to be “complemented” through oral announcements or external communications, which are of dubious legal value and may not be relied upon in any future proceedings. Lastly, we would note that not even did the President’s announcement contain any references to section 27(2) of the 1960 Act (paragraph 16 of the judgment).

10. We are fully aware of the differences that may exist between various legal systems and traditions in the European legal area, including as to the formalities of judgment delivery. We have no intention of denying this diversity. But this could not justify the deprivation of one of the fundamental guarantees of the right to a fair trial in criminal proceedings.