



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

THIRD SECTION

CASE OF LOUCAIDES v. CYPRUS

(Application no. 60277/19)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Domestic courts' failure to duly consider crucial issues concerning a *nolle prosequi*, leading to a lawyer's conviction for interfering with judicial proceedings

STRASBOURG

18 October 2022

FINAL

06/03/2023

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

In the case of Loucaides 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. 60277/19) 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 Loukis Loucaides (“the applicant”), on 18 November 2019;

the decision to give notice to the Cypriot Government (“the Government”) of the complaint concerning the applicant’s right to a fair trial under Article 6 § 1 of the Convention;

the parties’ observations;

Having deliberated in private on 20 September 2022,

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

INTRODUCTION

1. The case concerns the fairness of criminal proceedings brought against the applicant for interfering with judicial proceedings and the allegedly arbitrary findings of the domestic courts in that regard.

THE FACTS

2. The applicant, Mr Loukis Loucaides, was born in 1937 and lives in Nicosia. He is a lawyer who, *inter alia*, served as the Deputy Attorney General of the Republic of Cyprus between 1975 and 1998.

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.

I. THE EVENTS LEADING TO THE APPLICANT’S PROSECUTION

5. Private prosecutions (nos. 15419/13, 15270/13 and 15420/13) were brought against the applicant (defendant no. 2) and his two clients S.F. (defendant no. 1) and E.F. (defendant no. 3) before the Larnaca District Court (hereinafter “the court”).

6. On 28 February 2014 the prosecution withdrew the case against E.F.

7. By a letter dated 26 March 2014 the applicant requested the Attorney General to issue a direction of no prosecution (*nolle prosequi*) in respect of the pending criminal proceedings against himself and his clients.

8. In reply, by a letter of 9 April 2014 headed “Private Criminal Cases no. 15419/13, 15270/13 and 15420/13 of the District Court of Larnaca” the Attorney General informed the applicant that he had decided to suspend the prosecution of the said cases (“... αποφάσισα να αναστείλω την ποινική δίωξη των εν λόγω υποθέσεων”).

9. On the same day, the Attorney General issued three *nolle prosequi* forms headed “Direction of no prosecution (*Nolle prosequi*) in accordance with Article 113.2 of the Constitution and Section 154(1) of Cap. 155” in respect of the three private prosecutions (nos. 15419/13, 15270/13 and 15420/13) and forwarded them to the registrar of the court. The three forms had been filed in the court’s respective files (court file for case no. 15419/13, court file for case no. 15270/13 and court file for case no. 15420/13). The applicant also received a copy. The forms, which were signed by the Attorney General, stated the following:

“By enacting the powers vested in me by Article 113.2 of the Constitution and Section 154(1) of the Criminal Procedure Law, I inform the Larnaca District Court that the Republic suspends the proceedings on charges 2, 5 and 8 against –

2. Louki Loucaide, from Nicosia
defendant in the above case.”

10. Each *nolle prosequi* form stated that the criminal prosecution was suspended in respect of the applicant. No mention was made of defendants S.F. or E.F. in the forms.

11. On 10 April 2014 the court dismissed the cases pending against the applicant as a result of the *nolle prosequi* and acquitted him on all charges.

12. The verbatim record of the proceedings on 10 April 2014, for all three cases, reports the following exchange (translation):

“Parties appearing:

Ms K. appears for the prosecution.

Mr Loucaides appears for defendant no. 1 [S.F.].

Defendant no. 2 [Mr. Loucaides] appears for himself.

Defendants 1 and 2 are present.

Ms K: As regards defendant no. 3 [E.F.], the case against her has been withdrawn as from 28.02.14. As regards defendant no. 2, the case will be discontinued (θα διακοπεί) by the Attorney General’s instructions. I present the relevant letter.

Court: The criminal prosecution as regards the second defendant is discontinued (διακόπτεται). Defendant no. 2 is discharged (απαλλάσσεται). Please read the charges to defendant no. 1.

The charges concerning defendant no. 1 (namely charges 1,4,7) have been read to the defendant and he pleads not guilty.

Court: The case concerning defendant no. 1 is set down for hearing on 7.10.2014 at 11 a.m. The defendant should sign a bond of € 2,000.”

13. The cases therefore continued to run against S.F. and were subsequently set down for hearing on 7 October 2014, 11 February 2015 and 14 July 2015.

14. By a letter of 14 July 2015 the applicant informed the registrar of the criminal division of the court that the case of S.F. seemed to have been scheduled for hearing by mistake, as according to the letter of 9 April 2014 the Attorney General had decided to suspend the prosecution of all three cases. The Attorney General’s letter of 9 April 2014 addressed to the applicant and the applicant’s letter of 26 March 2014 to the Attorney General were attached. The applicant requested that the registrar inform the court of the above, stating that, if necessary, he could attend the court and provide any additional clarifications, although the content of the documents had been self-evident (“παρόλο που τα έγγραφα μιλούν από μόνα τους”). These letters were filed in the court’s respective case files.

15. On the same day, S.F. appeared alone before the court with the above letters. According to the court records of 14 July 2015, S.F. had informed the court that he had secured a *nolle prosequi* through his lawyer. Relying on the letters, the court dismissed the cases which were pending against S.F.

II. PRIVATE PROSECUTION (No. 8629/15)

16. On 10 September 2015 a new private prosecution (no. 8629/15) was brought against the applicant and S.F. for, *inter alia*, interfering with judicial proceedings. According to the indictment, through his letter of 14 July 2015 the applicant had informed the registrar that a *nolle prosequi* had been granted for all three cases, although he was aware that this information was false.

17. A trial took place before the Larnaca District Court in which the court heard the applicant, S.F., the complainants and the registrar of the court.

18. On 16 November 2018 the court delivered its judgment finding the applicant guilty of interfering with judicial proceedings contrary to section 122(b) of the Criminal Code, Cap. 154. S.F. was acquitted of all charges.

19. According to the court’s judgment, the applicant’s position throughout the trial had been that the Attorney General’s letter of 9 April 2014 constituted the true direction of no prosecution and that the *nolle prosequi* form had been sent to him in excess. He had based this position on the fact that through his letter of 26 March 2014 he had requested a *nolle prosequi* for all three defendants, not just for himself, and that in his reply of 9 April 2014 the Attorney General had granted his request with reference to all three cases. He insisted that the Attorney General’s letter of 9 April 2014

led to the logical conclusion that he had entered a *nolle prosequi* for all three defendants. The court dismissed his testimony as not credible and considered that it did not coincide with the knowledge of the *nolle prosequi* procedure he had admitted to have had as a former Deputy Attorney General.

20. More specifically, the court noted the following inconsistencies or gaps in the applicant's testimony. During his cross-examination he admitted that, as a Deputy Attorney General for thirty years, he had signed *nolle prosequi* requests in the absence of the Attorney General and was well aware of the procedure. When asked whether the *nolle prosequi* form was the real and true direction of no prosecution he avoided replying and eventually said that "it is that too" ('είναι και αυτό'). The applicant also testified that he had sent the letter of 14 July 2015 because it appeared that the court had not noticed that the *nolle prosequi* also concerned S.F. When asked why he had not mentioned this fact earlier, he replied that if the Attorney General had made a mistake, it had not been his fault. The court noted that, despite the fact that the applicant had been representing S.F., he claimed during his cross-examination that he had not been aware of the reason why between 9 April 2014 and 14 July 2015 the case against S.F. continued to be scheduled for a hearing. The court also noted the applicant's insistence that the case pending against E.F. had been dismissed as a result of the *nolle prosequi*, whereas the prosecution had withdrawn the case pending against her already on 28 February 2014 (see paragraphs 6 and 12 above).

21. The court found that the *actus reus* of the offence had been proved. The applicant's acts were objectively viewed as tending or likely to interfere with the judicial proceedings: the applicant had sent the letter of 14 July 2015 to the registrar informing her of an error and the Attorney General's letter of 9 April 2014 seen in isolation, and without the *nolle prosequi* form, had been capable of persuading the addressee that an error had indeed occurred.

22. The court further held that the *mens rea* of the offence had been proven though circumstantial evidence. First, the applicant had been aware since 10 April 2014 that the *nolle prosequi* referred only to himself, as on that day he was the only person to be acquitted in all three criminal cases. Second, while he continued to represent S.F., at no time prior to 14 July 2015 had he informed the court that S.F. ought to have been acquitted on account of the *nolle prosequi*. This was despite the fact that fifteen months had passed, and the case had been set down for hearing on three other dates. Third, on 14 July 2015 and without presenting to the court a *nolle prosequi* form for S.F., the applicant raised the issue by means of a letter to the registrar saying that the case had been erroneously set down for hearing. Fourth, the cases against E.F. had not been dismissed on account of the *nolle prosequi*, as pleaded by the applicant, but rather because the prosecution had withdrawn the cases pending against her on an earlier date. Fifth, the applicant had served as a Deputy Attorney General for years and he was aware of the procedure related to the suspension of a criminal case by the Attorney General. Sixth, had he

believed that the letter the Attorney General sent him on 9 April 2014 was the actual direction for no prosecution concerning S.F., he would have been expected to have raised the issue since 10 April 2014 when he appeared in court. In reaching these findings, the court made reference to the relevant legal provisions and case-law (see paragraphs 30 and 31 below).

23. The court lastly noted that the applicant had never admitted or let it be understood that he had made a *bona fide* mistake, or a mistake of fact, without the intention of interfering with the court procedures when sending the letter of 14 July 2015. Had he taken this position from the outset, namely that he had by mistake confused the letter of 9 April 2014 with the true *nolle prosequi* form, the court's finding might have been different.

24. On 23 November 2018 the court sentenced the applicant to four months' imprisonment, suspended for three years.

III. APPEAL PROCEEDINGS

25. On 26 November 2018 the applicant filed an appeal (no. 5/19) with the Supreme Court. He raised two grounds of appeal: the first challenging his conviction and the second challenging the sentence. He claimed primarily that there had been no proof that he had acted deceitfully. Specifically, he had requested a *nolle prosequi* for all three defendants; the Attorney General had sent two letters dated 9 April 2014: the first informing him of the decision to suspend the prosecution of all three cases and the second informing him of the decision to suspend the prosecution against him. The "second letter" had therefore been unnecessary and sent in excess. In any event, the applicant submitted that a *nolle prosequi* form was not necessary as it could also be entered orally. As soon as he had been informed by S.F. that the latter's case was ongoing, he had sent the letter of 14 July 2015; that was why the court had erred in convicting him due to his delay in sending the letter of 14 July 2015. Lastly, the applicant observed that when he had served as Deputy Attorney General in the past, he had merely signed the *nolle prosequi* and had not taken any action to forward them to the court as this had been the secretaries' task.

26. On 19 July 2019 the Supreme Court, with reference to domestic case-law, upheld the findings of the court as being objective and well-founded, and dismissed the appeal.

27. The Supreme Court held, *inter alia*, that the most glaring evidence of the applicant's knowledge that the *nolle prosequi* applied only to himself was the fact that, according to the court records of 10 April 2014 concerning the three cases, the applicant, who had been present in court both as a defendant and as counsel for S.F., had been aware on that date that the prosecution had been suspended solely in respect of himself, while the case against S.F. had been scheduled for another hearing. In addition, considering the applicant's prior experience as Deputy Attorney General, as well as the facts of the case

as a whole, the Supreme Court dismissed as unfounded the applicant’s argument as to the “second letter”, meaning the *nolle prosequi* form, having been sent in excess. It held that as a former Deputy Attorney General the applicant knew or ought to have known that the letter of 9 April 2014 had only been an informative letter and that the true *nolle prosequi* had been the form – headed “Direction of no prosecution (*Nolle prosequi*) in accordance with Article 113.2 of the Constitution and section 154(1) of Cap. 155” – which made specific mention of the applicant’s name. Therefore, according to the Supreme Court, the applicant’s position that the *nolle prosequi* could also have been granted orally was unfounded and in any event did not apply in the present case. Consequently, the Supreme Court held that when the applicant sent the letter of 14 July 2015 to the registrar without referring to the true facts, he had committed the offence under section 122(b) and that the *actus reus* and *mens rea* of the offence had been established.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DISCONTINUANCE OF CRIMINAL PROCEEDINGS

28. Article 113 § 2 of the Constitution of Cyprus provides:

“The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions.”

29. Section 154(1) of the Criminal Procedure Law, Cap. 155, as amended, provides as follows, in so far as relevant:

“In any criminal proceedings and at any stage thereof before judgment the Attorney-General may enter a *nolle prosequi*, either by stating in Court or informing the Court in writing that the Republic intends that the proceedings shall not continue and thereupon the accused shall be at once discharged in respect of the charge or information for which the *nolle prosequi* is entered.”

II. OBSTRUCTION OF JUSTICE

30. Section 122(b) of the Criminal Code, Cap. 154, as amended, provides as follows, insofar as relevant:

“Any person who does any act –

(a) ...

(b) calculated, or which is likely, to obstruct, or in any way interfere with, any judicial proceedings, is guilty of a misdemeanour and is liable to imprisonment for three years.”

31. In the case of *Konstantina Akkelidou v. The Police* (2005) 2 A.A.D. 249 the plenary of the Supreme Court explained that for a person to be convicted under section 122(b) both the *mens rea* and *actus reus* of the crime needed to be satisfied. As regards the *actus reus* there must be an act which is meant to interfere with or may interfere with judicial proceedings. As regards the *mens rea*, specific intent is not necessary; basic intent will suffice.

THE LAW

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

32. The applicant complained of a breach of his right to a fair trial as guaranteed in Article 6 § 1 of the Convention, which 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 the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) *The applicant*

34. The applicant reiterated the arguments he had made before the Supreme Court (see paragraph 25 above). He claimed that the domestic courts had failed to carefully examine his arguments and had erred in their assessment of the facts of the case. He further argued that there was no domestic legal provision requiring a standard *nolle prosequi* form. On the contrary, according to the applicant, the law provided that a *nolle prosequi* could be entered in writing or orally, without specifying its form. The applicant submitted that, as a result, the Government could not contest the effect of the letter that the Attorney General had sent him as merely “informative”. According to the applicant that letter had constituted a genuine expression of the Attorney General’s decision to suspend all three cases, while the other letter had been sent “in excess or inadvertently”. Overall, he submitted that there was essentially no case against him and that in any event he had been tried “arbitrarily and unreasonably”.

(b) The Government

35. The Government submitted that the proceedings as a whole had been fair and that the domestic courts' findings had not been arbitrary or manifestly unreasonable. The domestic courts' judgments were reasoned and detailed; the courts had examined and evaluated the evidence; the interpretation and application of domestic law as well as the establishment of facts had been reasonable and based on domestic law and practice; the applicant had benefited from adversarial proceedings and all his arguments had been duly heard and examined at length.

36. In this connection, the Government reiterated that the true *nolle prosequi* was represented by the forms dated 9 April 2014 which the Attorney General's office had forwarded to the court's registrar and which had been placed in all three case files. They further argued that a *nolle prosequi* could be entered by the Attorney General or officials on behalf of the latter, and the fact that a *nolle prosequi* could be entered orally had been irrelevant in the circumstances of the present case, as the *nolle prosequi* concerning the applicant had been entered in writing. The Government additionally submitted that the fact that the *nolle prosequi* forms had been placed in the court's case files did not have any bearing on the applicant's responsibility under section 122(b) of the Criminal Code, as his actions were objectively viewed as tending or likely to interfere with the judicial proceedings, irrespective of whether they had ultimately had that result.

2. The Court's assessment

37. The Court observes at the outset that the applicant's complaint essentially concerns the outcome of the domestic proceedings and the assessment of the facts, evidence, and domestic law by the national courts.

38. The Court reiterates that it is not its task to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts. Nor is it for the Court to deal with alleged errors of law or of fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015). The Court's only concern is to examine whether the proceedings have been conducted fairly and to ensure that in a given case they were compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case (see, *mutatis mutandis*, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 118, ECHR 2011).

39. In addition, the Court cannot itself assess facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance and would be disregarding the limits

imposed on its action (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). The Court will not therefore question, under Article 6 § 1, the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan*, cited above, § 61).

40. Whilst acknowledging the domestic judicial authorities' prerogative to assess the evidence and decide what is relevant and admissible, the Court reiterates that Article 6 § 1 places the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see *Khamidov v. Russia*, no. 72118/01, § 173, 15 November 2007) without prejudice to its assessment of whether they are relevant to its decision (see *Carmel Saliba v. Malta*, no. 24221/13, § 64, 29 November 2016).

41. The Court further reiterates that the requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law, the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases (see *Carmel Saliba*, cited above, § 67).

42. The Court reiterates that its concern is to verify whether the proceedings as a whole complied with the requirements of Article 6 of the Convention. One such requirement is that the domestic courts must deal with the most important arguments raised by the parties and provide reasons for accepting or rejecting them (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I). Specifically, in that case the Court stated the following:

"80. The Court notes that the right to a fair trial as guaranteed by Article 6 § 1 of the Convention includes the right of the parties to the trial to submit any observations that they consider relevant to their case. The purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 16, § 33), this right can only be seen to be effective if the observations are actually "heard", that is duly considered by the trial court. In other words, the effect of Article 6 is, among others, to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 19, § 59)."

43. In the present case, one of the main arguments raised by the applicant was that he had genuinely believed the Attorney General's letter to be the actual *nolle prosequi* for all defendants, (see paragraph 20 above, and the applicant's statement that 'it is that too') as in Cyprus a *nolle prosequi* could be entered in writing or orally, without there being any rules on its prescribed form (see paragraph 25 above). The Court cannot identify, in the domestic

courts' judgments, a proper analysis of this argument which could have influenced the outcome of the proceedings.

44. Neither the domestic courts in their judgments, nor the Government in their submissions to the Court, have pointed to any rules which regulate the form or content of a *nolle prosequi* – whether that be in writing or orally. Section 154(1) of the Criminal Procedure Law (see paragraph 29 above) is also silent on the matter.

45. In this connection, it appears that due to the absence of such concrete regulation, the District Court considered the letter of 9 April 2014 addressed to the applicant as sufficient proof of a *nolle prosequi*. As a result, the court dismissed the criminal proceedings against S.F. on 14 July 2015 without requiring S.F. to present an official *nolle prosequi* form. In addition, the prosecution, which was present in court when S.F. submitted the Attorney General's letter, did not object to the dismissal of the criminal proceedings or raise an issue concerning the absence of a *nolle prosequi* form. All parties on the said date, including the court, considered the Attorney General's letter to be the actual *nolle prosequi*.

46. The Court cannot, moreover, ignore the fact that the court's case files contained the *nolle prosequi* forms issued by the Attorney General, referring to the applicant alone (see paragraph 9 above), as well as the letters of 14 July 2015, 9 April 2014 and 26 March 2014 (see paragraph 15 above). The Court notes in this respect that while the applicant did not attach to his letter of 14 July 2015 to the registry the *nolle prosequi* form which referred to him alone, nonetheless the said form had already been placed in the court's case files. The Court cannot therefore agree with the Government's suggestion that the fact that the *nolle prosequi* forms had been placed in the court's case files did not have any bearing on the applicant's responsibility.

47. A serious charge as that of obstruction of justice, with an ensuing conviction, should not be pursued lightly, considering the impact on the applicant, with all the associated repercussions on his reputation – especially as he had served as Deputy Attorney General – as well as on his private and professional life. In the event of doubt as to the existence of a *nolle prosequi* concerning S.F., the court could have consulted its case files and inquired further into the issue by addressing questions to S.F., the prosecution or even the registry. Moreover, through his letter of 14 July 2015 the applicant expressly stated that the case of S.F. seemed to have been scheduled by mistake and subsequently expressed his readiness to attend the court and provide any additional clarifications if needed (see paragraph 14 above). Thus, in the event of doubt, the court could also have asked the applicant to do so. The Court notes in this regard that the language used by the applicant, namely the phrase “seemed to be” is not categorical.

48. The Court considers that the domestic courts in their assessment of the applicant's responsibility – which had to be proven beyond reasonable doubt – failed to deal with these issues entirely and provided no explanation as to

the reasons why, despite the alleged necessity of a formal *nolle prosequi* form, the District Court had nonetheless readily dismissed the criminal cases against S.F. in the absence of such a form.

49. The Court considers that the above omissions are not negligible, and it cannot find any explanations in this regard in the domestic courts' judgments or the Government's submissions.

50. In the light of the foregoing, the Court considers that the applicant did not have the benefit of fair proceedings as the domestic courts failed to deal with crucial arguments which could have affected the outcome of the proceedings. The Court therefore finds that the case was not "duly considered by a domestic tribunal" (see, *mutatis mutandis*, *Fomin and Others v. Russia*, no. 34703/04, § 34, 26 February 2013).

51. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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. Damage

53. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage. He alleged that as a result of the breach of his rights, he had suffered mentally and physically, while his professional activities and image had also been affected.

54. The Government contested the above amount as excessive.

55. The Court considers that the applicant must have suffered distress and anxiety due to the violation of Article 6 of the Convention, and that this justifies awarding him compensation in respect of non-pecuniary damage. Ruling on an equitable basis, the Court awards the applicant EUR 9,600, plus any tax that may be chargeable.

B. Costs and expenses

56. As the applicant did not claim costs and expenses, the Court makes no award under this head.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by five votes to two, that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 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 dissenting opinion of Judge Krenč, joined by Judge Seibert-Fohr is annexed to this judgment.

G.R.
M.B.

DISSENTING OPINION OF JUDGE KRENC, JOINED BY
JUDGE SEIBERT-FOHR

1. To my deep regret, I am unable to share the majority’s finding that there has been a violation of Article 6 of the Convention in the present case.

2. As the present judgment rightly recalls, “the Court cannot itself assess facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance and would be disregarding the limits imposed on its action” (see paragraph 39 of the judgment). It is also well established in the Court’s case-law that it is for the national authorities, notably the courts, to interpret and apply domestic law (see *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018). Therefore, the Court may not question their interpretation unless there has been a flagrant violation of domestic law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 216 and 244, 1 December 2020, and *Erotocritou v. Cyprus* (dec.), no 15783/16, § 63, 25 May 2021).

3. This so-called “fourth-instance doctrine” is especially relevant under Article 6 of the Convention. As regards this provision, the role of the Court is not to supervise the validity of judicial decisions rendered by national courts, but it is to examine whether the procedural guarantees enshrined by Article 6 have been duly respected (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). As the Court has clearly and repeatedly said, it “should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable” (see, among others, *Zubac v. Croatia* [GC], no. 40160/12, § 79, 5 April 2018, and *Vujanovic v. Croatia*, no. 32349/16, § 98, 11 June 2020). This is the guiding principle of the Court’s case-law under Article 6 of the Convention (see paragraph 39 of the judgment).

4. In the present case, the applicant claimed under Article 6 of the Convention that the domestic courts had failed to carefully examine his arguments and had erred in their assessment of the facts and the law applicable in his case (see paragraph 34 of the judgment). The majority concur with the applicant and find that “the case was not duly considered by a domestic tribunal” (see paragraph 50 of the judgment). By so ruling, the Court is, in my opinion, exercising a substantive review of the judicial domestic decisions which is incompatible with the Court’s role under Article 6 of the Convention and inconsistent with its traditional approach.

5. It cannot seriously be contested in the present case that the domestic courts provided reasoning, and even extensive reasoning, for their findings:

they examined the facts and relied on the relevant legal provisions and case-law, and they explained how they had reached their conclusions. In particular, the domestic courts considered that the applicant had been aware since 10 April 2014 that the *nolle prosequi* referred only to himself. They observed that the applicant had raised no objection when he was informed on that date that the case in respect of S.H. had been scheduled for a new hearing. They noted that at no time prior to 14 July 2015 had the applicant informed the court that S.F. ought to have been acquitted on account of the *nolle prosequi*. They ruled that the applicant's argument that the *nolle prosequi* could also have been granted orally was unfounded and in any event did not apply in the present case, as it was apparent that in the applicant's case the Attorney General had decided to use the written form.

6. In the light of the above, there is nothing, in my opinion, to allow the Court to conclude that these domestic courts' findings were "arbitrary or manifestly unreasonable" on the basis of our well-established case-law (see paragraph 3 above). The majority do not rule otherwise. I also note that the majority do not consider that the national courts failed to sufficiently provide the reasons on which they based their decisions (compare with *Taxquet v. Belgium* [GC], no. 926/05, ECHR 2010). In fact, they find that "the case was not duly considered by a domestic tribunal" (see paragraph 50 of the judgment). What does this mean concretely? At what point can we say that a case has "not been duly considered by a domestic tribunal" under Article 6 of the Convention?

7. In fact, this expression "not been duly considered by a domestic tribunal" was used in Article 35 § 3 (b) of the Convention, before being deleted as a result of Protocol No. 15, amending the Convention. Article 35 § 3 (b) did not allow the rejection of an application on the grounds of the absence of a "significant disadvantage" for the applicant if the case "[had] not been duly considered by a domestic tribunal". This safeguard clause sought to "ensure that every case receive[d] a judicial examination whether at the national level or at the European level, in other words, to avoid a denial of justice" (see *Korolev v. Russia* (dec.), no. 22551/05, 1 July 2010). In the present case, there is no question of a denial of justice. The applicant was afforded the opportunity to present his arguments before these two courts, namely before the Larnaca District Court and the Supreme Court, which delivered reasoned decisions (see paragraph 5 above).

8. It may be noted that the applicant relied solely on Article 6 of the Convention in his application. He did not invoke any other provision. Therefore, the impact of this sanction on the applicant's reputation as well as on his private and professional life (as emphasised in paragraph 47 of the present judgment and I absolutely do not deny this impact) could have been

taken into consideration under Article 8 of the Convention but is not relevant as far as Article 6 is concerned. The Court does not have jurisdiction under Article 6 to examine whether the impugned sanction was justified or proportionate. Accordingly, I am not taking a position on the merits of this sanction. I cannot but repeat that this is not the issue under Article 6.

9. In conclusion, I consider that the Court is effectively acting *in casu* as a “court of fourth instance”. The present judgment is highly questionable, as every day the Court sitting both in a single-judge formation and in a committee of three judges dismisses a huge number of applications relying on Article 6 of the Convention on the sole ground that the Court cannot reassess the facts or the application of domestic law by national courts.