

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

THIRD SECTION

CASE OF AROUTSIDIS v. GREECE

(Application no. 47604/13)

JUDGMENT

This version was rectified on 15 July 2025
under Rule 81 of the Rules of Court.

STRASBOURG

20 May 2025

This judgment is final but it may be subject to editorial revision.



In the case of Aroutsidis v. Greece,

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

Peeter Roosma*, President*,
Ioannis Ktistakis,
Lətif Hüseynov*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 47604/13) 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") on 18 July 2013 by a Greek national, Mr Nikolaos Aroutsidis ("the applicant"), who was born in 1965, lives in Xanthi and was represented by Mr S. Ganias, a lawyer practising in Xanthi;

the decision to give notice of the complaint concerning Article 6 § 2 of the Convention to the Greek Government ("the Government"), represented by their Agent, Ms N. Marioli, President at the State Legal Council, and their Agent's delegates, Mr K. Georgiadis, Ms S. Charitaki, Legal Counsellors at the State Legal Council and Ms Z. Chatzipavlou, Legal Representative at the State Legal Council.

the parties' observations;

the decision of 10 January 2023 to reject the unilateral declaration presented by the Government;

Having deliberated in private on 29 April 2025,

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

SUBJECT MATTER OF THE CASE

I. THE CIRCUMSTANCES OF THE CASE

1. The case concerns the applicant's complaint under Article 6 § 2 of the Convention that the presumption of innocence stemming from his criminal acquittal in respect of false invoicing was not respected in subsequent administrative proceedings.

2. Following an audit, the applicant was found to have received and registered in his accounting book several false documents (invoices and dispatch notes relating to the purchase of transport fuel and mineral oil) with a view to evading tax. The competent tax office of Xanthi imposed on the applicant the payment of administrative fines equivalent to three times the taxes the applicant had evaded in accordance with Article 6 § 1 of Law no. 2523/1997. By decisions nos. 35/11-2-2004 and 37/11-2-2004, the applicant was ordered to pay a fine of 13.882,50 euros (EUR) for the 2001 tax year and EUR 16.617,81 for the 2002 tax year. The applicant lodged two

recourses ("*προσφυγή*") against the aforementioned decisions of the tax authorities before the domestic administrative courts.

3. In the meantime, the public prosecutor at the Xanthi Court of First Instance initiated criminal proceedings against the applicant for tax evasion consisting of receiving and registering false documents in accordance with Article 19 §§ 1, 4 of Law no. 2523/1997.

4. By judgment no. 64/2008 of 15 January 2008 the three-member Xanthi Criminal Court found that the documents were not false and acquitted the applicant of the charge of tax evasion. It appears from the case file that no appeal was lodged against it. Therefore, the acquittal decision became irrevocable.

5. By judgments nos. 81/2008 and 82/2008, delivered on 29 April 2008, the Komotini Administrative Court of First Instance confirmed that the documents were false and dismissed the applicant's recourses. The applicant appealed against the aforementioned judgments. Invoking Article 6 § 2 of the Convention, he relied upon his acquittal judgment and submitted a copy of it. By irrevocable judgments nos. 174/2012 and 175/2012 delivered on 9 May 2012, the Komotini[1] Administrative Court of Appeal dismissed the appeals. In particular, as regards the applicant's criminal acquittal, the Court of Appeal held that Article 6 § 2 of the Convention was not applicable in the present case on the grounds that its application would contradict the autonomy of administrative proceedings from criminal proceedings, which was provided for in Articles 94 § 1 and 96 § 1 of the Constitution. The decisions were not subject to an appeal on points of law.

II. RELEVANT DOMESTIC LAW

A. Constitution

6. The relevant Articles of the Greek Constitution read as follows:

Article 94

"1. The Supreme Administrative Court and ordinary administrative courts shall have jurisdiction on administrative disputes, as specified by law, without prejudice to the competence of the Court of Audit."

Article 96

"1. The punishment of crimes and the adoption of all measures provided by criminal laws belong to the jurisdiction of ordinary criminal courts."

[1] Rectified on 15 July 2025: "Xanthi" has been replaced by "Komotini".

B. Law no. 2523/1997 (Administrative-Criminal sanctions in tax legislation)

7. The relevant Articles of Law no. 2523/1997 read as follows:

Article 6
VAT fines for forged, falsified or false tax documents

"1. In the case of VAT, when it is proven after an audit that the taxable person, as the recipient of a false tax document or a document falsified by him or by others on his behalf, has deducted input tax or received a tax refund, in accordance with the provisions on VAT, or, as the issuer, did not remit tax on the basis of forged, false or falsified tax documents, a special fine equal to three times the amount of tax forfeited or refunded or not repaid shall be imposed, irrespective of whether no tax is ultimately due."

Article 19
Tax evasion offence for issuing or receiving forged, falsified or false tax documents

"1. Whoever issues forged or false tax documents, as well as whoever receives false tax documents or falsifies such documents, whether or not he evades tax payment, shall be punishable with imprisonment of at least three (3) months. Specifically, whoever issues or receives false tax documents for an entire non-existent transaction or part thereof shall be punishable with: (a) imprisonment of at least one (1) year where the total value of the false tax documents exceeds an amount of three thousand euros (€3,000); and (b) imprisonment of up to ten (10) years where the above amount exceeds one hundred and fifty thousand euros (EUR 150,000).

...

4. A false document is a document issued for a transaction which does not exist in whole or in part or for a transaction carried out by persons other than those indicated on the document..."

THE COURT'S ASSESSMENT

8. Relying on Articles 6 § 1 and 6 § 2 of the Convention, the applicant complained that the presumption of innocence stemming from his criminal acquittal was not respected in the subsequent administrative proceedings.

9. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case (see *Molla Sali v. Greece* [GC], no. 20452/14, § 85, 19 December 2018). It considers that the applicant's allegations should be examined solely under Article 6 § 2 of the Convention.

10. The Government did not submit observations on the admissibility and merits of the case.

11. The general principles concerning the applicability of Article 6 § 2 in proceedings that follow the conclusion of criminal proceedings are set out in the Court's judgments of *Allen v. the United Kingdom* [GC] (no. 25424/09,

§§ 92-105, ECHR 2013) and *Nealon and Hallam v. the United Kingdom* [GC] (nos. 32483/19 and 35049/19, §§ 120-25, 11 June 2024).

12. In the present case, in the subsequent administrative proceedings, the Komotini[1] Administrative Court of Appeal was required to assess and proceeded to an assessment of the applicant's participation in all of the events leading to the criminal charge, namely the receipt and registration of false documents (see *Allen*, cited above, § 104). It follows that the administrative proceedings before the Komotini[2] Administrative Court of Appeal were linked to the criminal proceedings which had ended with the applicant's acquittal by judgment no. 64/2008 of the three-member Xanthi Criminal Court. Article 6 § 2 is therefore applicable.

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

14. Turning to the merits, the Court reiterates that, where criminal proceedings end with acquittal or a discontinuance, "the presumption of innocence requires that the lack of a person's criminal conviction be preserved in any other proceedings of whatever nature" and also that "the operative part of an acquittal judgment must be respected by any authority referring directly or indirectly to the criminal responsibility of the interested party" (see *Allen*, § 102, and *Nealon and Hallam*, § 106, both cited above, with references therein).

15. In the present case, the Court notes that the Komotini[3] Administrative Court of Appeal assessed the circumstances of the case and concluded that the documents received and registered by the applicant were false, contrary to the conclusion reached by the three-member Xanthi Criminal Court (see paragraphs 4 and 5 above). Accordingly, it upheld the administrative fines imposed. With regard to the applicant's complaint under Article 6 § 2 of the Convention, it refused to take into account the three-member Xanthi Criminal Court's acquittal judgment of 15 January 2008, holding that Article 6 § 2 of the Convention was not applicable.

16. The Court finds that the Komotini[4] Administrative Court of Appeal's conclusion according to which the applicant received and registered false documents imputed criminal liability to the applicant, in disregard of the valid acquittal judgment in respect of the same facts (see, *mutatis mutandis*, *Melo Tadeu v. Portugal*, no. 27785/10, § 66, 23 October 2014).

17. Accordingly, the Court holds that the applicant's right to be presumed innocent was not respected. There has therefore been a violation of Article 6 § 2 of the Convention.

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APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 30,500.31 euros (EUR) in respect of pecuniary damage on account of the imposition of administrative fines. He also claimed EUR 30,000 in respect of non-pecuniary damage.

19. The Greek Government argued that the claims for pecuniary damage were not causally linked with the alleged violations and that, in any case, the applicant had so far paid only a small part of the fines imposed, namely EUR 4.164,75 for the fine imposed by decision no. 35/11-2-2004 and EUR 2.549,68 for the fine imposed by decision no. 37/11-2-2004, that is a total amount of EUR 6,714.43. They further contended that, should the Court find a violation, national legislation provides for the reopening of proceedings before the domestic courts[1]. Finally, they claimed that if the Court held that an amount should be awarded to the applicant, the amount requested was excessive.

20. The Court takes note of the fact that it will be open to the applicant to apply for the reopening of the proceedings in the domestic courts[2] and request the cancellation of the administrative fines imposed (see, for a description of the relevant procedure, *Aggloupas v. Greece* (dec.) [Committee], no. 28616/17, § 7, 23 May 2023). The applicant's claim for pecuniary damage must therefore be dismissed.

21. Ruling in equity, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. The applicant made no claim in respect of costs and expenses and, therefore, the Court makes no award in this regard.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, 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

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rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President