

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

THIRD SECTION

CASE OF SYLAKOS v. GREECE

(Application no. 72036/14)

JUDGMENT

STRASBOURG

21 January 2025

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



In the case of Sylakos v. Greece,

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

Peeter Roosma, President,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, Deputy Section Registrar,

Having regard to:

the application (no. 72036/14) 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") on 3 November 2014 by a Greek national, Mr Michail Sylakos ("the applicant"), who was born in 1954, lives in Karditsa and was represented by Mr N. Mistras, a lawyer practising in Karditsa;

the decision to give notice of the complaints concerning Article 6 § 2 of the Convention and Article 4 of Protocol 7 to 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 delegate, Ms A. Magrippi, Legal Representative at the State Legal Council, and to declare inadmissible the remainder of the application;

the parties' observations;

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

Having deliberated in private on 17 December 2024,

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 applicant's allegation that he was tried and convicted twice for the same offence and that the presumption of innocence stemming from a criminal acquittal in respect of smuggling was not respected in subsequent administrative proceedings.

2. On 8 July 2002 the competent Customs Office (*Τελωνείο Καρδίτσας*) held the applicant liable for smuggling under the Greek Customs Code. The offence was related to the purchase in the Netherlands and circulation in Greece of a vehicle which had been imported into Greece without paying customs duties and taxes and whose identification number had been forged and replaced by that of a legally registered vehicle.

3. An administrative fine for smuggling (*πολλαπλό τέλος λαθρεμπορίας*) equivalent to 128,102.85 euros (EUR) was imposed, plus EUR 3,074.47 in stamp duty. The applicant contested the above decision before the domestic administrative courts.

4. Before the beginning of the administrative proceedings, the applicant was finally acquitted of the charge of smuggling by judgment no. 224/2005 of the Larissa Criminal Court of Appeal, delivered on 8 February 2005, which became irrevocable as no appeal was lodged against it. It follows from the file that the applicant relied upon his acquittal judgment and submitted a copy of it in the proceedings before the administrative courts of the first instance and on appeal.

5. By its judgment no. 16/2008, delivered on 24 January 2008, the Trikala Administrative Court of First Instance took into consideration criminal judgment no. 224/2005 but held that the applicant had committed the customs offence of smuggling. In particular, as regards the applicant's criminal acquittal relied upon before it, it held that, pursuant to Article 5 § 2 of the Code of Administrative Procedure, administrative courts were not bound by the previous criminal acquittal, other than being obliged to take it into consideration in their assessment. According to that provision, as it stood at the time, administrative courts were bound solely by irrevocable conviction judgments delivered by the criminal courts and not by irrevocable acquittal judgments. By its judgment no. 323/2013 delivered on 14 August 2013, the Larissa Administrative Court of Appeal upheld the first-instance judgment and dismissed the application on the merits on the same grounds as those stated in the first-instance judgment.

6. Subsequently, by its judgment no. 1879/2014 delivered on 21 May 2014, the Supreme Administrative Court dismissed the applicant's third ground of appeal alleging disregard of the *ne bis in idem* principle and the presumption of innocence as inadmissible under Article 12 of Law no. 3900/2010. According to the latter provision, an appeal on points of law may be lodged only when the litigant maintains by specific arguments, contained in the appeal on points of law, that there is no case-law of the Supreme Administrative Court, or that the impugned judgment is contrary to the case-law of the Supreme Administrative Court or of another supreme court or to a final judgment of an administrative court (see for relevant domestic law provisions *Papaioannou v. Greece*, no. 18880/15, §§ 14-25, 2 June 2016). In the present case, the Supreme Administrative Court found that, contrary to the applicant's argument, there was indeed case-law on the relevant question with which the judgment appealed against complied. Nevertheless, the Supreme Administrative Court examined the applicant's appeal in this regard and concluded that it did not transpire from the Larissa Administrative Court of Appeal's judgment that the criminal acquittal had become irrevocable, nor had the applicant argued before the Supreme Administrative Court that he had relied upon and proved before the Larissa Administrative Court of Appeal that the criminal acquittal had become irrevocable.

II. RELEVANT DOMESTIC LAW AND PRACTICE

7. 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

8. The Government argued that the applicant had not exhausted domestic remedies since he had failed to raise before the competent domestic authorities the complaints that he subsequently made before the Court, in accordance with the applicable procedural requirements. In particular, according to the Government, the applicant had failed to comply with the admissibility requirements of Article 12 of Law no. 3900/2010 and, additionally, had not proved that the criminal judgment in his favour had become irrevocable. Therefore, the applicant had deprived the Larissa Administrative Court of Appeal and/or the Supreme Administrative Court of the possibility to consider the criminal judgment as irrevocable.

9. The applicant contested the Government's objection. He argued that the domestic administrative courts ought to have verified, of their own motion, whether the criminal acquittal judgment had become irrevocable.

10. The Court reiterates that 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). In the present case, the Court notes that, despite the fact that the Supreme Administrative Court rejected the appeal as inadmissible under Article 12 of Law no. 3900/2010 (see paragraph 6 above), it examined the merits of the applicant's claim by holding that it did not transpire from the Larissa Administrative Court of Appeal's judgment that the criminal acquittal had become irrevocable nor had the applicant argued before the Supreme Administrative Court that he had relied upon and proved before the Larissa Administrative Court of Appeal that the criminal acquittal had become irrevocable. Furthermore, the Courts notes that, in so far as the applicant relied upon and submitted the acquittal judgment in question, it was for the administrative courts examining the case to consider, of their own motion, the effect that the said acquittal judgment could have in the context of the pending administrative proceedings in the light of the *ne bis in idem* principle (see *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, § 66, 30 April 2015). The Court therefore rejects the Government's preliminary objection.

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

11. The applicant complained under Article 4 of Protocol No. 7 of having been tried and convicted twice for the same offence, because the administrative courts had upheld the administrative fine for smuggling on the basis of the same facts for which he had been acquitted in criminal proceedings.

12. The Government contested that argument.

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

14. 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).

15. 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).

16. Turning to the present case, the Court notes that both sets of proceedings, namely the administrative and the criminal, were of a criminal nature in view of the severity of the customs fine imposed and its deterrent effect (ibid., §§ 52-57). They further concerned the same offence (ibid., §§ 65-73).

17. The applicant was criminally acquitted by judgment no. 224/2005 of the Larissa Criminal Court of Appeal, against which no appeal on points of law was lodged. It further follows from the file that the applicant relied on and submitted the above acquittal judgment, which had already become *res judicata*, at both first instance and appeal level as well as before the Supreme Administrative Court. 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 acquittal judgment relied upon could have in the context of the pending administrative proceedings in the light of the *ne bis in idem* principle. However, both the Court of Appeal and the Supreme Administrative Court refused to take into account the applicant's final acquittal in the criminal proceedings (see paragraphs 4 to 6 above). Accordingly, the Court does not discern any reason to depart from the conclusion reached in *Kapetanios and Others* in the present case.

18. 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

19. The applicant further complained under Article 6 § 2 of the Convention that the presumption of innocence stemming from their criminal acquittal was not respected in the subsequent administrative proceedings.

20. The Government contested that argument.

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

22. In the case of *Kapetanios and Others* (cited above, §§ 86-88), the Court has already found a violation in respect of issues similar to those in the present case.

23. 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 the latter took place autonomously, the Court concludes that the administrative courts held the applicant liable for the same offences for which he had previously been acquitted by the criminal courts. Therefore, the Court does not discern any reason to depart from its conclusions in *Kapetanios and Others* (cited above, § 88) in the present cases.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. In his application form only, the applicant claimed 260,433.10 euros (EUR) plus EUR 3,074.47 in stamp duty in respect of pecuniary damage resulting from the imposition of administrative fines for smuggling. He also claimed EUR 100,000 in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

26. The Government invited the Court not to make an award in respect of pecuniary and non-pecuniary damage to the applicant, pointing to his failure to submit any such claim within the time-limit set after the communication of the complaints to the Government, except for an unsubstantiated claim in respect of costs and expenses.

27. The Court notes that, as the applicant has failed to comply with Rule 60 §§ 2 and 3 of the Rules of Court, as well as with the Practice Direction on Just Satisfaction Claims, which, in so far as relevant, provides that the Court "will normally reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings", his claim for pecuniary and non-pecuniary damages must be dismissed. In any event, and with regard to the applicant's pecuniary claims, 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 Supreme Administrative Court and request the cancellation of the administrative fines for smuggling.

28. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, the Court rejects the claim for costs and expenses because the applicant did not submit itemised particulars of all claims, together with any relevant supporting documents.

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;

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

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

Olga Chernishova Deputy Registrar	Peeter Roosma President