

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

THIRD SECTION

CASE OF MALATESTA v. GREECE

(Application no. 28631/18)

JUDGMENT

STRASBOURG

9 December 2025

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



In the case of Malatesta 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. 28631/18) 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 12 June 2018 by a Greek national, Ms Zafiria Malatesta ("the applicant"), who was born in 1936, lives in Athens and was represented by Ms G. Floratou, a lawyer practising in Athens;

the decision to give notice of the complaints concerning Article 6 § 2 of the Convention and Article 4 of Protocol No. 7 to the Convention to the Greek Government ("the Government"), represented by their Agent, Ms N. Marioli, President of the State Legal Council, and their Agent's delegate, Ms S. Trekli, Senior Advisor at the State Legal Council, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 18 November 2025,

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

SUBJECT MATTER OF THE CASE

I. THE CIRCUMSTANCES OF THE CASE

1. The application concerns the alleged violation of the presumption of innocence and the *ne bis in idem* principle on account of the imposition of a smuggling fine on the applicant despite her acquittal in criminal proceedings.

2. In 2005 large amounts of undeclared cigarettes were found in a container declared as carrying restaurant supplies. The applicant with her son, who was a customs clearance agent, were considered to have been involved in the import of goods which were falsely presented as purchased by a company. It was alleged that the son, with others, had prepared false documents, and the applicant had attempted to obtain a necessary ownership transfer document from the shipping company using forged forms, as directed by her son. The shipping company agent refused to hand over the document. Criminal proceedings were initiated against the applicant and her son.

3. In parallel, on 8 October 2010 the customs authority imposed on the applicant an administrative fine for smuggling of 1,323,851.98 euros (EUR) pursuant to Articles 142 § 2, 150 and 155 § 1 (b) of Law no. 2960/2001 (Customs Code, hereinafter "the CC") which provided that any action aimed

at depriving the State or the European Union of customs duties constituted smuggling and that a smuggling fine was imposed notwithstanding whether the offence was subject to criminal prosecution. The applicant was held 20% liable, her son 80%, and she was jointly responsible for paying the total fines of EUR 6,619,259.90.

4. By judgment no. 5414/2011 of 6 September 2011 the Piraeus Criminal Court of First Instance acquitted the applicant of attempted smuggling (*απόπειρα λαθρεμπορίας*), namely of having initiated the import of goods subject to duties without the authorisation of the customs authority, pursuant to Article 155 § 1 (a) of the CC. The court found that her intent was not established. Her son was convicted of attempted smuggling of cigarettes and was subsequently acquitted on appeal.

5. The applicant appealed requesting the annulment of the administrative fine on the grounds that (a) the acquittal judgment confirmed that she had not acted with intent; in view of her age (70 years old) and her occupation as housewife, she could not have acted knowingly; and (b) there was no attempt of smuggling as the import of the goods has not started.

6. Her appeal (*προσφυγή*) was dismissed by judgment no. 1611/2014 of 30 May 2014 of the Piraeus Administrative Court of Appeal. It found that the applicant had executed a plan for her son and attempted to receive the ownership transfer document to allow him to import the smuggled cigarettes. It considered, in particular, that the acquittal judgment and the finding that she had had no intent was based on a witness statement according to which "anyone could receive the goods"; in any event the acquittal concerned Article 155 § 1 (a) of the CC and not § 1 (b). It found that the applicant committed smuggling with intent under Article 155 § 1 (b) of the CC (actions aimed at depriving the State or the European Union of customs duties) and confirmed the imposed fine.

7. On 23 January 2015 the applicant appealed on points of law. By her second ground she argued that the appellate court's judgment had violated Article 6 § 2 of the Convention and that it should have considered her previous final acquittal for the same conduct and annulled the fine. She claimed that regarding the binding effect of the acquittal judgment on the administrative court, the appellate court's judgment had been contrary to the Court's judgment *Vassilios Stavropoulos v. Greece* (no. 35522/04, 27 September 2007).

8. By the third ground the applicant argued that the appellate court's judgment had been in breach of Article 5 § 2 of the Code of Administrative Procedure (CAP) which provided that the administrative courts were bound by the final convicting judgments of criminal courts. It was also contrary to the Supreme Administrative Court's (SAC) case-law that, when an administrative court examines the administrative offence of smuggling, it is not bound by a prior criminal acquittal; however, it must duly consider the acquittal and provide clear and reasoned justification if it reaches a different

conclusion. She argued that the criminal acquittal for attempted smuggling concerned the same facts as those involved in the administrative offence of smuggling under Article 155 § 1 (b) of the CC.

9. By its judgment no. 3076/2017 (available on 19 December 2017) the SAC dismissed the second ground, because the appeal court's judgment did not establish that the acquittal had become final and the applicant did not claim before the SAC that she had invoked and substantiated before the appellate court that the acquittal judgment had been final. It further found that it did not result from the invoked *Vassilios Stavropoulos* judgment that the administrative court should have been bound by the criminal acquittal under Article 6 § 2 of the Convention, also where, as in the present case, the administrative court applied a different legal provision than the one applied by the criminal court (see paragraph 6 above). As there was no contrariety between the appellate court's interpretation and the Court's judgment, the SAC declared that ground inadmissible under Article 53 § 3 of Presidential Decree no. 18/1989 (see *Tsiolis v. Greece*, no. 51774/17, § 35, 19 November 2024, and *Papaioannou v. Greece*, no. 18880/15, §§ 14-25, 2 June 2016).

10. It further declared inadmissible the third ground for appeal on points of law under the same procedural provisions, because it did not concern the appellate court's interpretation but its reasoning of whether the offence of smuggling had been committed by the applicant; the appellate court had considered the content of the acquittal judgment and had not disregarded it.

11. Lastly, the SAC referred to additional observations (*υπόμνημα*) submitted before the hearing of the case on 21 September 2017 by which the applicant argued that the appellate court's judgment had violated Article 4 of Protocol No. 7 to the Convention, and that it had been contrary to the SAC's judgments nos. 1992/2016 and 680/2017, issued after she had lodged the appeal on points of law. The SAC held that this ground for appeal "was, in any case, based on the unfulfilled condition of timely and proper invocation and substantiation of a relevant acquittal judgment that was also final" and referred to the reasoning of the dismissal of the second ground on Article 6 § 2 (see paragraph 9 above). It declared it inadmissible as the applicant had relied for the first time on the *ne bis in idem* principle in the additional observations which had not been submitted properly as they lacked proof of payment of contributions to the Bar association. She could have raised a new ground for appeal after lodging the appeal on points of law arguing contrariety with later SAC judgments, through a supplementary grounds document (*δικόγραφο προσθέτων λόγων*), as per Article 25 of Presidential Decree no. 18/1989.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. A description of the relevant domestic law and practice can be found in *Kapetanios and Others v. Greece* (nos. 3453/12 and 2 others, §§ 36-47, 30 April 2015).

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

13. The Government argued that the applicant failed to exhaust domestic remedies. As regards Article 4 of Protocol No. 7 to the Convention, they maintained that the applicant had not complained of this violation before the appellate court. She did not also properly formulate a complaint before the SAC as she should have invoked it in her appeal on points of law or by submitting a supplementary ground and not in her improperly submitted additional observations. They further argued that the applicant had not invoked in substance a *ne bis in idem* violation when relying on a breach of Article 5 § 2 of the CAP, as applicable at that time, or of Article 6 § 2 of the Convention. As regards her complaint under Article 6 § 2, the Government submitted that the applicant had failed to properly show that the acquittal judgment had become final and her relevant ground for appeal on points of law did not comply with the admissibility requirements set out in Article 53 § 3 of Presidential Decree no. 18/1989 (see *Tsiolis*, cited above, § 35, and *Papaioannou*, cited above, §§ 14-25).

14. The applicant disagreed.

15. Non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008). The SAC held that the appeal judgment did not establish that the acquittal had become final and the applicant did not claim before the SAC that she had relied on and substantiated the finality of the acquittal before the appellate court (see paragraph 9 above). When examining the additional observations, it raised, referring also to its above reasoning, the applicant's failure to timely and properly invoke and prove the existence of a final acquittal judgment (see paragraph 11 above). Therefore, the Court finds that the SAC, despite having rejected as inadmissible the relevant grounds, examined the merits of the applicant's claims (compare *Sylakos v. Greece* [Committee], no. 72036/14, § 10, 21 January 2025; and see *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, § 66, 30 April 2015). It therefore rejects the Government's objection.

16. The application 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.

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

17. The applicant complained of a violation of Article 4 of Protocol No. 7 to the Convention arguing that the administrative courts should have annulled the fine. The Government contested that argument.

18. The general principles concerning the *ne bis in idem* principle have been summarised in *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, §§ 78-84, ECHR 2009) and *A and B v. Norway* ([GC] nos. 24130/11 and 29758/11, §§ 117-34, 15 November 2016).

19. As regards administrative fines for smuggling imposed on the basis of facts which had previously given rise to acquittal in criminal proceedings, the Court has already found a violation of Article 4 of Protocol No. 7 in almost identical circumstances in the case of *Kapetanios and Others* (cited above, §§ 50-75).

20. In the present case, considering the severity of the fine imposed and its deterrent effect, both sets of proceedings were of a criminal nature (ibid., §§ 52-57) and concerned the same offence (ibid., §§ 65-73). The applicant was criminally acquitted of having attempted smuggling by judgment no. 5414/2011 of the Piraeus Criminal Court of First Instance against which no remedies were exercised in so far as the judgment concerned the applicant.

21. It further follows from judgment no. 1611/2014 of the Piraeus Administrative Court of Appeal that the applicant relied on and submitted the above acquittal judgment while the court did not raise any issue as to whether the acquittal was final. She further relied on and submitted the acquittal before the SAC. In *Kapetanios and Others* (cited above, § 66), the Court held that under such circumstances it was for the administrative courts examining the case to consider, of their own motion, the effect that the final acquittal judgment relied upon could have in the context of the pending administrative proceedings. However, the domestic courts failed to consider the effect of the acquittal on the imposition of the fine and annul it. Accordingly, the Court does not discern any reason to depart from the conclusion reached in *Kapetanios and Others* in the present case.

22. There has accordingly been a violation of Article 4 of Protocol No. 7 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

23. The applicant complained of a violation of Article 6 § 2 of the Convention, as the administrative courts had disregarded her final acquittal for the same conduct.

24. The Court found a violation of Article 6 § 2 of the Convention in *Kapetanios and Others* (cited above, §§ 86-88) in respect of issues similar to those raised in the present case.

25. Turning to the present case, in view of the constituent elements of the offences concerned, the similar nature of the two sets of proceedings in issue and the fact that they took place independently of each other, the Court concludes that the administrative courts held the applicant liable for the same offence for which she had previously been acquitted by the criminal court. Therefore, the Court does not discern any reason in the present case to depart from its conclusions in *Kapetanios and Others* (cited above, § 88).

26. It follows that there has been a breach of Article 6 § 2 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention;

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

Done in English, and notified in writing on 9 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Peeter Roosma President