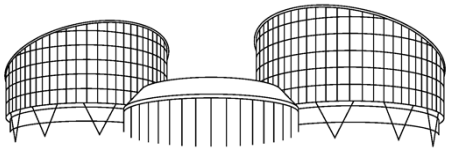

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MAKRYLAKIS v. GREECE

(Application no. 34812/15)

JUDGMENT

Art 6 § 1 (civil) • Dismissal of compensation applications for two-year detention following acquittal judgment given on appeal • Application procedure not regulated in a coherent and foreseeable manner • Applicant made to bear adverse consequences of errors imputable to domestic courts • Excessively formalistic application of relevant procedural requirements • Disproportionate burden impairing very essence of right of access to court
Art 6 § 1 (criminal) • Unreasonable length of first instance criminal proceedings

STRASBOURG

17 November 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Makrylakis v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Lorraine Schembri Orland,
Ioannis Ktistakis,
Davor Derenčinović*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 34812/15) 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 10 July 2015 by a Greek national, Mr Charalambos Makrylakis ("the applicant");

the decision to give notice of the complaints concerning Article 5 § 5 and Article 6 § 1 of the Convention to the Greek Government ("the Government") and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 18 October 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged lack of access to a court on account of dismissal of the applicant's applications for compensation in respect of his two-year detention in prison, which he lodged following his acquittal by the Criminal Court of Appeal, as well as the length of the criminal proceedings. Relying on Article 6 § 1 of the Convention, the applicant complained of the unfairness of the proceedings relating to his applications for compensation and alleged that the length of the criminal proceedings before the domestic courts at first instance had been incompatible with the "reasonable time" requirement.

THE FACTS

2. The applicant was born in 1968 and lives in Rethymno. He represented himself before the Court.

3. The Government were represented by their Agent, Mr K. Georgiadis, Senior Adviser at the State Legal Council.

4. The facts of the case may be summarised as follows.

I. CRIMINAL PROCEEDINGS

5. On 4 August 2004 a cannabis plantation was found in the municipality of Nikiforou Foka in the prefecture of Rethymno. For a period of time, the applicant had been renting the plot of land where the plantation was found. A preliminary investigation was conducted by the police during which the applicant was examined as a witness. On 22 December 2004 a criminal file against persons unknown was submitted to the prosecutor. On 7 January 2005 the prosecutor of the Rethymno Criminal Court of First Instance instituted criminal proceedings and requested the investigating judge to conduct the main investigation into the offence of cultivating cannabis plants.

6. On 20 January 2006, during the main investigation, the applicant was examined as an accused before the investigating judge and a prohibition on his leaving the country was imposed.

7. When the main investigation was completed, the prosecutor at the Rethymno Criminal Court of First Instance submitted the criminal case file to the prosecutor at the Crete Criminal Court of Appeal (*Τριμελές Εφετείο Κακουργημάτων* – "the Court of Appeal") on 7 March 2006. On 17 March 2006, following a proposal by the prosecutor, the President of the Crete Criminal Court, by decision no. 85, committed the applicant for trial before the three-member Crete Criminal Court of Appeal acting as a first-instance court. By summons (*κλητήριο θέσπισμα*) no. 1464 issued on 22 June 2006, the applicant was ordered to appear in court as an accused in respect of the offence concerning the cannabis plantation.

8. A hearing was scheduled for 15 December 2006. The applicant requested the adjournment of the hearing because of the inability of his representative to attend. The hearing was rescheduled for 21 September 2007.

9. The court suspended or adjourned the hearing on the dates set out below.

(i) During the hearing held on 21 September 2007 the court suspended the hearing. The case resumed on 22 October 2007, when it was further adjourned until 13 June 2008 on account of the court secretary's schedule.

(ii) During the hearing held on 13 June 2008 the court adjourned the case until 13 February 2009 because the secretary was on strike.

(iii) During the hearing held on 13 February 2009 the court suspended the hearing. The case resumed on 17 February 2009, when it was further adjourned until 4 December 2009 for the collection of important evidence and in order to examine a witness.

(iv) During the hearing held on 4 December 2009 the court adjourned the case until 14 May 2010 on account of the secretary's schedule.

10. During the hearing held on 14 May 2010 the case was adjourned until 21 January 2011 at the applicant's request because his representative was on strike. During the hearing held on 21 January 2011 the case was further adjourned until 21 October 2011 following a request by the applicant's representative, on account of a general national strike by lawyers.

11. During the hearing held on 21 October 2011 the court suspended the hearing. The case resumed on 1 November 2011. On that date, by judgment no. 867/2011 of the three-member Crete Court of Appeal acting as a first-instance court, the applicant was convicted of cultivation of cannabis and sentenced to eighteen years' imprisonment and a pecuniary penalty of 300,000 euros (EUR).

12. On 1 November 2011 the applicant lodged an appeal. All his four requests for the suspension of the sentence were rejected by decisions of the five-member Crete Court of Appeal and he was transferred to prison.

13. On 26 September 2013 the appeal hearing was suspended by the court. The hearing resumed on 15 October 2013, and resulted in the applicant being acquitted by judgment no. 184/2013 of the five-member Crete Court of Appeal. The applicant, who had been imprisoned since 1 November 2011, was released on 16 October 2013, after approximately two years' imprisonment.

14. On 11 February 2014 the prosecutor at the Crete Court of Appeal lodged an appeal on points of law. Following a request by the applicant's representative on 8 April 2014, the case was adjourned until November 2014. By judgment no. 23/2015 of 13 January 2015, the Court of Cassation declared the appeal on points of law inadmissible.

II. PROCEEDINGS CONCERNING COMPENSATION FOLLOWING THE APPLICANT'S ACQUITTAL

A. The applicant's first application for compensation

15. On 23 October 2013 the applicant lodged an application with the Crete Court of Appeal, relying on Articles 533, 536 and 537 of the Code of Criminal Procedure, seeking compensation in respect of his conviction at first instance and detention, in view of his subsequent acquittal by judgment no. 184/2013 of that court.

16. On 28 November 2013 the five-member Crete Court of Appeal held a hearing with the applicant present, and by decision no. 222/2013 adjourned the case until judgment no. 184/2013 became final.

B. The applicant's second application for compensation

17. In the meantime, the prosecutor lodged the above-mentioned appeal on points of law and the Court of Cassation dismissed it on 13 January 2015 (see paragraph 14 above). No hearing was scheduled subsequently in respect of the first application for compensation. On 11 February 2015 the applicant lodged a second application with the five-member Crete Court of Appeal.

C. Dismissal of the applicant's applications

1. Dismissal of the second application

18. The five-member Crete Court of Appeal first ruled on the second application for compensation, lodged in 2015; on 23 April 2015, by judgment no. 59/2015, it declared the application inadmissible as having been lodged out of time. In particular, it held that Article 533 § 1 and Article 536 § 1, in conjunction with Article 537 §§ 1-2 of the Code of Criminal Procedure (see paragraph 24 below), provided that a person who was convicted and imprisoned but subsequently acquitted had the possibility of requesting compensation either (i) immediately after the delivery of the acquittal judgment or (ii) at a later stage. According to the court, taking into account the will of the legislature, the acquittal judgment had to be final in order to prevent further proceedings for recovery of the compensation in the event that the acquittal was overturned. Therefore, for an application for compensation to be admissible, in the first circumstance (i), it could only be lodged if the judgment had also become final; in the second circumstance (ii), it had to be lodged within ten days after the acquittal judgment had become final, except in cases of *force majeure*.

19. In view of the fact that in the present case the acquittal judgment had become final on 13 January 2015 (see paragraph 17 above), the court held that the time-limit for lodging an application for compensation had expired on 23 January 2015, and that the applicant had lodged his application out of time on 11 February 2015 as he had not additionally claimed that *force majeure* or any other hindrance had prevented him from lodging the application.

20. On 10 July 2015 the applicant lodged an application with the Court.

2. Dismissal of the first application

21. The five-member Crete Court of Appeal subsequently ruled on the first application for compensation, which had been lodged in 2013. On 15 October 2015, in judgment no. 123/2015, the court adopted the same interpretation regarding the procedural requirements for lodging compensation applications. It declared the applicant's first application inadmissible as being premature, as the acquittal judgment had not yet become final when he lodged that application.

22. On 7 July and 6 November 2015 the applicant lodged two appeals on points of law against the two judgments dismissing his applications for compensation. On 25 October and 2 November 2016 respectively both appeals were declared inadmissible because the impugned judgments had not assessed the guilt of the applicant or determined a criminal charge with final effect; they were thus not subject to an appeal on points of law.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION

23. The relevant provision of the Constitution reads as follows:

Article 7

"2. The conditions under which the State, following a judicial decision, shall award compensation to persons who were unjustly or unlawfully convicted, detained pending trial or otherwise deprived of their personal liberty shall be provided for by law."

II. THE CODE OF CRIMINAL PROCEDURE

24. The relevant provisions of the Code of Criminal Procedure, as in force at the material time, read as follows:

Article 533
Persons entitled to compensation

"1. The following persons shall be entitled to request compensation by the State: ... (b) persons who have been imprisoned as a result of a court's judgment convicting them, which was subsequently reversed by a final judgment following the use of a legal remedy ..."

Article 536
Competent court and amount of compensation

"1. When an oral or written application is lodged by a person who has been acquitted ... the court which delivered the judgment in the case shall rule on the State's obligation to award compensation in a separate decision delivered at the same time as the verdict, after having heard the applicant and the prosecutor in that regard.

2. In the event that the application of the acquitted person is accepted, a fixed amount in daily compensation shall be awarded for pecuniary and non-pecuniary damage, the total of which shall not be less than ... EUR 8.804 or more than EUR 29.347 per day; the amount shall be determined after also taking into account the financial and family situation of the entitled person ..."

Article 537
Subsequent application for compensation

"1. A person who has suffered damage may also lodge an application for compensation at a later stage before the same court.

2. In that event, the application shall be lodged with the prosecutor at that court within the statutory time-limit of ten days after the delivery of the judgment in open court ...."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE APPLICANT'S ACCESS TO A COURT

25. Relying on Article 6 § 1 of the Convention, the applicant asserted that he had been denied a fair trial, as the domestic courts had dismissed his applications for compensation. Article 6 § 1, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

A. Admissibility

26. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

27. The applicant argued that he had tried to obtain a response to his applications for compensation and that he had met with refusals and excuses on the part of the authorities. During the court proceedings he had been deprived of access to a court owing to fabricated difficulties, obstacles and misinformation. He had lodged two applications, both of which had been declared inadmissible: one as being premature and the other as having been lodged out of time. He had thus been punished for having shown too much diligence and the courts had tried to find ways of dismissing his applications. The applicant further argued that it was unfair that he had not been awarded compensation for having been unjustly deprived of his liberty for two years, that his life has been destroyed and that he had also twice been required to pay fees of EUR 250 because his applications had been dismissed.

(b) The Government

28. The Government submitted that domestic case-law had highlighted the fact that the wording of Article 533 § 1, Article 536 § 1 and Article 537 §§ 1-2 of the Code of Criminal Procedure created a problem concerning the admissibility of and the time-limit for lodging an application for compensation: if an application was lodged immediately after the delivery of the acquittal judgment (Article 536 § 1) or within ten days from the delivery of the acquittal judgment (Article 537 § 1), it would be inadmissible as being

premature, since a judgment by a criminal court of first instance was not in principle final. The relevant legal remedies had to be exhausted so as to render it final. However, if the person concerned waited until it had become final and subsequently lodged an application for compensation, it would be declared inadmissible as being out of time if the ten-day time-limit was calculated from the delivery of the acquittal judgment at first instance.

29. The Government submitted that, in view of the wording of the provisions, it seemed that in almost all cases an application for compensation would be declared inadmissible. They reiterated the interpretation of the domestic courts which, according to them, had remedied that untenable situation (see paragraph 18 above). They adduced judgment no. 403/2004 of the Patra Court of Appeal, another case in which the court had adopted the same interpretation. The first application for compensation was premature, since at the time when it had been lodged the acquittal judgment had not yet become final. However, this had not deprived the applicant of his right to request compensation for his detention, as he had subsequently lodged a second application with the same content. The second application had been lodged after the expiry of the time-limit of ten days after the final acquittal and the applicant had not invoked *force majeure*.

30. Lastly, the Government argued that the domestic legal framework on the compensation of persons deprived of their personal liberty, as interpreted by the relevant domestic case-law, fully guaranteed the effective exercise of the right of access to a court. The person concerned, however, should have demonstrated the required diligence and vigilance. As the applicant had not been represented by a lawyer in the compensation proceedings, he could not have been expected to be aware of that case-law. However, the average diligent lawyer would have properly advised him in that connection. The applicant had had a fair trial, as he had had the opportunity to present all his arguments and receive specific answers.

2. The Court's assessment

(a) General principles

31. As the Court held in *Georgiadis v. Greece* (29 May 1997, §§ 35-36, *Reports of Judgments and Decisions* 1997-III), a dispute pertaining to the right to compensation, recognised under Greek law, when a period of detention follows a conviction which is overturned concerns a right of a civil character (see, among other authorities, *Kurti v. Greece*, no. 2507/02, 29 May 2005, and *Dimitrellos v. Greece*, no. 75483/01, 7 April 2005).

32. Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect (see, for example, *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). Regarding access to a court, the Court refers to the general principles set out in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018), *Lupeni Greek Catholic Parish and*

Others v. Romania ([GC], no. 76943/11, §§ 84-90 and 116, 29 November 2016).

33. However, the "right to a court" is not absolute. It lends itself to limitations since, by its very nature, it requires regulation by the State, which may select the means to be used for that purpose. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. However, these limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Zubac*, § 78, and *Lupeni Greek Catholic Parish and Others*, § 89, both cited above).

34. In respect of the application of statutory *ratione valoris* restrictions on access to the superior courts, the Court has taken account of the following criteria: (i) the foreseeability of the restriction, (ii) whether it is the applicant or the respondent State who should bear the adverse consequences of the errors made during the proceedings that led to the applicant's being denied access to the supreme court and (iii) whether the restrictions in question could be said to involve "excessive formalism" (see *Zubac*, cited above, § 85, with further references).

35. As regards the assessment of each of those criteria, the Court refers to the relevant general principles set out in *Zubac* (cited above, §§ 87-99).

(b) Application of the above principles to the present case

36. The dispute in the instant case, relating to the right to compensation when a period of detention follows a conviction that is subsequently overturned, concerned subject matter to which the guarantees of Article 6 § 1 apply. The present case does not concern the *ratione valoris* admissibility threshold for appeals before the Court of Cassation. The Court considers, however, that, since it concerns the procedural rules of a court which was called upon to rule on a case at first and last instance, the general principles established in *Zubac* (cited above, §§ 80-99) are likewise applicable, *mutatis mutandis*, to the present case.

37. In the present case, it is necessary to bear in mind the timeline of the most relevant events set out in detail in paragraphs 13-21 above. The Crete Court of Appeal held a hearing on the applicant's first application for compensation and adjourned the case by decision no. 222/2013 until the acquittal became final. It then declared the second application for compensation inadmissible as having been lodged after the expiry of the time-limit of ten days from the date on which the acquittal became final (see paragraph 18 above). It subsequently declared the previously lodged initial application for compensation inadmissible as being premature by adopting

the same interpretation of the legal provisions and holding that when the first application had been lodged, the acquittal judgment had not yet become final (see paragraph 21 above).

38. The Court sees no reason to question that the procedural requirements to be complied with in lodging an application for compensation, as interpreted by the domestic courts, were aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty. The question to be examined in the present case, however, is whether the application of the procedural requirements and the particular conduct of the domestic courts, which led to the finding that the applicant's applications were inadmissible, were proportionate to the aim sought to be achieved or if they undermined the very essence of the applicant's right of access to a court, as guaranteed by Article 6 § 1.

(i) Whether the restriction was foreseeable

39. The Court notes in respect of the first criterion that the wording of the applicable provisions of the Code of Criminal Procedure gave rise to uncertainty and ambiguity as to the admissibility requirements for lodging an application for compensation. Article 533 § 1 defines the persons who are entitled to request compensation, including those convicted by a judgment which was subsequently reversed by a final judgment. Article 536 § 1 provides that the court which delivered the judgment in the case is competent to rule on compensation in a separate decision delivered at the same time as the verdict. Article 537 further provides that an application for compensation may be lodged at a later stage, within ten days after the delivery of the judgment in open court. It is not clear from the provisions that an application can be lodged only after an acquittal becomes final and within ten days after it becomes final.

40. The Crete Criminal Court of Appeal, in judgment no. 59/2015, had to have regard to the will of the legislature, according to which the right to compensation should not be infringed and the acquittal judgment should be rendered final so that there could be no subsequent recovery of the compensation, and to interpret the relevant provisions of the Code of Criminal Procedure accordingly. It thus held that an application for compensation was admissible only if it was lodged, in accordance with Article 536 § 1, immediately after the delivery of the acquittal judgment and only on condition that the judgment was final. As regards an application lodged at a later stage, in accordance with Article 537 § 1, the ten-day time-limit started from the date on which the acquittal judgment became final. The Government acknowledged that, in accordance with the wording of the provisions, it seemed that in almost all cases an application for compensation would be declared inadmissible, and maintained that the courts' interpretation had remedied that untenable situation. The Court cannot conclude on the basis of the single judgment adduced by the Government which followed the same

interpretation of the applicable provisions in a similar case in 2004 (see paragraph 29 above) that there was a coherent domestic judicial practice and a consistent application of that practice.

41. As regards the accessibility of the relevant practice to the applicant who was not represented by a lawyer, the Court cannot accept the Government's argument that the average diligent lawyer would have been aware of the domestic courts' case-law and would have advised the applicant properly. Even if the applicant had obtained legal advice, it would be difficult if not impossible for him to ascertain, on the basis of the relevant domestic provisions and practice, that he did not comply with the procedural requirements, also in view of the issuance of decision no. 222/2013 of the Crete Court of Appeal which adjourned the case until the acquittal became final. The foregoing considerations are sufficient for the Court to conclude that the procedure to be followed for in respect of an application for compensation was not regulated in a coherent and foreseeable manner.

(ii) Whether the applicant was made to bear the adverse consequences of the errors made during the proceedings

42. As regards the second criterion, the Court observes that the Crete Court of Appeal, by decision no. 222/2013, led the applicant to believe that his first application for compensation complied with the procedural requirements laid down in the Code of Criminal Procedure and did not raise any issues of inadmissibility. On the contrary, since the case was adjourned pending the outcome of a possible appeal on points of law, the applicant was led to believe that his application would then be assessed on the merits. Furthermore, the Crete Court of Appeal declared the applicant's first application for compensation dating back to 2013 inadmissible after approximately two years, at a time when it was no longer possible for the applicant to comply with the time-limit requirement.

43. The Government did not adduce any argument as to why it had been necessary for the domestic courts to adjourn the examination of the applicant's first application for compensation, taking into consideration that the application was ultimately dismissed as being premature. Those mistakes are exclusively and objectively imputable to the court and not to the applicant. The Court cannot exclude that this approach prevented the applicant from determining in time which steps to take after such a dismissal in order to have his application for compensation examined on the merits. Had the court replied in due time that his application had been lodged prematurely, this could have prevented the situation complained of. It would have been clear to the applicant how to comply with the admissibility requirements in line with the court's interpretation.

44. It is true that the applicant's second application was declared inadmissible as having been lodged out of time and the initial one as having been premature. However, the applicant had had a reasonable expectation that

a ruling on the merits of his application was pending (contrast *Zubac*, cited above, § 121). Additionally, the court, when ruling on the second application, did not take into account his first application, which at that time still remained undecided. As regards the first application, the applicant cannot be considered to have failed to use the necessary diligence in a manner consistent with domestic law, which was in any event unclear with regard to the procedural requirements.

45. The Court cannot accept the Government's argument that the applicant demonstrated a lack of diligence. The applicant maintained in that connection that he had been discouraged by the court from lodging his application and that he had not been given a clear answer about the date of the hearing, assertions which the Government did not contest. Moreover, the applicant, despite not having obtained any ruling on his first application after his acquittal had become final, continued to pursue his case and lodged a second application. He did this despite not being legally represented in the compensation proceedings concerning either of his requests, a circumstance which may have made it more difficult for him to orient himself in the proceedings.

46. The inadmissibility of the applications was thus not the result of a mistake for which the applicant was objectively responsible; rather, it was owing to a series of omissions and uncertainties created by the domestic courts that the applicant's case eventually remained undetermined (see, *mutatis mutandis*, *Gogić v. Croatia*, no. 1605/14, § 40, 8 October 2020). In those circumstances, the Court finds that the applicant was made to bear the adverse consequences of errors which were not imputable to him.

(iii) Whether there was excessive formalism restricting the applicant's access to a court

47. With regard to the manner in which the procedural requirements were applied in the applicant's case, the Court reiterates that after adjourning examination of the applicant's first application until the acquittal became final, the Crete Court of Appeal declared his second application for compensation inadmissible. The court subsequently re-examined his first application, declaring it inadmissible as being premature. It did so on the basis of an interpretation of the specific provisions which had created uncertainty and ambiguity.

48. In the Court's view, the examination of the case, taken as a whole and with regard to the particular circumstances, shows that the manner in which the provisions of the Code of Criminal Procedure concerning the procedural requirements for lodging an application for compensation were applied amounted to excessive formalism. It cannot be considered reasonable to expect the applicant to have lodged his compensation claim within the required time-limit, in view of the lack of foreseeability of the relevant procedure (see paragraphs 39-41 above), allied to the decision to adjourn the

proceedings and the subsequent conduct of the court. The procedural rules thus ceased to serve the aims of legal certainty and the proper administration of justice and formed a barrier preventing the litigant from having his case determined on the merits (see, *mutatis mutandis*, *Eşim v. Turkey*, no. 59601/09, §§ 25-26, 17 September 2013).

49. Furthermore, given the nature of the Crete Court of Appeal's role in ruling on compensation applications in respect of detention following a person's acquittal, the Court cannot accept that the procedure before that court should be so formalistic. Indeed, the Court notes that the Crete Court of Appeal did not succeed other national courts in examining the applicant's request but was called upon to rule at first and last instance. It was therefore the first and last set of proceedings in which the applicant's case could be examined by a court (see, *mutatis mutandis, Sotiris and Nikos Koutras ATTEE v. Greece*, no. 39442/98, § 22, ECHR 2000-XII).

50. In the light of the above criteria and the circumstances of the case, the manner in which the applicant's applications for compensation were declared inadmissible prevented him from obtaining an examination of his compensation claim and amounted to a disproportionate burden impairing the very essence of his right of access to a court as guaranteed under Article 6 § 1.

51. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE CRIMINAL PROCEEDINGS

52. The applicant complained that the length of the criminal proceedings at first instance had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

53. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

54. The applicant submitted that the criminal proceedings at first instance had started on 4 August 2004, when the plantation was found, and lasted for approximately seven and a half years until 1 November 2011, when he was

convicted. He argued that the case had been adjourned several times and the new hearing dates had been set on dates long after the initial hearing dates. The court had also been responsible for the delay in the criminal proceedings because this delay had been linked to the unfairness of the conduct of the proceedings. He added that his personal and professional life had been destroyed and that he had developed mental health issues.

55. The Government argued that the length of the proceedings should be assessed separately for each stage of the procedure. The first stage had started with the examination of the applicant as an accused on 20 January 2006 and had ended on 15 December 2006, the scheduled date of the hearing. It had thus lasted for eleven months, which was clearly reasonable. The subsequent proceedings at first instance had lasted for four years and ten months, from 15 December 2006 until 1 November 2011, when judgment no. 867/2011 convicting the applicant had been delivered. Certain periods should be deducted as they could not be attributed to the authorities: the period from 15 December 2006 until 21 September 2007 (nine months) and the period from 14 May 2010 until 21 January 2011 (eight months), when the proceedings had been adjourned because of the applicant's representative, as well as the adjournment from 21 January 2011 until 21 October 2011 (nine months) due to the general strike by lawyers. Taking into account the complexity of the case, the need for the examination of witnesses and the delays attributable to the applicant, the length of proceedings could not be considered excessive.

2. The Court's assessment

56. The reasonableness of the length of proceedings must be assessed, in accordance with well-established case-law, in the light of the circumstances of the case and with reference to the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, for example, *Lupeni Greek Catholic Parish and Others,* cited above, § 143, and *Michelioudakis v. Greece*, no. 54447/10, §§ 42-43, 3 April 2012).

57. The Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he or she would be prosecuted, or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see, among other authorities, *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 110, 12 May 2017).

58. In the present case, the period to be taken into consideration began on 20 January 2006, when the applicant was examined as an accused before the investigating judge (see paragraph 6 above), and ended on 1 November 2011, when the decision of the court of first instance was delivered (see paragraph 11 above). It thus lasted for more than five years and nine months at one level of jurisdiction. The Court acknowledges the fact that the case was of some complexity because of the number of witnesses and suspects. However, it cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings.

59. The Court agrees with the Government that the adjournments requested by the applicant on 15 December 2006 (a delay of approximately nine months), 21 January 2011 (a delay of approximately eight months) and 21 October 2011 (a delay of nine months, due to a general strike by lawyers) (see *Papageorgiou v. Greece*, no. 24628/94, 22 October 1997, § 47 *in fine*) cannot be attributed to the authorities.

60. With regard to the conduct of the judicial authorities, the Court notes that the case was adjourned four times by the court: on 22 October 2007 until 13 June 2008 (approximately eight months) on account of the secretary's schedule, and again immediately on 13 June 2008 until 13 February 2009 (a further eight months) because the secretary was on strike. After four days, on 17 February 2007, it was adjourned until 4 December 2009 (approximately ten months) for the purpose of the collection of evidence. It was adjourned again immediately on 4 December 2009 until 14 May 2010 (approximately five months) on account of the secretary's schedule.

61. Even after the deduction from the total length of proceedings (five years and nine months) of the total delay of two years and two months that cannot be attributed to the authorities (see paragraph 59 above), the length of the proceedings cannot be considered reasonable. Additionally, there is no indication that the court explored any possible ways of making the delays due to adjournments shorter by examining whether the circumstances and the reasons for the adjournments would have allowed for an earlier date (see, for the purpose of illustration, *Gančo v. Lithuania* (Committee), no. 42168/19, § 34, 13 July 2021). Lastly, special consideration must be given in the instant case to the nature of the allegations which were pending against the applicant, the criminal nature of the proceedings and the diligence required in such cases (see, *mutatis mutandis*, *Aresti Charalambous v. Cyprus*, no. 43151/04, §§ 45-47, 19 July 2007).

62. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the length of the criminal proceedings at first instance against the applicant.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

63. Lastly, the applicant complained under Article 5 § 5 of the Convention that he received no compensation for his detention even though he had been acquitted. This provision reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Court reiterates that, for Article 5 § 5 to apply, the deprivation of liberty must have been effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see, for example *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions.

64. The Court notes that it did not transpire from the parties' observations that the applicant's detention was unlawful or otherwise in contravention of the first four paragraphs of Article 5. The applicant was convicted at first instance, and was acquitted by the Court of Appeal on the basis that he had not committed the offence. In these circumstances, the guarantees of Article 5 § 5 of the Convention do not apply in the present case (see *Kabili v. Greece*, no. 28606/05, § 23, 31 July 2008). This complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

66. The applicant sought redress in respect of pecuniary damage resulting from his loss of income throughout the entire proceedings. He pointed out that after criminal proceedings had been instituted against him, he had lost his livelihood as a livestock farmer and had become unemployed. The 400 animals of a total value of 120,000 euros (EUR) provided him an annual net profit of EUR 80,000. He had also had to borrow the amount of EUR 73,000 to cover his family's expenses. During his imprisonment he had had to spend a total of EUR 12,500. He also argued that the judicial proceedings had caused his divorce and that he had had to pay a monthly maintenance allowance of EUR 2,435, which amounted to EUR 292,200 over ten years. Consequently, in respect of compensation for the pecuniary damage sustained

as a result of the loss of earnings, loss of annual income and the family's maintenance expenses, the applicant claimed a total of EUR 2,452,200.

67. The Government submitted that there was no causal link between the violations complained of and the alleged damage, and that the applicant's claims were vague in nature.

68. With regard to non-pecuniary damage, the applicant submitted that he had been deprived of the fundamental right of freedom and that his unjust detention had caused serious damage to his mental health, which had required major medical treatment. For a period of ten years he had been stigmatised as a criminal and isolated from his acquaintances, and his six children had been traumatised, having had to explain that their father was not a criminal. For these reasons he claimed a total of EUR 9,150,000 in respect of non-pecuniary damage.

69. The Government contended that the amounts were excessive and unjustified and that they had not been corroborated by reference to specific consequences proved to have been suffered by the applicant as a result of the violations. They further submitted that a finding of a breach of the Convention would constitute sufficient just satisfaction.

70. The applicant has not substantiated his claim for the alleged pecuniary damage; the Court therefore rejects this claim. However, the applicant must have sustained non-pecuniary damage as a result of the violations of Article 6 § 1. Making its assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 16,500 in respect of non-pecuniary damage in relation to both violations, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant claimed EUR 22,500 for the fees paid to his legal representatives during the criminal proceedings. He also claimed EUR 500 for the court fees he had been obliged to pay on account of the dismissal of his applications for compensation. He attached relevant evidence concerning a debt of EUR 500 to the tax office for judicial fees.

72. The Government maintained that the amounts were not supported by any evidence or relevant documentation.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant.

C. Default interest

74. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares*, the complaints under Article 6 § 1 of the Convention concerning access to a court and the length of criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds*, that there has been a violation of Article 6 § 1 of the Convention on account of the breach of the applicant's right of access to a court;

3. *Holds*, that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant;

4. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 16,500 (sixteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Marko Bošnjak
Registrar	President