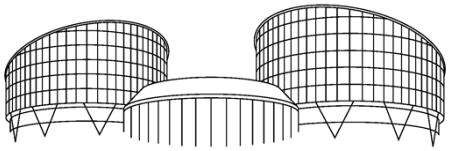

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TSALKITZIS v. GREECE (No. 2)

(Application no. 72624/10)

JUDGMENT

STRASBOURG

19 October 2017

FINAL

19/01/2018

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

In the case of Tsalkitzis v. Greece (No. 2),

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

Kristina Pardalos, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 26 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 72624/10) 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 Mr Vassilis Tsalkitzis, a Greek national ("the applicant"), on 1 December 2010.

2. The applicant was represented by Mr Stavros Tsakyrakis, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegate, Ms A. Dimitrakopoulou, Senior Advisor at the State Legal Council.

3. The applicant alleged that his right to a fair trial had been violated because he had been convicted of making false accusations, perjury and slander and that those proceedings had not been suspended until the criminal courts had ruled on complaints made by him against a parliamentarian, C.T.

4. On 16 March 2016 the complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Afidnes Attikis.

A. Background of the case

6. On 2 November 2001 the applicant lodged a criminal complaint against C.T. for breach of duty and extortion concerning acts he had allegedly committed as mayor of Kifissia Municipality. The applicant gave a statement under oath on the same day, repeating the allegations in his criminal complaint. He made a further statement under oath related to his criminal complaint on 21 December 2001.

7. At the time the complaint was lodged C.T. was a member of the Greek Parliament. In accordance with Article 62 of the Constitution, the public prosecutor asked Parliament to lift C.T.'s immunity from prosecution for breach of duty, extortion and bribery. That request was rejected on 20 March 2002.

8. On 5 August 2003 the applicant, relying on the Court's judgments in *Cordova v. Italy (no. 1)* (no. 40877/98, ECHR 2003-I) and *Cordova v. Italy (no. 2)* (no. 45649/99, ECHR 2003-I (extracts)) resubmitted his criminal complaint, arguing that Parliament's rejection of the request to lift C.T.'s immunity had violated his right to a fair trial under Article 6 § 1 of the Convention. On 21 October 2003 the criminal complaint was submitted to Parliament. On 2 February 2004 the President of Parliament rejected the request to lift C.T.'s immunity, relying on Article 83 § 8 of Parliament's Regulation, according to which a request to lift a member's immunity for a criminal complaint based on the same facts as a previous request was inadmissible.

9. On 18 March 2004 the applicant lodged an application with the European Court of Human Rights, complaining under Article 6 § 1 of the Convention that Parliament's refusal to lift C.T.'s immunity had violated his right of access to a court. On 16 November 2006 the Court delivered a judgment concluding that the refusal by the President of Parliament to lift C.T.'s immunity for acts that had allegedly been committed prior to his election had violated the applicant's right of access to a court under Article 6 § 1 of the Convention (*Tsalkitzis v. Greece*, no. 11801/04, 16 November 2006). To date, the Committee of Ministers of the Council of Europe has not yet concluded the supervision of the execution of the judgment under Article 46 § 2 of the Convention.

10. In the meantime, on 4 April 2004 the applicant appeared on a television show on the nationwide ALTER Channel and reiterated the allegations made in his criminal complaint.

B. Criminal proceedings against the applicant

11. On 2 July 2004 C.T. lodged a criminal complaint against the applicant for false accusation, perjury and slander. Following a preliminary examination, criminal proceedings were initiated against the applicant. On

15 November 2007 the applicant was convicted *in absentia* by a three-member panel of the Athens Court of First Instance. He was sentenced to twenty months' imprisonment and deprivation of his political rights (decision no. 63131/07). C.T. joined the proceedings as a civil party. The applicant lodged an appeal against the decision.

12. Before the three-member panel of the Athens Court of Appeal ("the Court of Appeal"), the applicant submitted that his trial for slander should have been suspended pursuant to Article 366 § 2 of the Criminal Code or, in any event, that it should have been adjourned in respect of all the charges, pursuant to Article 59 § 2 of the Code of Criminal Procedure. At a hearing on 25 May 2009 the Court of Appeal dismissed the applicant's application to suspend or adjourn the trial and proceeded to examine C.T.'s criminal complaint. In particular, it held the following:

> "... Following this, the party who had filed the criminal complaint, Vasileios Tsalkitzis, lodged application no. 11801/04 with the European Court of Human Rights in Strasbourg, complaining that Greece had not lifted C.T.'s parliamentary immunity and that criminal proceedings had not been initiated against him. That Court ... held that the refusal of the President of the Greek Parliament had violated Article 6 § 1 of the Convention ... Therefore, the following issues have been identified concerning: a) the relation of international conventions to current constitutional provisions; b) the act in question of the President of the Greek Parliament and whether it breaches constitutional provisions and the above-mentioned international convention; and c) the question of whether or not it is possible to suspend the current criminal case being tried following the criminal complaint dated 2.11.2001 by the defendant Vasileios Tsalkitzis against ... C.T ... The matter of the supremacy of the Constitution does not appear to be contradicted by the above-mentioned European Court of Human Rights judgment, which identifies the issue as the act of the President of Parliament of not putting the request to the Plenary of the Greek Parliament, which resulted, according to the judgment, in impeding the applicant's and the case's access to the competent criminal court ... It is noted that the President of Parliament's act was based on Article 82 of Parliament's Regulations...
>
> According to the foregoing, it is clear that the Greek Parliament has irrevocably dismissed the request of the public prosecutor of the Athens Court of First Instance, thus refusing to lift the immunity of the member of Parliament against whom the criminal complaint was lodged ... on the basis of a legitimate procedure foreseen by the above-mentioned constitutional provisions. Therefore, according to the legislation, there is absolutely no possibility of reconsidering the issue and, eventually, of instituting a criminal prosecution. During the ... Plenary meetings of the Greek Parliament, the issue of the well-foundedness of the accusation was examined as a whole, as were all aspects of the case, securing the work of the deputy and at the same time protecting him from malicious acts. In addition, and this is important, the whole case file which had been created following the preliminary examination was taken into account, as was the opinion of the competent public prosecutor who, following a review of the case, considered that there was no reason to initiate criminal proceedings against C.T. for the offences of which he had been accused ..."

13. Subsequently, the Court of Appeal proceeded to examine witnesses. The trial record shows that the applicant left the building following a short break after the examination of the first three witnesses for the prosecution.

His lawyer then contacted him to find out his whereabouts and informed the court that he was not feeling well and had thus left the building. The hearing continued in the presence of his lawyer. In total, five prosecution witnesses were heard, including C.T., who joined the proceedings as a civil party, and one defence witness. It does not transpire from the information provided that the applicant or his representative requested the examination of any other defence witness and that such a request was refused. In view of the applicant's absence, the Court of Appeal asked his representative to express the applicant's views on the accusations. The applicant's representative stated that his client denied all the charges and insisted on the truthfulness of his allegations against C.T.

14. The Court of Appeal upheld the first-instance verdict, including the sentence of twenty months' imprisonment and the deprivation of political rights (decision no. 4512/2009).

15. On 9 November 2009 the applicant appealed on points of law. He stated, *inter alia*, that the proceedings should have been suspended or adjourned pursuant to Article 366 § 2 of the Criminal Code and Article 59 § 2 of the Code of Criminal Procedure. On 5 May 2010 the Court of Cassation dismissed the appeal on points of law (decision no. 912/2010). In particular, it held the following:

> "... It is clear from this new provision (Article 59 § 2 of the Code of Criminal Procedure) ... that in order to adjourn a trial owing to an interlocutory criminal issue (*ποινικό προδικαστικό ζήτημα*) concerning Articles 224, 229, 362, 363 of the Criminal Code, a criminal prosecution must have been instituted for an act attested to on oath or for which a legal complaint has been submitted or one which a defendant has alleged or disseminated information about. As regards Article 366 § 2 of the Criminal Code ... the suspension of criminal proceedings is obligatory, but also requires a prior criminal prosecution for the act that a defendant has alleged or disseminated information about ... In the present case ... the court dismissed the above requests, providing full and correct reasoning, in particular because the immunity of the person against whom the criminal complaint had been lodged, who is now a civil party and member of Parliament, had not been lifted. Hence, a criminal prosecution had not been instituted, which is a prerequisite for the suspension and adjournment of criminal proceedings against a defendant who requests them. It can be concluded from the above-mentioned considerations that the court correctly interpreted and implemented the above-mentioned provisions, and did not violate them, when it proceeded to examine the allegations of false accusation, perjury and slander against the defendant-appellant on points of law and dismissed the defendant's request on the grounds that a criminal prosecution had not been instituted against the current civil party, former mayor and now member of Parliament, without suspending and adjourning the proceedings until the end of the previously instituted proceedings against him ..."

16. The decision was finalised on 4 June 2010 (*καθαρογραφή*) and the applicant was able to receive a copy on 7 June 2010. The applicant was imprisoned from 13 May 2010 to 21 May 2010 as he was not able to pay the fine to which his sentence had been commuted. On 21 May 2010 his sentence was commuted to community service and he was released. Finally,

on 31 May 2010 the applicant paid 5,799.94 euros in lieu of serving his sentence.

II. RELEVANT DOMESTIC LAW

A. The Greek Constitution

17. The relevant Article of the Constitution reads as follows:

Article 62

"1. A deputy cannot be prosecuted, arrested, detained or restrained in any other way during a parliamentary session without the permission of Parliament ..."

B. The Criminal Code

18. The relevant Articles of the Criminal Code read as follows:

Article 224
Perjury

"1. A person who knowingly lies under oath as a party to a civil trial shall be sentenced to at least one year's imprisonment.

2. The same sentence is imposed on a person who knowingly lies or denies or hides the truth when being examined as a witness under oath before an authority which is competent to conduct an investigation under oath or when he refers to the oath he has given ..."

Article 229
False accusation

"A person who falsely accuses another person or reports to the authorities that the other person has committed a crime or a disciplinary offence, with an intention to cause a criminal prosecution, shall be sentenced to at least one year's imprisonment ..."

Article 362
Defamation

"Anyone who by any means disseminates information to a third party concerning another which may harm the latter's honour or reputation shall be punished by up to two years' imprisonment or a pecuniary penalty. The pecuniary penalty may be imposed in addition to imprisonment."

Article 363
Slander

"1. If, in a case under Article 362, the information is false and the offender was aware of its falsity, he shall be punished by at least three months' imprisonment, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be ordered."

Article 366
General Provisions

"...

2. Where, in cases under Articles 362, 363, 364 and 365, the fact which the defendant has alleged or disseminated information about constitutes a criminal offence for which a criminal prosecution has been instituted, the trial for defamation is suspended until the end of the criminal prosecution; a fact for which proceedings for defamation have been initiated is considered proven if there is a conviction and false if there is an acquittal on the grounds that it was not proved that the person who has been defamed committed the criminal offence ..."

C. The Code of Criminal Procedure

19. The relevant Article of the Code of Criminal Procedure reads as follows:

Article 59
Interlocutory issues

"1. When a decision in a criminal trial depends on another case for which a criminal prosecution has been initiated, the first trial shall be adjourned until an irrevocable decision has been issued in the second trial.

2. Where, in cases under Articles 224, 229, 362, 363 of the Criminal Code, there has been a criminal prosecution for an act alleged under oath or for which someone was accused or which was alleged or disseminated by a defendant, the public prosecutor of the court of first instance, following a preliminary examination (Articles 31, 43 § 1 (b)), adjourns any further action until the end of the criminal prosecution, with the assent of the public prosecutor of the court of appeal."

D. Parliament Regulations

Article 83

"...

8. A new request (for lifting a parliamentarian's immunity) concerning a prosecution which is based on the same facts as earlier shall be rejected."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant complained of a violation of his right to a fair trial under Article 6 of the Convention because of the refusal of the domestic courts to suspend or adjourn the criminal proceedings initiated by C.T. against him for false accusation, perjury and slander until the end of the

criminal proceedings he had initiated against C.T. for breach of duty, extortion and bribery. The provision in question reads as follows:

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

21. The Government contested that argument.

A. Scope of the Court's review

22. At the outset, the Court notes that the present application is the sequel to an application lodged by the same applicant in relation to the criminal complaint he had lodged against C.T. In that case, the Court concluded that the refusal by the President of Parliament to lift C.T.'s immunity for acts that had allegedly been committed prior to his election as a parliamentarian had violated the applicant's right of access to a court under Article 6 § 1 of the Convention (*Tsalkitzis*, cited above).

23. The Court must determine in the first place whether it is prevented by Article 46 of the Convention from dealing with the applicant's complaints in view of the distribution of powers effected by the Convention between the Committee of Ministers and the Court as regards the supervision of the execution of the Court's judgments (see, for instance, *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX).

24. The relevant general principles were summarised in the Court's decision in *Egmez v. Cyprus* ((dec.) no. 12214/07, §§ 48-56, 18 September 2012) and in its judgments in *Bochan v. Ukraine (no. 2)* ([GC], no. 22251/08, §§ 33 - 34, ECHR 2015), *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* ([GC], no. 32772/02, §§ 61 - 63, ECHR 2009) and more recently in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, §§ 47-51, 11 July 2017).

25. Returning to the present case, the Court considers that some of the applicant's arguments appear to be complaints about an alleged lack of the proper execution of the Court's judgment of 16 November 2006 in his previous case to the effect that it required the domestic authorities to initiate criminal proceedings against C.T. However, complaints of a failure either to execute a judgment by the Court or to redress a violation already found by it fall outside the Court's competence *ratione materiae* (see *Lyons and Others*, cited above). In this connection, the Court observes that to date, the execution of judgment no. 11801/04 is still pending before the Committee of Ministers.

26. Accordingly, the applicant's complaints, in so far as they concern the failure to remedy the original violation of Article 6 § 1 of the Convention found in the Court's 2006 judgment, must be declared incompatible *ratione materiae* with the Convention, pursuant to Article 35 §§ 3 (a) and 4.

27. However, the current application raises a new grievance concerning the proceedings instituted against the applicant by C.T. and the fairness of those proceedings, rather than his own criminal complaint against C.T. Those proceedings came after and were distinct from the domestic proceedings which were the subject of the Court's 2006 judgment.

28. Accordingly, the Court is not prevented by Article 46 of the Convention from examining the applicant's new complaint about the unfairness of the proceedings initiated against him by C.T.

B. Admissibility

29. The Government asked the Court to declare the application inadmissible for non-exhaustion of domestic remedies. In the Government's view, the applicant had not invoked his rights under the Convention before the domestic courts or argued, even in vague or general terms, that a refusal to suspend or adjourn the proceedings in question would violate his right to a fair trial; his submissions before the domestic courts had been based exclusively on domestic legislation. His application to suspend or adjourn the trial could not be said to equate with an allegation of a violation of the right to a fair trial. Even if the domestic courts had been able to examine the case *proprio motu* in the context of the Convention, the applicant could not be relieved of his obligation to invoke the Convention before those courts, or at least to draw their attention to matters he intended to raise subsequently before the Court.

30. In addition, the Government submitted that the applicant's observations on the merits and just satisfaction had been lodged out of time as they had reached the Court on 19 August 2016, after the deadline of 17 August 2016.

31. The applicant contested the argument that he had not exhausted domestic remedies. He argued that even though he had not explicitly referred to Article 6 of the Convention, he had raised such a complaint in substance before the Court of Appeal and the Court of Cassation. The domestic courts had been aware of the Court's first judgment and therefore the only interpretation of a refusal to grant his request for a suspension was that such a refusal would not be in line with the first judgment. He had thus given the domestic courts the opportunity to provide redress for the alleged violation.

32. Firstly, the Court notes that it set a deadline of 17 August 2016 for submission of observations from the applicant. Those observations were sent by fax on 16 August 2016 and reached the Court by post on 19 August 2016. The Court notes that the material date under Rule 38 § 2 of the Rules of Court for the purposes of observing time-limits for written observations is the certified date of dispatch of documents. On the basis of the material

before it, the Court sees no reason to find that the applicant's observations were sent out of time. It therefore rejects the Government's objection.

33. Secondly, the Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010). While Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, §§ 604 and 605, 13 November 2003).

34. Turning to the present case, the Court notes that the applicant did not explicitly invoke any Article of the Convention before the domestic courts. However, he referred to the Court's judgment in *Tsalkitzis* (cited above) before the Court of Appeal and asked for the adjournment or suspension of the criminal proceedings against him until the end of the criminal proceedings against C.T. In addition, he reiterated his arguments before the Court of Cassation, arguing that by refusing to adjourn or suspend the proceedings against him the Court of Appeal had denied him the right to judicial protection.

35. In those circumstances the Court is persuaded that, in accordance with the requirements of its case-law, the applicant raised his complaint in substance under Article 6, if only implicitly, in the proceedings before the Court of Appeal and the Court of Cassation and that the legal arguments made by the applicant in those courts included a complaint connected with that provision of the Convention. In the Court's view, even though the applicant did not expressly rely on the Convention, he put forward arguments to the same or like effect based on domestic law by requesting an adjournment or suspension of the proceedings and referring to *Tsalkitzis* (cited above).

36. The applicant thus provided the domestic courts with an opportunity to put right the alleged violation. The Government's objection of a failure to exhaust domestic remedies must therefore be dismissed.

37. The Court notes in addition that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

38. The applicant submitted that his trial for false accusation, perjury and slander on the basis of C.T.'s criminal complaint against him should have been suspended or adjourned, in accordance with Article 59 § 2 of the Code of Criminal Procedure and Article 366 § 2 of the Criminal Code, until his criminal complaint against C.T. for the acts that had constituted the basis of C.T.'s complaint had been heard by the domestic courts. In this case, the domestic courts' refusal to suspend or adjourn the proceedings had not just concerned a procedural issue but had had effects on the applicant's substantive rights. Parliament's refusal to lift C.T.'s immunity was the only reason C.T. had not been prosecuted, which had already been found by the Court to be in breach of the Convention and thus illegal. If Parliament had granted permission to lift C.T.'s immunity, the prerequisite of pending trials required by Article 59 of the Code of Criminal Procedure and Article 366 of the Criminal Code would have been met. In any event, the procedure concerning the applicant's criminal complaint against C.T. had been initiated by the public prosecutor's request to lift C.T.'s immunity, which could be equated with initiating a criminal prosecution. The domestic court's refusal to suspend proceedings had thus been formalistic and had ignored the judgment in *Tsalkitzis* (cited above).

39. Moreover, the rationale of the provisions of Articles 59 of the Code of Criminal Procedure and 366 of the Criminal Code was to allow courts to rule on whether alleged offences had in fact been committed before deciding whether accusations of alleged offences were false. Otherwise, domestic courts would be called on to speculate whether alleged offences, which were not the object of their direct examination, had actually taken place so as to decide on charges of false accusation and other offences. Therefore, the provisions concerning suspension or adjournment of proceedings had been instituted so as to protect the substantial rights of defendants.

40. The applicant additionally relied on the Government's submission in *Tsalkitzis* (ibid.), in which they had argued that C.T. could be prosecuted after the end of his term as a member of the Greek Parliament. Therefore, the applicant's criminal complaint against C.T. had not been archived, as it would have been if it had been unfounded, but had been suspended while C.T. was still a member of parliament. The domestic courts had been wrong to rule that there was no longer any possibility to initiate criminal proceedings against C.T. In the applicant's view, the mere fact of a second trial taking place was *per se* a violation of his right to a fair trial, which had resulted from the domestic courts' refusal to suspend the proceedings against him until the end of the proceedings against C.T. The applicant had not participated in the hearings at the first-instance court as he had

considered that the trial could not possibly take place without his criminal complaint having been heard first. For the same reason, his whole defence case had been based on requesting the suspension of the proceedings, which was the reason why he had called only one witness.

41. The applicant submitted that the two sets of criminal proceedings were inextricably linked as he had been charged and convicted on account of his allegations against C.T., which had been included in the latter's criminal complaint. In addition, criminal proceedings against C.T. would have led to an examination by the courts of whether C.T. had actually committed the alleged offences, whereas the burden of proof had been reversed in the criminal proceedings against the applicant as the main issue under examination had been charges against him and the offences allegedly committed by C.T. had been only incidental. The principle *in dubio pro libertatis* in such cases had had the opposite result as it had worked at the expense of the defendant given that domestic courts tended to consider unproven accusations as false. The applicant had thus been deprived of the opportunity to prove his allegations with the assistance of the domestic authorities in charge of the investigation and had in the end been convicted of false accusation, perjury and slander without first having had the opportunity to prove the truthfulness of his criminal complaint against C.T.

42. The Government submitted that according to domestic law, namely Articles 59 § 2 of the Code of Criminal Procedure and 366 § 2 of the Criminal Code, the initiation of criminal proceedings for an interlocutory criminal matter was a prerequisite for the suspension or adjournment of a trial for false accusation, perjury and defamation. The initiation of criminal proceedings took place when someone was prosecuted, not just by the filing of a criminal complaint. In the present case therefore, where there had been no prosecution of C.T. following the applicant's criminal complaint, the conditions for a suspension or adjournment of the trial had not been met. The applicant had been aware of the above-mentioned provisions and their interpretation and therefore should have anticipated the rejection of his request for suspension or adjournment of the proceedings and should have prepared his defence accordingly. In any event, the Government pointed out that pursuant to Article 366 § 2 of the Criminal Code, in case of suspension of the trial for defamation, there is a presumption that the fact for which proceedings for defamation were initiated is considered proven if there is a conviction and false if there is an acquittal. However, no such presumption is provided for by Article 59 of the Code of Criminal Procedure. Therefore, even if the proceedings had been adjourned in the present case, the above-mentioned presumption would have concerned only the offence of slander and not the offences of false accusation and perjury. Even, therefore, in the hypothetical case of the applicant's criminal complaint having led to C.T.'s conviction, the domestic court would have been bound only in respect of the

offence of slander and would have freely assessed the decision in respect of the other offences.

43. The Government argued that it was not possible to derive an obligation to suspend criminal proceedings in situations such as those in the present case from Article 6 or any other Article of the Convention. Although the offences of which the applicant had been convicted were related to the offences of which C.T. had been accused, there had been no procedural obligation to leave the offences unpunished or extend C.T.'s immunity to the applicant. The Government also submitted that even though the offences of false accusation and perjury had been related to the applicant's criminal complaint, the offence of slander had been committed during his appearance on the television programme on 4 April 2004 and therefore it had not been related to his criminal complaint against C.T.

44. Lastly, the Government submitted that the violation found by the Court in *Tsalkitzis* (cited above) in the proceedings initiated by the applicant against C.T. did not automatically mean that a new violation of the same Article had occurred in the proceedings initiated by C.T. against the applicant. In the latter proceedings, all aspects of the right to a fair hearing had been observed: the applicant had familiarised himself with the case file, had been able to prepare his defence in an appropriate manner, had had the opportunity to be heard in person or through counsel before an impartial and independent tribunal, to examine witnesses and to have a well-reasoned judgment, benefitting at the same time from the presumption of innocence. Although the domestic courts could not have convicted C.T. in the context of the criminal proceedings against the applicant, they had had the power to examine all the facts and evidence. If they had had any doubts regarding the truth of the applicant's allegations against C.T., they could have acquitted the applicant. The applicant had been given every procedural possibility to prove the truthfulness of his allegations against C.T. during the criminal proceedings against him and was trying erroneously to connect the fact that the proceedings had not been suspended with his final conviction, which had taken place following a legally conducted evidentiary procedure. The applicant had chosen not appear before the first-instance court nor to express his views in person before the Court of Appeal. In the Government's view, no violation of the right to a fair hearing had therefore occurred in this case.

2. The Court's assessment

(a) General principles

45. The Court reiterates that its duty, pursuant to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court

unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 62, ECHR 2010).

46. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see *O'Halloran and Francis v. the United Kingdom* [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007-III, and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, ECHR 2016). The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010, and *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, ECHR 2015).

47. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, § 48, Series A no. 96; *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 251, ECHR 2016; *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 113, CEDH 2017 (extracts)). In evaluating the overall fairness of the proceedings, the Court will take into account, if appropriate, the minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases. They can be viewed, therefore, as specific aspects of the concept of a fair trial in criminal proceedings in Article 6 § 1 (see, for example, *Gäfgen*, cited above, § 169; and *Schatschaschwili*, cited above, § 100). However, those minimum rights are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (see *Can*, cited above, § 48; *Mayzit v. Russia*, no. 63378/00, § 77, 20 January 2005; and *Seleznev v. Russia*, no. 15591/03, § 67, 26 June 2008).

48. As regards unfairness resulting from the reasoning adopted by domestic courts, the Court has held that a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see *Moreira Ferreira,* cited above, §§ 83-85).

49. In order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States (see, *mutatis*

mutandis, *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999−VII). Where national legislation is in issue, the Court's task is not to review the relevant legislation in the abstract. Instead, it must confine itself, as far as possible, to examining the issues raised by the case before it (see *Taxquet v. Belgium*, cited above, § 83).

50. In addition, the right of access to a court secured by Article 6 § 1 of the Convention 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. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual 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. The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart v. Turkey* [GC], no. 8917/05, § 79, ECHR 2009 (extracts)).

(b) Application to the present case

51. The Court notes at the outset that the applicant did not allege before the domestic courts or the Court that any specific aspect of the proceedings conducted against him had not been in accordance with the requirements of a fair trial under Article 6 of the Convention, for example that he had not been heard by an independent and impartial tribunal or that he had been denied the right to examine witnesses. Rather, the applicant submitted that the domestic courts' refusal to suspend or adjourn the proceedings had been excessively formalistic in view of the Court's 2006 judgment, which had been ignored. He further argued that the fact that the trial for false accusation, perjury and slander had taken place had *per se* violated his right to a fair trial as he had not had the opportunity to first prove the truthfulness of his allegations against C.T., which constituted the basis of his conviction.

52. In that connection, the Court notes that C.T. was not prosecuted following the applicant's criminal complaint because Parliament had not lifted his immunity. That fact was found by the Court to constitute a breach of the applicant's right of access to a court under Article 6 of the Convention (*Tsalkitzis*, cited above). The Court additionally notes that even though the applicant did not appear before the first-instance court and therefore was convicted *in absentia*, he was able to put forward his request for a suspension or adjournment of the proceedings against him before the Court of Appeal. In decision no. 4512/2009 the Court of Appeal examined

the applicant's request for suspension or adjournment and concluded that it should be rejected on the grounds that no criminal prosecution had been initiated against C.T. That meant therefore that there were no pending criminal proceedings which would justify the suspension of the proceedings against the applicant. It subsequently proceeded with the examination of witnesses and convicted the applicant of false accusation, perjury and slander. The Court of Cassation fully upheld the Court of Appeal's conclusions (see paragraph 15 above).

53. The Court observes that the reasons given for the judicial decision in question addressed the main arguments put forward by the applicant. It concluded that domestic legislation provided for the suspension of criminal proceedings for false accusation, perjury and slander, but only if criminal proceedings had been initiated against the alleged perpetrator. The Court considers that this interpretation of the applicable Greek law does not appear to be arbitrary; on the contrary it is supported by the wording of the said provisions. Indeed, it appears that the initiation of criminal proceedings was a prerequisite for suspending or adjourning the proceedings in question; however, there were no provisions in the domestic legislation to allow for the suspension of criminal proceedings in cases such as the applicant's, that is when a criminal complaint had not led to prosecution for reasons other than it being unfounded and, more specifically, owing to an act found to be in breach of the Convention.

54. The Court reiterates in this connection that just as no provision of domestic law should be interpreted and applied in a manner incompatible with the State's obligations under the Convention (see *Ćosić v. Croatia*, no. 28261/06, § 21, 15 January 2009), a lacuna in the domestic law cannot be a justification for failing to give full force to the Convention standards (see *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, § 31, 16 February 2016). However, the Court has consistently held in its case-law that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see, among other authorities, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015). In particular, in the circumstances of the present case, the Court's task is to ascertain *in concreto* whether the proceedings as a whole, including the refusal of the applicant's request to suspend the proceedings, infringed the applicant's right to a fair trial under Article 6 of the Convention in view of the Court's judgment of 2006 (see, *mutatis mutandis*, *Karataş v. Turkey* [GC], no. 23168/94, § 62, ECHR 1999-IV).

55. In that connection, the Court notes that when the Court of Appeal refused the applicant's request for a suspension or adjournment of the proceedings in question, it took the Court's judgment in *Tsalkitzis* (cited above) into account and examined the request in the light of the Court's jurisprudence and domestic legislation. It inferred from its reading of that

judgment that the Court had identified the problem as the "the act of the President of Parliament of not putting the request to the Plenary of the Greek Parliament, which resulted, according to the judgment, in impeding the applicant's and the case's access to the competent criminal court" (see paragraph 12 above). In view of the margin of appreciation available to the domestic authorities in the interpretation of the Court's judgments, and in the light of the principles governing the execution of judgments (see, *mutatis mutandis*, *Emre v. Switzerland* (no. 2), no. 5056/10, § 71, 11 October 2011, and *Moreira Ferreira* (no 2), cited above, § 95), the Court considers that it is unnecessary to express a position on the validity of that interpretation. It is sufficient for the Court to satisfy itself that the domestic court judgment was not arbitrary, that is to say that the judges of the Court of Appeal did not distort or misrepresent the judgment delivered by the Court (see *Moreira Ferreira* (no 2), cited above, § 98 and compare with *Bochan* (no. 2), cited above, §§ 63-65, and *Emre* (no. 2), cited above, §§ 71-75).

56. The Court cannot conclude that the Court of Appeal's reading of the Court's 2006 judgment was, viewed as a whole, the result of a manifest factual or legal error leading to a "denial of justice". In particular, it does not directly flow from the Court's 2006 judgment that that any future criminal proceedings against the applicant related to the same set of facts would have to be adjourned. In addition, the finding of a violation of Article 6 of the Convention does not generally create a continuing situation and does not impose a continuing procedural obligation on the respondent State (see *Moreira Ferreira* (no 2), cited above, § 91 and contrast *Jeronovičs v. Latvia* [GC], no.44898/10, § 118, ECHR 2016).

57. In the light of the above, the Court does not share the applicant's view that the violation of his right of access to a court established in *Tsalkitzis* (cited above) automatically rendered the proceedings conducted against him unfair. The Court does not lose sight of the fact that the proceedings against the applicant were closely linked with the applicant's criminal complaint against C.T. for which no criminal proceedings were initiated, in breach of the Convention. In that connection, it remains unclear to the Court whether the applicant's criminal complaint against C.T. could still lead to a prosecution following the end of his mandate, as the applicant maintained by relying on the Government's observations in *Tsalkitzis* (cited above), or if there is no prospect of reconsidering the issue and eventually initiating criminal proceedings, as was accepted by the Court of Appeal. However, the Court emphasises again that the subject matter of the present case refers to the proceedings against the applicant and whether his right to a fair trial was violated, not to his criminal complaint against C.T. The two proceedings, although closely linked, were distinct from each other.

58. The applicant also argued that his right to a fair trial had been violated as he had not had the prior opportunity to prove the truthfulness of

his allegations against C.T., which had constituted the basis of his conviction. However, the Court observes that the domestic courts' task in those proceedings was to examine whether the applicant had committed the offences of false accusation, perjury and slander and eventually to reject the accusations made against C.T. by the applicant. In order to do so, they had to examine if the allegations made by the applicant against C.T. were true, a matter closely linked with the charges against him, as the applicant himself admitted. The applicant was given the opportunity to examine witnesses, adduce documents, be represented by a lawyer and be heard by the domestic courts which examined his case. At the various stages of the proceedings he was able to submit the arguments he considered relevant to his case and an oral hearing was held both before the first-instance court and the Court of Appeal, which had full competence to assess all the relevant facts and evidence. The applicant was therefore afforded all the guarantees of a fair trial in the proceedings against him and had had a real opportunity to defend himself and be acquitted.

59. In addition, the Court notes that the applicant did not make full use of all the means the domestic law gave to him. In particular, he did not appear before the court of first instance, while at the Court of Appeal he examined only one defence witness. He also left the hearing while his case was being examined and therefore did not testify himself. Under those circumstances, the Court is not convinced that the applicant was deprived of a real opportunity to prove the truthfulness of his allegations against C.T. in support of his defence. Admittedly, the domestic proceedings conducted could not have led to C.T.'s conviction if the applicant had proven that his accusations were true. However, the applicant could have been acquitted if his guilt had not been established.

60. The Court takes note of the applicant's argument that the fact that the trial took place without his criminal complaint being heard deprived him of the assistance that the domestic authorities would have given him by investigating its well-foundedness. However, the Court notes that any lack of assistance in that regard refers to the violation which was previously found by the Court in *Tsalkitzis* (cited above). In those proceedings the applicant was deprived of his right of access to a court on account of the fact that C.T.'s immunity had not been lifted and he therefore did not benefit from the carrying out of criminal proceedings, including an investigation, for his complaints against C.T. In respect, however, of the criminal proceedings against the applicant, he was able to use all the means provided to him by domestic law and could have been acquitted. In reaching that conclusion, the Court attaches significant weight to the different level of proof required in the two set of proceedings: on the one hand, if criminal proceedings had been initiated against C.T. his guilt would have had to be proven beyond any reasonable doubt; on the other hand, in the proceedings against the applicant any reasonable doubt benefited him as a defendant, in

accordance with the principle of *in dubio pro reo*, which is a specific expression of the presumption of innocence (see *Vassilios Stavropoulos v. Greece*, no. 35522/04, § 39, 27 September 2007). There is nothing in the material in the Court's possession to support the applicant's argument that he was not able to benefit from the above-mentioned principle because domestic courts tended to consider unproven accusations as false. On the contrary, the Court notes that the domestic courts examined all the relevant testimony and evidence at their possession in order to conclude that the applicant was guilty.

61. Having regard to the circumstances of the present case, the Court considers that the applicant was afforded the right to participate effectively in the proceedings and sufficient possibilities of exercising his defence rights before the domestic courts (see paragraphs 58-59 above). The Court emphasises that the above considerations are not intended to detract from the importance of the Court's 2006 judgment, which found that Article 6 of the Convention had been violated on account of the failure to lift C.T.'s immunity, which resulted in the applicant's right of access to a court being violated. From the material in its possession, however, the Court is not convinced that the proceedings conducted against the applicant were unfair or that the domestic courts' refusal to suspend or adjourn the proceedings was so formalistic as to limit unreasonably the applicant's access to a court or to render the proceedings as such unfair.

62. In the light of the foregoing considerations, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 of the Convention concerning the proceedings instituted against the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 19 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Kristina Pardalos
President