



## Convention violation on account of unreasoned decision dismissing objections by applicant who was imprisoned pursuant to judgment not concerning him, and lack of remedy by which to seek redress

In today's **Chamber judgment**<sup>1</sup> in the case of [Nsingi v. Greece](#) (application no. 27985/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 §§ 1 and 5 (right to liberty and security / right to compensation) of the European Convention on Human Rights**

The case concerned the rejection of the applicant's claim for compensation for having been imprisoned pursuant to a sentence that had been handed down in respect of a different person, for whom he had been mistaken at the time of his arrest.

On 6 June 2018 the applicant was arrested by the police and, after verification of his identity, was registered under the name of an individual who had been sentenced to eight years' imprisonment for drug possession. The prosecutor ordered that he be sent to prison. On 20 June 2018 the applicant demanded that he be released, objecting that he was not the person who had been convicted and sentenced. The Criminal Court dismissed the applicant's objections without giving reasons for its decision.

The Court took the view that the complete lack of reasoning in the Thessaloniki Criminal Court's judgment had clearly been in breach of the principle of protection against arbitrariness enshrined in Article 5 § 1, having regard, in particular, to the fact that the applicant was, at the time, imprisoned pursuant to a judgment imposing an eight-year prison sentence on a different person.

As to the right to compensation provided for in the Code of Criminal Procedure (CCP), the Court pointed out that the Thessaloniki Criminal Court had dismissed the applicant's claim on the ground that his situation did not fall under any of the cases mentioned in Article 533 of the CCP and that Article 564 of that Code did not secure a right to compensation for prisoners whose objections had been allowed.

The Court therefore took the view that, in interpreting Article 533 of the CCP as it had, the Criminal Court had taken an overly formalistic approach that was not in keeping with the spirit of Article 5 § 5.

### Principal facts

The applicant, Yannick Nsingi, is a Congolese national who was born in 1987 and lives in Thessaloniki (Greece).

On 6 June 2018 Mr Nsingi was arrested by the police in Athens and, after verification of his identity, was registered at the Omonia police station under the name "O.C.", which was that of an individual who, under judgment no. 1551/2017 of the Thessaloniki Criminal Court of Appeal, had been

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).

sentenced to eight years' imprisonment for illegal drug possession and was wanted in that connection.

On 14 June 2018 the applicant was brought before the prosecutor at the Thessaloniki Court of Appeal, who ordered that he be sent to prison pursuant to judgment no. 1551/2017.

On 20 June 2018 the applicant lodged objections under Article 564 of the Code of Criminal Procedure (CCP), demanding that he be released. Objecting that he was not the individual who had been convicted and sentenced, he asked that his fingerprints be taken.

On 20 July 2018 the Thessaloniki Criminal Court ordered a report on the applicant's fingerprints. This report, which was drawn up on 2 August 2018, indicated that there was another individual in the list of wanted persons, whose fingerprints had been taken on 29 September 2011, with the same last name, first name and date of birth, and whose father and mother also had the same names. The report established that the fingerprints did not match and therefore belonged to two different individuals.

In delivering its judgment no. 6842/2018 on 3 September 2018 the Criminal Court dismissed the applicant's objections, without giving reasons for its decision.

On 8 November 2018 Mr Nsingi lodged fresh objections, alleging that he was not the person who had been convicted under judgment no. 1551/2017. The same day the Criminal Court adjourned the case and ordered that evidence be taken from witnesses and documents produced, including a fresh fingerprint report. The new report, making express reference to the findings of the first report, indicated that the applicant's fingerprints, taken the same day, differed from those of the person convicted under judgment no. 1551/2017, which had been taken in 2011, and that they therefore belonged to two different individuals.

In a judgment delivered on 19 November 2018 the Criminal Court noted that the applicant had been imprisoned pursuant to judgment no. 1551/2017 of the Thessaloniki Criminal Court of Appeal because he had been subjected to an identity check while in possession of a certificate of application for a residence card bearing the name of the individual who had been convicted. The Criminal Court found that applicant was not the person who had been convicted. In consequence, it allowed his objections and ordered his release. Mr Nsingi was released two days later.

On 28 November 2018 Mr Nsingi lodged a compensation claim with the Criminal Court, arguing that he had been unlawfully imprisoned for 168 days as a result of an error in the registration of his personal details by the police authorities that had arrested him. He also complained that the Criminal Court had dismissed his objections.

The Criminal Court dismissed the applicant's claims.

It held that the applicant's situation did not fall within the scope of Article 533 of the CCP, which secured a right to compensation only for such persons as were exhaustively (rather than as a general indication) listed therein, namely individuals who had been detained on remand and subsequently acquitted, those who had been imprisoned as a result of a conviction subsequently reversed in a final judgment on appeal or, lastly, those who had been convicted, imprisoned and subsequently acquitted following a retrial. The court further noted that the legislature had not included in Article 564 of the CCP a right to compensation for individuals who had been imprisoned and whose objections had been allowed; nor did Article 533 make any provision for its application to situations such as the applicant's.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 5 (right to liberty and security/right to compensation), the applicant complained that he had been unlawfully imprisoned from 6 June to 21 November 2018, namely for 168 days, and that he was unable to obtain redress for the unlawful imprisonment he alleged.

The application was lodged with the European Court of Human Rights on 15 May 2019.

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

Pere Pastor Vilanova (Andorra), *President*,  
Jolien Schukking (the Netherlands),  
Georgios A. Serghides (Cyprus),  
Ioannis Ktistakis (Greece),  
Andreas Zünd (Switzerland),  
Oddný Mjöll Arnardóttir (Iceland),  
Diana Kovatcheva (Bulgaria),

and also Milan Blaško, *Section Registrar*.

## Decision of the Court

### Article 5 §§ 1 and 5

The Court observed, firstly, that the domestic authorities had not established whether the applicant's imprisonment had been lawful under domestic law or the Convention. It therefore fell to the Court itself to ascertain whether his imprisonment had complied with Article 5 § 1 de la Convention.

The Court took the view that, in the particular circumstances of the case and at the time when he had been imprisoned, the applicant's imprisonment could be regarded as having been lawful for the purposes of Article 5 § 1 (a) of the Convention, since it had been based on a conviction by a court and the issue of identity had not yet been raised.

The judgment in which the Thessaloniki Criminal Court had dismissed the applicant's initial objections did, however, raise an issue as to the lawfulness of his imprisonment in the light of Article 5 § 1 (a) of the Convention. The Court observed that no reasons had been given in this judgment. Consequently, it was impossible to know whether the Criminal Court had duly assessed the fingerprint report which had categorically established that the applicant registered under the name O.C., whose fingerprints had been taken on 7 June 2018, was not the same person as the individual who had been convicted under judgment no. 1551/2017 and whose fingerprints had been taken in 2011.

This fingerprint report ought, however, to have prompted the Criminal Court either to order the applicant's release or to examine the question of his identity more closely. The validity of these options had moreover been confirmed retrospectively when, on 8 November 2018, the Criminal Court had then ordered, firstly, a fresh report and, secondly, that evidence be taken from witnesses and documents produced, and had gone on to rule in favour of the applicant's release.

The Court therefore took the view that the complete lack of reasoning in the Thessaloniki Criminal Court's judgment no. 6842/2018 of 3 September 2018 had clearly been in breach of the principle of protection against arbitrariness enshrined in Article 5 § 1, having regard, in particular, to the fact that the applicant was, at the time, imprisoned pursuant to a judgment imposing an eight-year prison sentence on a different person. It found, consequently, that the applicant's imprisonment, which had lasted until 21 November 2018, had become unlawful from 3 September 2018, when the Criminal Court's initial judgment had been delivered.

There had therefore been a violation of Article 5 § 1 of the Convention.

### Article 5 § 5

The Court noted that the applicant's imprisonment could not be attributed solely to an error on the part of the police in verifying his identity at the time of his arrest. It pointed out that the applicant had been imprisoned pursuant to judgment no. 1551/2017 by order of the prosecutor, after being subjected to an identity check while in possession of a certificate of application for a residence card bearing the name of the convicted individual. There had thus been no doubt as to the applicant's identity at the time of his imprisonment.

However, the applicant had lodged objections with the Thessaloniki Criminal Court, which had dismissed them on 3 September 2018 in its judgment no. 6842/2018. The Court accordingly took the view that the applicant's imprisonment was attributable solely to a judicial body.

The Court found that, as the domestic case-law stood, an action brought under section 105 of the Introductory Law to the Civil Code on State liability for the acts or omissions of judicial bodies – such as, in the present case, those of the Criminal Court in dealing with the applicant's initial objections – was bound to fail.

As to the right to compensation provided for in the CCP, the Court pointed out that the Thessaloniki Criminal Court had dismissed the applicant's claim on the grounds that his situation did not fall under any of the cases mentioned in Article 533 of the CCP and that Article 564 of that Code did not secure a right to compensation for prisoners whose objections had been allowed.

The Court noted, however, that Article 7 § 4 of the Constitution enshrined the right to compensation for all "persons who [had been] convicted, imprisoned or otherwise unfairly or unlawfully deprived of their personal liberty".

The Court therefore took the view that, in interpreting Article 533 of the CCP as it had, the Criminal Court had adopted an overly formalistic approach that was not in keeping with the spirit of Article 5 § 5.

The Court concluded that there had been no remedy available to the applicant by which to seek redress and found that there had been a violation of Article 5 § 5 of the Convention.

### Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 55.80 in respect of costs and expenses.

### Separate opinion

Judge Zünd expressed a separate opinion, which is annexed to the judgment.

*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.