



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

THIRD SECTION

CASE OF FTITI v. GREECE

(Application no. 37957/14)

JUDGMENT

Art 2 P7 • Delayed examination of the applicant's appeal against his criminal conviction after he had served the minimum duration of his sentence, been granted conditional release and expelled from the country • Appeal with no suspensive effect on the execution of the prison sentence • Applicant's immediate expulsion • Review unable to address any deficiencies in the lower court's decision in an effective manner

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 August 2025

FINAL

26/11/2025

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

In the case of Ftiti v. Greece,

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

Peeter Roosma, *President*,
Ioannis Ktistakis,
Lətif Hüseynov,
Diana Kovatcheva,
Mateja Đurović,
Canòlic Mingorance Cairat,
Vasilka Sancin, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 37957/14) 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 a Tunisian national, Mr Cherif Ftiti (“the applicant”), on 6 May 2014;

the decision to give notice to the Greek Government (“the Government”) of the complaint concerning Article 2 of Protocol No. 7 to the Convention;
the parties’ observations;

Having deliberated in private on 1 July 2025,

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

INTRODUCTION

1. The case concerns the effectiveness of the applicant’s right of appeal. The appeal hearing in the applicant’s case was scheduled for a date after he had been granted conditional release and expelled from the country. The appeal was ultimately dismissed as unfounded (αυτοστήρικτη) on account of his absence from the hearing.

THE FACTS

2. The applicant was born in 1973 and lives in Sousse, Tunisia. He was granted legal aid and was represented by Mr P. Stefanou, a lawyer practising in Thessaloniki.

3. The Government were represented by their Agent and their Agent’s delegate, Ms N. Marioli and Mr K. Georgiadis, President and Legal Counsellor respectively at the State Legal Council.

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

5. The applicant had a residence permit in Greece and from 1996 lived in Crete. He has two children born in Greece.

6. On 29 December 2009 the applicant was arrested in Rethymno on suspicion of aggravated theft of livestock, committed jointly, and was detained pending trial.

7. On 17 February 2010 he was sentenced by the Chania Mixed Jury Court to seventeen years' imprisonment and given a fine of 1,000 euros. The first-instance court ruled that any appeal by the applicant would not have suspensive effect and ordered his deportation from Greece upon completion of his sentence. The court did not give reasons for its decision not to suspend the execution of the sentence.

8. On an unspecified date, the applicant lodged an appeal against the first-instance judgment. On 30 January 2014 he attended a hearing in the Crete Criminal Court of Appeal. However, the case was adjourned to 13 November 2014 owing to the absence of key prosecution witnesses.

9. On 27 October 2014 the director of Kassandra Prison, where the applicant was being held, sent a letter to the prosecutor indicating that the applicant did not wish to be transferred to court for the hearing scheduled for 13 November 2014 as his lawyer would represent him. On the day of the hearing, the applicant requested an adjournment on the grounds that he was unable to contact his lawyer.

10. On 20 January 2015 the applicant, who was still detained in the same prison, was notified that the appeal hearing had been rescheduled for 1 November 2015.

11. On 25 February 2015 the Chalkidiki Criminal Court of First Instance granted the applicant conditional release under Article 105 of the Criminal Code as he had served three-fifths of his sentence after deduction of the days he had worked, and as he had demonstrated good behaviour.

12. The applicant was formally released on 6 March 2015, but was transferred to the Department of Illegal Migration in Triglia and placed in a detention facility for migrants. On 22 April 2015 he was deported to Tunisia and banned from entering the Schengen area.

13. On 26 October 2015 the Crete Mixed Jury Appeal Court sent a request to the prosecutor at the Chania Court of First Instance for the applicant to attend the forthcoming hearing. However, that request could not be forwarded to the applicant, because he had not appointed a new representative and had provided an incomplete residential address in Tunisia.

14. On 1 November 2015 the Crete Mixed Jury Court of Appeal rejected the appeal owing to the applicant's failure to appear in court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

15. The relevant domestic law and practice is described in *Firat v. Greece* (no. 46005/11, §§ 11-14, 9 November 2017) and *Martzaklis and Others v. Greece* (no. 20378/13, §§ 33-37, 9 July 2015).

16. The relevant parts of Article 497 of the Code of Criminal Procedure read as follows:

“...

4. If the conviction entails a sentence of imprisonment, it shall be for the court hearing the case to decide on the suspensive effect of the appeal. The court, giving detailed reasons and applying the criteria set out in paragraph 8 of this Article, shall give its decision immediately after the delivery of its judgment, either of its own motion or after the accused person has declared his or her intention to appeal.

5. The court may in all cases order restrictive measures. ...

7. Where the accused person has been sentenced by a court of first instance to a custodial sentence and has lodged an appeal that does not have suspensive effect, either the accused person or the public prosecutor may request that the execution of the sentence be stayed until the appeal court has given a final ruling. Such a request shall be lodged with the appeal court or, if that court is the Criminal Court of Appeal but it is not currently in session, with the Court of Appeal sitting as a panel of five judges. Restrictive conditions may be imposed on the accused person. If the application is rejected, a new application may not be lodged for one month from the date of rejection of the previous application.

8. An appeal shall not have suspensive effect, in accordance with paragraph 4 of this Article, and an application for a stay of execution of the first-instance decision shall be rejected, where it is considered, with good reason, that restrictive measures are not sufficient, or that the accused person has no known and stable residence in the country, has engaged in preparatory acts to facilitate his or her absconding, has in the past been convicted *in absentia* ..., or has been found guilty of assisting the escape of another prisoner or of violating the restrictions imposed in relation to his or her place of residence. This applies in particular where a combination of the above-mentioned factors suggests that the accused person intends to abscond or is likely to commit further offences if released ... The court shall in all cases grant suspensive effect or a stay of execution if it considers with good reason that should the convicted person serve his or her sentence immediately or continue to serve that sentence, it would cause the person or his or her family disproportionate and irreparable harm ...

9. The accused person shall be summoned, in accordance with Articles 155-161 and 166, to appear before the court with jurisdiction in accordance with paragraphs 6 and 17 of this Article. If the accused person is detained a long way from the court, he or she shall not appear.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7 TO THE CONVENTION

17. The applicant complained of a violation of his right of appeal under Article 2 of Protocol No. 7 to the Convention, which reads as follows:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

A. Admissibility

18. The Government submitted that the applicant had failed to exhaust domestic remedies as it had been open to him, under Article 497 § 7 of the Code of Criminal Procedure, to request that the execution of the sentence imposed by the first-instance court be stayed pending the decision of the appeal court.

19. The applicant did not comment on this point.

20. The Court reiterates that in the context of exhaustion of domestic remedies under Article 35 § 1 of the Convention, a State relying on a particular remedy must demonstrate that that remedy is accessible and effective in respect of the complaints examined (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 143, 27 November 2023, and *Sampanis and Others v. Greece*, no. 32526/05, § 58, 5 June 2008).

21. In the case at hand, the Government have not adduced any examples of past court rulings capable of demonstrating convincingly that the lodging by the applicant of a request for a stay of the execution of his prison sentence under Article 497 § 7 of the Code of Criminal Procedure could have remedied his complaints concerning his right of appeal. Consequently, the Government have failed to demonstrate that the applicant had at his disposal an effective remedy that could have provided sufficient redress for his complaint. Thus, the Court dismisses the Government's objection as to the inadmissibility of the application for failure to exhaust domestic remedies.

22. The Government also argued that the applicant had lost his victim status by failing to attend or to appoint a representative for two of the appeal hearings.

23. The applicant justified his absence by referring to the obstacles caused by his imprisonment and expulsion.

24. Given the close connection between the parties' arguments and the substance of the applicant's complaint, the Court considers it necessary to join this objection to the merits of the case.

25. 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

26. The applicant maintained his complaint, arguing that the delayed examination of his appeal had, in practical terms, rendered the appeal ineffective in that it had been unable to affect the outcome of the proceedings against him. He submitted that his sentence of imprisonment had been executed immediately without proper consideration being given to the fact that he was legally present in Greece or to his family life. The appeal hearing

had been postponed for years, for a period lasting beyond the duration of his sentence, and his attendance of the hearing had become impossible owing to his expulsion from Greece and subsequent ban from the Schengen area.

27. The Government emphasised that neither the applicant nor his representative had been present at the hearing of 13 November 2014. Regarding the hearing held on 1 November 2015, the Government argued that the applicant could have appointed a lawyer through consular channels.

1. General principles

28. The Court reiterates that Article 2 of Protocol No. 7 recognises the right of everyone convicted of a criminal offence by a tribunal to have his or her conviction or sentence reviewed by a higher tribunal. The lack of a possibility of appeal will amount to a violation of this provision unless it is covered by one of the exceptions referred to in the second paragraph of that Article (see *Zaicevs v. Latvia*, no. 65022/01, § 54, 31 July 2007).

29. The concept of “criminal offence” in the first paragraph of Article 2 of Protocol No. 7 corresponds to that of “criminal charge” in Article 6 § 1 of the Convention (see *Gurepka v. Ukraine*, no. 61406/00, § 55, 6 September 2005).

30. The Contracting States enjoy in principle a wide margin of appreciation in determining how the right secured by Article 2 of Protocol No. 7 to the Convention is to be exercised (see *Krombach v. France*, no. 29731/96, § 96, ECHR 2001-II). This provision mostly regulates institutional matters, such as the accessibility of the appeal court or the scope of the review in appellate proceedings (see, for example, *Kashlev v. Estonia*, no. 22574/08, § 53, 26 April 2016 and further references therein). That being so, a review by a higher court of a conviction or sentence may concern both points of fact and points of law or be confined solely to points of law. Furthermore, it is considered acceptable that, in certain countries, a defendant wishing to appeal may sometimes be required to seek permission to do so. However, any restrictions contained in domestic legislation on the right to a review mentioned in Article 2 of Protocol No. 7 must, by analogy with the right of access to a court enshrined in Article 6 § 1 of the Convention, pursue a legitimate aim and not infringe the very essence of that right (see *Shvydka v. Ukraine*, no. 17888/12, § 49, 30 October 2014, and *Galstyan v. Armenia*, no. 26986/03, § 125, 15 November 2007).

31. An appeal must provide a means of rectifying any deficiencies that have occurred during the trial or sentencing stages which led to the conviction. Therefore, an appeal in criminal proceedings must include the possibility of suspending a prison sentence, and the appellate court must be able to conduct the proceedings expeditiously (see *Shvydka*, cited above, §§ 51-53). The absence of suspensive effect of an appeal does not inherently breach Article 2 of Protocol No. 7, provided that the exercise of the right of appeal does not come at the cost of the individual’s liberty (see *Firat*, cited

above, §§ 39-46, and by contrast *Ruslan Yakovenko v. Ukraine*, no. 5425/11, §§ 79-83, ECHR 2015, a case in which the applicant's release would have been delayed had he decided to appeal).

32. The availability of a compensation procedure for individuals who have served a sentence which has later been quashed does not render the appeal effective, as it fails to meet the requirement of promptness in such cases (see *Shvydka*, cited above, §§ 51-54, and *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, §§ 188-90, 10 April 2018).

2. Application of the above principles to the present case

33. The Court reaffirms its well-established principle that the right of access to a court, which reflects the prominent place held by the right to a fair trial in a democratic society, requires that where the right to a review under Article 2 of Protocol No. 7 exists, it must be effective in the same way as the right of access to a court enshrined in Article 6 § 1 of the Convention (see *Shvydka*, cited above, § 50).

34. In the present case, the applicant's appeal against the judgment of 17 February 2010 did not have suspensive effect and the trial court did not provide reasons for that decision. Consequently, the prison sentence imposed on the applicant was executed immediately.

35. Although the absence of justification for not suspending the sentence pending the appeal may raise concerns, that measure, by itself, cannot be deemed a violation of the right to appeal (see *Firat*, cited above, §§ 39-46). However, the Court notes that in the case at hand, the first appeal hearing was scheduled for 30 January 2014, nearly four years after the applicant's conviction on 17 February 2010. Furthermore, the applicant attended that hearing, which was subsequently adjourned to 13 November 2014 owing to the absence of key prosecution witnesses. That entire delay was solely attributable to the authorities, as the applicant had no involvement in causing or preventing it.

36. In the light of the already excessive duration of that phase of the proceedings and in the absence of suspensive effect on the execution of the prison sentence, the Court dismisses the Government's objection regarding the lack of victim status of the applicant.

37. The next hearing was postponed owing to the applicant's inability to contact his representative. However, the overall scheduling of hearings became excessively delayed, with the appeal hearing ultimately taking place on 1 November 2015, approximately seven months after the applicant's conditional release on 6 March 2015.

38. In conclusion, the national authorities failed to hold an appeal hearing for nearly six years, from 17 February 2010 to 1 November 2015, during which time the applicant had already served the minimum duration of his sentence and been granted conditional release.

39. The Court further notes that the applicant's release was based on Article 105 of the Code of Criminal Procedure – which governs the arrangements for execution of sentences – and in particular on the fact that the applicant had already served three-fifths of his sentence.

40. As the Convention is intended to safeguard rights that are practical and effective, rather than theoretical or illusory (see *García Manibardo v. Spain*, no. 38695/97, § 43, ECHR 2000-II), the Court concludes that, at that stage, after the applicant had already served three-fifths of his sentence and been granted early release, the review was unable to address any deficiencies in the lower court's decision in an effective manner.

41. In the light of that conclusion, the Court considers it unnecessary to further examine the additional difficulties faced by the applicant, including his immediate expulsion following release – which occurred without proper consideration of the fact that his appeal hearing was still pending – or the subsequent rejection of his appeal owing to his involuntary absence.

42. The Court concludes that there has been a violation of Article 2 of Protocol No. 7.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He contended that he had been legally residing in Greece since 1996, alongside his wife and two children, and emphasised the severe and lasting impact that the immediate execution of his imprisonment and expulsion had had on his family and private life. He argued that those actions had been further exacerbated by the denial of his right to appeal. Additionally, the applicant pointed out that his expulsion had led to his being banned from the Schengen area, resulting in a significant and irreversible disruption to his relationship with his children. The applicant also requested that the proceedings against him be reopened under Article 525 § 6 of the Code of Criminal Procedure as a form of redress.

45. The Government argued that there was no causal link between the alleged violation and the non-pecuniary damage claimed. They further contended that the amount requested was excessive and that a finding of a breach of the Convention would constitute sufficient just satisfaction. Regarding the reopening of the proceedings, the Government stated that such

a decision fell within the jurisdiction of the national courts, in accordance with the relevant provisions of the Code of Criminal Procedure, and was subject to a request being duly submitted by the applicant to the appropriate authority.

46. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of Article 2 of Protocol No. 7, which cannot be regarded as adequately compensated for by the mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

47. With regard to the request for reopening of the proceedings and taking note of the Government's submission concerning the possibility available in that regard under Greek law, which has not been refuted by the applicant, the Court considers that there is no convincing reason to indicate to the defending State to take the initiative of reopening.

B. Costs and expenses

48. The applicant did not make any claim in respect of costs and expenses. Accordingly, there is no call to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection concerning the applicant's victim status and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 2 of Protocol No. 7 to the Convention;
4. *Holds*
 - (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 7,000 (seven 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

FTITI v. GREECE JUDGMENT

Done in English, and notified in writing on 26 August 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Peeter Roosma
President