



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

THIRD SECTION

CASE OF CHURCH OF GREECE v. GREECE

(Application no. 44547/15)

JUDGMENT

Art 6 § 1 (civil) • Disproportionate limitation on applicant organisation's right of access to a court • Hearing of the applicant organisation's civil action about the ownership of certain property not in its possession declared inadmissible for non-compliance with the requirement to include the property in the tax declaration for the previous five years and pay the relevant land tax on it • No indication the State was prevented from collecting the relevant tax from the liable party by other means • Failure to strike a fair balance between the applicant's right of access to a court and the legitimate aims pursued

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 January 2025

FINAL

21/04/2025

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

In the case of Church of Greece v. Greece,

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

Peeter Roosma, *President*,

Ioannis Ktistakis,

Lətif Hüseynov,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 44547/15) 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 the Church of Greece (“the applicant organisation”), on 2 September 2015;

the decision to give notice to the Greek Government (“the Government”) of the application concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

the parties’ observations;

Having deliberated in private on 17 December 2024,

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

INTRODUCTION

1. The application concerns the applicant organisation’s alleged lack of access to a court as required by Article 6 § 1 of the Convention because the hearing of its civil action about the ownership of certain property (*rei vindicatio-διεκδικητική αγωγή*) was declared inadmissible for non-compliance with the requirement to file a certificate of land tax. The applicant organisation further complained that the requirement in question had been in breach of its right to the peaceful enjoyment of its possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant organisation was represented by Mr D. Povaretos, a lawyer practising in Athens.

3. The Government were represented by their Agent’s delegate, Ms Z. Chatzipavlou, Legal Representative at the State Legal Council.

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

5. The applicant organisation manages the immovable property of the Asomaton Petraki Holy Monastery which had owned three tracts of land totalling 31.9 hectares in the prefecture of Athens. In 1933 the Office for the

Management of Church Property (ODEP) was put in charge of managing the land. By notarial deed no. 31184 of 1 April 1978, registered in the Athens Land Registry, ODEP and the Asomaton Petraki Holy Monastery donated the land to the Greek State for the construction of a hospital and related State purposes, on certain terms such as the availability of a number of beds for and the provision of free healthcare to the priests of the Church of Greece and their families. The deed of gift included a condition subsequent (*διαλυτική αίρεση*) according to which, if the aforementioned objective had not been fulfilled within ten years from its signature, the gift would be automatically terminated by a unilateral declaration of the donor made before a notary and duly registered in accordance with the law. By notarial deed no. 32122 of 12 July 1978, registered in the Athens Land Registry, which made certain amendments to the original deed, it was specified that the construction of the hospital should start within ten years from the date on which the Minister of Finance accepted the gift.

6. By a ministerial decision dated 3 August 1978 the Minister of Finance accepted the gift and that decision was registered at the Athens Land Registry. On 24 November 1978 the land was registered in the Register of Public Land (*Βιβλίο Δημοσίων Κτημάτων*).

7. By a contract of exchange of properties of 1979 and a contract of 1980, both of which were validated by Law no. 1081/1980, the State transferred parts of the 31.9 hectares to the National and Kapodistrian University of Athens for the University to build a university hospital within ten years. Law no. 2166/1993 validated a further contract between the State and the University which stated that the State had not fulfilled its obligations and undertook to fully cover the expenses of building the hospital within ten years. Law no. 2892/2001 validated a contract between the State and the University which provided that the land subject to the aforementioned contracts would be returned to the ownership of the State as the latter could not comply with its obligations, because, among other reasons, a land-use planning study had concluded that this was impossible. By a ministerial decision of 2001 three parcels of land totalling 97,500 sq. m from the 31.9 hectares were transferred to the B Healthcare Administrative Region on condition that it built hospital units within five years. In 2006 the Administrative Region requested that this period be extended for a further ten years.

8. On 23 April 2013 the Church of Greece submitted a request to the Minister of Finance asking for the Asomaton Petraki Holy Monastery to be declared the owner of the land of 31.9 hectares. The request was also transmitted to the Directorate of Forest Protection and Natural Environment, which sent the file to the Directorate of Forests of the municipality of Athens requesting an administrative examination of the request.

9. On 21 November 2013, not having received a response to its request, the applicant organisation lodged a civil action asking the Athens Court of

First Instance (i) to acknowledge that the condition subsequent in the original transfer of ownership had been satisfied; (ii) to declare that the Asomaton Petraki Holy Monastery was the owner of the land in question; and (iii) to order that the Greek State be dispossessed of the land. In its written observations dated 5 September 2014, the applicant organisation argued that it was not required to submit a uniform land tax (*ενιαίος φόρος ιδιοκτησίας ακινήτων*, *ΕΝ.Φ.Ι.Α.* – “*ENFIA*”) certificate because the Greek State was in possession of the land in issue and was therefore the body required by law to submit the certificate. It further cited judgment no. 2/2014 of the Chania Court of First Instance as regards the unconstitutionality of that requirement. In that judgment the court had ruled that Article 54A § 5 of Law no. 4174/2013 (“Code of Tax Procedure”) providing for that requirement was contrary to the Constitution and to the Convention (see paragraphs 23-24 below).

10. A hearing took place on 30 September 2014. On 25 February 2015 the Athens Court of First Instance by interlocutory decision no. 573/2015 held that the action should not have been admitted and declared the hearing inadmissible (*κήρυξε απαράδεκτη τη συζήτηση*) because the applicant organisation had not filed the ENFIA certificate after having been previously invited to complete that requirement in accordance with Article 227 of the Code of Civil Procedure (see paragraph 16 below).

11. The decision was finalised and on 13 March 2015 it was archived. It was not subject to appeal. On 2 September 2015 the applicant organisation lodged an application with the Court.

12. On 4 June 2018 the applicant organisation filed an application in the domestic court for the above decision no. 573/2015 to be revoked and asking for a date to be set for the hearing of its action. It maintained that it had not filed, as required by Article 54A § 5 of the Code of Tax Procedure, the certificate of the tax authority stating that the land had been included in the ENFIA declaration for 2014 and in the land tax (*φόρος ακίνητης περιουσίας*, *ΦΑΠ* – “FAP”) declaration for years 2010 to 2013 and that the corresponding tax for these five years had been paid (see paragraph 19 below). The reason was that the courts had not yet ruled on whether the condition subsequent in the original donation had been satisfied or, if it had, when the Asomaton Petraki Holy Monastery had been reinstated as the owner of the land in question, which the State was then occupying. It maintained that the nature and character of the land and its value for tax purposes were unclear, as the State claimed that the tracts of land had been unlawfully included in the urban plan because they were forest land and their inclusion had not been approved as required by the Minister of Agriculture. In addition, provided that the land was part of the urban plan, it would have been valued at approximately EUR 53,000,000, which would have resulted in a tax obligation of approximately EUR 500,000 over the five years. It was impossible for the

applicant organisation to pay that amount for land which was under litigation and of which it was unable to enjoy its property rights.

13. The requirement to file the tax certificate was, according to the applicant organisation, impossible to comply with, and contrary to the Constitution, to Article 6 § 1 of the Convention and to the right of property, as several national courts had ruled. The hearing should not have been declared inadmissible for non-compliance with a requirement which was provided for not in the Code of Civil Procedure but in special tax legislation aimed at serving tax purposes. Tax was not relevant for the outcome of the case and the proper administration of justice and could have been dealt with by the tax authorities. The purpose of the trial should be reaching a decision on the merits and procedural requirements should enable the unhindered progress of the proceedings and guarantee the issuance of correct judgments. In addition, the requirement to submit the certificate did not apply as regards in particular the applicant organisation's request in its civil action for a declaration that the condition subsequent in the original deed of gift had been satisfied (see paragraph 9 above under (i)), as this did not concern a claim *in rem*. Pending compliance with that requirement, which was inappropriate, the adjudication of the applicant organisation's claim had been delayed unnecessarily.

14. On 10 May 2019 the Athens Court of First Instance dismissed the applicant organisation's application, by judgment no. 1829/2019. It held that, for the hearing to be admissible, under Article 54A § 5 of the Code of Tax Procedure as amended by Law no. 4474/2017, in force as of 1 January 2017 (see paragraph 20 below), and in accordance with decision no. 573/2015, it was not necessary for the uniform land tax for the property in question to have been calculated and paid but only for the property to have been included in the relevant declaration to the appropriate authority. This requirement did not impair the right of access to a court or the essence of the right to property. As regards the request for a declaration that the condition subsequent to which the original gift was subject had been fulfilled, the court held that this was a necessary preliminary question in support of the applicant organisation's claims *in rem* and could not be dissociated from them. It therefore dismissed the application to revoke decision no. 573/2015 and the request for a date to be set for the hearing of the action.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGISLATION

15. The relevant provision of the Civil Code reads as follows:

Article 1094

Civil action about the ownership of property (*rei vindicatio*- διεκδικητική αγωγή)

“The owner of a property shall have the right to request from a person who is in possession or occupation of the property the recognition of his or her ownership and the recovery of the property.”

16. The relevant provisions of the Code of Civil Procedure read as follows:

Article 227

“1. If there are procedural omissions which can be rectified, ... the representative or plaintiff ... shall be invited to rectify them, including after the hearing, within an appropriate ... time-limit.”

Article 309

“... Interlocutory decisions may, of the court’s own motion or on application by one of the parties ... be revoked by the court which made them at any stage of the proceedings before the delivery of a final decision. The court shall not be obliged to respond to an application for revocation [of an interlocutory decision] even if it is submitted in an admissible manner.”

17. The explanatory memorandum of Law no. 4223/2013, in Chapter A, page 1, provides:

“... Aiming to maintain budgetary stability and secure public revenues, the proposed provisions of the present law repeal the tax on immovable property (*φόρος ακίνητης περιουσίας*, *Φ.Α.Π* – ‘FAP’) and establish as of 1 January 2014 the uniform land tax (*ενιαίος φόρος ιδιοκτησίας ακινήτων*, *ΕΝ.Φ.Ι.Α.* – ‘ENFIA’) imposed on all land in the country based on the criteria of the surface area and the specific characteristics of each parcel of land ...”

18. The relevant provisions of Law no. 4223/2013, as in force at the relevant time, read as follows:

Article 1

“1. From 2014 and for every subsequent year ENFIA shall be imposed as specified in paragraph 2 of the present [Article] on land located in Greece and owned by natural or legal persons or any kind of legal entity on 1 January of every year.

2. ENFIA shall be imposed on rights *in rem* of full ownership ... It shall also be exceptionally imposed on rights of possession (*δικαίωμα νομής*) ..., occupation (*κατοχής*) ...”

Article 3

“1. The rights over land owned by (a) the State ... shall be exempted from ENFIA ...”

19. The relevant provisions of Law no. 4174/2013 (“Code of Tax Procedure and other provisions”), as in force at the relevant time, read as follows:

Article 48

“2. The tax authority may offset claims resulting from taxes and other public revenues ..., in accordance with Article 83 of [Legislative Decree no. 356/1974] ...”

Article 53

“1. If an amount of a tax is not paid ..., the taxpayer shall pay interest on that amount ...”

Article 54

“1. A fine shall be imposed on the taxpayer ... in the event of: ... (b) non-submission or late submission of a tax declaration...

2.(a) The fine shall be set at 100 euros... ”

Article 54A

This Article was added by Article 9 § 2 of Law no. 4223/2013, which was adopted by the Greek Parliament on 31 December 2013, and was in force as of 1 January 2014 and for every financial year (Article 59 § 2 of Law no. 4223/2013).

“1. Every promissory (*υποσχετική*) or executory (*εκπονητική*) legal transaction (*δικαιοπραξία*) by which rights over land are created, modified, varied or transferred ... shall be *ipso jure* void unless the notary refers to in the deed and attaches to [it] ... a certificate of the tax authority stating that this specific land ... has been included in an ENFIA declaration and that the taxpayer has paid or has been lawfully exempted from ENFIA for the property in question and has paid ... or has been lawfully exempted from ENFIA corresponding to other immovable property for which he has been liable during the last five years. ...

3. If it is not possible to attach an ENFIA certificate, as referred to in paragraph 1 corresponding to the last five years before the transfer of the property, to the notarised deed, for the other years a certificate under Article 48 of Law no. 3842/2010 shall be attached to it which states that this specific property has been included in a FAP declaration and that the person liable has paid the immovable property tax ...

5. A hearing of an action relating to immovable property ... shall be inadmissible if the person liable to pay ENFIA does not submit the certificate referred to in paragraphs 1 and 3 of the present Article.”

20. With effect from 1 January 2017, Article 13 § 6 of Law no. 4474/2017 amended Article 54A § 5 of the Code of Tax Procedure as follows:

“5. A hearing of an action relating to immovable property ... shall be inadmissible if a person liable to pay ENFIA does not submit a certificate stating that the immovable property in issue has been included in an ENFIA and FAP declaration, where applicable, for the last five years.”

21. Article 83 of Legislative Decree no. 356/1974, as in force at the relevant time, read as follows:

“1. A claim by a debtor of the State which is confirmed (*βεβαιη*) and ascertained (*εκκαθαρισμένη*) ... may be offset by confirmed sums owed by the debtor to the State...”

22. Article 7 of Law no. 2961/2001 reads as follows:

“By way of exception, the tax obligation shall arise:

...

(b) when litigation ends by any means, where inherited assets are under litigation at the time the deceased passes away and the person entitled to them is not in possession of them ...”

II. RELEVANT PRACTICE

A. Case-law referred to by the applicant organisation

23. The Court of Cassation in its judgment no. 1143/2019 held that Article 54A § 5 of the Code of Tax Procedure had been introduced to ensure the right of the State to collect taxes and could not lead to inadmissibility. It dismissed as unfounded a ground of appeal on points of law that the hearing of the action lodged by the owners of apartments within a building should have been declared inadmissible because the plaintiffs had not filed a certificate of payment of ENFIA. A requirement to file such a certificate for a hearing to be admissible was held to be inapplicable because of the purely fiscal nature of the requirement and because it was contrary to the right of property, to judicial protection and the principle of proportionality in the Constitution and to Article 6 § 1 of the Convention, given that it did not concern the judicial protection of the parties involved in land transactions.

24. Other domestic courts have reached similar conclusions, as seen for example in judgment no. 2/2014 of the Chania Single-member Court of First Instance and judgment no. 19/2016 of the Crete Single-member Court of Appeal. In those judgments it was also held that the requirement to file a tax certificate was a procedural barrier which deprived individuals of access to a court: it was designed to ensure the protection of the public purse, which did not constitute a legitimate aim in the general interest, and there was no proportionality between the individual right and the aim pursued. The provision contributed to unequal treatment by the State, which reserved a privileged position for itself by protecting its own financial interests. The right of access to a court should not be dependent on the fulfilment of tax obligations. Otherwise, heavily indebted owners would not be able to file the tax certificate and could not bring proceedings to protect their property rights, so they could not be protected against anyone who tried to dispossess them of their property.

25. Those findings were supported by judgment no. 15203/2014 of the Thessaloniki Multi-member Court of First Instance and judgment no. 1200/2015 of the Athens Multi-member Court of First Instance, in which the courts further held that, in particular where a plaintiff brought a civil action about the ownership of certain property and for an order for possession against the defendant who had taken possession of or was occupying that property, it could not be the case that both the plaintiff and the defendant,

who both claimed to be the owner, would be liable for the tax on the property. The plaintiff would be obliged to pay tax on property which was the subject of litigation and which he or she was currently unable to enjoy and the party that lost in the proceedings would not be able to obtain a refund of the tax.

B. Case-law regarding Article 54A § 5 of the Code of Tax Procedure after its amendment

26. With effect from 1 January 2017, Article 13 § 6 of Law no. 4474/2017 amended Article 54A § 5 of the Code of Tax Procedure as follows: “A hearing of an action relating to immovable property ... shall be inadmissible if a person liable to pay ENFIA does not submit a certificate stating that the immovable property in issue has been included in an ENFIA and FAP declaration, where applicable, for the last five years.” (see paragraph 20 above). The amended legislative provision did not contain the requirement to have paid the ENFIA tax when bringing proceedings relating to immovable property. The majority of courts have applied the amended provision (see, for instance, judgment no. 41/2020 of the Leros Justice of the Peace) and have declared hearings inadmissible owing to the plaintiff not having submitted an ENFIA certificate stating that the property in issue had been included in the relevant tax declaration (see, for instance, judgment no. 189/2019 of the Rhodes Justice of the Peace).

27. However, certain courts, such as for instance the Patras Court of Appeal in judgment no. 630/2021 and the Aegean Court of Appeal in judgment no. 31/2021, have ruled that the requirement provided for by the amended provision was contrary to the Constitution and to the Convention and in particular violated the right of property, the principle of proportionality and the right of access to a court. The Patras Single-member Court of First Instance in judgment no. 324/2020 and the Leros Justice of the Peace in judgment no. 21/2021 similarly held that, even after it had been amended, the provision protected the public purse and ensured compliance with fiscal obligations, and the aim pursued by the legislation was not proportionate to its restriction of property rights and the right of access to a court.

THE LAW

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

28. Relying on Article 6 § 1 of the Convention, the applicant organisation asserted that it had been deprived of access to a court, as the domestic courts had declared inadmissible the hearing of its civil action about the ownership of the property in question. Article 6 § 1, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”

A. Admissibility

29. The Government argued that the applicant organisation had not raised the alleged breach of its rights under the Convention with the national courts and had therefore failed to exhaust domestic remedies. They referred to the fact that the applicant organisation submitted that it was not obliged to include the original parcels of land in the ENFIA declaration because they had been transferred to the Greek State in 1978 by deed of gift and the satisfaction of the condition subsequent did not entail the *ipso jure* recovery of possession of the land. According to the Government, the applicant organisation should therefore have made those arguments in a clear and precise manner and proved its case both in its civil action at the Athens Court of First Instance and when it filed its application requesting that decision no. 573/2015 be revoked together with the request for a date to be set for the hearing of its action on the merits.

30. In its additional observations the Government argued that the applicant organisation could have made any argument in the above application as to why compliance with the requirement to include the land in the tax declaration was impossible or particularly difficult. Additionally, there was no legal restriction on the applicant organisation applying again to have the decision revoked, giving any arguments as to why it had been impossible to file the tax certificate.

31. The applicant organisation maintained that it had argued in the written pleadings of its action that the State, which was in possession of the land, was liable for the ENFIA tax. It had also cited domestic case-law according to which the requirement provided for in Article 54A § 5 of the Code of Tax Procedure was contrary to the constitutional right to judicial protection, to Article 6 § 1 of the Convention and to the right of property as protected by the Constitution (see paragraphs 23-25 above).

32. The applicant organisation further maintained that decision no. 573/2015 was an interlocutory decision which was not subject to appeal. As regards its application for revocation of decision no. 573/2015 and request for a date to be set for the hearing of its action, this did not constitute a remedy which could lead to the review of the decision and the court was not even required to respond to the application (see paragraph 16 above). However, the applicant organisation had attempted it in order to overcome the procedural obstacle posed by Article 54A § 5 of the Code of Tax Procedure to its claim. In this application, it had presented its arguments that decision no. 573/2015 was in error and that it imposed a requirement which was impossible to comply with, unnecessarily delaying the enforcement of its right; however, these arguments were dismissed.

33. The Court considers that the Government's objection in relation to exhaustion of domestic remedies is closely linked to the substance of the complaint under 6 § 1 of the Convention as it concerns the scope, interpretation and application by the domestic courts and authorities of the requirement to file a tax certificate, in proceedings relating to immovable property, in the applicant organisation's case. The Court therefore joins it to the merits of the case.

34. It further notes that the complaint relating to Article 6 § 1 of the Convention 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 organisation

35. The applicant organisation maintained that the obligation to submit the tax certificate would have meant that during the past five years it would have had to include the property at issue in its ENFIA declaration for 2014 and in its FAP declaration for years 2010 to 2013. It had considered that it had not been obliged to include the tracts of land in the tax declaration because they had been given to the Greek State in 1978 and the satisfaction of the condition subsequent did not entail the *ipso jure* recovery of the land then in the possession of the Greek State. That was why the applicant organisation had submitted the request to be declared the owner of the land in question in 2013 and why it had brought proceedings against the State in the course of which it transpired that the tracts of land had been registered as public land. Moreover, if the value of the property had been calculated using the tax authority's calculation tool and based on the objective system of calculation of its value and its size (31.9 hectares), it would have been valued at approximately EUR 53,815,300. If the applicant organisation had declared the property under ENFIA and FAP, it would have been liable to tax at a rate of EUR 95,700 per year according to a privately operated calculation tool designed for this purpose.

36. The applicant organisation maintained that Article 54A § 5 of the Code of Tax Procedure had introduced a procedural barrier at an early stage of proceedings and deprived individuals of access to a court as it constituted a means of exerting pressure on them to fulfil their tax obligations. It added that the imposition of a land tax, in addition to other taxes, should not make the constitutional right of access to court conditional on the fulfilment of those specific tax obligations. The provision was of a purely fiscal nature and it should not have constituted a procedural precondition for lodging an action concerning rights *in rem* and a prerequisite for obtaining a judgment on the

merits as its aim was not to provide judicial protection to parties involved in immovable property transactions.

37. The applicant organisation further submitted that, in the context of an action where the plaintiff claimed ownership of land and requested that the party in possession or in occupation vacate it, both parties could not be liable to ENFIA because that would result in multiple taxation for the same property. The plaintiff would have to pay tax for property which was subject to litigation and of which he or she had no current enjoyment and in the event of losing the case, the plaintiff would not be entitled to a refund of the tax paid. It added that Article 54A § 5 of the Code of Tax Procedure was contrary to the principle of equality of arms because the State was exempted from the obligation to pay ENFIA under Article 3 § 1(a) of Law no. 4223/2013 (see paragraph 18 above) and therefore to submit the certificate required. The applicant organisation further cited domestic case-law by which it had been held that Article 54A § 5 of the Code of Tax Procedure was void as being contrary to the Constitution and the Convention (see paragraphs 23-25 above).

38. The applicant organisation further submitted that Article 54A § 5 of the Code of Tax Procedure as amended by Article 13 § 6 of Law no. 4474/2017 (see paragraph 20 above) continued to prevent the examination of its case and to infringe Article 6 § 1 of the Convention, since the obligation to include the property in the declaration would have resulted in the applicant organisation being liable to tax and to a fine for late submission of the declaration (Article 54 §§ 1 and 2 of the Code of Tax Procedure; see paragraph 19 above). In the event of non-payment of ENFIA, a tax debt would have arisen under Article 53 § 1 and monthly interest would have been incurred (see paragraph 19 above); the State could have offset the debt against other amounts due to the applicant (Article 48 § 2 of the Code of Tax Procedure in conjunction with Article 83 of Legislative Decree no. 356/1974; see paragraphs 19 and 21 above). The applicant organisation also submitted that, in contrast to proceedings relating to immovable property, in the context of inheritance law there was an exemption from the obligation to submit the certificate stating that the claimed inheritance had been included in the ENFIA declaration when the property being inherited was the subject of litigation and the plaintiff was not in possession of it (see paragraph 22 above).

39. Lastly, the applicant organisation observed that the purpose of the obligation to pay ENFIA or to include the property in a tax declaration was to protect the public purse and ensure compliance with fiscal obligations. It created an excessive burden on the plaintiff and there was no reasonable relationship of proportionality between the legislative aim pursued and the restriction of the right of access to a court. It further cited domestic case-law concluding that the amended requirement was void as being contrary to the Constitution and the Convention (see paragraph 27 above).

(b) The Government

40. The Government maintained that the introduction of ENFIA by Law no. 4223/2013 had pursued the aim of maintaining budgetary stability and ensuring the collection of public revenues (see paragraph 17 above). The requirement in Article 54A § 5 of the Code of Tax Procedure was provided for by law and it was foreseeable and accessible. ENFIA and the measures taken for collecting it not only protected the public purse by ensuring that the tax was collected but were also part of a programme of measures aimed at securing the overriding public interest in the proper functioning of the State and the protection of citizens' rights.

41. Referring to *Mamatas and Others v. Greece* (nos. 63066/14 and 2 others, §§ 101-03, 21 July 2016) and *Koufaki and Adedy v. Greece* ((dec.), nos. 57665/12 and 57657/12, § 40, 7 May 2013), the Government explained that in 2008 the international financial crisis had had a serious impact on the Greek economy; in 2009 the European Union institutions had found that the country had an excessive fiscal deficit and in 2010 they had notified Greece that it must take steps to reduce it. As the country had been unable to meet payments which were falling due, a stability mechanism with the participation of the Eurozone member States and the International Monetary Fund had made loans to Greece. The situation had worsened in the following years and the State had taken measures to maintain financial stability and restructure its debt such as steps aimed at restoring tax equity and tackling tax evasion and a review of the procedures for auditing public finances.

42. The Government reiterated that in its judgment no. 668/2012 the Supreme Administrative Court had held that the measures "formed part of a wider programme of public finance adjustment and structural reform of the Greek economy which, taken as a whole, was designed to meet the country's pressing financing needs and to improve its future economic and financial prospects. Those aims were in the general interest and also coincided with those of the euro area Member States, in view of the requirement under European Union legislation to ensure budgetary discipline and preserve the stability of the euro area. By their very nature, the measures in question therefore contributed to an immediate reduction in public spending" (the Government cited *Koufaki and Adedy*, cited above, § 38).

43. The Government further submitted that the factual and legal context of the case has substantially changed since the present application before the Court was lodged and the complaints of the applicant organisation should be assessed on the basis of the new factual elements and applicable legal framework. The requirement in question had rendered the applicant organisation's action only temporarily inadmissible as the applicant organisation could have subsequently complied with it. To remedy the findings of certain courts that the requirement was in breach of the Constitution, the provision had been amended by Article 13 § 6 of Law no. 4474/2017 which came into force on 1 January 2017. As the applicant

organisation was, by the time it filed the application for revocation of decision no. 573/2015 on 4 June 2018 and by the time the application was heard, no longer required to have paid the tax, it could have requested a new hearing in its application and it could then have submitted a declaration attesting that the property had been included in the ENFIA and FAP declarations for the last five years. As regards the applicant's arguments about the consequences of the tax declaration, the Government maintained that those were hypothetical and concerned the interpretation of domestic law on tax issues on which the tax authorities and the domestic courts were competent to decide.

44. The Government contested the applicant organisation's arguments relating to the high tax charge and submitted that the applicant organisation had not proved its allegation that it would have had to pay EUR 95,700 per year based on the value of the property, adding that in any event the hearing of the case was no longer connected to the payment of the tax. The tax could not have been calculated in the context of the present application. In addition, where the requirement to file a tax certificate had not been fulfilled, that had meant that the hearing had been declared inadmissible and not the action itself. A plaintiff would usually be invited under Article 227 of the Code of Civil Procedure to rectify the position by fulfilling the obligation in question (see paragraph 16 above). The requirement in issue was no longer in breach of the Constitution and the right of access to a court and to enjoyment of property. It fell within the margin of appreciation allowed to the State in regulating procedural requirements and it was not disproportionate or inappropriate to its legitimate aim.

2. *The Court's assessment*

(a) **General principles**

45. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

46. The right of access to a court must be "practical and effective", not "theoretical or illusory". This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair hearing (see *Zubac*, cited above, § 77, with further references). For the right of access to be effective, a person must have a clear, practical opportunity to challenge an act that interferes with

his or her rights. Equally, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016, with further references).

47. Whether a person has an actionable domestic claim may depend not only on the substantive content, properly speaking, of the relevant civil right as defined under national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims before a court (*ibid.*, § 87).

48. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of persons. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to the observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the person concerned in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Zubac*, cited above, § 78, with further references; see also *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 195, 25 June 2019, with further references, and *Grzęda*, cited above, § 343).

(b) Application to the present case

49. The Court notes that ENFIA was introduced by Law no. 4223/2013 and constituted one example of measures aimed at maintaining financial stability and collecting public revenues, as stated in the law's explanatory memorandum (see paragraph 16 above). As explained in *Koufaki and Adedy* (cited above, §§ 37-41; see also the Supreme Administrative Court's ruling no. 668/2012 referred to in *Koufaki and Adedy*, cited above, § 38), the existence of an exceptional crisis of public finances posing a serious threat to the national economy had justified the adoption of measures such as reducing salaries and pensions, restoring tax equity and tackling tax evasion, and reviewing the procedures for checking and auditing the public finances. As explained in *Mamatas and Others* (cited above, §§ 101-05), the State was justified in taking steps to achieve the goals of maintaining economic stability and restructuring its debt, in the best interests of the community, and thus the measures at issue were considered to have been carried out in the public interest.

50. The Court does not lose sight of the fact that the present case does not concern the requirement to pay fees to civil courts in connection with claims that they are asked to determine (see, for example, *Kreuz v. Poland*, no. 28249/95, ECHR 2001-VI) and that the requirement provided for in Article 54A § 5 of the Code of Tax Procedure did not impose a financial restriction on the individual's access to a court that was justified by the interests of the fair administration of justice. At the same time, it accepts that ensuring the collection of ENFIA formed part of the programme of measures aimed at securing the overriding public interest in the proper functioning of the State and the protection of citizens' rights and that it thus pursued a legitimate aim (see paragraphs 40-42 above).

51. The Court reiterates that the State remains free to determine the procedure by which access to a court is to be realised (see paragraph 48 above), as well as how taxes are to be collected (as regards taxes in particular, see *Cacciato v. Italy*, no. 60633/16, § 25 *in fine*, 16 January 2018). It notes, however, that the requirement in dispute, which made the admissibility of the hearing of the action by which immovable property was claimed dependent on the fulfilment of a tax obligation, gave rise to national courts' rulings that it was contrary to the Constitution and to Article 6 § 1 of the Convention (see paragraphs 23-25 above).

52. According to the applicant organisation's calculations based on the tax authority's calculation tool and the system of objective property valuation, the 31.9 hectares of land in issue was valued at approximately EUR 53,815,300. On the basis of the calculations made using privately operated software developed for this purpose, this would have made the applicant organisation liable to a substantial tax obligation, amounting to EUR 95,700 for 2014, and approximately EUR 500,000 for the period of five years in total (see paragraph 35 above). The Court cannot accept the Government's argument that the applicant organisation's calculations were not substantiated, given also the Government's failure to properly challenge them and to provide their own calculations of the value of the property and of the tax.

53. The Court attaches significance to the applicant organisation's contention that if it had lost its case it could not have obtained a refund of the tax paid, which the Government did not contest. It does not find it to be of critical importance to the outcome of the present case that the court had previously invited the applicant organisation to complete the certificate (see paragraph 44 above) as this would not have resolved the applicant organisation's problem and would have left it with no reasonable alternative other than to include the disputed property in the declaration and pay the relevant tax on it in order to have the dispute determined by the court. The Court also observes that the State, which was exempted from payment of ENFIA (Article 3 § 1(a) of Law no. 4223/2013; see paragraph 18 above),

could take legal proceedings to claim property rights over land without having to comply with that requirement.

54. In proceedings originating in an individual application, the Court has to confine its attention, as far as possible, to the specific case before it (see *Ashingdane*, cited above, § 59). Accordingly, its task in assessing the compatibility with the Convention of the restriction imposed in this case is not to review Article 54A § 5 of the Code of Tax Procedure as such but the circumstances and manner in which that provision was actually applied to the applicant organisation. The Court thus considers that in declaring the hearing of the action inadmissible because the applicant organisation had not submitted a certificate stating that the property claimed had been included in the tax declarations for the previous five years and that the relevant land tax had been paid, the Athens Court of First Instance, by its decision no. 573/2015, imposed a substantive restriction on the applicant organisation, preventing it from having its dispute over the claimed property determined by the courts. Without losing sight of the general context in which that requirement was introduced (see paragraphs 40-42 above), the Court considers that not proceeding with the examination of the applicant organisation's case on the merits at the initial phase of proceedings relating to land of which it was not in possession but which was the subject of its claim was disproportionate to the aims pursued, bearing in mind also that there is no indication that the State was prevented from collecting the property tax from the liable party by means other than restricting its access to a court.

55. The Court further notes that when the applicant organisation lodged its action on 21 November 2013 (see paragraph 9 above) the requirement relating to the tax certificate had not been yet introduced. Article 54A of the Code of Tax Procedure was added by Article 9 § 2 of Law no. 4223/2013, adopted by the Greek Parliament on 31 December 2013. It was subsequently applicable as of 1 January 2014 (see paragraph 19 above). In its written observations dated 5 September 2014 in the proceedings in the Athens Court of First Instance, the applicant organisation argued that it should not be required to submit the tax certificate because the State was in possession of the land. It also raised the question of the conformity with the Constitution of the requirement by referring to judgment no. 2/2014 of the Chania Court of First Instance (see paragraph 9 above). In that judgment the court held that the hearing of an action *in rem* concerning immovable property was admissible, despite the plaintiff in that case not having filed the ENFIA certificate, on the ground that Article 54A § 5 of the Code of Tax Procedure was inapplicable as being contrary to the constitutional right to judicial protection, to Article 6 § 1 of the Convention and to the right of property as protected by the Constitution (see paragraphs 23-24 above).

56. Further, in its application for revocation of decision no. 573/2015 and request for a date to be set for the hearing of its action, the applicant organisation complained that the requirement to file the tax certificate was

impossible to comply with. It explained in detail the reasons for that (see paragraphs 12-13 above), namely that the courts had not yet ruled on whether the condition subsequent in the original donation had been satisfied or, if it had, when the Asomaton Petraki Holy Monastery had been reinstated as the owner of the land in question; that the nature, character and the value of the land for tax purposes were unclear, and that the tax obligation could have amounted to approximately EUR 500,000 over the five years which was impossible for the applicant organisation to pay for land under litigation of which it was unable to enjoy its property rights. It also argued that Article 54A § 5 of the Code of Tax Procedure posed a procedural obstacle on having its action examined on the merits and it expressly raised that it was contrary to the Constitution, to Article 6 § 1 of the Convention and to the right of property. It further contested that the hearing had been declared inadmissible for non-compliance with a requirement which was provided for in tax legislation aimed at serving tax purposes which were not relevant for the proper administration of justice and could have been dealt with by the tax authorities.

57. As regards, the Government's arguments that when the applicant organisation applied on 4 June 2018 for decision no. 573/2015 to be revoked and asked the court to set a date for the hearing of its action it was no longer required to have filed a certificate of payment of the relevant tax, the Court notes that the relevant provision had indeed been amended. Judgment no. 1829/2019 of the Athens Court of First Instance dismissed the applicant organisation's application holding that, after the requirement had been amended, for the hearing to be admissible it was only necessary for the property to have been included in the property tax declarations for the previous five years and not for the tax to have been actually paid (see paragraph 43 above). However, this amendment entered into force well after the events complained of in the case before it (see, *mutatis mutandis*, *Sâmbata Bihor Greek Catholic Parish v. Romania*, no. 48107/99, §§ 72-75, 12 January 2010).

58. Moreover, the Court is not convinced that this amendment meant that "the factual and legal context of the case had substantially changed" as the Government argued (see paragraph 43 above), because: (i) the requirement for the property to have been included in the land tax declarations for the previous five years remained, and (ii) the Government did not rebut the applicant organisation's allegations (see paragraph 38 above) that the amended requirement still made the applicant organisation liable to tax, and that in the event of non-payment of it a tax debt would arise and monthly interest would be incurred (Article 53 § 1 of the Code of Tax Procedure, see paragraph 19 above). Neither did the Government refute the argument that the State could have offset any tax owed by the applicant organisation against amounts due to it (Article 48 § 2 of the Code of Tax Procedure in conjunction

with Article 83 of Legislative Decree no. 356/1974; see paragraphs 19 and 21 above).

59. Even if the plaintiff became formally exempted from submitting a certificate of payment of the tax in order to seek judicial protection of the property, it has not been explained by the Government, who dismissed the relevant arguments as hypothetical, how the applicant organisation would have in fact avoided negative repercussions linked to the incurrence of a tax debt. The Court cannot see how the requirement for the property to have been included in the land tax declarations for the previous five years could have been dissociated from the requirement to pay the relevant tax. It cannot therefore accept the Government's contention that the applicant organisation can no longer complain of a violation of its right of access to a court following the legislative amendment of the requirement in question. It also notes that there were certain national courts which ruled that, even after it had been amended, the requirement was in breach of the right of access to a court (see paragraph 27 above).

60. Additionally, having considered the applicant organisation's submissions in the domestic proceedings (see paragraph 55 above) and in its application to revoke the decision about the tax certificate (see paragraph 56 above) and having regard to the above considerations in respect of the amended legislation (see paragraphs 57-59 above), the Court finds that the applicant organisation did raise its complaints relating to Article 6 § 1 of the Convention at least in substance in the domestic courts. It finds that the applicant organisation did provide the national court with the opportunity to avoid or redress the alleged violation, as required under Article 35 § 1 of the Convention. The Government's objection that the applicant organisation failed to exhaust domestic remedies must therefore be dismissed.

61. In the light of the above, the Court concludes that in declaring the hearing of the applicant organisation's action inadmissible in decision no. 573/2015 because of its failure to comply with the obligation to include the property in dispute in the tax declaration for the previous five years and to pay the relevant tax on it, the Athens Court of First Instance failed to strike a fair balance between the aims pursued and the applicant organisation's effective access to the civil court of first instance. The limitation on the applicant organisation's right of access to a court was disproportionate.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

63. The applicant organisation complained that by not having examined its case relating to immovable property because it had not complied with the requirement provided for in Article 54A § 5 of the Code of Tax Procedure,

the domestic courts had impaired the essence of its right of property. It alleged a violation of Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

64. Having regard to the facts of the case, the parties’ submissions and its findings under Article 6 § 1 of the Convention (see paragraphs 49-62 above), the Court considers that it has examined the main legal question raised in the present application and that it is not necessary to examine the admissibility and merits of the complaint raised under Article 1 Protocol No. 1 (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant organisation claimed 100,000 euros (EUR) in respect of non-pecuniary damage in view of the considerable time during which the matter had been in litigation without being resolved, the need to deploy its own personnel to deal with the case, the fact that ownership or use rights to parts of the land in question had been transferred gratuitously to third parties without its involvement or consent and, above all, the fact that it had not been possible to fulfil the purpose for which the land had been donated and the State disputed the applicant organisation’s ownership of the land.

67. The Government contended that the amount claimed was excessive and unrealistic and that the reasons invoked were unfounded. They maintained that the delay in the adjudication of the case was attributable mainly to the applicant organisation because, despite the legislative amendment in 2017, it had submitted an application to the court in 2018 requesting the revocation of decision no. 573/2015 and had not complied with the applicable requirements following that amendment. They further submitted that in the event that a breach of the Convention was found, the

difficult financial situation of the country due to COVID-19 should be taken into account and that in any event a finding of a breach would constitute sufficient just satisfaction.

68. The Court awards the applicant organisation EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

69. The applicant organisation also claimed EUR 5,000 for the costs and expenses incurred.

70. The Government objected, arguing that no invoices had been submitted, that the request was vague and that the requested amount was excessive.

71. 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 fact that the applicant organisation did not submit any relevant documents and to the above criteria, the Court rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objection concerning the non-exhaustion of domestic remedies and *dismisses* it;
2. *Declares* the complaint concerning Article 6 § 1 of the Convention admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant organisation, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand 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;

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

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Peeter Roosma
President