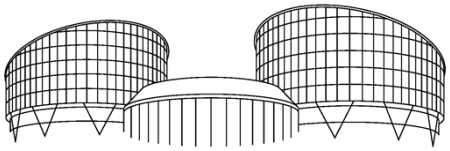

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BELTSIOS v. GREECE

(Application no. 57333/14)

JUDGMENT

STRASBOURG

28 November 2023

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

In the case of Beltsios v. Greece,

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

Yonko Grozev*, President*,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 57333/14) 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 29 July 2014 by a Greek national, Mr Ioannis Beltsios, born in 1951 and living in Athens ("the applicant") who was represented by Mr I. Anagnostopoulos, a lawyer practising in Athens;

the decision to give notice of the complaints concerning Articles 6 § 2 and 5 § 4 to the Greek Government ("the Government"), represented by their Agent's delegates, Ms Z. Chatzipavou, senior adviser at the State Legal Council, and to declare inadmissible the remainder of the application;

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 7 November 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns an alleged violation of the presumption of innocence under Article 6 § 2 of the Convention and the alleged failure to decide "speedily" on the application for the applicant's release under Article 5 § 4.

2. In 2000 a contract was signed for the procurement of submarines from the German consortium H.-F. by the Hellenic Shipyards for a total value exceeding 1,3 billion euros (EUR). In 2002 another contract was signed for the repair of submarines for a total value of over EUR 820 million. In 2010 audit companies in Germany were assigned to perform an internal audit of company F. and a compliance report was issued. On 30 October 2010, following an investigation conducted by the German authorities for corruption, criminal proceedings were opened in Greece against forty-one persons, including the applicant. In 2011 a report was issued by a special committee of the Greek Parliament assigned to investigate the former Defence Minister's liability as regards the submarine contracts.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND PRE-TRIAL DETENTION

3. In 2011, after the preliminary investigation, criminal proceedings were instituted against the applicant and forty other persons, in respect of having unlawfully assisted a German company to obtain the submarines' related contracts. In particular, he was accused that he had promised and transferred money to the Minister of Defence at the time A.T., and to the top managers of Hellenic Shipyards, so that they assisted in this action by breaching their duties. A further accusation against him was that between March 2000 and October 2003, together with others and repeatedly, he had intentionally concealed the real origin of over EUR 52 million and over 2,9 million Swiss francs (CHF), as well as received and transferred these sums, resulting from corruption in the context of the submarine contracts.

4. On 29 September 2011 the criminal file was transferred to the Investigating Judge at the Athens Criminal Court of First Instance for the main investigation. The applicant was placed in preliminary detention as of 13 January 2014, confirmed by the Investigating Judge on 18 January 2014.

5. On 23 January 2014 the applicant lodged a recourse (*προσφυγή*) against the pre-trial detention, requesting its replacement by other preventive measures. On 7 April 2014 the prosecutor submitted his proposal before the Indictment Division of the Athens Criminal Court of First Instance (*Συμβούλιο Πλημμελειοδικών*) to dismiss the recourse. The Indictment Division met on 27 May 2014 and by order (*βούλευμα*) no. 1821/2014, published on 6 June 2014, rejected the applicant's recourse. By order no. 2369/2014 published on 10 July 2014, the Indictment Division ordered extension of detention for six months, namely until 13 January 2015.

6. The applicant lodged an application before the Court on 29 July 2014.

7. By order no. 518/2015 the applicant was referred to trial before the Indictment Division of the Athens Criminal Court of Appeal for i) active bribery to the detriment of the State, committed together with others and repeatedly, under particularly aggravating circumstances, causing the State particularly significant damage, and ii) laundering the proceeds of organised crime together with others and committed as a profession. By the same order his pre-trial detention was replaced by preventive measures. The applicant was detained until 27 March 2015.

II. CRIMINAL PROCEEDINGS AGAINST A.T.

8. By order no. 545/2013 former Minister A.T. and eighteen co-accused (the applicant was not among them) were referred for trial for laundering, together with others and individually, the proceeds of passive bribery in the amount exceeding EUR 150,000. By judgment no. 4554/2013 delivered on 7 October 2013, the three-member Athens Criminal Court (*Τριμελές Εφετείο*

Κακουργημάτων) convicted A.T. as charged. It convicted sixteen other accused for related crimes.

9. The relevant parts of the judgment read as follows:

> "[Page 2052] "Further, according to the evidence in the German judicial file, ... executives of company F. agreed to use a team of persons [...]. The team was constituted of persons who could exert pressure [...] so that through bribery the supply of the submarines would be trusted to the consortium. Among the members of the team was [...] Ioannis Beltsios, former associate and acquaintance of the former Minister [...]. These persons, in collaboration with the executives of company F. organised subgroups, in order to exert influence and succeed in entrusting the supply of the submarines to the consortium, satisfying its business interests. ...
>
> [Pages 2059-2060] Among the members of the team, as it is already exposed, were [...] and Beltsios. Beltsios, a civil engineer who, as it is referred to in the compliance report for company F., ... was a close associate and friend of A.T., as exposed in the report of the Parliamentary Committee of 2011, while he had served as a General Secretary at the Ministry of Interior during A.T.'s tenure as the Minister. As reported by [Mr. H.], A.T. recommended ... to use Beltsios, when [Mr. H.] asked [A.T.] what the consortium could do in order to create a 'counterweight' against the French competitors. This fact is fully confirmed by what will follow. The initial agreement between company F. and the above consultants (Beltsios, [...] etc.) was that the payments would be made to offshore companies connected with these consultants. ...
>
> [Page 2061] As it appears mainly from the lawsuit of company D. against company F., but also from the compliance report for company F., which draws on material from the archives of company F., [...] Beltsios appeared as a representative of Mr. A., a fact which confirms that he was one of those who received bribe payments on behalf of A.T. ...
>
> [Page 2062] It is very interesting that [...] the Munich Court of First Instance estimates that from 37.3 million euros paid to Mr. A. and to his circle [...] at least one third, namely 12.43 million, was channelled in fact to officials in Greece as bribes. An unknown amount, part of that amount of money, according to the aforementioned considerations, came through Beltsios with the former Minister as recipient. Also Beltsios himself in 2000 had entered into two consulting contracts with company F. and its subsidiary for infrastructure works allegedly in the Hellenic Shipyards (which, as it results from the reports of SDOE [Body for the Prosecution of Economic Crimes] were never executed, proof that they concealed illegal transactions) ...
>
> Notwithstanding the bribe payments [Beltsios] received [ανεξάρτητα από τις μίζες που έπαιρνε] on behalf of the former Minister as a representative of Mr. A "consultant" of company F., he also received other bribes [έπαιρνε κι άλλες μίζες] for A.T., as a special "consultant" of the German company. ... "

III. SUBSEQUENT DEVELOPMENTS

10. Before the three-member Athens Criminal Court the applicant raised an objection of nullity of the procedure under Article 171 § 1 of the Code of Criminal Procedure applicable at the time for non-respect of the presumption of innocence, on the grounds that the court ruling on A.T.'s case accepted the applicant's guilt and prejudiced the subsequent judicial assessment of his case. On 23 January 2019, by judgment no. 345/2019, the Athens Criminal

Court convicted the applicant of aiding and abetting, together with others, the passive bribery of the former Minister of Defence A.T. for the amount of EUR 1,000,000 to the detriment of the State. It rejected his objection, holding that the court had to assess all evidence contained in the judicial file in order to assess the well-foundedness of the accusations and other accused had requested the reading of certain documents for their defence. He was sentenced to eight years' imprisonment. The applicant was acquitted of active bribery and laundering the proceeds of organised crime. The five-member Athens Court of Appeal, by judgment no. 262/2021, accepted an appeal by the applicant and held that he could no longer be prosecuted as the limitation period had expired.

THE COURT'S ASSESSMENT

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

11. The applicant complained about references made in the judgment against A.T., and in particular pages 2052 and 2059-2062, the content of which he presented in his observations, which had allegedly violated the presumption of innocence, essentially finding him guilty of criminal offences.

A. Admissibility

12. In the Government's view, the presumption of innocence did not apply in the present case because there was no link between the proceedings against A.T. and the proceedings against the applicant on which judgment no. 4554/2013 had no impact. Nor could the applicant claim to be a victim of a violation of the right to be presumed innocent because at the time he lodged the application he had not been referred to trial and the impugned statements did not have a prejudicial effect on the proceedings against him as he was acquitted by the appellate court (see paragraph 10 above). The Court has already rejected similar objections (see, for instance, *Karaman v. Germany*, no. 17103/10, §§ 40-44, 27 February 2014). It sees no reason to depart from this conclusion, even if the appellate court by judgment no. 262/2021 held that the applicant could no longer be prosecuted for the expiry of the prescription period.

13. The Government next submitted that the applicant had not exhausted domestic remedies as he could have brought an action for damages against the State based on Article 105 of the Introductory Law to the Civil Code for the damage allegedly caused by the State's authorities and invoked *Anastassakos and others v. Greece* ((dec.), no. 41380/06, 3 May 2011). The Court notes that in that case it accepted that the applicants had failed to exhaust domestic remedies as they ought to have tried initiating a procedure under Article 105 capable of leading to compensation for the alleged damage

due to actions or omissions of judicial authorities relating to the disclosure of a confidential prosecutor's report to the media. However, the present situation clearly differs from that case as the applicant complains that the wording used in judgment no. 4554/2013 disregarded the principle of the presumption of innocence. While the Government produced some judgments which recognised the State's civil liability based on the analogous application of Article 105 in cases revealing manifest errors committed by the prosecutorial or judicial authorities principally in their administrative functions, none of these decisions have concerned a situation similar to the applicant's. An action for damages under Article 105 would thus not have constituted an effective remedy in this regard (see, for similar line of reasoning, *Konstas v. Greece*, no. 53466/07, §§ 28-31, 24 May 2011, and also *Savvaidou v. Greece*, [Committee], no. 58715/15, § 11, 31 January 2023).

14. Finally, in the Government's opinion, following the dismissal of his objection of nullity of the procedure under Article 171 § 1 of the Code of Criminal Procedure (as applicable at the time), the applicant should have appealed against judgment no. 345/2019. The Government produced two judgments in which grounds of appeal on points of law relating to nullity of the procedure due to the non-respect of the presumption of innocence had been dismissed. In those judgments the Court of Cassation assessed whether the appellate court had passed on to the applicant the burden of proof of his innocence, failing to respect the relevant procedural guarantees in the context of the criminal trial against the appellants. It did not provide any examples where the courts examined such a ground of appeal relating to the disregard of the presumption of innocence arising from a trial against another person and its effect on the trial against the appellant. The Court considers that the Government have not shown that the applicant had at his disposal a remedy that was accessible, capable of providing him redress and offered reasonable prospects of success. The Court is therefore satisfied that the applicant exhausted domestic remedies as required by Article 35 § 1 of the Convention.

15. The complaint 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

16. The general principles are summarised in *Karaman* (cited above, §§ 41 and 63).

17. The Court notes that at the time of delivery of judgment no. 4554/2013 convicting A.T. for laundering the proceeds of bribery, proceedings against the applicant before the investigating judge had been set in motion on allegations of active bribery and laundering the proceeds of organised crime. He had thus been "charged with a criminal offence" within the meaning of Article 6 § 2 (see *Šubinski v. Slovenia*, no. 19611/04, § 66, 18 January 2007).

The relevant passages in the judgment concerned his involvement in the submarine contracts which was the subject of the investigation instituted against him. The competent courts had not yet decided on the charges against the applicant, who stood accused of aiding and abetting the passive bribery of A.T. and others. The proceedings were therefore directly linked. It was thus essential to have safeguards to ensure that the decisions taken in the proceedings against A.T. would not undermine the fairness of the subsequent proceedings against the applicant, especially that the latter had not been granted any status in these proceedings which would have allowed him to challenge the findings made therein (see *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 103, 23 February 2016).

18. The criminal proceedings relating to the assessment of A.T.'s guilt involved several persons and there was a need to shed light and examine material concerning complex bribery schemes. In order to assess whether A.T. had laundered the proceeds of passive bribery to the detriment of the State, the court inevitably had to mention the role played by a circle of persons allegedly assigned by the consortium to identify and influence high-ranking officials, such as the applicant. It needed to analyse all the evidence collected during the proceedings and was obliged to establish the facts relevant for the assessment of the legal responsibility of the accused, A.T., as accurately and precisely as possible (see, *mutatis mutandis, Karaman*, cited above, § 66). The court also took the precaution of mentioning the documents (German judicial file, compliance audit report, report of the Parliamentary Committee) or the witness' statements on which certain assumptions were based.

19. However, assessing the impugned statements in their context, in the proceedings against A.T. the court did not make it clear that it was not determining the applicant's guilt. The latter was referred to by name and the statements did not contain any reservation clarifying that his actions were examined in a separate set of criminal proceedings pending at the given time (contrast *Bauras v. Lithuania*, no. 56795/13, § 54, 31 October 2017). In particular, the court stated that "Beltsios appeared as a representative of Mr A., a fact which confirms that he was one of those who... received bribes on behalf of A.T.", "Beltsios himself in 2000 had entered into two consulting contracts with company F. ... (which, as it appears from the reports of SDOE [Body for the Prosecution of Economic Crimes] were never executed, proof that they concealed illegal transactions)", "notwithstanding the bribe payments [Beltsios] received on behalf of the former Minister ..., he also received other bribes for A.T., as a special "consultant" of the German company..." (see paragraph 9. above). Although the court, as the Government rightly pointed out, could not find the applicant guilty in those proceedings, it expressed findings of fact and opinion about his participation in the offence in terms which did not describe a state of suspicion but could be prejudicial regarding his guilt (see *Navalnyy and Ofitserov*, cited above, § 106, and *Krebs v. Germany*, no. 68556/13, § 54, 20 February 2020). The wording

employed by the impugned parts of the judgment read as a whole amounted to a clear declaration, in the absence of a final conviction, that the applicant had committed those criminal offences.

20. Although the court which examined the case against the applicant had to carry out a new assessment of all the evidence and the applicant had the opportunity to contest it, the Court cannot accept the Government's argument that the applicant was afforded all procedural rights before the competent courts ruling on his case. The presumption of innocence rules out a finding of guilt outside criminal proceedings before the competent trial court, irrespective of the procedural safeguards in such parallel proceedings (see *Böhmer v. Germany*, no. 37568/97, § 67, 3 October 2002, and *Krebs*, cited above, § 59).

21. The Court finds that the impugned statements in judgment no. 4554/2013 had been in violation of Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

22. The Court notes that this complaint 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.

23. General principles regarding the right to review of pre-trial detention guaranteed by Article 5 § 4 of the Convention have been stated in a number of judgments (see, among others, *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 251-56, 4 December 2018, and *Tsitsiriggos v. Greece*, no. 29747/09, §§ 63-64, 17 January 2012).

24. On 23 January 2014 the applicant lodged a recourse against the decision to order his pre-trial detention. On 7 April 2014 the prosecutor submitted his proposal before the Indictment Division of the Athens Criminal Court of First Instance. The Indictment Division met on 27 May 2014 and order no. 1821/2014 was published on 6 June 2014, dismissing the applicant's recourse (see paragraph 5 above). The period lasted four months and fourteen days and nothing suggests that the applicant contributed to this. It took the prosecutor two and a half months to submit his proposal without the Government advancing any reasons to justify this delay. Even if the criminal file was of a certain complexity, involving several suspects and concerning complex bribery schemes, the question raised was whether there were serious indications of guilt against the applicant and whether there was a risk of flight or re-offending (see also *Loizou v. Greece,* no. 17789/16, § 56-59, 18 March 2021, in which a similar procedure lasted for four months and eight days). The present case differs from *Kargakis v. Greece* (no. 27025/13, § 101, 14 January 2021) in which the procedure had lasted for sixty-five days, and was of some complexity, including medical certificates which had to be examined.

25. In these circumstances, the Court considers that there has been a violation of Article 5 § 4 of the Convention because of the national authorities' failure to decide on the lawfulness of the applicant's detention "speedily".

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed EUR 10,000 euros in respect of non-pecuniary damage for each of the violations, under Article 6 § 2 and Article 5. The Government retorted that the claim was inadmissible or unfounded.

27. Ruling in equity, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

28. The applicant further claimed, after the submission of his claims for just satisfaction, EUR 8,680 in respect of costs and expenses incurred before the Court, arguing that this claim could not have been submitted earlier because the fee payment and the issuance of the invoice had not yet taken place. The Government maintained that the claim was submitted out of time and it was thus inadmissible.

29. The applicant failed to submit a claim in respect of costs and expenses within the time-limit fixed under Rule 60 of the Rules of Court. The Court considers that there is no exceptional situation (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 61 and 78-82, 30 March 2017), warranting the making of an award in that respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,800 (seven thousand eight hundred euros), 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;

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

Done in English, and notified in writing on 28 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Yonko Grozev President