



## Adjournment by Supreme Administrative Court of proceedings on legal challenge to marina berthing fees was properly justified

In today's **Chamber** judgment<sup>1</sup> in the case of **Sailing Club of Halkidiki 'I Kelyfos' v. Greece** (applications nos. 6978/18 and 8547/18) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 1** (right of access to a court) of the European Convention on Human Rights.

The case concerned legal proceedings brought by the applicants, boat owners using a marina, against an increase in the mooring and berthing fees that they were charged by the limited company responsible for its management, the Porto Carras Marina company.

The Court observed that the undeniably lengthy proceedings could be explained by the repeated adjournments of hearings. While a number of them had been adjourned by the Supreme Administrative Court of its own motion, some hearings had been affected by a lawyers' strike. However, the Court acknowledged that there had been valid reasons for the Supreme Administrative Court to adjourn its examination of the cases until the end of 2014, on account of a complete change in the legislative framework during that year, following the previous review in 2013, as regards the fixing of mooring and berthing fees in marinas, which are owned by the Greek State.

### Principal facts

The first applicant, the "I Kelyfos" Sailing Club of Halkidiki, is a group of boat owners who rent moorings in Porto Carras marina in Sithonia (Halkidiki). The second applicant, Mr Dimitrios Papafilippou, is a boat owner, member of the sailing club and the chairman of its board of directors, as well as being its legal representative.

In 2010 the marina's management company raised the mooring and berthing fees charged to boat owners by a large amount. According to the applicants, only the State, as owner of all the country's ports, was entitled to run marinas or entrust their management to third parties through a statutory procedure.

Over time the Porto Carras Marina company submitted a number of successive pricelists, all approved by ministerial decision, each time increasing the fees.

On 27 October 2012 and on 3 July 2012 the sailing club brought proceedings in the Supreme Administrative Court for the annulment of the ministerial decisions which had approved the price rises.

On 8 August 2013 a law abolished the obligation for pricelists to be approved by ministerial decision and required that they simply be notified to the Ministry of Tourism. In 2014 Law no. 4254/2014 abolished any obligation of notification and of approval by the Ministry.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In two judgments the Supreme Administrative Court decided that there was no case to answer in the proceedings brought by the sailing club, noting that the law had abolished the obligation to have pricelists approved by the Ministry of Tourism and that the validity of the previous approval decisions had expired.

For its part, the Porto Carras Marina company brought civil proceedings against members of the sailing club for payment of unpaid mooring and berthing fees.

## Complaints, procedure and composition of the Court

The applicants complained of a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights. They argued that the Supreme Administrative Court had delayed its decision on their appeals and had discontinued the proceedings six years after they had been brought on the grounds that new legislation had rendered those proceedings without object.

The applications were lodged with the European Court of Human Rights on 31 January 2018 and 12 February 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,  
Linos-Alexandre **Sicilianos** (Greece),  
Aleš **Pejchal** (the Czech Republic),  
Armen **Harutyunyan** (Armenia),  
Pere **Pastor Vilanova** (Andorra),  
Tim **Eicke** (the United Kingdom),  
Raffaele **Sabato** (Italy),

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

## Decision of the Court

### Article 6 § 1

The Court noted that the proceedings on the two appeals lodged by the sailing club had been undeniably lengthy on account of the repeated adjournments of hearings. While a number of them had been adjourned by the Supreme Administrative Court of its own motion, some hearings had been affected by a lawyers' strike. But the Court also observed that the year 2014 had been decisive for the case, as the plenary formation of the Supreme Administrative Court had delivered judgments which for the first time addressed questions that were similar to those of the applicants. It was also in 2014 that Law no. 4254/2014 had entered into force. The Court thus found that there had been valid reasons for the Supreme Administrative Court to adjourn its examination of the cases until the end of 2014.

The Court observed that the Supreme Administrative Court had dismissed the applicants' claims with detailed reasoning based on well-established case-law. In its first judgment it had taken the view that there was no need to continue its examination of the appeal against the Ministry's decision to approve the increase in mooring and berthing fees on the ground that the sailing club had not relied on an individual legal interest.

In its second judgment the Supreme Administrative Court had taken the view that the sailing club could not rely on a legal interest in support of continuing the proceedings because, on the one hand, the subject matter of its complaints did not concern the administrative consequences of the ministerial decisions it was challenging, and on the other, the questions raised, being of an economic nature, could be referred to the civil courts. Lastly, the Supreme Administrative Court had found that

it was no longer necessary to pursue the matter, as the validity of the decision challenged by the club had expired in 2014 and Law no. 4254/2014 had come into force.

The Court reiterated that it was not a court of fourth instance and that it would not call into question, under Article 6 § 1, the assessment of the domestic courts, unless their findings were arbitrary or manifestly unreasonable. In the present case the Court observed that the grounds on which the Supreme Administrative Court had dismissed the applicants' requests could not be regarded as arbitrary or unreasonable.

There had thus been no violation of Article 6 § 1.

*The judgment is available only in French.*

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**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.