



## Complaint concerning the dismissal of an application for the annulment of criminal proceedings: inadmissible

In its decision in the case of [Kokkonis and Chalilopoulou v. Greece](#) (application nos. 76386/11 and 76408/11) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned the Greek courts' dismissal of the applicants' requests for the annulment of proceedings in which they had been convicted without having attended the hearing of the trial court.

The Court came to the conclusion that Article 6 (right to a fair trial) did not apply to the proceedings brought by the applicants, namely an application for annulment under Article 341 of the Greek Code of Criminal Procedure. Under that provision, the domestic court's task was not to determine the criminal charge but to examine whether the conditions for granting an annulment and a retrial were satisfied. The Court underlined that, under its case-law, Article 6 did not apply to proceedings to reopen a criminal case.

### Principal facts

The applicants, Zois Kokkonis and Nikolitsa Chalilopoulou, a married couple, are Greek nationals who were born in 1964 and 1968 respectively and live in Patra (Greece).

The applicants had been convicted in their absence in January 2009 of theft committed jointly, and sentenced to twelve months' imprisonment. They lodged an appeal, which was scheduled to be heard on 15 February 2011 by the Patras Court of Appeal. However, on that date, they applied for an adjournment of the hearing, as their lawyer could not be present, and the hearing was rescheduled for 3 May 2011. Neither the applicants nor their lawyer attended the hearing on that date. The Patras Court of Appeal, taking into account that the applicants had been present on 15 February 2011, considered that it was "as if they were present". The court thus examined their appeal and changed their sentence to ten months' imprisonment.

The applicants subsequently applied for the annulment of the proceedings, arguing that they had been prevented from attending the hearing or informing the court of their absence due to an acute illness of Mr Kokkonis. The Patras Court of Appeal heard their applications and, on 25 May 2011, dismissed them as inadmissible. It held in particular that an application for annulment (under Article 341 of the Code of Criminal Procedure) could only be lodged if the defendants had been tried in their absence, and not when they had been tried "as if they were present".

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 November 2011.

The applicants complained of a violation of their rights under Article 6 (right to a fair trial), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

The decision was given by a Chamber of seven, composed as follows:

Kristina **Pardalos** (San Marino), *President*,  
Linos-Alexandre **Sicilianos** (Greece),  
Aleš **Pejchal** (the Czech Republic),

Krzysztof **Wojtyczek** (Poland),  
Armen **Harutyunyan** (Armenia),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (“The former Yugoslav Republic of Macedonia”), *Judges,*

and also Renata **Degener**, *Deputy Section Registrar.*

## Decision of the Court

### Article 6

As to the scope of the case, the Court underlined that the complaint before it concerned the proceedings before the domestic Court of Appeal leading to its decision of 25 May 2011, not the applicants’ conviction in their absence as such.

Under the relevant principles of the Court’s case-law<sup>1</sup> Article 6 did not apply to proceedings to reopen a criminal case, given that a person who made such a request and whose sentence had become final was not “charged with a criminal offence” within the meaning of Article 6. The Court observed that in proceedings under Article 341 of the Greek Code of Criminal Procedure, which was at stake in the applicants’ case, the domestic court’s task was not to determine the criminal charge but to examine whether the conditions for granting an annulment and a retrial were satisfied. The Court therefore considered that the remedy under Article 341 of the Code of Criminal Procedure was akin to proceedings to reopen a criminal case.

Consequently, Article 6 did not apply to the proceedings in question brought by the applicants. That part of their application was therefore incompatible *ratione materiae* with the provisions of the Convention and had to be rejected in accordance with Article 35 (admissibility criteria).

### Other articles

The Court also declared inadmissible the applicants’ complaints under Article 13 and Article 14. It noted that Article 13 applied only where an individual had an arguable claim to be a victim of a violation of a Convention right. Having regard to its findings under Article 6 the Court did not find that the applicants had an arguable claim. Since Article 14 was not autonomous, and Article 6 was not applicable, Article 14 did not apply in the case.

*The decision is available only in English.*

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<sup>1</sup> As set out in the Grand Chamber judgment in the case of *Moreira Ferreira v. Portugal* (no. 2) (19867/12) of 11 July 2017

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.