



## Violation of the right not to be tried twice for the same offence and breach of the presumption of innocence in cases involving accusations of smuggling

In today's **Chamber** judgment<sup>1</sup> in the case of [Sismanidis and Sitaridis v. Greece](#) (applications nos. 66602/09 and 71879/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 4 of Protocol No. 7** (right not to be tried or punished twice) to the European Convention on Human Rights as regards Mr Sismanidis, and

**a violation of Article 6 §§ 1 and 2** (right to a fair hearing within a reasonable time and presumption of innocence) of the Convention as regards Mr Sitaridis.

The case concerned the institution of proceedings against each of the applicants for smuggling despite the fact that the criminal courts had already irrevocably acquitted them of the same offence.

In the case of the first applicant, the Court held that the administrative proceedings in issue had concerned a second offence originating in identical acts to those which had given rise to a final acquittal. In the case of the second applicant, the Court considered that the administrative courts' finding had infringed the principle of the presumption of innocence as already established through his acquittal by the Thessaloniki Court of Appeal. It also held that the length of the proceedings before the Thessaloniki Administrative Court and Court of Appeal – approximately six years and ten months – had been excessive and did not satisfy the “reasonable time” requirement.

### Principal facts

The applicants, Christoforos Theofilos Sismanidis and Spyridon Sitaridis, are Greek nationals who live in Acharnai and Thessaloniki respectively.

#### *Mr Sismanidis*

In December 1994, criminal proceedings were instituted against Mr Sismanidis and N.T. for smuggling. They were found guilty and sentenced to 16 months' imprisonment. On 15 April 1997 the Nafplio Court of Appeal acquitted them, finding that their guilt could not be established. The judgment became final.

In the meantime, in September 1996, following an investigation by the customs authorities, the Director of the Customs Service had ordered Mr Sismanidis and N.T. to pay the sum of 24,000,000 drachmas (approximately EUR 70,433) in unpaid customs duties, including a surcharge for contraband. Mr Sismanidis applied to the Administrative Court for judicial review of the decision by the Director of the Customs Service, and on 30 October 1998 the court allowed his application and, taking into account the acquittal by the Nafplio Court of Appeal on the charge of smuggling, set aside the decision complained of. The State appealed. On 5 February 2003, finding it established from the evidence before it that Mr Sismanidis and N.T. had performed a fictitious transaction in order to

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).

avoid having to pay import duties, the Administrative Court of Appeal concluded that they had committed the offence of smuggling. Mr Sismanidis appealed on points of law to the Supreme Administrative Court, arguing that the tax authorities had imposed a penalty on him for smuggling despite the fact that the criminal courts had already irrevocably acquitted him of the same offence. The Supreme Administrative Court dismissed the appeal and upheld the judgment of the Administrative Court of Appeal.

#### *Mr Sitaridis*

In 1998, criminal proceedings were instituted against Mr Sitaridis for smuggling. He was found guilty and sentenced to 14 months' imprisonment, but was acquitted on appeal on the charge of smuggling because of doubts as to his guilt. The Court of Appeal's judgment became final.

In the meantime, in November 1996, the director of the Central and West Macedonia Customs Service had ordered Mr Sitaridis to pay a fine of 8,485,368 drachmas (approximately EUR 24,902) for the tax offence of importing illegal goods, and also to pay additional customs duties. Mr Sitaridis applied for judicial review to the Administrative Court, which partly set aside the decision complained of. Mr Sitaridis and the Greek State each lodged appeals, which were dismissed. Mr Sitaridis appealed on points of law to the Supreme Administrative Court, which dismissed the appeal and upheld the judgment of the Administrative Court of Appeal.

### Complaints, procedure and composition of the Court

Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice) and Article 6 § 2 (presumption of innocence), Mr Sismanidis and Mr Sitaridis complained that in not taking into account their acquittal by the criminal courts, the administrative courts had breached the *ne bis in idem* principle, by which a person who had been lawfully acquitted could not be tried again for the same offence. They also alleged a breach of the presumption of innocence.

Relying on Article 6 §§ 1 and 2 (right to a fair hearing within a reasonable time and presumption of innocence), Mr Sitaridis complained that the length of the proceedings in the administrative courts had breached the "reasonable time" principle.

The applications were lodged with the European Court of Human Rights on 16 November 2009 and 2 November 2012.

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

Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"), *President*,  
Ledi **Bianku** (Albania),  
Kristina **Pardalos** (San Marino),  
Linos-Alexandre **Sicilianos** (Greece),  
Robert **Spano** (Iceland),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),

and also Abel **Campos**, *Section Registrar*.

### Decision of the Court

#### [Article 4 of Protocol No. 7 and Article 6 § 2](#)

The Court noted that Mr Sitaridis had not raised his complaint of a violation of Article 4 of Protocol No. 7 in the domestic courts, at least in substance. This complaint therefore had to be rejected for failure to exhaust domestic remedies.

In the case of Mr Sismanidis, the Court considered that once his acquittal in the initial criminal proceedings had become final in 1997, he should have been regarded as having “already been finally acquitted” within the meaning of Article 4 of Protocol No. 7. The Court considered that the administrative proceedings in question had concerned a second offence originating in identical acts to those which had given rise to a final acquittal. That finding was sufficient to reach the conclusion that there had been a violation of Article 4 of Protocol No. 7 in the case of Mr Sismanidis.

The Court noted that Mr Sismanidis had not raised his complaint of a violation of Article 6 § 2 before the Supreme Administrative Court. This complaint therefore had to be rejected for failure to exhaust domestic remedies.

In the case of Mr Sitaridis, the Court noted that in the proceedings following his acquittal by the Thessaloniki Court of Appeal, the administrative courts had determined a criminal charge. In both the criminal and the administrative proceedings, the applicable sanctions had had a punitive element. The evidence suggested that the acts of which Mr Sitaridis had been accused were identical and the constituent elements of the relevant offences were the same. The administrative courts dealing with the case had found that Mr Sitaridis had committed the same offence of smuggling in respect of which he had previously been acquitted by the criminal court. The Court considered that the administrative courts’ finding had breached the principle of the presumption of Mr Sitaridis’s innocence as already established through his acquittal by the Thessaloniki Court of Appeal.

There had therefore been a violation of Article 6 § 2 in the case of Mr Sitaridis.

#### Article 6 § 1

As regards the proceedings in the Supreme Administrative Court, the Court noted that it had been open to Mr Sitaridis to use the remedy provided for by law in order to complain of the length of the proceedings. This part of the complaint therefore had to be rejected for failure to exhaust domestic remedies.

As regards the proceedings in the Thessaloniki Administrative Court and Court of Appeal, the period to be considered had lasted approximately six years and ten months across two levels of jurisdiction.

The Court found that the case had not been especially complex and that there was no evidence to suggest that Mr Sitaridis should be held responsible for the protracted nature of the proceedings in the Administrative Court. The Court found that a period of approximately six years and ten months across two levels of jurisdiction had been excessive and did not satisfy the “reasonable time” requirement. There had therefore been a violation of Article 6 § 1 in the case of Mr Sitaridis.

#### Just satisfaction (Article 41)

The Court held that Greece was to pay 3,500 euros (EUR) to Mr Sismanidis and EUR 4,500 to Mr Sitaridis in respect of non-pecuniary damage and EUR 1,230 to Mr Sitaridis in respect of costs and expenses.

*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.