



## Sentences imposed by the administrative courts in spite of acquittals in criminal proceedings: violations of the Convention

The European Court of Human Rights has today delivered its **Chamber judgment**<sup>1</sup> in the case of [Kapetanios and Others v. Greece](#) (application nos. 3453/12, 42941/12 and 9028/13).

The Court held, unanimously, that there had been:

**a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights and of Article 4 of Protocol No. 7 (right not to be tried or punished twice) with regard to all three applications, and**

**a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) with regard to Mr Kapetanios's application.**

The case concerned the imposition of administrative fines on individuals accused of contraband who had been acquitted of a criminal offence.

The Court found in particular that the fact of ordering the three applicants to pay administrative fines, even though they had been acquitted by the criminal courts of the same offence in respect of the same set of facts, was contrary both to the right to the presumption of innocence and to the right not to be tried or punished twice (*ne bis in idem*).

The Court also held, with regard to Mr Kapetanios, that the length of the proceedings before the administrative courts, which lasted twenty-two years, had been excessive, and that at the relevant time there was no effective remedy available under domestic law in this connection.

### Principal facts

The applicants, Evaggelos Kapetanios, Athanasios Nikolopoulos and Nikolaos Aggloupas, are Greek nationals who were born in 1952, 1946 and 1943 respectively and live in Tsaggarada Piliou, Patras and Athens (Greece).

Criminal proceedings were brought against each of the three applicants on contraband charges. The first applicant was charged with having illegally imported electronic devices, a winch and a hunting rifle, the second applicant with having committed the same offence in respect of petrol and diesel oil, and the third with illegally importing two luxury vehicles. These criminal proceedings ultimately ended in the acquittal of each of the three applicants.

At the same time, the applicants were ordered to pay administrative fines for the offence of contraband, in 1989, 1996 and 2001 respectively. They lodged appeals with the administrative courts, in which they criticised the courts which had imposed the fines for, among other things, failing to take account of the acquittals delivered by the criminal courts. At the close of the administrative proceedings the fines were nonetheless confirmed by the Supreme Administrative Court in 2011 and 2012. In particular, the Supreme Administrative Court noted with regard to Mr Kapetanios and Mr Aggloupas, that in view of the autonomous nature of the two sets of

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).

proceedings, the administrative authorities were not bound by the acquittal judgments delivered by the criminal courts, and, with regard to Mr Nikolopoulos, that he had not submitted the criminal court's acquittal judgment to the administrative courts within the prescribed time-limits.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (presumption of innocence), and Article 4 (right not to be tried or punished twice) of Protocol No. 7, the applicants complained that the administrative courts had failed to take account of their acquittal by the criminal courts. Relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy), Mr Kapetanios complained that the length of the proceedings had breached the reasonable time principle and that at the material time there had been no effective remedy in Greece in that connection. Lastly, relying on Article 1 of Protocol No. 1 (protection of property), Mr Nikolopoulos and Mr Aggloupas alleged that the administrative fines imposed on them for contraband had been excessive, did not comply with the proportionality principle and had thus infringed the right to the protection of property.

The applications were lodged with the European Court of Human Rights on 28 December (Mr Kapetanios), 2 July 2012 (Mr Nikolopoulos) and 28 January 2013 (Mr Aggloupas).

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

Elisabeth Steiner (Austria), *President*,  
Khanlar Hajiyev (Azerbaijan),  
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),  
Paulo Pinto de Albuquerque (Portugal),  
Linos-Alexandre Sicilianos (Greece),  
Erik Møse (Norway),  
Dmitry Dedov (Russia),

and also Søren Nielsen, *Section Registrar*.

## Decision of the Court

### Article 6 § 2 (presumption of innocence) and Article 4 of Protocol No. 7 (right not to be tried or punished twice)

The Court considered, firstly, that the administrative penalties in question were indeed criminal for the purposes of the Convention, given the severity of the fines imposed on the applicants, which varied between two and three times the amount due in customs duties, and the severity of the maximum fines that could have been imposed, which went up to ten times the amount due in customs duties. In consequence, the Court ruled admissible the complaints under Article 6 § 2 and Article 4 of Protocol No. 7, Convention provisions which were applicable only to criminal charges. In this connection, the Court noted the convergence between its assessment and that of the Court of Justice of the European Union with regard to the criminal nature of a penalty<sup>2</sup>.

With regard to Article 4 of Protocol No. 7, the Court reiterated that this provision prohibited the prosecution or trial of a second "offence" in so far as it arose from facts which were substantially the same and where a prior acquittal or conviction had already acquired the force of *res judicata*. In the present case, the Court noted firstly that the acquittal judgments had become final, in 1992, 2000 and 1998, and that the second set of proceedings had nonetheless not been brought to a close. In addition, for each of the applicants the two sets of proceedings, administrative and criminal,

<sup>2</sup> See § 73 of the judgment.

referred specifically to the illegal import of the same objects, and thus to the same conduct over the same periods.

The Court commented, however, that the principle *ne bis in idem* (which meant that one could not be tried or punished twice) would not have been breached had the two possible forms of penalty, imprisonment and pecuniary, been envisaged as part of a single set of judicial proceedings, or if the criminal court had suspended the trial following the opening of the administrative proceedings and subsequently brought the criminal proceedings to a close once the Supreme Administrative Court had confirmed the fine. As that had not been the case, the Court concluded that there had been a violation of Article 4 of Protocol No. 7 in respect of the three applicants.

With regard to Article 6 § 2, protecting the presumption of innocence, the Court reiterated that one of its aims was to protect individuals who had been acquitted of a criminal charge, or in respect of whom criminal proceedings had been discontinued, from being treated by public officials and authorities as though they were in fact guilty of the offence charged. In the present case, the administrative courts had held that the applicants had committed the same offences of contraband of which they had been acquitted in the criminal proceedings. As a result, the Court concluded that there had been a violation of Article 6 § 2.

#### Article 6 § 1 (reasonable length of proceedings) and Article 13 (right to an effective remedy)

With regard to Mr Kapetanios's complaint about the length of the proceedings before the administrative courts, the Court found that it had to be considered as excessive and failing to meet the "reasonable time" requirement. The proceedings had lasted twenty-two years for three levels of jurisdiction. The Court therefore concluded that there had been a violation of Article 6 § 1.

With regard to the existence of an effective remedy that would have enabled Mr Kapetanios to complain about this excessive length, the Court noted that a law had been promulgated in 2012 introducing a remedy of this type in administrative proceedings. However, that law had not had retrospective effect, and the applicant's case had been closed before the law entered into force. The Court concluded that there had been a violation of Article 13 on account of the lack of an effective remedy at the relevant time.

#### Article 1 of Protocol No. 1 (protection of property)

The Court noted that Mr Nikolopoulos had not relied on the right to protection of his property or complained about the exorbitant nature of the imposed fines at any point in the proceedings. As to Mr Aggloupas, he had challenged the amount of the fines on appeal, but had not repeated this complaint before the Supreme Administrative Court.

The Court therefore held that Mr Nikolopoulos and Mr Aggloupas had not provided the State with the opportunity to put right the alleged violations of the right to protection of property. In consequence, the Court dismissed this complaint as inadmissible for failure to exhaust domestic remedies.

#### Just satisfaction (Article 41)

The Court held that Greece was to pay 14,000 euros (EUR) to Mr Kapetanios and EUR 5,000 each to Mr Nikolopoulos and Mr Aggloupas in respect of non-pecuniary damage, and EUR 2,460 to Mr Kapetanios, EUR 2,500 to Mr Nikolopoulos and EUR 1,000 to Mr Aggloupas in respect of costs and expenses.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive

the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### **Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Céline Menu-Lange (tel: + 33 3 90 21 58 77)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.