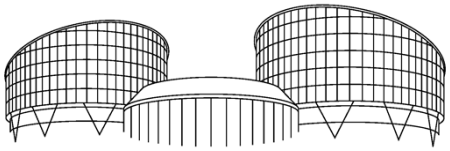

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF ZOUBOULIDIS v. GREECE (No. 3)

*(Application no. 57246/21)*

JUDGMENT

Art 6 § 1 (civil) • Access to court • Applicant's action against the State for damage allegedly caused by the Court of Cassation's rejection of his appeal on points of law, found by the Court in *Zouboulidis v. Greece* (77574/01) to have breached Art 6 § 1, declared inadmissible for lack of jurisdiction by the Supreme Administrative Court (SAC) • Domestic law on State liability interpreted by the SAC as not allowing claims of damage caused by a manifest error on the part of a judicial body until the enactment of specific legislation regulating such liability • SAC's interpretation not in line with its previous case-law applying current domestic law by analogy to such cases in view of the absence of specific legislation and resulting in a first-time inadmissibility finding in applicant's case • No indication of any perceptible line of case-law development departing from SAC's previous interpretation • New interpretation resulted in applicant's claim not being eligible ad infinitum for judicial review and constituted an insurmountable obstacle to any future compensation claims by him against the State for the alleged errors of the civil courts until the eventual adoption of specific legislation • Restriction on applicant's right for an undetermined period creating legal uncertainty to his detriment • Disproportionate burden imposed on the applicant • Very essence of the right of access to a court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 June 2024

*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 Zouboulidis v. Greece (no. 3),**

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 57246/21) 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") by a Greek national, Mr Ioannis Zouboulidis ("the applicant"), on 19 November 2021;

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

the parties' observations;

Having deliberated in private on 14 May 2024,

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

# INTRODUCTION

1. The application concerns the dismissal of an action lodged by the applicant against the Greek State for compensation for damage allegedly caused to him by a judgment delivered by the Court of Cassation.

# THE FACTS

2. The applicant was born in 1960 and lives in Dusseldorf, Germany. He was represented by Ms V. Skordaki, a lawyer practising in Athens.

3. The Government were represented by their Agent's delegates, Mr K. Georgiadis, Legal Counsellor, and Ms A. Dimitrakopoulou, Senior Adviser at the State Legal Council.

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

## I. CIVIL PROCEEDINGS RELATED TO AN INCREASE IN THE EXPATRIATION ALLOWANCE

5. On 2 October 1992 the applicant signed a private-law employment contract of indefinite duration as an auxiliary staff member at the Greek embassy in Germany in respect of a position as senior bailiff. By an action

brought in the Athens Civil Court of First Instance, the applicant requested an increase in the amount of the expatriation allowance which he had been paid in respect of his two dependent children during the period from 1 January 1993 to 31 May 1998. By judgment no. 964/1999 his claim was dismissed on the grounds that, in accordance with Article 131 §§ 10-11 of Law no. 419/1976 in conjunction with joint ministerial decision no. F083-58 of 11 March 1988, which regulated the calculation of increases in respect of dependent children as a percentage of the expatriation allowance, that increase was only to be paid to permanent employees of the Ministry of Finance and not to the staff employed under private-law contracts of indefinite duration. This was without prejudice to the constitutional principle of equality, as it was justified by reasons of general social and public interest. In the court's view, the two categories of employees were separate and had different legal statuses, which entailed different rights and obligations under each category, including those relating to remuneration, career development and social insurance.

6. The Court of Appeal, by judgment no. 9975/1999, partly allowed an appeal lodged by the applicant and his claim in so far as it concerned the period from 24 March 1998 to 31 May 1998 and ordered the State to pay him 2,584 European Currency Units, holding that under the new statute of the Ministry of Finance (Article 135 of Law no. 2594/1998) there was no longer any difference in the status of permanent and non-permanent employees and, as a result, those entitled to the expatriation allowance were also entitled to the increased rates in respect of dependent children. The appellate court dismissed the applicant's claim in respect of the period from 1 January 1993 to 24 March 1998 as ill-founded and upheld the judgment delivered at first instance on the ground that Article 131 § 10 of Law no. 419/1976 and the relevant ministerial decisions on its implementation referred to State employees with public-law status and this justified their different treatment from that of employees with private-law status. The non-payment of the higher amount to the latter category of employees did not contravene the constitutional principle of equality and equal remuneration for work of equal value set out in Article 119 of the Treaty establishing the European Community or the provisions of the International Labour Organisation Convention No. 100 on Equal Remuneration, since the circumstances concerned different categories of employees in terms of their employment conditions and those who were in a different situation as regards their recruitment and career development and since this was in the general public interest.

7. The applicant appealed on points of law. In the first two grounds relied on by the applicant he asserted that the impugned judgment dismissing his claim had been unlawful in so far as it concerned the period from 1 January 1993 to 24 March 1998, on the grounds that the appellate court should have applied joint ministerial decision no. F083-58 of 11 March 1988 instead of

decision no. 201/800/185/0022 of 17 March 1993, which was null and void, as that decision had exceeded the delegated authority granted by Article 131 §§ 10-11 of Law no. 419/1976. Moreover, the impugned judgment infringed Article 4 § 1 and Article 22 § 1 of the Constitution, Article 119 of the Treaty establishing the European Community and Convention No. 100 of the International Labour Organisation.

8. The Court of Cassation, by judgment no. 1143/2001 of 15 June 2001, dismissed the above-mentioned grounds as vague because the applicant, in his appeal on points of law, had not set out in adequate detail the factual basis of his action, as he had not provided the terms of his contract of employment or the number and age of his children. While dealing with opposing appeals on points of law, one lodged by the applicant and another lodged by the State, the court also dismissed the applicant's grounds of appeal except for one of them. It quashed the relevant part of the impugned judgment and referred the case back to the Court of Appeal so that the latter could rule on the applicant's claim for interest incurred on the amount awarded by that judgment.

## II. THE COURT'S JUDGMENT IN *ZOUBOULIDIS v. GREECE*

9. The applicant lodged an application (*Zouboulidis v. Greece*, no. 77574/01, 14 March 2007) with the Court, complaining that the reasons for the rejection by the Court of Cassation of some of his grounds of appeal had constituted excessive formalism and had breached his right of access to a court under Article 6 § 1 of the Convention. In its judgment the Court held that all the relevant facts had been available to the Court of Cassation. The employment contract, the applicant's marriage status and the age and number of dependent children had clearly been available in the file. It held that the dismissal of the applicant's appeal on points of law had constituted an excessively formalistic approach to the conditions of admissibility of the relevant remedy, imposing a limitation that was disproportionate to the aim of safeguarding legal certainty and proper administration of justice. It found a violation of Article 6 § 1 of the Convention and awarded the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 for costs and expenses. It dismissed his claim in respect of pecuniary damage as it could not speculate on the Court of Cassation's decision in case it had examined the merits of the claims.

The Committee of Ministers by means of Resolution CM/ResDH(2009)68 adopted on 19 June 2009, in view of the general measures (publication of the judgment in Greek and transmission to all judicial authorities) and individual measures (payment of just satisfaction) taken by the respondent State, declared that it had exercised its functions under Article 46 § 2 of the Convention and it decided to close the examination of the case.

## III. ADMINISTRATIVE PROCEEDINGS AS REGARDS THE STATE'S LIABLITY FOR ACTS OF JUDICIAL BODIES

### A. The applicant's action and appeal before the administrative courts

10. On 13 December 2007 the applicant, relying on Article 105 of the Introductory Law of the Civil Code ("the ILCC") on the State's liability, brought an action in the Athens Administrative Court of First Instance, requesting the court to declare that the State was liable to pay 47,280 United States dollars, plus interest, and EUR 16,860 as compensation for the damage which he had suffered as a result of the delivery of judgment no. 1143/2001 of the Court of Cassation in civil proceedings. In particular, he argued that that judgment had been unlawful in so far as it had rejected as vague his two grounds of appeal on points of law, thereby violating his right of access to a court as enshrined in Article 6 § 1 of the Convention, as had previously been found by the Court. He argued that if the Court of Cassation had not unlawfully declared the two grounds inadmissible but had examined them on the merits, it would have accepted them in the light of the case-law development which had taken place. It would have then quashed the Court of Appeal's judgment and remitted the quashed part to that court, which would have subsequently ordered the State to pay the higher amount in respect of dependent children for the period from 1 January 1993 to 24 March 1998 in accordance with his claims.

11. On 28 April 2014 the plenary of the Supreme Administrative Court ruled on an appeal on points of law following the dismissal of an action brought by another plaintiff for compensation from the State in respect of the closure of a business and seizure of goods by the police on the orders of the prosecutor. In judgment no. 1501/2014 it held that Article 4 § 5 of the Constitution provided that the State was liable for the acts of its bodies which cause damage when those acts were unlawful or when they were lawful but caused serious and significant damage. Article 4 § 5 required that the legislature determine the conditions for the compensation for damage caused by any State body, taking into account the nature and the mission of the bodies which carry out the activities of the State under its three branches (executive, legislative and judiciary). It accepted that Article 105 of the ILCC directly applied to the bodies of the legislative and executive branches; it did not specifically refer to the acts of judicial bodies because the State's liability for compensation for the erroneous interpretation of law or assessment of facts was not compatible with the nature of judicial work in respect of which the Constitution guaranteed judicial independence. The court held that the State was thus liable to compensate only for damage caused by a manifest error on the part of the judicial bodies. As the Constitution did not allow damage caused by State bodies to remain uncompensated for, the court held that until the legislature enacted specific legislation in respect of the State's liability for

acts of the judicial bodies, Article 105 should be applied by analogy in cases where damage was attributed to their manifest error. An error would be considered manifest depending on the specific characteristics of the case which rendered the error justifiable or not.

12. The Administrative Court of First Instance, ruling on the applicant's action, delivered judgment no. 4997/2015 on 20 April 2015. In that judgment it applied by analogy Article 105 in respect of damage caused by acts of the judiciary which were attributed to a manifest error. The court, citing judgment no. 1501/2014 of the plenary of the Supreme Administrative Court, held that it would be incompatible with Article 4 § 5 of the Constitution that damage caused by the conduct of any State body should not give rise to compensation. It then dismissed the action in issue, ruling that the error which had been attributed by the Court to the judgment of the Court of Cassation was not manifest.

13. The applicant appealed on 14 September 2015. The Administrative Court of Appeal, in judgment no. 1107/2017 delivered on 23 February 2017, in the same spirit, applied by analogy Article 105 concerning damage caused by acts of the judiciary which were attributed to a manifest error, holding that it would be incompatible with Article 4 § 5 of the Constitution that damage caused by the conduct of any State body should not be compensated for; the court cited judgments nos. 1501/2014 (see paragraph 11 above) and 1330/2016 (see paragraph 19 below) of the Supreme Administrative Court. It then dismissed his appeal, ruling that there was no manifest error in the judgment. It held that the omission at issue – in the light of the requirements of Article 566 § 1 of the Code of Civil Procedure for an appeal on points of law to be precise, the relevant case-law of the Court of Cassation and the fact that it was standard practice for appeals on points of law to contain at least a brief explanation of the factual basis of a case – rendered the appeal on points of law marginally vague, even if the employment contract could be inferred from the grounds of appeal and the applicant' family status could be determined from the case file, which had been at the court's disposal. Even if the Court of Cassation had had the possibility, pursuant to Article 562 § 4 of the Code of Civil Procedure, of examining of its own motion those grounds of appeal, reasons of legal certainty had led the Court of Cassation to deliver its judgment, which therefore could not be considered a manifest error and had not gone beyond what was legitimate in determining whether the appeal on points of law was sufficiently precise. It also accepted that the fact that the Court had found the dismissal of the appeal on points of law excessively formalistic had not automatically amounted to a manifest error and the conditions for establishing the State's liability for compensation had not thus been satisfied.

### B. The applicant's appeal on points of law to the Supreme Administrative Court and judgment no. 800/2021

14. On 8 May 2017 the applicant lodged an appeal on points of law with the Supreme Administrative Court. The appeal was brought before the plenary court on account of the importance of the case. By judgment no. 800/2021 of 4 June 2021 the Supreme Administrative Court held that Article 4 § 5 of the Constitution established the liability of the State for acts of its bodies which had caused damage, irrespectively of whether the acts were unlawful or they were lawful but had caused serious and significant damage. In that connection, the purpose of that provision was considered fulfilled when the compensation for such damage was possible in cases of misconduct of any of the State's bodies, including those of the judiciary. Exclusion of the State's liability could not be inferred by Article 99 of the Constitution, which attributed the finding of personal liability of judges during the exercise of their duties to a specialised court (see paragraph 23 below).

15. It further held that Article 105 of the ILCC, which refers to bodies of the State, could not be applied as regards judicial bodies, despite its vague wording. The relevant damage could not be compensated for under the terms and conditions of Article 105 or by directly relying on Article 4 § 5 of the Constitution. In respect of acts of the judiciary in their judicial and administrative functions, Article 4 § 5 of the Constitution instead imposed on the legislature the obligation to determine the procedure and the terms of the compensation for damage and the extent of damage to be compensated for. As long as the terms of the unlawfulness of the conduct, the extent of the compensatory claims and the competent courts had not been determined by law, the damage at issue could not be redressed and the relevant claims were not enforceable in the courts. It further noted that the Supreme Administrative Court had ruled differently in judgment no. 799/2021 (see paragraph 32 below) in its finding that damage caused by a judgment at last instance which infringed European Union (EU) law was to be compensated for under the conditions laid down by the Court of Justice of the European Union on account of the need for the uniform application of that law by national authorities, including the courts.

16. A minority of seven (out of twenty-seven) judges with voting capacity and two (out of three) judges participating in an advisory capacity supported the view that since the Constitution did not allow damage incurred as a result of actions on the part of State bodies to remain uncompensated for, until such time as the legislature enacted specific legislation in respect of the State's liability for acts of the judiciary, Article 105 should be applied by analogy in cases of damage caused by those bodies and which was attributed to their manifest error. Compensation for such damage should be awarded under the conditions set out in that provision. They added that it would be contradictory

in a national constitutional order that the rights deriving from the legal order of EU law should be guaranteed, and rightly so, as decided in judgment no. 799/2021 (see paragraph 32 below), but not the rights deriving from the national constitutional order.

17. The Supreme Administrative Court further held that under Article 94 of the Constitution, the administrative courts had jurisdiction to hear administrative disputes and the civil courts had jurisdiction to hear private disputes, subject to the exception set out in paragraph 3 of that Article to the rule of assigning jurisdiction based on the nature of the case as private or administrative. In view of the system of distinct jurisdictions (Article 93 of the Constitution), the judgments and acts of judicial bodies of a certain jurisdiction were subject to judicial review by courts of the same jurisdiction. The legislature, in adopting the relevant framework relating to the judiciary, was to respect that system and regulate the relevant matters by jurisdiction. A minority of eight judges, and one judge participating in an advisory capacity, supported the view that the jurisdiction of the administrative courts, enshrined in Article 1 § 1 (h) of Law no. 1406/1983, includes adjudicating on cases of liability of the State for acts of the bodies of the judiciary which cause damage, irrespectively of the jurisdiction to which those bodies belong.

18. The Supreme Administrative Court held that as there had been no legislative determination of the terms of compensation for damage caused by judicial bodies, or of the courts competent to deal with such matters, the damage at issue could not be compensated for, either by the application by analogy of Article 105 or by the direct application of Article 4 § 5 of the Constitution. The Administrative Court of First Instance had thus exceeded its jurisdiction when it had examined the action on its merits and it should instead have declared the action inadmissible.

19. The Supreme Administrative Court also stated that the change of the case-law as regards the interpretation of legislation was inherent in the judicial function and necessary for its development and was not contrary to the principles of legal certainty and the protection of legitimate confidence unless a change was arbitrary or contained insufficient reasoning. These principles did not confer a right to consistency of case-law. Interpreted in conjunction with the right to a fair trial, they did not oblige the courts to postpone the legal consequences of a change of case-law, except where it concerned (a) the admissibility of the exercised legal remedy ; on this point the Supreme Administrative Court made reference to the Court's judgment in *Gil Sanjuan v. Spain*, no. 48297/15, §§ 36-44, 26 May 2020, and (b) the rights, claims or legitimate expectations based on well-established case-law which had to be protected despite the change and on account of which they would not be recognised from that point on. In any event, a rule which was enacted as a result of a change of case-law could not be applied immediately if it breached the principle of foreseeability.

20. The question of jurisdiction, as a question of public order, may be examined of the court's own motion irrespectively of the fulfilment of the relevant admissibility requirements for lodging an appeal on points of law. The case under examination did not fall within the aforementioned exceptions (see paragraph 19 above) and the principles of legal certainty and protection of legitimate confidence had not prevented the direct application of the finding that the administrative courts had exceeded their jurisdiction which resulted from the change of case-law as regards the conditions of liability for acts of the judiciary introduced at that time by judgment no. 800/2021. This was because, firstly, the excess of jurisdiction constituted a ground of appeal on points of law. It did not concern the admissibility of the appeal on points of law itself.

21. Secondly, the applicant's claim had not been based on well-established case-law. Judgment no. 1501/2014 of the Supreme Administrative Court of 28 April 2014 (see paragraph 11 above) accepted for the first time the application by analogy of Article 105 of the ILCC in cases of manifest error of judicial bodies. However, the action in issue had been lodged on 13 December 2007 and heard on 5 March 2014, at a time when the Supreme Administrative Court and the administrative courts had not recognised the State's liability for acts of the judiciary. The applicant had appealed on 11 September 2015, his case had been heard on 8 December 2016 and the resulting judgment had been published on 23 February 2017. The Supreme Administrative Court maintained that during that period the case-law of judgment no. 1501/2014 of the plenary court had been followed by its sections in a small number of cases: in a case concerning police officers acting in the pre-trial investigation (judgment no. 1330/2016) and another judgment concerning an act of a judicial body relating to the administration of justice (judgment no. 48/2016). It had also been followed in cases which did not concern a manifest error of judicial bodies (judgments nos. 3783/2014, 4403/2015, 1607/2016 and 2168/2016).

22. The Supreme Administrative Court accepted the appeal on points of law, quashed the appellate court's judgment, accepted the appeal, quashed the judgment given at first instance and declared the action inadmissible on the ground, examined of its own motion, that the Administrative Court of First Instance had not had jurisdiction to adjudicate on it.

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. RELEVANT LEGISLATION

23. The relevant provisions of the Greek Constitution read as follows:

**Article 4**

"1. [All] Greeks are equal before the law.

...

5. Greek citizens shall contribute without distinction to public charges in proportion to their means.

..."

**Article 22**

"1. Work constitutes a right under the protection of the State, which shall regulate the conditions of employment for all citizens and shall pursue the moral and material advancement of the rural and urban working population.

All workers, irrespective of sex or other distinctions, shall be entitled to equal pay for work of equal value.

..."

**Article 93**

"1. The courts are divided into administrative and civil and criminal courts and are regulated by special statutes.

..."

**Article 94**

"1. The Supreme Administrative Court and ordinary administrative courts shall have jurisdiction over administrative disputes, as specified by law, without prejudice to the competence of the Court of Audit.

2. Civil courts shall have jurisdiction over private disputes and over cases of non-contentious jurisdiction, as provided for by law.

3. In special cases and in order to achieve the consistent application of the same legislation, the legislature may assign the hearing of [certain] categories of private disputes to administrative courts or the hearing of [certain] categories of substantive administrative disputes to civil courts.

..."

**Article 99**

"1. Actions against judicial officers for miscarriage of justice shall be tried, as provided for by law, by a special court [whose membership shall be] composed of the President of the Supreme Administrative Court as President, one judge of the Supreme Administrative Court, one judge of the Court of Cassation, one judge of the Court of Auditors, two law professors from the law schools of the State's universities and two lawyers from among the members of the Supreme Disciplinary Council for lawyers, all of whom shall be chosen by lot.

..."

24. Article 105 of the Introductory Law of the Civil Code provides as follows:

"The State shall make good any damage caused by unlawful acts or omissions attributable to its bodies in the exercise of public authority, except where the unlawful act or omission was in breach of a provision of law which was intended to serve the

general interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

25. The relevant provisions of Law no. 1406/1983 on the organisation of the jurisdiction of the administrative courts read as follows:

**Article 1**

"...

2. [The administrative courts have jurisdiction] ... including in particular cases arising from the application of legislation concerning:

...

(h) the liability of the State ... to award compensation in accordance with Article 105 ... of the Introductory Law of the Civil Code.

..."

**Article 2**

"...

2. [Under] Article 105 ... of the Introductory Law of the Civil Code and in any ... case where the State ... is liable for compensation, an action shall be brought by the entitled person."

**Article 9**

"1. The administrative courts shall hear cases which fall under Article 1 as from:

...

(c) 11 June 1985 for all the other cases.

..."

26. The relevant provisions of Article 131 of Law no. 419/1976 read as follows:

"10. In order to address the difference between the cost of living abroad and the particular conditions of living in each country, ... an allowance shall be paid depending on the sector, the level of family expenses and the cost of living in the place where the person is employed ...

11. The allowance ... shall be determined ... for the other employees ... by an act of the Ministerial Council ..."

27. The relevant provision of Article 135 of Law no. 2594/1998 reads as follows:

"4. In order to address a higher cost of living abroad and the particular conditions of living in each country, an expatriation allowance shall be paid ..., depending on the [person's] sector and their grade. This allowance shall be increased by the relevant percentage provided for family expenses and housing."

28. Article 119 of the Treaty establishing the European Community states as follows:

> "Each Member State shall, during the first stage, ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.
>
> ..."

29. The relevant provisions of the Code of Civil Procedure on appeals on points of law before the Court of Cassation and relevant practice are described in *Zouboulidis v. Greece* (no. 77574/01, §§ 17-18, 14 March 2007).

## II. RELEVANT PRACTICE

### A. Case-law of the Court of Justice of the European Union

30. In its judgment of 30 September 2003 in the case of *Gerhard Köbler v. Republik Österreich* (C-224/01, EU:C:2003:513, point 1 of the operative part) the Court of Justice of the European Communities ruled on the States' liability for judicial breaches of European Community law, holding as follows:

> "The principle that Member States are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible is also applicable where the alleged infringement stems from a decision of a court adjudicating at last instance where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between that breach and the loss or damage sustained by the injured parties. In order to determine whether the infringement is sufficiently serious when the infringement at issue stems from such a decision, the competent national court, taking into account the specific nature of the judicial function, must determine whether that infringement is manifest. It is for the legal system of each Member State to designate the court competent to determine disputes relating to that reparation."

### B. Case-law of the plenary of the Supreme Administrative Court

31. By judgment no. 1501/2014 of 28 April 2014 the plenary of the Supreme Administrative Court accepted the application by analogy of Article 105 of the ILCC in cases of damage caused by acts of judicial bodies which was attributed to their manifest error, as the Constitution did not allow damage caused by any of the State's bodies to remain uncompensated for; this approach was to be pursued until such time as the legislature enacted specific regulations on the State's liability for acts of the judicial bodies (see, for details, paragraph 11 above).

32. The plenary of the Supreme Administrative Court, in its judgment no. 799/2021 delivered on 4 June 2021, reaffirmed the Court of Justice of the European Union's case-law concerning the conditions for compensation for damage caused by infringement of EU law where the alleged infringement stemmed from a decision of a court adjudicating at last instance (and involved a manifest error and infringement of law which was intended to confer rights on individuals and which entailed a sufficiently serious breach and a direct

causal link between that breach and the loss or damage sustained; see paragraph 30 above). It held that the liability of a member State could not be called into question on grounds of lack of a competent court. Until such time as a procedure could be established in respect of this matter, legal protection was to be provided by the application by analogy of Article 105 of the ILCC. The jurisdiction of the administrative courts enshrined in Article 1 § 1 (h) of Law no. 1406/1983 was overridden when the infringement of EU law was attributed to the civil courts, which were considered competent to rule on the relevant actions. Since in the plaintiff's case compensation had been claimed for the alleged damage suffered as a result of a manifest error and the infringement by the civil courts of rights conferred by EU law, the Supreme Administrative Court declared the action inadmissible on the ground that the administrative courts had not had jurisdiction to rule on it.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. Relying on Article 6 § 1 of the Convention, the applicant complained that he had been deprived of access to a court, as the Supreme Administrative Court had declared his action on the State's liability as regards damage caused by an act of a judicial body inadmissible. 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

#### *1. Applicability of Article 6*

34. The Government mentioned in passing, while addressing the merits of the present complaint, that Article 6 was not applicable to the applicant's claims, which had been examined in the context of civil proceedings in which the allegedly erroneous judgment had been delivered, but was only applicable to claims which were causally linked to the allegedly erroneous judgment. They added that this was true, in particular, when, as in the present case, the alleged error was not linked to the courts' assessment on the merits of those claims which had been examined at more than one instance. The applicant disputed that argument, maintaining that his action in the civil courts had been different from the action in the administrative courts, which had concerned an error on the part of the judiciary.

35. The Court reiterates its consistent case-law to the effect that Article 6 § 1 does not in itself guarantee any particular content for civil "rights and obligations" in the substantive law of the Contracting States. It extends only

to "contestations" (disputes) over civil "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 87, ECHR 2001-V, and the authorities cited therein). Whether a person has an actionable domestic claim may depend not only on the substantive content, properly speaking, of the relevant civil right as defined under national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. In the latter kind of case Article 6 § 1 may be applicable. Certainly, the Convention enforcement bodies may not create by way of interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 47, ECHR 2001-XI).

36. The Court notes that the Government did not dispute the applicability of Article 6 in proceedings relating to actions for compensation from the State for damage caused by judicial bodies. Under domestic law and practice it has been accepted that Article 4 § 5 of the Constitution, which enshrines the principle of equality in respect of public charges, sets out the liability of the State for the acts of its bodies, including those of the judiciary, which cause damage and, in view of that provision, compensation for such damage caused by the conduct of a judicial body should be possible (see paragraphs 11, 14 and 22 above). The applicant claimed compensation from the State on the basis of the alleged damage caused by an erroneous judgment by the civil courts. The constitutional legal basis in Article 4 § 5 of the Constitution has a particularly significant meaning and requires that the compensation for such damage be made possible; in the domestic legal order a relevant action against the State cannot be barred on grounds of the nature of that action. It has also been accepted that the State's liability is not excluded by an action for miscarriage of justice, which is different, as it is aimed at establishing the personal liability of judicial officers (see paragraph 14 above).

37. The two administrative courts, one at first instance and the other on appeal, examined on the merits the applicant's action and confirmed that by the application by analogy of Article 105 of the ILCC, the State was to be held liable to compensate for damage caused by the acts of the judiciary which were attributed to a manifest error, even if they ultimately held that the error was not considered manifest in the case in issue (see paragraphs 12 and 13 above). Even considering the Supreme Administrative Court's position in judgment no. 800/2021, it follows that if the State had enacted the relevant legislation, the action would have led to a judgment on the merits (see paragraph 15 above). The Supreme Administrative Court, in its judgment, did not thus remove the arguability of the applicant's claims retrospectively. In view of the considerations above, the dismissal by the Supreme Administrative Court of the applicant's action as inadmissible is to be seen, not as qualifying a substantive right, but as a procedural bar on the

national courts' power to determine the right (see, *mutatis mutandis*, *Al-Adsani*, cited above, § 48).

38. In such circumstances, the Court notes that it is not in dispute between the parties that the right to claim compensation for damage caused by acts of the judiciary arises from the Constitution and finds that the applicant had, at least on arguable grounds, a valid claim under domestic law. In that connection, the Court is satisfied that there existed a serious and genuine dispute over the applicant's civil rights. Article 6 § 1 of the Convention is therefore applicable in the instant case.

*2. Objections as to lack of victim status and the application being substantially the same as a matter previously examined by the Court*

39. The Government objected that the applicant lacked victim status as in his action on the State's liability he had relied on *Zouboulidis v. Greece* (no. 77574/01, 14 March 2007) and had attempted to raise his claims previously brought in the civil courts, arguing that the Court's award of just satisfaction had not exempted the State from the obligation to comply with the Court's judgment and had not been sufficient to redress the damage, namely the violation of his right of access to a court, suffered as a result of the unlawful conduct of State bodies. The Government argued that by judgment no. 1143/2001 of the Court of Cassation, the civil proceedings in relation to his initial action had been completed. Following his application, the Court had found a violation of Article 6 § 1 and awarded him compensation in respect of non-pecuniary damage in the amount of EUR 5,000. The State had fully complied with that judgment according to the Committee of Ministers and the supervision of the State in respect of that case had been terminated long ago. They asserted that the applicant could not be considered a victim of a violation of the Convention for claims which he had lodged in the initial proceedings.

40. The Government further submitted that the present application was a second application which was related to the first application, *Zouboulidis* (cited above), in which the Court had delivered its judgment on 14 December 2006. The complaints raised in relation to the violation of Article 6 § 1 as regards the non-examination of the *res judicata* resulting from the Court's judgment proved that the Court had already ruled on the case. They asserted that the applicant's complaint that the administrative courts had not examined his claims, which were identical with those raised before the civil courts, should therefore be declared inadmissible.

41. The applicant maintained that his action in the civil courts against the State as his employer had been brought in respect of an increase in the expatriation allowance relating to his dependent children under Law no. 419/1976 and had been based on his contract and the labour law. Unlike in the above-mentioned first action, he had brought the subsequent action against the State in the administrative courts under the Constitution, Law

no. 1406/1983 and Article 105 of the ILCC, seeking compensation for the damage caused by an error on the part of the judiciary which the Court had found in *Zouboulidis* (cited above). In that action, he had claimed compensation for an amount in respect of pecuniary damage which corresponded to the amounts of which he had been deprived on account of an error on the part of the civil courts and which had not been compensated for by any court. He had thus used the amounts of the increase in order to estimate the amount of damage incurred. The reference to his application no. 77574/01 before the Court, which had led to its judgment in *Zouboulidis*, had been aimed at construing whether the error of the judiciary in his case was manifest or not.

42. The Court notes that, as the applicant's action claiming compensation for the damage caused by the judiciary was declared inadmissible and his complaints relate to an alleged violation of Article 6 § 1 of the Convention caused by judgment no. 800/2021 of the Supreme Administrative Court, the applicant may claim to be a victim, owing to the ruling that the administrative courts had no jurisdiction to entertain actions such as the one he had brought. The Court's finding of a violation of Article 6 § 1 in *Zouboulidis* (cited above) and its award to the applicant of the sum of EUR 5,000 in respect of non-pecuniary damage while ruling that the dismissal of his appeal on points of law by judgment no. 1143/2001 of the Court of Cassation had constituted an excessively formalistic approach to the conditions of admissibility of the above-mentioned remedy cannot be considered redress for the alleged violation of Article 6 § 1 of the Convention caused by judgment no. 800/2021. That conclusion cannot be altered by the fact that the applicant claimed an amount in compensation for an alleged error on the part of the judiciary which corresponded to the amount of the increase in the allowance which he had allegedly been deprived of, all the more so as that amount in respect of pecuniary damage had never been awarded to him by any court. In these circumstances, it is undeniable that the applicant was, as he asserted, affected by the impugned judgment of the Supreme Administrative Court and has continued to be a victim of the violation of the Convention which he asserts flowed from that judgment.

43. The Court further notes that, as regards the criteria established in the case-law concerning Article 35 § 2 (b) of the Convention, by which an application is to be declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information", it must ascertain whether the two applications brought before it by the applicant relate essentially to the same person, the same facts and the same complaints (see, *mutatis mutandis*, *Pauger v. Austria*, no. 24872/94, Commission decision of 9 January 1995, Decisions and Reports 80-A, p. 170, and *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006). The applicant has not raised substantially the same matter as he raised in his previous application to the Court. In

*Zouboulidis* (cited above), his application concerned the dismissal of his appeal on points of law as regards his claim for the increase in the expatriation allowance in so far as it concerned the period from 1 January 1993 to 24 March 1998 and he complained that the rejection by the Court of Cassation of certain of his grounds of appeal for formalistic reasons had breached his right of access to a court. The present application concerns an action for compensation from the State for damage allegedly caused to him by the Court of Cassation's judgment and he complained that he had been deprived of access to a court, as the Supreme Administrative Court, following his appeal on points of law, had declared his action inadmissible. The objection as regards lack of victim status must therefore be dismissed.

*3. Non-exhaustion of domestic remedies*

44. The Government submitted that the applicant had not exhausted all the domestic remedies, as he should have awaited the adoption of legislation which would determine the conditions of the unlawfulness of the acts or omissions of the judicial bodies in accordance with the constitutional provisions establishing the system of distinct jurisdictions. His application was thus premature, as a reasonable length of time was required for the enactment of that legislation. In that connection, his claims could not be time-barred, as the limitation period could not start as long as his claims were not yet enforceable before the court. In the event that the relevant legislation had been enacted before he had lodged his application, his application would have been inadmissible for non-exhaustion of domestic remedies.

45. They further argued that the applicant had failed to avail himself of an action under Article 105 of the ILCC by which he could claim compensation for damage caused by the omission of State bodies to legislate on this matter as being contrary to Article 6 § 1 of the Convention. They maintained that liability of the State could not be established from the fact that the State had either legislated or omitted to legislate, unless such legislation or omission had been contrary to higher-level legislation, such as the Convention, which was directly applicable in the national legal order and superseded any contrary statutory provision. The Government referred to judgment no. 481/2018 of the Supreme Administrative Court and the case-law cited therein; as regards the effectiveness of the proposed remedy, they argued that judgment no. 800/2021 had reiterated the relevant obligation of the legislature.

46. The applicant replied that the Government's argument that the application would have been declared inadmissible if legislation would have been adopted and that he should have waited for its adoption was hypothetical, was not applicable in his case and was irrelevant to the action which he had brought. Moreover, the need to use the remedy referred to by the Government had only come into play after the delivery of judgment no. 800/2021 and it shows, moreover, that there was a lack of a fair hearing

of the applicant's case by any court. The action proposed by the Government pointed to the legislature as the body which had caused the damage and was totally different from the action taken by the applicant, which pointed to the judiciary as the body which had caused the damage; it would also involve different facts than those in the present case. It is, however, an applicant's right to choose the grounds on which he or she will bring an action in the courts. The applicant asserted that the Government's argument that he should have initiated an action on a different legal and factual basis was hypothetical and did not address the question of whether the applicant had had access to a court in the present case.

47. The Court emphasises that the present application concerns the fact that, following the applicant's appeal on points of law, the Supreme Administrative Court settled the case with final effect by declaring the action brought by the applicant in respect of the State's liability for errors committed on the part of the judiciary inadmissible. The Government did not demonstrate how the applicant's bringing of a different action (in respect of the absence of legislation) might have remedied the alleged violation. In these circumstances the Court finds that the applicant was not required to bring a subsequent action in respect of the State's liability for the omission to legislate on the matter, as this avenue of redress could not be considered effective as regards the complaints put forth by the applicant in the present case. As regards the argument that the application was premature on the ground that the applicant should have awaited the enactment of specific legislation on errors on the part of the judiciary, the Court notes that the Government argued, in fact, that the applicant should have resorted to a remedy which did not yet exist. The impugned judgment being final and not liable to review and in view of the fact that the legislation which the Government mentioned in their argument has still not been enacted, the Court considers that the applicant's complaint is not premature.

48. The Court finds that the application is neither premature nor inadmissible for non-exhaustion of domestic remedies and the Government's objection must be dismissed.

*4. Conclusion on admissibility*

49. The Court notes that the application 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

50. The applicant argued that the Court's judgment in *Zouboulidis* (cited above), in which the Court found that an error had been committed on the part of the judiciary, had constituted substantive *res judicata*, as the Court of Cassation had also acknowledged in its case-law. He asserted that if that error had not taken place, he would have been awarded an increase in the expatriation allowance on the basis of the standard case-law of the Court of Cassation from the period 2003-07 and as that court recently confirmed in judgment no. 2/2020, which stated that employees of the Ministry of Foreign Affairs entitled to the expatriation allowance were automatically authorised to receive the increase in respect of dependent children.

51. He maintained that the Supreme Administrative Court had violated his right to a fair trial when it found that the Administrative Court of First Instance, which had ruled on the merits of his action, had exceeded its jurisdiction as long as there was no legislation laying down the conditions and competent courts in respect of the compensation for damage caused by judicial bodies. In that connection, it had found that under Article 105 of the ILCC the damage caused by judicial bodies could not be compensated for and his claim could not be considered admissible or legally enforceable and could not be heard in any court. Although the Supreme Administrative Court's judge rapporteur had not raised any admissibility issue in his draft proposal, the court had not ruled on the merits of the case, thereby depriving the applicant of his right of access to a court, in breach of the principle of legal certainty. The applicant asserted that since 1998 he had not received a judgment on the merits of his case, his claim in respect of pecuniary damage had not been satisfied by the civil courts and his action in respect of the State's liability before the administrative courts had been declared inadmissible.

52. The applicant noted that judgment no. 1501/2014 had acknowledged the State's liability for manifest errors on the part of the bodies of the judiciary and applied by analogy Article 105 of the ILCC. This finding had been followed thereafter in judgments nos. 1330/2016, 48/2016, 2168/2016, 3783/2014, 4403/2015 and 1607/2016. However, by a series of judgments (nos. 799 to 803/2021) in cases which had been heard by the plenary court on the same day with the same judges sitting, including the applicant's case, the Supreme Administrative Court had suddenly and unexpectedly "changed" its case-law. In judgments nos. 800/2021 to 803/2021 it had categorically prohibited access to a court and declared all the actions inadmissible. However, in judgment no. 799/2021 the Supreme Administrative Court had found differently, accepting the application by analogy of Article 105 of the

ILCC, thus respecting the principle of the State's liability for damage caused by a judgment which had violated EU law.

53. The applicant submitted that Article 4 § 5 of the Constitution provided the basis on which the liability of the State for damage caused by unlawful or lawful acts of State bodies was to be established and the purpose of that provision would thus be achieved if all the damage were compensated for in all cases involving acts of State bodies, including those of the judiciary. The finding that Article 105 of the ILCC could not be applied by analogy had constituted a denial of justice, as his right of access to a court had been restricted in such a manner and to such an extent that it had violated the essence of that right. In addition, he asserted that the requirement in the Constitution that the legislature had to lay down the conditions for compensation for damage caused by judicial bodies had been reiterated at least since the delivery of judgment no. 1501/2014, yet the legislature had still taken no relevant action and there was no guarantee of whether or when this legislation would be enacted.

54. He further maintained that the existence of a legislative vacuum should not have resulted in the impossibility of having the case heard or the finding that the action was inadmissible for that reason. The judges should have used a teleological interpretation and the application by analogy of similar legislation. The judges' failure to do so had resulted in a denial of justice in the present case, as had also been suggested by the minority of nine judges of the plenary court in the impugned judgment.

55. The applicant noted that in accordance with Article 1 § 2 (h) and Article 9 § 1 (c) of Law no. 1406/1983, all administrative disputes arising from the implementation of legislation concerning the liability of the State under Article 105 of the ILCC fell under the jurisdiction of the administrative courts and, in accordance with Article 2 of the same Law, the relevant remedy was an action which had to be brought by the entitled person (see paragraph 25 above).

56. Additionally, the applicant submitted that the stance of the Supreme Administrative Court in judgment no. 800/2021 could not be considered a mere change of case-law, but an absolute prohibition of the case being heard before any court. It had been, moreover, an arbitrary and radical change and not a gradual evolution of jurisprudence and it had violated the principle of predictability, which was also reflected in the Court's case-law. The applicant had not had any reasonable alternative means of effectively protecting his rights.

**(b) The Government**

57. The Government argued that judgment no. 1501/2014 of the Supreme Administrative Court had recognised for the first time the State's liability for damage caused by the acts of judicial bodies and had applied by analogy Article 105 of the ILCC. This had been based on the reasoning that it could

not be accepted under the Constitution, specifically under Article 4 § 5, that damage suffered as a result of the actions of any of the State's bodies should not be compensated for. Therefore, the legislature had to regulate specifically the liability of the State for the acts of the judicial bodies and, until then, Article 105 should be applied by analogy. They argued that the error in this situation should be manifest, which depended on the characteristics of the specific case which rendered the error excusable or not. A significant minority of the judges had stated in the judgment that the conditions for the establishment of the State's liability in cases concerning judicial bodies fell under the exclusive competency of the legislature and that the legislative vacuum could not be covered by an application by analogy of Article 105.

58. The Government further submitted that the case which had led to judgment no. 1501/2014 of the Supreme Administrative Court had concerned acts of the prosecuting authorities and police acting as prosecuting authorities. The findings in that judgment had been followed in similar judgments of that court, most of which concerned, albeit in a broader sense, the same subject matter: the application by analogy of Article 105 in cases where the unlawfulness was attributed to police officers acting as prosecuting authorities, and thus as part of the criminal justice system (judgments nos. 1330/2016, 1533/2018 and 1534/2018). Other judgments had concerned notaries acting as bodies of the judiciary (judgment no. 2168/2016), police officers acting in the context of an *in flagrante delicto* procedure (judgment no. 2557/2019) and service-related matters concerning a prosecutor (judgment no. 48/2016). In other cases (judgments nos. 3783/2014, 4403/2015 and 1607/2016), reference had been made to judgment no. 1501/2014 but those cases had concerned the acts and omissions of administrative bodies. The Government added that in none of those cases had the notion of "manifest error" been defined.

59. The Government further maintained that following judgment no. 1501/2014, a large number of actions had been brought in the administrative courts for compensation from the State for damage allegedly caused by judgments at all levels of jurisdiction. For that reason, four actions, which had been brought in the administrative courts and concerned a subject of general interest, namely the requirements for establishing the State's liability for the acts and omissions of judicial bodies and in particular for judgments, had been brought before the Supreme Administrative Court through the pilot trial procedure. The actions had been referred to the plenary court together with the applicant's appeal on points of law, which had been pending before the Supreme Administrative Court.

60. In the Government's view, by judgments nos. 800/2021 to 803/2021 the Supreme Administrative Court had changed its previous case-law established in judgment no. 1501/2014 and the majority had followed the position of the former minority. In judgments nos. 800/2021 to 803/2021 the court had reiterated that the obligation of the State to compensate for damage

caused by its judicial bodies had arisen from Article 4 § 5 of the Constitution, which imposed the duty of defining the relevant procedure and requirements on the legislature. The damage could not thus be compensated for in accordance with the conditions of Article 105 of the ILCC, which, despite its vague wording and reference to State bodies, was not applicable in the present case. This change could not give rise to a violation of Article 6 § 1 of the Convention. In that way the Supreme Administrative Court had acknowledged that the legislature had had priority in setting up the legislative framework, as the matter was particularly complex, requiring the striking of a balance between the compensation of the affected persons and the principle of legal certainty, which was served by the *res judicata* effect of judicial decisions. The application by analogy of Article 105 would have meant that the judge had legislated, which was contrary to the Constitution. Therefore, as long as the legislature had not enacted the relevant provisions, any action brought against the State had had to be declared inadmissible. Additionally, as only a short time had passed since the publication of judgment no. 800/2021, the fact that the relevant legislative initiative, which was related to legal certainty and the protection of the authority of the judiciary and which required particular attention, had not yet been realised did not give rise to a violation of Article 6 § 1.

61. The Government also reiterated the Supreme Court's guiding principle that courts had the power to change the case-law on the interpretation of legal norms, which was inherent in the judicial activity and necessary for the evolution of the case-law. Accordingly, a change of case-law did not violate the constitutional and Conventional principles of legal certainty and protection of reasonable expectations from which no right to the stability of case-law could be derived, unless the change was arbitrary or contained insufficient reasoning. Those principles, interpreted in conjunction with the right to a fair trial, did not oblige the courts to postpone the legal consequences resulting from a change in case-law unless the change of case-law concerned (a) the admissibility of the exercised legal remedy and (b) the rights, claims or legitimate expectations based on well-established case-law which were to be protected despite a change on account of which they would not be recognised from that point on. The Government further noted that the Supreme Administrative Court had provided extensive reasoning as regards the immediate application in the applicant's case of the rules resulting from judgment no. 800/2021.

62. The Government asserted that the violation found in *Zouboulidis* (cited above) did not mean that the applicant's action brought in the civil courts had been well-founded and that he had been entitled to claim the amounts corresponding to the increase in the expatriation allowance in respect of dependent children as compensation for the damage caused by the allegedly erroneous final judgment. The applicant's inability to indirectly make the subject of the initial trial the subject of the subsequent trial in respect

of the action against the State did not entail a violation of Article 6 § 1 of the Convention due to lack of access to a court; to find otherwise would lead to the unending pursuit of his original claims and the perpetual continuation of the relevant trials. Moreover, the Court, in *Zouboulidis*, had dismissed his claim in respect of pecuniary damage, as it could not speculate on what the Court of Cassation's decision would have been if it had examined the merits of his complaints. The Government, furthermore, rejected the applicant's argument that his case had not been examined on the merits since 1998, as the competent civil courts had ruled on his claims and the administrative courts had not been competent to decide while examining his action.

63. The Government submitted that, in any event, even if declaring the applicant's action inadmissible had constituted a limitation of his right of access to a court, taking into account the State's margin of appreciation, it had not affected the essence of that right. The well-foundedness of his claim relating to a manifestly erroneous judgment had been examined at two levels of jurisdiction by the administrative courts and the plenary of the Supreme Administrative Court had quashed the first-instance judgment and dismissed his action.

### *2. The Court's assessment*

#### (a) General principles

64. The right of access to a court was established as an aspect of the right to a fair hearing guaranteed by Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his or her civil rights and obligations brought before a court (see *Grzęda v. Poland* [GC], no. 43572/18, § 342, 15 March 2022; see also *Zubac v. Croatia* [GC], no. 40160/12, § 76, 5 April 2018).

65. The right of access to a court must be "practical and effective", not "theoretical or illusory". This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair hearing (see *Zubac*, cited above, § 77, with further references). For the right of access to be effective, a person must have a clear, practical opportunity to challenge an act that interferes with his or her rights. Equally, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016, with further references).

66. In respect of matters that fall within the ambit of the Convention, the Court's case-law has tended to show that where there is no access to an independent and impartial court, the question of compliance with the rule of law will always arise (see *Grzęda*, cited above, § 343, with further references). However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of persons. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to the 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. Nonetheless, the limitations applied must not restrict the access left to the person concerned in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does 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*, cited above, § 78, with further references; see also *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 195, 25 June 2019, with further references, and *Grzęda*, cited above, § 343).

**(b) Application of the above principles in the present case**

67. The Court is called to determine whether the applicant's access to a court was restricted and, if so, whether the restriction pursued a legitimate aim and was proportionate to it.

*(i) Restriction on the applicant's access to a court*

68. The Court notes that in the Greek legal order Article 105 of the ILCC establishes the State's liability for any damage caused by acts or omissions attributable to its bodies in the exercise of public authority, except where the act or omission was in breach of an existing provision of law but was intended to serve the public interest (see paragraph 24 above). This is a case of strict liability which does not require a finding of fault such as negligence or intent on the part of the State body.

69. In judgment no. 1501/2014 the Supreme Administrative Court ruled that, as Article 105 of the ILCC did not make particular reference to the bodies of the judiciary, and as the Constitution, in the light of Article 4 § 5, did not allow damage caused by any of the State's bodies to remain uncompensated for, Article 105 should be applied by analogy in cases of damage caused by acts of judicial bodies which were attributed to a manifest error on their part until such time as the legislature enacted specific regulations in respect of this matter (see paragraph 11 above).

70. In the present case, the applicant, relying on Article 105 of the ILCC, brought an action in the administrative courts concerning the State's liability, seeking compensation for the allegedly manifest error of judgment no. 1143/2001 of the Court of Cassation, which had declared the applicant's two grounds of appeal on points of law inadmissible and in relation to which the Court found a violation of Article 6 § 1 of the Convention. He argued that if that error had not taken place, he would have been paid the increase in the expatriation allowance which he had claimed in respect of his dependent children. His action was examined on the merits by the Administrative Court of First Instance and dismissed on the ground that the error attributed to the Court of Cassation was not manifest as required by Article 105, which was applicable by analogy (see paragraph 12 above). The applicant's subsequent appeal was similarly dismissed by the appellate court which, applying by analogy Article 105, held that the finding of the Court that the dismissal of the appeal on points of law had been excessively formalistic had not automatically amounted to a manifest error in the judgment and that the conditions for the liability for compensation of the State's judiciary bodies had therefore not been satisfied (see paragraph 13 above). However, the Supreme Administrative Court, in judgment no. 800/2021, accepted the appeal on points of law, quashed the appellate court's judgment, accepted the appeal, quashed the judgment delivered at first instance and declared the action inadmissible (see paragraphs 14-22 above).

71. In view of the foregoing, the restriction at issue followed from the interpretation of the Supreme Administrative Court that Article 105 of the ILCC could not be applied by analogy in cases of damage caused by a manifest error on the part of a judicial body until such time as the legislature enacted specific regulations on this matter. It also followed from the dismissal of the action as inadmissible on the ground that the administrative court had not had jurisdiction to adjudicate on it. The Court thus notes that the applicant's right of access to a court was restricted by the Supreme Administrative Court's judgment.

*(ii) Whether the restriction pursued a legitimate aim*

72. The Court is now called to examine whether the restriction pursued a legitimate aim. In that connection it notes that the Government adduced that the terms and conditions of the State's liability to compensate for damage incurred as a result of acts of the bodies of the judiciary in particular was a significantly complex issue and should be regulated by the legislature and that a balance had to be struck between the requirement to compensate for the damage suffered by the persons affected and the principle of legal certainty served by the *res judicata* effect of judgments. In that connection, the Supreme Administrative Court refused to apply by analogy Article 105 of the ILCC in order not to intervene as a law-making body in legal relations, as this would be contrary to the Constitution. On the other hand, the Government

observed that following judgment no. 1501/2014, a large number of actions had been brought in the administrative courts, seeking compensation from the State under Article 105 for damage allegedly incurred as a result of acts of the judiciary and mostly for damage allegedly incurred as a result of judgments at all levels of jurisdiction (see paragraph 58 above). The Court is thus ready to accept that the restriction at issue pursued the aim of legal certainty and the good administration of justice, as follows from the essence of the Government's arguments.

73. Notwithstanding the above considerations, the Court notes that the Government's argument that the Supreme Administrative Court's decision not to apply by analogy Article 105 of the ILCC had been aimed at respecting the constitutional principle of separation of powers by not intervening as a law-making body in legal relations (see paragraph 60 above) was inconsistent with the Supreme Administrative Court's previous practice of accepting the application of law by analogy. Moreover, it was contradictory to the clear indication given to the legislature by the Supreme Administrative Court that it should fulfil the obligation to adopt a legislative framework in accordance with which the judgments and acts of judicial bodies of a certain jurisdiction would be subject to judicial review by courts of the same jurisdiction (see paragraphs 17-18 above).

74. The Court thus considers that the restriction at issue pursued a legitimate aim. It should be ascertained whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means employed to attain it.

*(iii) Whether the restriction was proportionate*

75. The Court notes that the administrative courts at first instance and on appeal accepted in the present case the interpretation set out in judgment no. 1501/2014 which, despite noting the need for specific legislation on the matter, examined the claim under Article 105 of the ILCC (see paragraphs 12-13 above). Judgment no. 1501/2014 was delivered by the plenary of the Supreme Administrative Court. As the Government acknowledged, sections of that court applied by analogy Article 105 thereafter, accepting accordingly the jurisdiction of the administrative courts, in six other judgments which concerned the same subject, albeit in a broader sense: three judgments on damage caused by police acting as prosecuting authorities, and thus as part of the criminal justice system (nos. 1330/2016, 1533/2018 and 1534/2018), one judgment on notaries functioning as bodies of the judiciary in enforcement proceedings (no. 2168/2016), one judgment on police officers acting in the context of an *in flagrante delicto* procedure (no. 2557/2019) and one judgment on acts of judicial bodies in their administrative functions (no. 48/2016 – see paragraph 58 above; see also *Sine Tsaggarakis A.E.E. v. Greece*, no. 17257/13, §§ 24 and 30, 23 May 2019).

76. The Court also notes that the Supreme Administrative Court, in judgment no. 800/2021, after restating, as in judgment no. 1501/2014, that the State's liability for damage caused by acts of the judiciary was enshrined in the Constitution and that specific legislation should be enacted, ruled for the first time that the relevant damage could not be compensated for, either by relying on the Constitution directly or on the terms and conditions of Article 105, the latter point representing a change in its previous position. Although the Court takes note of the Government's assertion that this was similar to the position of the minority in judgment no. 1501/2014 (see paragraph 57 above), it shows that no judgment taking that view had been delivered before the impugned judgment. Moreover, the Supreme Administrative Court raised of its own motion the point regarding lack of jurisdiction of the administrative courts. The position taken in the impugned judgment was not in line with the Supreme Administrative Court's previous practice on the matter.

77. At this juncture the Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law; the Court will not substitute its own interpretation for the courts in the absence of arbitrariness. The Court's role is not to approve or disapprove as such the solution ultimately adopted by the Supreme Administrative Court as regards the State's liability for damage caused by judicial bodies but is limited to that of verifying the compatibility with the Convention of the effects of such an interpretation (see *Çela v. Albania*, no. 73274/17, § 32, 29 November 2022). The Court must thus examine whether the decision taken in the present case maintained the right balance between the legitimate aim of legal certainty and good administration of justice and the right of access to a court. It therefore must analyse whether the manner in which the Supreme Administrative Court interpreted and applied national law in order to declare the applicant's action inadmissible was compatible with Article 6 § 1 of the Convention (see, for instance, *Ghrenassia v. Luxembourg*, no. 27160/19, § 29, 7 December 2021).

78. While case-law development is not, in itself, contrary to the proper administration of justice (see *Lupeni Greek Catholic Parish and Others*, cited above, § 116; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 58, 20 October 2011; and *Legrand v. France*, no. 23228/08, § 37, 26 May 2011), in previous cases where changes in domestic case-law had affected pending civil proceedings, the Court was satisfied that the way in which the law had developed had been well known to the parties, or had at least been reasonably foreseeable, and that no uncertainty had existed as to their legal situation (see *Petko Petkov v. Bulgaria*, no. 2834/06, § 32, 19 February 2013, and the authorities cited therein).

79. In the light of its previous considerations, the Court notes that, even if at the time when the applicant had brought his action on 13 December 2007 (see paragraph 10 above), judgment no. 1501/2014 of the Supreme Administrative Court had not yet been issued, the administrative courts at

first instance on 20 April 2015, and on appeal on 23 February 2017, had followed the interpretation set out in that judgment. They had considered the applicant's action and appeal admissible, and they had examined them under Article 105 of the ILCC (see paragraphs 12-13 above). At the time when the applicant lodged his appeal on points of law, the administrative courts had not raised any admissibility issue and there was no indication of any perceptible line of case-law development departing from the interpretation set out in the Supreme Administrative Court's judgment no. 1501/2014, which had been followed in judgments thereafter. The new interpretation set out in its judgment no. 800/2021 had the effect that the applicant's action was considered for the first time inadmissible. The applicant had no reason to believe that the Supreme Administrative Court would depart from its previous case-law (see, *mutatis mutandis*, *Gil Sanjuan*, cited above, § 39 and *Legros and Others v. France*, nos. 72173/17 and 17 others, §§ 156-157, 9 November 2023).

80. The Court observes that the Supreme Administrative Court's interpretation resulted in the applicant's claim not being eligible *ad infinitum* for judicial review. In fact, regard being had to the particular circumstances of the case, notably the finding that until specific legislation was enacted Article 105 of the ILCC could not be applied by analogy and that the administrative courts lacked jurisdiction, the Supreme Administrative Court's ruling constituted an insurmountable obstacle to any future attempts of the applicant to claim compensation from the State for the alleged errors of the civil courts until the eventual adoption of new legislation (see, *mutatis mutandis*, *Lupaş and Others v. Romania*, nos. 1434/02 and 2 others, § 73, ECHR 2006-XV (extracts)).

81. Accordingly, reiterating that all the provisions of the Convention and its Protocols must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory, the Court, although it understands the complexity of the matter and the need to ensure legal certainty and to protect the authority of the judiciary, is not convinced by the argument that, as concerns the failure to introduce to date the necessary legislation, regard should be had to the fact that only a short period of time had lapsed since the dismissal of the applicant's action (see paragraph 60 *in fine* above). In this connection, it notes that the need to enact specific legislation was first stated in judgment no. 1501/2014 (see paragraph 11 above) and the Government have not indicated any action taken thus far in that direction. Therefore, the new interpretation set out in the impugned judgment which had the effect that the applicant's action was considered inadmissible combined with the fact that legislation has not been enacted for more than seven years, placed a restriction on the applicant's right of access to a court for an undetermined period which must at the very least be considered as creating legal uncertainty to the applicant's detriment (see, *mutatis mutandis*, *Arrozpide Sarasola and Others v. Spain*,

nos. 65101/16 and 2 others, § 107, 23 October 2018). Moreover, there is nothing in the applicant's behaviour to justify that the burden of the consequences of that uncertainty should be placed on him (see, *mutatis mutandis*, *Çela*, cited above, § 39).

82. Finally, the Court notes that in the impugned judgment the minority judges pointed out (see paragraph 16 above) that, in judgment no. 799/2021, delivered on the same date, the application by analogy of Article 105 was accepted until such time as the legislature enacted specific regulations on the State's liability for acts of the judiciary as regards the rights deriving from the legal order of EU law. The Court understands the argument put forward concerning the need for the uniform application of EU law as regards the State's liability for judgments infringing that law. However, it emphasises that the altered position adopted in judgment no. 800/2021 resulted in excluding access to a court in the applicant's case, which concerned a civil court judgment in relation to which a violation of Article 6 § 1 of the Convention had been found by the Court.

83. In the light of the foregoing considerations, the Court finds that a disproportionate burden was imposed on the applicant, depriving him of any clear and practical opportunity to have the courts decide on his action and thereby impairing the very essence of his right of access to a court.

84. The Court therefore finds a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant sought compensation in respect of pecuniary damage resulting from the dismissal of his action as inadmissible, claiming 47,280 United States dollars (USD), or the equivalent amount in euros on the date of payment, and 16,860 euros (EUR), plus interest calculated from the date on which he had initially brought his action in the domestic courts.

87. The Government submitted that even if the Court were to find a violation, it could not reasonably speculate on what the outcome of the proceedings before the competent national courts would be. Additionally, they maintained that in the event that the Court found a violation, the applicant had access to a procedure to reopen the case in the domestic courts in accordance with Article 69A of Presidential Decree no. 18/1989 as inserted

by Article 16 of Law no. 4446/2016, and he could request a retrial. In any event, the Government considered the amount excessive and unjustified.

88. With regard to non-pecuniary damage, the applicant submitted that he had been engaged in acutely stressful and time-consuming legal proceedings for several years and that he had suffered psychological damage as a result of a breach of his fundamental rights. He claimed EUR 5,000 in respect of non-pecuniary damage, plus interest calculated from the date on which he had lodged his application.

89. The Government contended that the amount was excessive and unjustified and that it had not been corroborated by reference to specific consequences proved to have been suffered by the applicant as a result of the violation. They further submitted that a finding of a breach of the Convention would constitute sufficient just satisfaction.

90. The Court notes that the applicant claimed the same amounts in respect of pecuniary damage as those which he had claimed in his action in the administrative courts as compensation for the damage which in his view he would not have suffered if the Court of Cassation had not declared the two grounds of his appeal inadmissible. The Court cannot speculate on what the outcome of the proceedings on the State's liability would have been if his action for damages had been examined on the merits; it therefore rejects this claim. However, the applicant must have sustained non-pecuniary damage as a result of the violation of Article 6 § 1. Making its assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

91. The applicant claimed EUR 1,860 for the costs incurred before the Court, plus interest calculated from the date on which he had lodged the application. He submitted an invoice.

92. The Government contended that the amount was excessive, as the proceedings had been done in writing, without a hearing before the Court.

93. 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 1,860 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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, at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,860 (one thousand eight hundred and sixty 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;

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

Done in English, and notified in writing on 4 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Milan Blaško<br>Registrar | Pere Pastor Vilanova<br>President |