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

THIRD SECTION

DECISION

Application no. 13702/18
Nikita Alekseyevich ONISHCHENKO
and Yekaterina Yuryevna ONISHCHENKO
against Greece

The European Court of Human Rights (Third Section), sitting on 20 January 2026 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. 13702/18) 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 15 March 2018 by two Russian nationals, Mr Nikita Alekseyevich Onishchenko and Ms Yekaterina Yuryevna Onishchenko ("the applicants"), who were born in 2001 and 1976 respectively, live in Berlin and were represented by Mr R. Maroz, a lawyer practising in London;

the decision to give notice of the complaints concerning the procedural aspect of the right to life and access to a tribunal to the Greek Government ("the Government"), represented by Mr K. Georgiadis, Legal Counselor of the State, and Ms K. Konsta, Legal Representative A at the State Legal Council, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns an attack upon the first applicant and the ensuing proceedings.

A. Attack of 2013 and its consequences

2. In 2013 the first applicant, who was twelve years old at the time, was in Crete on holidays with his mother (the second applicant). On 15 May 2013 on the grounds of a hotel he was stabbed more than twenty times in the back by Mr S.C.W., a person working at the hotel who was suffering from mental health problems.

3. A number of medical interventions followed, first in Greece, then in Germany. As a result of the attack, the first applicant became severely handicapped. He is unable to walk and moves with the help of a wheelchair.

4. After his discharge from a hospital in November 2013, the first applicant remained in Germany. On health grounds, since 2013 the applicants were granted German temporary residence permits, and in October 2022 - permanent residence permits.

5. In parallel, in 2014 and 2015 the Greek authorities issued special resident permits to the applicants, so that they could participate in the criminal proceedings (see below). In 2016 the applicants sought a permanent residence permit in Greece, so that they could participate in the pending criminal proceedings. They also indicated their intent to bring civil proceedings against the hotel and S.C.W. That request was denied.

6. On 17 July 2023 a forensic expert in Berlin issued a report which described the first applicant's condition as follows:

> "Complete paraplegia of the thoracic spinal cord ... from the middle of the back downwards with neurogenic bladder and bowel emptying disorder ..., with stiffening of the spine from BWK 5-BWK 12, including removal of the 8th thoracic vertebra and vertebral body replacement; implantation, and recurrent pressure ulcers and urinary tract infections, as well as recurrent depressive episodes."

7. In March 2024 another medical doctor in Berlin issued a certificate attesting that as a result of his health deterioration, the first applicant's medical treatment was estimated to cost approximately 256,000 euros (EUR) per year for a duration of five to eight years. A number of other documents provided details of the proposed treatments and their cost.

B. Criminal conviction of the perpetrator and conditional release

8. On 2 May 2014 the Lassithi Assize Court of First Instance sentenced S.C.W. to at least 11 years and six months of detention for attempted murder. On 21 October 2015 the Eastern Crete Assize Court of Appeal recognised that the perpetrator was suffering from a mental disorder, and his cognitive capacity was significantly reduced. The appellate court also found him guilty and sentenced him to ten years and four months' imprisonment. The second applicant participated as a witness and a civil party on behalf of both applicants.

9. On 25 October 2016 S.C.W. requested the competent prosecutor to grant him conditional release. He attached, *inter alia*, a calculation issued by the Supervising Prosecutor of the Korydallos Prison on 25 June 2015 to the effect that each day spent in detention in the psychiatric ward counted for two days of detention served under criminal sentence; and an extract from the Korydallos Prison record of 25 October 2016 indicating S.C.W.'s good behaviour and absence of disciplinary sentences.

10. On 22 December 2016 the Public Prosecutor of the Piraeus Misdemeanour Court issued order no. 5153/2016, granting S.C.W.'s release under Article 12 § 3 of Law 4322/2015. From the date of arrest, i.e. 15 May 2013, and by the date of the order S.C.W. has served one third of his sentence, i.e. three years, five months and ten days. Furthermore, the Prosecutor considered that in application of Article 105 § 7 of the Penal Code, as amended by Article 6 § 4 of Law 4322/2015, the detention period spent in psychiatric detention had to be calculated as double; therefore S.C.W. should be regarded as having served six years, ten months and 12 days, which amounted to two thirds of the sentence. The release was subject to the following conditions: residence at the premises of a prisoners' rehabilitation organisation in the Netherlands; compliance with prescribed medication and psychotherapy; and the submission of monthly psychiatric reports to the Greek Consulate in The Hague. The Prosecutor noted that the Netherlands has secured a place for S.C.W. at the organisation, that in that country he could benefit from a supportive environment and family structure, which should prevent relapse and ensure reintegration. His mother (who was his guardian, in view of his limited mental capacity) resided in the Netherlands.

11. On 27 December 2016 S.C.W. was released from prison. In the end of December 2021 the probationary period expired, without any reported breaches, as transpires from the documents submitted by the Government.

12. In particular, on 8 August 2023 the Greek Consulate in The Hague indicated that until March 2018 S.C.W. had submitted the reports, following which date that obligation has been transferred to the Netherlands prisoner reintegration service. The reports attested that S.C.W. regularly took his medication and pursued his treatment; a psychological clinic reported that S.C.W. had been treated there between May and November 2017, and had concluded that he presented "very little" risk of recidivism or of commission of new offences. By document dated 26 March 2018, the Netherlands prisoner reintegration service advised that it was no longer necessary for S.C.W. to report monthly to the Greek Consulate in The Hague, as that service had received a formal order by the Netherlands Prosecutor's Office to monitor S.C.W.

13. The Public Prosecutor of the Piraeus Misdemeanour Court issued on 31 August 2023 document no. 2414/2023. Taking note of the information provided by the Consulate, the Prosecutor concluded that until 27 December 2021 there had been continuous observance of the conditions set out in order

no. 5153/2016 and no violations have been recorded by the Consulate or the Netherlands prisoner reintegration service. Under Article 109 of the Penal Code, the sentence was deemed to have been served.

C. Civil action in Moscow and recognition proceedings

14. The applicants alleged that they were unable to bring a civil action in Greece and seek damages resulting from the assault, as they were unable to pay a stamp duty, calculated on the basis of a fixed percentage of the claim amount. They also claimed that they were not eligible for legal aid under Law No. 3226/2004 because their place of permanent residence at the time was not in a Member State of the European Union (EU).

15. In view of this, on 13 May 2016 the applicants brought a civil action against the hotel company and the Russian tour operator before the Russian courts. Following a series of proceedings, on 18 November 2020 the Moscow City Court upheld their claims and ordered the hotel company to pay the applicants 589,054 euros (EUR) covering medical and other costs; the tour operator company was ordered to pay the first applicant 500,000 roubles (RUB) in non-pecuniary damages.

16. The applicants applied to the Heraklion Single Member Court of First Instance for recognition and enforcement of that judgment.

17. By judgment No. 256/2022 delivered on 22 June 2022 that court, applying the Treaty of 21 May 1981 on Mutual legal assistance in civil and criminal matters between Greece and the Soviet Union ("the 1981 Treaty"), dismissed the application because proceedings involving the same parties and relating to the same dispute had already been brought before the Greek courts (see below).

18. On 22 July 2022 the applicants appealed. They were granted legal aid for the appeal proceedings by the President of the Eastern Crete Court of Appeal on 7 July 2022.

19. On 4 August 2023 the Eastern Crete Court of Appeal adjourned the examination of the case, so that the applicants could provide a certified translation of the Russian court judgments, as well as a document certifying that those judgments had acquired the force of *res judicata* and had become enforceable. The hearing of the case was scheduled for 11 February 2025. No further information was submitted with respect to these proceedings.

D. Civil action in Greece and legal aid proceedings

20. In the information submitted to the Court after their application was lodged, the applicants explained that towards the end of 2018 they learned that, in accordance with Law No. 4446/2016, an individual could bring an action for a declaratory judgment (*αναγνωριστική αγωγή*) before the Greek

courts without having to pay stamp duty, but that such judgment could only be enforced after payment of that duty.

21. On 5 October 2018 the applicants brought an action before the Heraklion Court of First Instance seeking a declaratory judgment against the hotel company for more than twenty million euros in respect of the material and non-material damage, including past and future medical expenses.

22. By judgment no. 99/2020, handed down on 19 June 2020, the court recognised the hotel company's obligation to pay the second applicant, on behalf of her son, EUR 2,509,053.15, covering medical expenses between 2013 and 2031. On 31 March 2023 the Eastern Crete Court of Appeal, on appeal by the defendants, reduced the period covered to 2023 and revised the compensation to EUR 1,195,558.07 (judgment no. 27/2023).

23. The applicants state that they learned in 2021 that, since they had been residing in Germany since 2018, they could have applied for legal aid, including exemption from stamp duty. On 17 May 2021 they submitted such a request to the Greek authorities in accordance with Law No. 3226/2004. In their request, they stated that they were Russian citizens residing in Moscow, but have been living in Berlin. They relied on Articles 17 ("exemption from court fees") and 18 ("free legal assistance") of the 1981 Treaty, as well as Article 6 of the Convention. The President of the Eastern Crete Court of Appeal granted this request on 16 March 2022. A lawyer was appointed to represent them at the appeal and a court bailiff was appointed to assist. Upon reaching the age of majority, the first applicant was granted the same level of legal aid on 4 June 2022.

24. On 10 May 2023 the first applicant sought exemption from obligation to pay costs in connection with the execution of judgment no. 27/2023. This request was granted on 12 May 2023 by the Heraklion Single Member Court of First Instance, under Law no. 3226/2004 and Article 18 of the 1981 Treaty.

25. On 27 September 2023 the President of the Eastern Crete Court of Appeal granted legal aid to the applicants with respect to lodging an appeal of points of law with the Court of Cassation against judgment no. 27/2023. It appears that these proceedings are pending.

E. Complaints

26. The applicants complained that by granting early release of the perpetrator of the attack Greece has breached its obligation under Article 2 of the Convention. They also alleged that, contrary to Article 6, they had no effective access to a court in Greece as they were unable to introduce before the domestic tribunals a civil action for damages, due to excessively high fee which they were obliged to pay.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 2 of the Convention

1. The parties' arguments

27. The Government argued that Member States enjoyed a wide margin of appreciation in the area of conditional release systems (referring to *Choreftakis and Choreftaki v. Greece*, no. 46846/08, §§ 31 and 55, 17 January 2012).

28. They explained the applicable legislation on conditional release and stressed that it ensured individualisation of supervision and focused on the conditions to be met during probation. In the present case, S.C.W. had served his sentence in the Korydallos Psychiatric Hospital detention facility in line with the legislation and the sentence. Under Article 1 of Law no. 2349/1940 and the Prison Code (Law no. 2776/1999) that facility was tasked with treatment of detained persons who faced mental problems, and S.C.W.'s state of mental health had justified his detention there. The conditional release was based on the legislative provisions cited in order no. 5153/2016. Those provisions allowed the time served in prison hospital to be calculated at the rate of one day to two, and thus S.C.W. was considered to have served two thirds of the sentence. The order took into account S.C.W.'s situation in the Netherlands during remaining time. The conditions of residence, medical supervision and regular reporting have been complied with. S.C.W. has not committed any violent act or other breach of order during the five years of probation. They invoked document no. 2414/2023 issued by a prosecutor which confirmed compliance with the conditions of parole until the end of the period in question. In such circumstances, no violation of the positive obligation to protect life by law could arise.

29. The applicants disputed that S.C.W.'s early release and probation conditions have been in line with legislation. In particular, they pointed out that the sentence by the Assize Appeal Court did not specify that he was to serve it in a psychiatric institution. They challenged the assertion that the conditions of probation had been respected in view of the fact that no reporting was required as of April 2018, and that no decision of a Greek public authority could be produced to justify this change during the probation.

2. The Court's assessment

30. Enforcement of a sentence imposed in the context of the protection of the right to life must be regarded as an integral part of the procedural obligation of the State under Article 2 (see *Akelienė v. Lithuania*, no. 54917/13, § 85, 16 October 2018, with further references). The Court's review in this respect is not limited to the severity of the sentences as initially imposed by the domestic courts but includes also the manner of their

subsequent implementation (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 269, 26 April 2011).

31. The perpetrator of the crime in the present case was a private person employed by a hotel, who committed the attack in a state of diminished mental capacity. This tragic incident thus has to be distinguished from situations where the Court has found that lenient treatment of certain offenders by the State – such as granting of amnesties, pardons, suspension of sentence or maintaining an eligibility for a public office - could run contrary to the purpose of ensuring an adequate punishment and preventing impunity (compare and contrast *Marguš v. Croatia* [GC], no. 4455/10, § 127, ECHR 2014 (extracts); *Barovov v. Russia*, no. 9183/09, § 44, 15 June 2021; *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 171, 26 May 2020; and *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 69, 8 April 2008). The Court expects States to be more stringent when punishing their own law-enforcement officers for the commission of life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office and to maintain public confidence in and respect for the law-enforcement system (see *Enukidze and Girgvliani*, cited above, § 274).

32. The perpetrator was sentenced to ten years and four months imprisonment. In December 2016 the Public Prosecutor of the Piraeus Misdemeanour Court issued order no. 5153/2016, finding that the requirements for conditional release have been met. The order relied on the applicable domestic law and was based on the calculation of the time spent in detention in a psychiatric institution against the entire period of detention and the assessment of the individual's situation that could be conducive to his rehabilitation. The release was conditioned on the residence at a specialised facility, medical supervision and monthly reporting.

33. The documents submitted to the Court indicate that these conditions were respected (see paragraph 12 above). As to the period between April 2018 and December 2021, the Netherlands Prisoner reintegration service attested having taken over the monitoring. No breach was signalled by the Dutch authorities (see paragraph 13 above). The Court has thus no reason to doubt that such monitoring was ensured until the end of the probationary period.

34. To sum up, the Court finds no reasons to conclude that the punishment served by S.C.W. was such as to place in question Greece's general obligation under Article 2 of the Convention to take effective action to deter the commission of offences against the lives of individuals, or otherwise to comply with its procedural obligations under that Article.

35. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 6 of the Convention

1. The parties' arguments

(a) The Government

36. The Government suggested that the complaint was inadmissible due to failure to comply with the six-month time-limit. As of 22 December 2016 - date of promulgation of Law no. 4446/2016 - the applicants could file an action for a declaratory judgment for damages without paying any fees. Thus, any alleged infringement of the right to court necessarily ended on that date. The applicants lodged their action before the three member Court of First Instance of Heraklion on 5 October 2018, without asking for legal aid.

37. They further considered that the applicants failed to exhaust domestic remedies. Under Article 1 of Law no. 3226/2004, third country nationals if they habitually reside or are domiciled in the EU may seek legal aid in Greece; Article 9 of the same Law provides that legal aid includes exemption from the payment of a court stamp duty. Permanent residence in the EU is not required. The Government pointed out a number of domestic decisions where Law no. 3226/2004 has been applied to persons unable to cover court fees. Once the applicants brough such requests, those have been granted: the applicants were exempted from the payment of fees and lawyers were appointed to assist them. Furthermore, the 1981 Treaty granted to the nationals of the other contracting party judicial protection under the same conditions as to its own nationals. The applicants' allegation that the treaty did not cover exemption from court fees was unfounded.

38. Finally, the allegation of a breach of Article 6 was ill-founded. Various solutions described above were available to the applicants from the date of the events. Thus, there has been no instance when the applicants' right to a court has been infringed.

(b) The applicants

39. The applicants stated that they had, initially, decided not to lodge a civil claim against the hotel company in Greece because their claim would be subject to the payment of the stamp duty amounting to 1% of their claim. As they had, in 2014, estimated their claim at EUR seven million, including pecuniary damages and complex medical expenses for years to come, the court fees would amount to over EUR 77,000. In their view, Law no. 3226/2004 was not applicable to them, as at the time they were neither citizens nor residents of a EU country. They were denied residence permits in Greece in 2016. There was no automatic exemption from fees for victims seeking damages in connection with the criminal injuries, and Law no. 3226/2004 left a discretion as to the extent of the legal aid to be granted. Accordingly, the applicants were obliged to seek damages in the proceedings

in Russia; but the final judgment of the Moscow City Court of 18 November 2020 was not accepted by Greek courts as *res judicata*.

40. They denied that the provisions of the 1981 Treaty included exemption from court fees, as the term "free judicial protection" used in its Article 18 was not clear. It was also not clear whether and how the conditions of citizenship and residence as defined by Law no. 3226/2004 would apply in parallel. They thus challenged the Government assertion that any legal remedies were available to them against the denial of access to a court.

41. Finally, as to the legislative change of December 2016, they argued that they were not aware of such changes immediately due to their position of foreigners not living in Greece, having no financial means and being occupied with the consequences of the first applicant's injury. Once they learnt of the possibility to seek a declaratory judgment without the fee, they did so. They denied that they missed the six-months time limit, since the fee was still required at the execution stage. They could only benefit from Law no. 3226/2004 after they had obtained permanent residence in Germany.

42. Overall, the delays in the obtention of the compensation through civil proceedings in Greece had dire consequences on the first applicant's health, as they had to postpone the necessary treatment due to lack of funds.

2. The Court's assessment

43. The Court notes that the applicants' complaints that their right of access to a court was infringed on the account of unavailability of legal aid in the form of exemption from stamp duty were not based on any decisions of the Greek courts or other public authorities. It thus remains a mere speculation on their part as to whether such fees would have been asked from them and whether they could have obtained an exemption prior to 2016, as the Government alleges, or to 2022, as the applicants allege.

44. To the contrary, once the applicants applied to the Greek courts within the procedures of (i) recognition of the Moscow City Court's judgment, and (ii) declaratory judgment, their actions were accepted and examined without any fees being levied on them. The applicants were granted legal aid in the course of adjudication of their declaratory action (see paragraphs 17-20 above). The applicants sought and obtained an exemption from the obligation to pay stamp duty in connection with the execution of declaratory judgment no. 27/2023 (see paragraphs 23 and 24 above). The applicants have never been told that permanent residence in the EU was a condition for granting of legal aid or that the provisions of the 1981 Treaty did not apply to them.

45. In particular, in their first request for legal aid dated 17 May 2021 the applicants relied exclusively on the provisions of the 1981 Treaty, and this request was granted (see paragraph 23 above). In granting their subsequent requests for legal aid, the domestic court expressly relied on Article 18 of the 1981 Treaty and noted that the applicants were Russian citizens residing in Germany for medical reasons (see paragraph 24 above).

46. The foregoing considerations are sufficient to conclude that there is no need to examine the Government's preliminary objections raised in connection with this complaint, which is in any event manifestly ill-founded.

47. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 February 2026.

Olga Chernishova Deputy Registrar	Peeter Roosma President