



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

THIRD SECTION

CASE OF MAMAIS v. GREECE

(Application no. 41542/19)

JUDGMENT

STRASBOURG

10 March 2026

This judgment is final but it may be subject to editorial revision.

In the case of Mamais v. Greece,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Peeter Roosma, *President*,

Ioannis Ktistakis,

Lətif Hüseyinov, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 41542/19) 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 31 July 2019 by a Greek national, Mr Nikolaos Mamais (“the applicant”), who was born in 1974, lives in Iraklio and was represented by Mr D. Polios, a lawyer practising in Athens; the decision to give notice of the application to the Greek Government (“the Government”) represented by their Agent, Ms N. Marioli, President of the State Legal Council and their Agent’s delegate, Ms Z. Chatzipavlou, Senior Adviser at the State Legal Council;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the application by a Committee;

Having deliberated in private on 10 February 2026,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the failure of the administrative court to take into account a criminal acquittal because the reasons for acquittal were not set out in the judgment.

I. THE FACTS

2. On 19 May 2008 the police filed a criminal complaint against the applicant and his former wife, Ms M. L., for illegal extraction of stones from a plot of land in Andros owned by her. On 20 May 2008 the police submitted the complaint to the prosecutor citing Article 8 of Law no. 2702/1999. On 4 June 2008 the police further informed the Mining Inspectorate of Southern Greece that on 16 May 2008 the applicant had extracted the stones without a permit. On 5 September 2008, by letter, the applicant denied any wrongdoing.

3. On 18 September 2008 the Mining Inspectorate decided that on 16 May 2008 the applicant had illegally extracted stones from the plot in Andros. It fined him 16,000 euros (EUR) for illegal mining activities under Article 8 of Law no. 2702/1999, and ministerial decision no. D7/A/F1/oik.21801/2001, finding also that he had put the health and safety of workers at serious risk.

4. On 27 October 2008 the applicant applied for the cancellation of the fine, claiming that the complaint was unfounded and that he had had a permit for the works in question, which were building works. He further asserted that the administrative authorities had fined him before the final adjudication of his case by the [criminal] court. On 29 April 2009 the Directorate of Marble and Aggregate Quarries dismissed his application as unfounded and found the works to be illegal mining works. The decision stated that as illegal exploitation posed serious risks for workers and residents, risking causing environmental damage and other problems, strict penalties were foreseen in the form of a fine of up to EUR 160,000.

5. On 22 June 2009 the applicant challenged the dismissal before the Athens Administrative Court of First Instance on the grounds that he had conducted ordinary building works, with a permit.

6. On 11 March 2013 the Syros Single-Member Misdemeanours Court by judgment no. 19/2013 acquitted the applicant in criminal proceedings of having illegally extracted aggregate on 4 January 2008. It discontinued the prosecution of M. L. because it was out of time. On the same date by judgment no. 21/2013 it acquitted the applicant and M. L. of having committed the same offence under Article 16 § 1 of Law no. 1428/1984 on 16 May 2008 and 7 February 2011. The applicant provided copies of those judgments to the Athens Administrative Court of First Instance. Each judgment contained the transcript of the trial and the operative parts of the judgment but not its ratio. Judgment no. 21/2013 described the process of adducing evidence and the judge's actions, summarised the defendants' objections, listed the evidence and the parties' submissions.

7. On 30 November 2017 by judgment no. 20945/2017 the Athens Administrative Court of First Instance dismissed the applicant's challenge in the administrative case. It found that the fine had been lawful. It held that it was not bound by the criminal acquittals under Article 5 § 2 of the Code of Administrative Procedure ("CAP") because the file did not show whether they had become final.

8. On 20 March 2018 the applicant appealed, contending, among other, that the certificates issued by the Justice of the Peace of Andros on 1 March 2018 stating that there had been no appeal confirmed that the judgments had become final. The applicant explained that he had been asking for the full texts since 2015 but they had not been provided. The courts had claimed that they "did not exist" or that "the presidents of the court had been transferred and they could not sign". Only after insisting, he received the indictment with a note "not guilty" and the judgments' texts, which he had filed in the administrative court. He further maintained that his representative had submitted request no. 196/7.3.2018 to the president of the administration of the criminal court, complaining about the refusal to provide the documents requested, which he needed for the administrative proceedings. He asserted

that the president of the court had telephoned his representative to say that the judges who had heard the case had been transferred.

9. The applicant contended that the indictment showed that he had been tried on charges of illegal extraction on a specific date and location. He maintained that the note “not guilty” and the judgment itself showed that he had been acquitted substantively and the proceedings had not failed on a technicality such as limitation or faulty summons. He further relied on Article 5 § 2 of the CAP stating that it had been amended to align with Article 6 § 2 of the Convention and made “final” (*αμετάκλητες*) criminal acquittals binding on administrative courts. He asked for his grounds of appeal to be accepted as he had been acquitted by a final judgment of a criminal offence which was identical to the administrative offence.

10. The Athens Administrative Court of Appeal dismissed the appeal by judgment no. 1505/2019 of 3 April 2019. It found that the criminal judgments showed that the applicant had been acquitted of illegally extracting aggregate in Andros on 4 January and 16 May 2008. The reason for the acquittal was not stated. The court therefore could not confirm whether the acquittal was for procedural reasons or because “a subjective or objective criterion was not satisfied which was related to the administrative offence”. It held under Article 5 § 2 of the CAP that the administrative court was not bound by the acquittal judgments.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

11. The relevant provisions of Article 5 of the CAP, as amended by Article 17 of Law no. 4446/2016 (entry into force on 22 December 2016), reads as follows:

“2. The [administrative] courts are ... bound by the final (*αμετάκλητες*) convicting judgments of criminal courts as to the guilt of the offender, by final acquittal judgments, and by final decisions (*βουλεύματα*) not to prosecute, unless the acquittal was based on a failure to fulfil objective or subjective criteria that are not a prerequisite for the administrative offence.

...

4. The court shall take into account *res judicata* also of its own motion, if this appears from the material on the file.”

12. A report of the Scientific Service of the Parliament states that Article 5 § 2 of the CAP was amended to ensure that Greece complied with the judgments of the Court in respect of the presumption of innocence and the principle against double jeopardy. The Supreme Administrative Court has held in its tax or customs case-law that Article 5 §§ 2 and 4 of the CAP mean that claims of double jeopardy or of violation of the presumption of innocence may be considered by the administrative courts if an applicant claims a violation of Article 5 § 2 following a final criminal acquittal (judgment no. 928/2024). When a breach of this provision is properly raised in view of

a final acquittal for the same offence as the administrative court is dealing with, and the acquittal is properly referred to as final, the administrative court should consider whether this is a situation of double jeopardy. Not to do so would be contrary to Article 5 §§ 2 and 4 of the CAP, which reflect the provisions of the Convention in administrative proceedings, as regards both the presumption of innocence and *ne bis in idem* (judgment no. 1411/2022, see also judgments nos. 951/2018 and 2217/2021).

13. The relevant provisions of Article 142 of the Code of Criminal Procedure (“CCP”, Presidential Decree no. 258/1986) read as follows:

“3. The court records of the proceedings of the Magistrate’s Court and the judgments and orders therein may be finalised together with the *ratio* (σκεπτικό) and entered in the special book kept by the court clerk On the instruction of the judge conducting the hearing, and also at the request of any person having a legitimate interest, including the representative of a party ... , the court clerk shall finalise the court records, the orders and the judgment

4. The preceding paragraph shall also apply to: 1. judgments of the Single Member Court of Misdemeanours ... : ... (d) which are acquittal judgments, provided that the criminal prosecution was brought by the state and there is no victim or civil party [to the proceedings]”

THE COURT’S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 4 § 1 OF PROTOCOL NO. 7

A. Admissibility

14. The Government objected that the applicant had not exhausted domestic remedies in several respects. They contended that he did not cite the Convention provisions and that he did not properly raise Article 5 § 2 of the CAP. They argued that he did not even in substance refer to a breach of *ne bis in idem*, he did not lawfully rely on the acquittal judgments and he did not plead that the fine was criminal in nature.

15. The applicant complained about the refusal to cancel the fine, which was criminal in nature, following his acquittal for the same act. He had set out his grievances in detail in the domestic proceedings and had explicitly referred to Article 5 § 2 of the CAP, as amended to align with the Convention. Under this provision, and for his circumstances, that final acquittal should have been binding. His requests to obtain a final text of the acquittal judgment had been denied and that responsibility rested solely with the authorities.

16. The Government’s objection of non-exhaustion is closely linked to the substance of the complaints and should be joined to the merits of the case.

17. The application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The applicant complained that the administrative court had refused to annul the fine, despite his final acquittal for the same act. He had duly requested the full text of the acquittal judgments, as evidenced by his appeal, and could not be held responsible for the finalisation of those judgments.

19. The Government argued that the conditions for a violation of the *ne bis in idem* principle were not met. The applicant had merely alleged, in vague terms, that he had requested the full text of the acquittal judgments, without specifying when or how such a request had been made and without submitting any evidence in support of that claim. They further argued that the applicant had failed to provide the full text and to timely request the finalisation of acquittal judgment no. 21/2013 under Article 142 of the CCP, as not all judgments were finalised. In addition, the Government asserted that in 2015 the presiding judge who had delivered the judgments could not draft and sign the full texts, as he had been transferred to another court in September 2014.

20. The relevant principles have been summarised in *Mihalache v. Romania* [GC], no. 54012/10, §§ 47-49, 53-54, 67 and 88-116, 8 July 2019; *Goulandris and Vardinogianni v. Greece*, no. 1735/13, §§ 49-55, 16 June 2022; *Kapetanios and Others v. Greece*, nos. 3453/12 and 2 others, §§ 62-63, 30 April 2015; *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 105-34, 15 November 2016; and *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 79-84, ECHR 2009.

1. Whether the proceedings were “criminal”

21. Extraction of aggregate without the appropriate permit is punishable by imprisonment of at least three months and a fine of between EUR 16,000 and 160,000 under Article 16 § 1 of Law no. 1428/1984 as amended by Article 25 of Law 2115/1993 and replaced by Article 8 of Law no. 2702/1999. That was an “administrative” penalty decided by the Mining Inspectorate to address, in particular, safety risks and risks of environmental damage and other risks (see paragraph 4 above). The Court takes into account the Government’s argument that the intention was to force compliance with mining legislation, and finds that the penalties aimed at punishing and deterring conduct that would undermine matters protected by law (see, *mutatis mutandis*, *Mihalache*, cited above, § 59): the intention was not solely to provide compensation.

22. The fine could be imposed on anyone, not just members of a group possessing a special status. Even if the applicant was fined the minimum amount, the maximum potential fine allowed by law was severe, as the authorities also acknowledged (see paragraph 3 above). The proceedings which led to the imposition of the fine were therefore “criminal” in nature.

2. *Whether there was a “final” acquittal on the merits and whether the applicant properly relied on it*

23. In criminal proceedings, the available text of judgment no. 21/2013 (see paragraph 7 above) shows that the court terminated the criminal proceedings against the applicant. The judgment was rendered following an assessment of the presented evidence and of the applicant’s guilt. Further, as the court clearly did not discontinue the case for procedural reasons but assessed whether the applicant had committed the offence for which he was tried, the judgment amounted to an “acquittal” (compare and contrast with the situations in *Smoković v. Croatia* (dec.), no. 57849/12, § 44, 12 November 2019, and *Petrakis v. Greece* (dec.) [Committee], nos. 57298/17 and 59318/18, 26 March 2024). Since no remedy has been exercised within ten days from its publication as provided in Article 473 § 1 of the CCP, the judgment became “final” on 21 March 2013.

24. Article 5 § 2 of the CAP makes final acquittals binding on administrative courts, unless such acquittal was based on a failure to fulfil criteria that were not a prerequisite to the administrative offence (see paragraph 11 above). In so far as the appellate court could be understood to question whether such criteria have been fulfilled, the Court refers to its analysis of the nature of the offences (see paragraph 28 below). As to finality, on appeal the applicant argued that the acquittal judgments were final and submitted the certificates (see paragraph 8 above). He claimed that the record of the criminal proceedings showed that he had been tried for and acquitted on the merits of a criminal offence which was the same as the administrative offence. He expressly referred to Article 6 § 2 of the Convention and to the domestic provision of Article 5 § 2 of the CAP protecting the *ne bis in idem* principle and the presumption of innocence (see paragraph 12 above for the domestic practice; see, *mutatis mutandis*, *Farzaliyev v. Azerbaijan*, no. 29620/07, § 56, 28 May 2020).

25. The applicant properly brought the judgments to the attention of the administrative courts and outlined his attempts to obtain full copies in his ground of appeal, including reference to the date and number of such request. He also explained in his appeal that he was aware that the judge had left the court which he could only have known if he had indeed been in contact with the court (see paragraph 8 above). The Court is satisfied that the applicant made timely steps to obtain a full copy of these judgments, given that Article 142 of the CCP does not specify a time-limit. It also notes the Government’s admission that the presiding judge could not in any event have drafted or signed the full texts in 2015, having been transferred elsewhere (see paragraph 19 above). The Court thus finds that the failure to submit the full text of the acquittal judgments, and in particular no. 21/2013 which concerned the events of 16 May 2008, could not be attributed to the applicant (compare *Kapetanios and Others*, cited above, § 66).

26. The case materials show that in the domestic proceedings the applicant referred to Article 5 § 2 of the CAP and to the prohibition of double jeopardy. The applicant also clearly demonstrated that he could not be held responsible for the failure to adduce the full text of the final acquittal judgments. The Court therefore rejects the Government's objection that the applicant has not properly exhausted domestic remedies.

3. *Whether the offences were the same in nature and whether proceedings were duplicated*

27. Article 4 of Protocol No. 7 prohibits the prosecution or trial of an individual for a second "offence" in so far as it arises from identical facts or facts that are "substantially" the same as those of the first offence. Following the approach adopted in *Sergey Zolotukhin* (cited above, §§ 78-84), the question of whether the offences in question are the same is determined on the facts (*ibid.*, § 84).

28. The applicant was acquitted in judgment no. 21/2013 of having illegally extracted stones from the plot owned by M. L. in Andros on 16 May 2008 and 7 February 2011, under Article 16 § 1 of Law no. 1428/1984. The fine was imposed on him under the same provision for having illegally extracted stones from the same location on 16 May 2008. The underlying facts were the same (see paragraphs 7 and 10 above). Even if it is accepted that the administrative offence lacked the requirement of intent inherent in a criminal offence, the facts that gave rise to the two sets of proceedings do not differ for the purposes of Article 4 of Protocol No. 7.

29. The proceedings were connected in substance and the main elements of evidence were the same in both sets; the objectives of both penalties were deterrence and punishment. However, the administrative courts assessed the evidence and decided on the fine independently of the criminal proceedings. The two sets of proceedings were conducted by different authorities: they followed their own separate course and became final independently of each other (see *Goulandrakis and Vardinogianni*, cited above, §§ 74-76, with further references).

30. As to the connection in time, there is no indication when the notice of a formal act of criminal prosecution was officially served on the applicant or when the authorities took procedural steps against him that related directly to the determination of the "charge". However, it results from the file that within an overall period of approximately ten years and ten months, the two sets of proceedings had been conducted in parallel for approximately four years and six months, from 18 September 2008 when the fine was imposed to the "final" acquittal in criminal proceedings on 21 March 2013. The administrative proceedings became final more than six years later. This substantial lapse of time cannot be attributed to the applicant and it cannot be considered that the connection in time was sufficient to avoid a duplication (see *Nodet v. France*, no. 47342/14, § 52, 6 June 2019).

31. The two sets of proceedings were not combined so as to form an integrated process connecting dual proceedings “sufficiently closely in substance and in time”.

32. In the light of all the above considerations, it follows that the failure of the administrative courts to take into account the criminal proceedings constitutes a violation of Article 4 § 1 of Protocol No. 7 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

33. The applicant further complained under Article 6 § 2 of the Convention that the presumption of innocence stemming from his criminal acquittal was not respected in the subsequent administrative proceedings.

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

35. In the case of *Kapetanios and Others* (cited above, §§ 86-88), the Court has already found a violation in respect of issues similar to those in the present case.

36. Turning to the present case, in view of the constituent elements of the offences concerned, the similar nature of the two sets of proceedings in issue and the fact that the latter took place autonomously, the Court concludes that the administrative courts held the applicant liable for the same offence for which he had previously been acquitted by the criminal courts. Therefore, the Court does not discern any reason to depart from its conclusions in *Kapetanios and Others* (cited above, § 88) in the present case.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicant claimed EUR 30,000 for non-pecuniary damage. He also claimed EUR 44,138.50 corresponding to the confirmed fine, plus interest and additional charges incurred when he was unable to pay on time. He did not claim costs and expenses.

38. The Government submitted that the claim in respect of non-pecuniary damage was unjustified and excessive. In respect of pecuniary damage they considered it vague and unjustified; there was no causal link with the alleged violations and it did not constitute losses actually sustained. They added that the finding of a violation constituted in itself sufficient just satisfaction.

39. The Court awards EUR 9,800 in respect of non-pecuniary damage plus any tax that may be chargeable to the applicant. It dismisses the claim for pecuniary damage as the applicant could apply for the reopening of the proceedings in the domestic courts and request the cancellation of the fine (see, for the relevant procedure, *Aggloupas v. Greece* (dec.) [Committee], no. 28616/17, § 7, 23 May 2023).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's non-exhaustion objection and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 4 § 1 of Protocol No. 7 to the Convention;
4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant EUR 9,800 (nine thousand eight hundred euros) within three months, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President