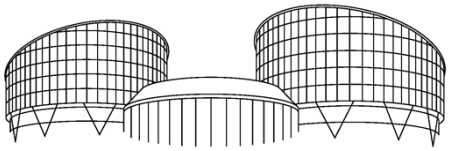

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TSIOLIS v. GREECE

(Application no. 51774/17)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Supreme Administrative Court's dismissal, for non-compliance with admissibility requirements, of applicant's appeal on law relating to a compensation claim for property deprivation • Failure to respond to first appeal ground and key submissions regarding lack of relevant case-law • Lack of an accessible comprehensive case-law database precluding the examination of case merits • Excessively formalistic approach taken in implementation of procedural requirements in rejecting third appeal ground • Very essence of right of access to court impaired

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 November 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 Tsiolis v. Greece,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 51774/17) 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 Tsiolis ("the applicant"), on 14 July 2017;

the decision to give notice to the Greek Government ("the Government") of the of the application concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

the parties' observations;

Having deliberated in private on 15 October 2024,

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

INTRODUCTION

1. The application concerns the dismissal by the Supreme Administrative Court for non-compliance with the admissibility requirements of the applicant's appeal on points of law relating to a claim for compensation for deprivation of his property.

THE FACTS

2. The applicant was born in 1938 and lived in Ioannina. He was represented by Mr I. Kantzios, a lawyer practising in Ioannina. The applicant died on 8 June 2019 after the lodging of the present application with the Court. His daughter and heir, Ms Lamprini Tsioli, informed the Court that she wished to pursue the proceedings.

3. The Government were represented by their Agent's delegate, Ms S. Trekli, Senior Adviser at the State Legal Council.

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

I. THE APPLICANT'S CLAIM FOR COMPENSATION

5. By decision no. 255/1981 of the Prefect of Arta the applicant was granted formal authorisation to establish a fish farm on 44,087 square metres of a property that he owned, located by the Ambracian Gulf. A subsequent application lodged by the applicant for authorisation to extend the fish farm to the remaining 26,771 square metres of the property was dismissed by document no. 10725/1992 of the Ministry of Environment issued on 29 May 1992. That document stated that the fish farm was located in the special wetland protection zone ("Zone A") of the Ambracian Gulf and that his fish farm was excluded from the activities that were allowed in the zone.

6. On 1 November 2004 the applicant brought an action in the Administrative Court of First Instance of Athens, (i) stating that owing to the above-noted developments, all his construction works and activities relating to fish farming had ceased, and (ii) seeking compensation from the Greek State under Article 105 of the Introductory Law to the Civil Code ("the ILCC") in the amount of 923,562.05 euros (EUR) in total for pecuniary and non-pecuniary damage allegedly suffered because of the failure of the relevant State bodies to issue a presidential decree, as prescribed in Article 22 § 4 of Law no. 1650/1986. Such a decree should have set out the conditions and procedure in respect of the awarding of financial compensation to owners of property on which restrictions had been imposed for reasons of environmental protection which were excessively burdensome and impeded the exercise of one's right of property (*δικαίωμα της ιδιοκτησίας*). The amount sought was calculated on the basis of the value of his property (as calculated by the applicant) and his alleged loss of earnings between 1 January 1999 and 31 October 2004.

7. On a subsidiary basis, the applicant sought *via* his action (*επικουρική βάση της αγωγής*) the amount of EUR 474,092.05 as compensation for the restriction of his right of property under Article 22 § 1 of Law no. 1650/1986.

8. By judgment no. 6211/2006 the Athens Administrative Court of First Instance dismissed as unfounded the applicant's action relating to the State's failure to issue a presidential decree. It further declared inadmissible his subsidiary action for compensation under Article 22 § 1 of Law no. 1650/1986 on the grounds that the applicant had failed to first seek compensation from the relevant administrative authority.

9. The applicant appealed against the dismissal of the subsidiary basis of his action (Article 22 § 1 of Law no. 1650/1986). The Athens Court of Appeal dismissed the appeal by its judgment no. 3882/2007, which upheld the judgment delivered at first instance.

10. Subsequently, the Supreme Administrative Court by its judgment no. 4283/2013 allowed an appeal on points of law lodged by the applicant and quashed the appellate court's judgment. It held that owners of property on which restrictions had been imposed had the right to bring a direct action

(*ευθεία αγωγή*) against the State under Article 22 § 1 of Law no. 1650/1986 seeking compensation for having been deprived in substance of the possibility of putting their respective property to its intended use (*λόγω ουσιώδους στέρησης της χρήσης ιδιοκτησίας κατά τον προορισμό της*), without being first required to have lodged an application for compensation with the administrative authorities. State's failure to issue the above-mentioned presidential decree (see paragraph 6 above) resulted in evasion of its obligation to compensate owners of property on which restrictions had been imposed. That was contrary to the principle of equality in respect of public charges, the principle of proportionality and the right to property under the Convention and the Constitution. The Supreme Administrative Court referred the case back to the Athens Court of Appeal for a fresh judgment.

11. In its judgment no. 6432/2014 the Athens Administrative Court of Appeal dismissed the applicant's appeal, holding that his claim for compensation under Article 22 § 1 of Law no. 1650/1986 had become time-barred. It held that, within the meaning of Article 22 § 1 of Law no. 1650/1986, the right of an owner of property on which restrictions had been imposed owing to its location in Zone A to claim compensation arose "in the absence of a specific provision, after a reasonable period (*εύλογος χρόνος*) had elapsed following the imposition of the restrictive measure in question (cf. judgments nos. 2165/2013, 80/2013, 2707/2009, 323/2009, 325-6/2009, 3000/2005 (seven members), 3146/1986 (plenary) of the Supreme Administrative Court, ECHR 28.11.2011 Fix v. Greece)" (*Fix v. Greece*, no. 1001/09, 12 July 2011).

12. The court further held that Article 90 § 1 of Law no. 2362/1995 provided a limitation period of five years in respect of claims against the State. Article 91 of the same Law provided that that limitation period began at the end of the financial year within which such a claim arose and could be pursued through the courts. The court further held that given that the applicant's application for authorisation to extend the fish farm had been dismissed in 1992 (see paragraph 5 above), his right to claim compensation had arisen and had become pursuable in the courts after a "reasonable period" of five years had elapsed following that dismissal. The court stated that applicant's claim had thus arisen at the end of 1997; it added that in view of the five-year limitation period that had begun at that point, his claim had already become time-barred by the time that he had brought his action in 2004.

II. PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURT

13. With effect from 1 January 2011, Article 12 § 1 of Law no. 3900/2010 amended Article 53 § 3 of Presidential Decree no. 18/1989 and introduced a new statutory provision governing the admissibility of appeals on points of

law (for further details see paragraph 35 below; see also *Aigaion Oil v. Greece* (decision), no. 3714/16, § 15, 2 October 2018, and *Papaioannou v. Greece*, no. 18880/15, §§ 14-25, 2 June 2016).

14. By an appeal on points of law lodged on 29 June 2015 with the Supreme Administrative Court, the applicant, represented by a lawyer, sought the quashing of judgment no. 6432/2014.

A. The applicant's appeal on points of law

1. The grounds for the applicant's appeal on points of law

(a) First ground

15. The applicant argued that the judgment of the Athens Court of Appeal – which had ruled that his action had become time-barred by virtue of the expiration of the relevant five-year limitation period which had started after the "reasonable period" of five years had elapsed following the dismissal of his application for authorisation to extend his fish farm – had lacked sufficient reasoning and had been based on an incorrect interpretation of the relevant law. He maintained that the appelate court incorrectly considered that his claim was based on the tort liability of the State instead of a claim directly arising from a specific legal provision. Additionally, according to the applicant, a period of five years constituted a "reasonable period" only in respect of the revocation of administrative decisions – which did not apply to his case. It could not be excluded that in respect of his case, a "reasonable period" meant – in the light of the relevant case-law of the Supreme Administrative Court – a period of more than five years. Taking into account the consistent failure of the authorities to issue the presidental decree prescribed by Article 22 § 4 of Law no. 1650/1986 in order to provide compensation for the damage caused by the continuous blocking of the intended use of his property, a "reasonable period" should be considered to amount to at least seven years from the occurrence of the burdensome measure in question. This would mean that the reasonable period had actually started in 1992 and lasted until 1999, by the end of which the five-year limitation period had started. Therefore, the limitation period ran until 31 December 2004, and the action had therefore not yet become time-barred by 10 November 2004 when the applicant had lodged it. The impugned judgment had thus erroneously interpreted Articles 90 and 91 of Law no. 2362/1995, Article 22 §§ 1 and 4 of Law no. 1650/1986 and Article 24 § 6 of the Constitution.

(b) Second ground

16. The applicant argued that, in view of the fact that the law did not stipulate a clear, pre-defined limitation period based on objective criteria in respect of the direct claim based on Article 24 § 6 of the Constitution and

Article 22 §§ 1 and 4 of Law 1650/1986, the limitation period was twenty years, in accordance with the general rule set out by Article 249 of the Civil Code. The impugned judgment had thus erroneously interpreted the relevant provisions.

(c) Third ground

17. The applicant submitted that the Court of Appeal had found by judgment no. 6432/2014 that under Article 22 of Law no. 1650/1986, the right of an owner of property on which restrictions had been imposed to claim compensation arose "in the absence of a specific provision, after a 'reasonable period' had elapsed following the restrictive measure" in question (see paragraph 11 above), and that the relevant limitation period started after that period. He further argued that national law was not sufficiently foreseeable and precise as regards the starting point of the limitation period in respect of the type of claim provided for by Article 24 § 6 of the Constitution and by Article 22 §§ 1 and 4 of Law no. 1650/1986. No person concerned could know in advance (on the basis of objective and predefined criteria) the exact starting point of that limitation period: there was no specific legal provision regulating this point, and to cover that vacuum it was deemed that that period started after the lapse of a "reasonable period" – an abstract notion that was not sufficiently foreseeable. The court considered a "reasonable period" to amount to five years; the applicant argued that the length of that period could not be known in advance and was not based on objective criteria, but rather depended on the wide powers of discretion enjoyed by the courts in this respect.

18. The applicant also stated that according to the relevant case-law of the European Court of Human Rights, the starting points of limitation periods should be clearly defined and linked to specific, objective and pre-defined facts that were known in advance. When the setting of the date from which a litigant could claim his debts depended on fortuitous and unforeseeable events outside his or her sphere of influence, the imperatives of the rule of law were hard to be satisfied. The applicant submitted that there was no standard case-law sufficiently accessible to a litigant, as it would be mentioned in the relevant section on the admissibility (of that litigant's appeal on points of law) in respect of the determination of the length of that "reasonable period" (which could be longer than five years). In respect of one single claim, one court could rule that this period was longer than five years and another court could rule that it was precisely five years. Different litigants were therefore placed in different situations as regards the starting point of the limitation period, depending on how different courts exercised their discretion. Consequently, the finding of the appellate court – namely, that (i) the limitation period had started after the passage of a "reasonable period" (which had been arbitrarily and without proper reasoning determined by the appellate court to amount to five years) following the imposition of the

restrictive measure, and (ii) that court's interpretation of the provisions on the limitation period (Articles 90 and 91 of Law no. 2362/1995) – had been contrary to Article 1 of Protocol No. 1 to the Convention and should therefore be considered void.

2. The arguments in support of the admissibility of each ground for the applicant's appeal on points of law

(a) Admissibility of the first ground for the applicant's appeal on points of law

19. In a separate section of his appeal on points of law entitled "Admissibility of the appeal on points of law (Article 53 § 3 of Presidential Decree no. 18/1989, as amended by Article 12 § 1 of Law no. 3900/2010)", the applicant argued, in support of the admissibility of the first ground for his appeal on points of law, that (i) the Court of Appeal's finding that the limitation period had started after the elapse of the "reasonable period" of five years from the issuance of the dismissal document of the Ministry had been contrary to judgment no. 749/2011 of the Supreme Administrative Council of State; (ii) the Court of Appeal's finding that five years should constitute the "reasonable period" pursuant to Article 1 of Law no. 261/1968 had been contrary to the Supreme Administrative Court's judgments nos. 832/1983, 3550/1988, 1283/1993, 384/2012, 2616/2002, 2695/2012, 1211/2011, 2919/2007 and 2251/2002 and – in particular – no. 2566/2002 which had accepted that a lapse of seven years constituted a "reasonable" length of time; and (iii) otherwise, in any other case, there was no case-law of the Supreme Administrative Court concerning those legal issues.

(b) Admissibility of the second ground for the applicant's appeal on points of law

20. Furthermore, in support of the admissibility of the second ground for his appeal on points of law, the applicant maintained that: "As regards the second ground for appeal, that which has been mentioned immediately above should apply".

(c) Admissibility of the third ground for the applicant's appeal on points of law

21. As regards the third ground for his appeal on points of law, the applicant argued that the Court of Appeal's judgment no. 6432/2014 had been "contrary to *Forminster Enterprises Limited v. the Czech Republic* (no. 38238/04, § 65, 9 October 2008), *Kokkinis v. Greece* (no. 45769/06, §§ 34-35, 6 November 2008) and *Reveliotis v. Greece* (no. 48775/06, 4 December 2008)".

3. Other arguments relating in general to the admissibility requirements of an appeal on points of law and access to a court

22. Lastly, the applicant argued that it was excessively formalistic and pointless to be required (for the purposes of admissibility) that – in the appeal on points of law – it be argued that an appellate court's judgment had been contrary to case-law or that there was no relevant case-law. His arguments were as follows:

a) case-law did not constitute facts that a litigant had to cite and prove; rather, it concerned the interpretation of the relevant legal rules – of which the judge was already aware (*jura novit curia*). There was an irrefutable presumption that the Supreme Administrative Court was familiar with its own case-law and that the citing of the relevant case-law by a litigant in his or her appeal on points of law could not be justified as being in the public interest – especially given that failure to do so rendered the remedy inadmissible.

b) the case-law database of the administrative courts was accessible only to judges and not to citizens and lawyers. Other available databases contained only a selection of a part of the case-law. It was thus an obligation to undertake an impossible task.

c) unlike laws, case-law was not published in the Official Journal or any equivalent medium, which would ensure that it was fully publicised.

d) the obligation at issue constituted a formality that was pointless and impossible to comply with, and it accordingly manifestly violated the principles of public trial (*αρχή της δημοσιότητας*) and proportionality.

e) the obligation had led to inappropriate results – namely: i) it had prevented litigants from citing case-law of which they had previously (that is, at the time of their lodging of the appeal on points of law) not been aware, or which had been subsequently established, ii) it had resulted in the Supreme Administrative Court declaring inadmissible a remedy that had been enshrined in the Constitution on the grounds that the litigant had not invoked case-law of which the court had been aware, and iii) in the event that a litigant argued that there was no relevant case-law in respect of the legal matter at issue and the court in question determined that – on the contrary – there was indeed case-law according to which the legal question at issue had been resolved in the opposite manner to that in which the legal question had been resolved in the litigant's case, it would declare such an appeal on points of law inadmissible instead of accepting it. In the event that the litigant argued that there was case-law that contradicted the appellate court's judgment but the court ruled that the case-law cited by the litigant did not concern the legal matter in question and that court itself then cited case-law that ran counter to the appellate court's judgment, it again would declare the appeal on points of law inadmissible, iv) it led to the absurd and contradictory result that, in the event that a court indeed found that there existed contradictory case-law, it did not remove the legal uncertainty if the applicant did not invoke that case-law – even if that case-law was in any event known to the court.

f) access to a lawfully established second-instance court had been impeded, in violation of Articles 6 § 1 and 15 of the Convention.

23. The applicant concluded that, "in view of the above, the appeal on points of law [had been] lodged in an admissible manner ...".

B. The Supreme Administrative Court's judgment no. 115/2017 on the applicant's appeal on points of law

24. On 16 January 2017 the Supreme Administrative Court by its judgment no. 115/2017 rejected the applicant's appeal on points of law.

1. The admissibility requirements of the appeal on points of law

25. The court held at the outset that for the appeal on points of law to have been considered admissible the appellant should have substantiated with specific and precise arguments, which should have been contained in the relevant appeal on points of law, that (i) each of the grounds of appeal on points of law raised a specific legal issue that was crucial for the resolution of the dispute brought before the Supreme Administrative Court, and (ii) in respect of this legal matter either there was no case-law of the Supreme Administrative Court or the findings of the impugned judgment had been contrary to the then applicable case-law of the Supreme Administrative Court or of another supreme court or of a final judgment of administrative courts. In that sense, "case-law" comprised that case-law which had been formulated in respect of the same crucial legal matter and not in respect of an analogous or similar legal matter.

26. The Supreme Administrative Court observed that an appellant should specifically cite a judgment delivered by a supreme court or administrative courts and argue (and substantiate his arguments) that the impugned judgment had been contrary to that judgment in respect of the same legal matter, namely in respect of the interpretation of a legal provision or of a general principle of substantial or procedural law. As regards the lack of any case-law of the Supreme Administrative Court, this could not concern the sufficiency of the reasoning regarding the facts of the case; rather, it had to exclusively concern the interpretation of a legal provision or a general principle that could be applied generally – irrespective of whether that interpretation had been stated in the part of the judgment containing the relevant legal provisions (*μείζων πρόταση του δικανικού συλλογισμού*) or in the part containing the accepted facts and their legal classification (*ελάσσων πρόταση του δικανικού συλλογισμού*). The appeal on points of law should be then considered admissible and examined in so far as it concerned a specific legal matter on which there was "contrariety" (*αντίθεση*) – provided that this was considered necessary for the resolution of the entire case.

27. The Supreme Administrative Court further observed that the admissibility requirements were aimed at reducing the high number of cases

before it in which no serious or resolved legal issues arose. That was in order to allow it to better serve its main mission as a supreme court: unifying when functioning as a cassation court the administrative courts' respective case-law and speeding up the administration of justice. The right of access to a court was ensured, as there had been a final adjudication of a case by the administrative courts at previous instances while the requirements of access to a cassation court could be more formal. Therefore, it dismissed as unfounded the applicant's allegations that Article 53 of Presidential Decree no. 18/1989 had deprived him of access to a court and that the interpretation of that Article was excessively narrow and contrary to Articles 6 and 15 of the Convention (see paragraph 22 above). It dismissed as unfounded his arguments that the admissibility requirements constituted an excessively formalistic and pointless formality.

2. The admissibility of each ground for appeal on points of law

(a) First ground

28. The Supreme Administrative Court subsequently declared the first ground (see paragraphs 15 and 19 above) inadmissible, holding firstly that judgment no. 749/2011 of the Supreme Administrative Court had not concerned the same legal matter regarding the starting point of the limitation period in respect of a claim for compensation under Article 24 § 6 of the Constitution. The judgment had concerned the analogous matter of the starting point of the limitation period in respect of a claim for compensation based on the tort liability of the State. Secondly, the appellate court's judgment no. 6432/2014 had not based its finding that five years should constitute "reasonable period" on Law no. 261/68.

(b) Second ground

29. As regards the second ground (namely, that as the law did not clearly provide a limitation period in respect of the claim based on Article 24 § 6 of the Constitution, a limitation period of twenty years should apply – see paragraphs 16 and 20 above), the Supreme Administrative Court declared it inadmissible because the legal matter had not been identified in an independent and precise manner and it had not been shown how that legal matter was decisive for the resolution of the dispute at issue.

(c) Third ground

30. As regards the third ground (namely, the alleged lack of foreseeability and clarity of national law as regards the starting point of the limitation period of the applicant's claim – see paragraphs 17-18 and 21 above), the Supreme Administrative Court held that – irrespective of the admissibility or otherwise of an appeal on points of law on the grounds of the contrariety of an appellate court's judgment with the case-law of the European Court of Human Rights

– "this allegation of contrariety with judgments of the ECHR (which [in fact] [did] not concern the specific legal matter on which the appellate court's judgment [had] decided)" should be dismissed as unfounded.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGISLATION

31. Article 24 § 6 of the Constitution reads as follows:

> "6. Monuments, historic areas and historic elements shall be protected by the State. A law shall provide for the restrictions on property which are deemed necessary for this protection, as well as for the manner and type of compensation payable to owners."

32. The relevant domestic law and practice regarding the protection of the environment and the right to claim compensation from the State for restrictions imposed on the right to property on environmental grounds are described in the Court's case-law, notably in *Thanopoulou v. Greece*, no. 65155/09, §§ 31-32, 12 July 2011 and *Theodoraki and Others v. Greece*, no. 9368/06, §§ 23, 26-27, 11 December 2008). In particular, the relevant provisions of Article 22 of Law no. 1650/1986 on the protection of the envioronment read as follows:

> "1. If the imposed ... conditions, restrictions and prohibitions are extremely burdensome, thus excessively impeding the exercise of the powers deriving from the right to property ... , the State, at the request of the persons affected, may, insofar as possible, either accept the exchange of private land for land belonging to the State, or the concession of nearby public land for similar use and exploitation, or the payment of compensation, in a lump sum or periodically, for the determination of which account shall be taken of the actual use of the private land ...
>
> (...)
>
> 4. A presidential decree, issued on the proposal of the Ministers of Finance, Agriculture and Environment, Spatial planning and Public works, lays down the conditions, the necessary supporting documents, the procedure and other terms for the allocation of counterweights, compensation or subsidies ..."

33. The relevant provisions of Law no. 2362/1995 regarding the limitation period of claims against the State read as follows:

> **Article 90**
> **Limitation period in respect of claims against the State**
>
> "1. Any claim against the State [must be lodged] within five years, provided that there is no other general or special provision providing a shorter limitation period ..."
>
> **Article 91**
> **Starting point of the limitation period in respect of claims against the State**
>
> "Notwithstanding any other special provision of the instant [Law], the limitation period of any claim against the State starts from the end of the financial year within which the claim arose and became pursuable in court ..."

34. The relevant provision of Article 1 of Law no. 261/1968 (that Law's only Article) reads as follows:

> "1. Individual administrative decisions that have been issued unlawfully may be revoked by the administrative authorities freely and without any consequence for the State, within a reasonable period of time following their issuance.
>
> Except where other legal provisions provide differently, a period of fewer than five years – at least from the issuance of the acts that should be revoked – can in no case be considered as unreasonable for the [purposes of] revocation ... "

35. Article 12 § 1 of Law no. 3900/2010 amended Article 53 of Presidential Decree no. 18/1989 with effect from 1 January 2011. The relevant provision of Article 53 reads as follows:

> "3. An appeal on points of law may be lodged only when the litigant maintains by specific arguments, contained in [his or her] substantive appeal on points of law (*εισαγωγικό δικόγραφο*), that there is no case-law of the Supreme Administrative Court, or that the impugned judgment is contrary to the case-law of the Supreme Administrative Court or of another supreme court or to a final judgment of an administrative court.
>
> ... ".

The explanatory memorandum to Law no. 3900/2010, which adopted important changes in the procedure to be followed before the Supreme Administrative Court, stated in respect of Article 12 § 1 that in order for the procedure to be accelerated, the number of cases brought had to be drastically decreased. A large number of appeals on points of law did not raise important legal issues but simply constituted an attempt by the party concerned to bring for the third time a claim before a court after seeing that claim dismissed at two lower instances. The administrative authorities also insisted on the exhaustion of all legal remedies – even in trivial cases. The reduction of the backlog should, however, be achieved in compliance with the right of access to a court. In order to substantially accelerate judicial proceedings, it was decided to adopt an objective criterion and to restrict the admissibility of the grounds for an appeal on points of law. In view of the role of the Supreme Administrative Court as supreme court (which had to ensure the unity of case-law), appeals on points of law should be admissible in cases in respect of which there was not yet any case-law or in the event that the impugned judgment was contrary to existing case-law of the Supreme Administrative Court or of another supreme court or to a final judgment delivered by an administrative court.

II. RELEVANT PRACTICE

36. For a detailed overview and recapitulation of the relevant practice and criticism expressed shortly after the adoption of Law no. 3900/2010, the Court refers to its judgment in the case of *Papaioannou* (cited above, §§ 16-25).

37. The Supreme Administrative Court ruled in its case-law regarding the admissibility requirements set out in Article 53 § 3 of Presidential Decree no. 18/1989 that an appellant himself is responsible for substantiating – by means of specific and precise allegations, to be included in the appeal on points of law – that each of the grounds of appeal on points of law raises a specific legal matter. Such matters shall concern the interpretation of a legal provision or a general principle of substantive or procedural law that is crucial for the resolution of the dispute. It is in respect of those matters that either there should be no case-law of the Supreme Administrative Court or the relevant findings of the impugned judgment must be contrary to non-overturned case-law of the Supreme Administrative Court or another supreme court or to a final judgment of an administrative court. Such case-law shall be that which has been formulated in respect of the same crucial legal matter (the resolution of which was necessary in order to decide on the dispute) and not in respect of an analogous or similar matter (see, for instance, judgments nos. 4163/2012, 3964/2014, 439/2018 and 488/2018). That legal matter on which the courts ruled must have been essential for the resolution of the relevant disputes before those courts (see, for instance, judgments nos. 2301/2011, 3374/2011 and 439/2018).

38. When an appellant has relied on a lack of case-law with regard to a ground for appeal on points of law, the Supreme Administrative Court has accepted the allegation in question as admissible when it has been formulated in a precise manner and the legal matter that is raised has been identified (see, for instance, judgments nos. 266/2016, 96/2016 and 162/2021). A laconic (*λακωνικός*) allegation that there is in general no case-law of the Supreme Administrative Court, without a specific determination of the legal issues, is considered vague, and therefore insufficient for the establishment of admissibility (see, for instance, judgments nos. 2317/2015 and 2325/2015). The Supreme Administrative Court has also ruled that an appellant's argument (in support of the admissibility of an appeal on points of law) that there is no case-law relevant to the invoked grounds for the respective appeal on points of law must be rejected as inadmissible if it was invoked in a vague manner (that is, by mere reference to the grounds for appeal), without identifying independently and precisely the legal issues raised by each of the grounds for appeal and without establishing the relevance of each of those issues to the outcome of those appeal proceedings (see, for instance, judgments nos. 446/2014, 436/2014 and 475/2015).

39. After the delivery of judgment no. 115/2017, the Supreme Administrative Court ruled that "case-law of another supreme court" should be deemed to encompass the case-law of the European Court of Human Rights from which the interpretation of a provision of the Convention and its Protocols results in a sufficiently clear manner. That was so given the fact that, in so far as the interpretation of the Convention is concerned, judgments of the Court have a significance and gravity that is analogous to the case-law

of the domestic supreme courts and that contrariety of an impugned judgment with the ECHR's case-law must be presumed to raise a serious legal question relating to the country's international obligations in the field of human rights. It justified the examination [of the serious legal question] by the Supreme Administrative Court in order to ensure the soundness and unification of case-law as regards the implementation and interpretation of the Convention by the administrative courts (see, for instance, judgments nos. 167/2017 and 2987/2017). Moreover, it was subsequently held (for instance, in judgments nos. 88/2018, 1070/2019, 956/2021) that any relevant case-law which an appellant could argue contradicted the appellate court's judgment should be considered to constitute not only an explicit interpretation of the court but also an interpretation which could be indirectly but clearly inferred and which was included either in the part of the judgment containing the relevant legal provisions (*μείζων πρόταση του δικανικού συλλογισμού*) or in the part containing the accepted facts and their legal classification (*ελάσσων πρόταση του δικανικού συλλογισμού*).

THE LAW

I. STANDING OF THE APPLICANT'S DAUGHTER

40. The applicant died on 8 June 2019 after the lodging of the present application with the Court. His daughter and heir, Ms Lamprini Tsioli, informed the Court that she wished to pursue the proceedings. The Court accepts that she has a legitimate interest in pursuing the application in the late applicant's stead.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant complained that he had been denied a fair trial on account of the rejection by the Supreme Administrative Court of his arguments supporting the admissibility of his appeal on points of law and that this rejection had not been properly reasoned. The applicant relied on Article 6 § 1 of the Convention, which, 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

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

B. Merits

1. The parties' submissions

(a) The applicant

43. The applicant complained under Article 6 § 1 of the Convention that although his appeal on points of law should have been deemed to be admissible, his arguments in support of its admissibility had been wrongly rejected, and with insufficient reasoning. He had been denied a fair trial, given that the Supreme Administrative Court had failed to properly examine his arguments.

44. He had argued in an admissible manner that regarding his claim against the State because of the above-mentioned situation (which had adversely affected him continually), the appellate court's judgment had in respect of certain legal questions contravened the case-law of the Supreme Administrative Court or the European Court of Human Rights – namely, a) the calculation of the start of the limitation period following a "reasonable period" of five years from the issuance of document no. 10725/1992 (see paragraph 5 above), b) the length of the limitation period and c) the clarity, precision and foreseeability of the law as regards the starting point of the limitation period and what could be deemed to constitute the "reasonable period". Alternatively, he had argued in his appeal on points of law that even if the cassation court did not find that there was contrariety, there was a lack of relevant case-law of the Supreme Administrative Court or other supreme court.

45. The applicant maintained that those substantial arguments had been decisive for the outcome of the case and that had they been accepted, the appeal on points of law would have been declared admissible. However, they had been dismissed without their having been properly examined and answered. The Supreme Administrative Court had held that the judgments that he had relied on had not concerned the same legal matters as those raised by the instant case and it had not further examined his substantial arguments regarding the alleged lack of any relevant case-law. According to the applicant, he had substantiated in his appeal on points of law with clarity and precision the legal matters which were crucial for the adjudication of the case and in respect of which there was no case-law.

46. The applicant further argued that under Article 6 § 1 of the Convention a court had the obligation to provide specific, clear and substantiated reasoning in its judgment and to examine specifically, clearly and properly substantial arguments advanced by an applicant that were of significant importance to the case in question. That obligation was even more pressing where the court interpreted and applied vague legal concepts whose meaning was not clear – such as the "reasonable period", the starting point of the limitation period and the length thereof. However, the Supreme

Administrative Court had failed to provide any explanation for why it had not examined and answered the aforementioned substantial submissions, which it had tacitly dismissed arbitrarily and without reasoning. The length of the above-mentioned "reasonable period" had been unclear and had not been determined in advance; therefore, Articles 90 and 90 of Law no. 2362/1995 had not been clear and sufficiently foreseeable in respect of the starting point and the duration of the limitation period.

47. Lastly, the applicant maintained that by its judgment no. 4283/2013 the Supreme Administrative Court had ruled with *res judicata* effect that he had – in accordance with Article 22 §§ 1 and 4 of Law no. 1650/1986 and Article 24 § 6 of the Constitution – a direct claim (under the relevant law) for compensation against the State for his being deprived in substance of the possibility to put his property to its intended use. However, it had not examined his substantial arguments or ruled on the merits of his case and had left his claims unadjudicated.

(b) The Government

48. The Government maintained that Article 12 § 1 of Law 3900/2010, which had amended Article 53 § 3 of Presidential Decree no. 18/1989 and had introduced the admissibility requirements, had been deemed necessary and proportional by the legislature for the purpose of speeding up proceedings before the Supreme Administrative Court, which had been affected by a considerable backlog and had led to delays that had hampered citizens. It had formed a part of measures aimed at strengthening the effective functioning of justice and enabling more effective judicial protection. The Government cited the case of *Papaioannou v. Greece* (no. 18880/15, 2 June 2016) and argued that the Court had already found in that case that the requirements at issue were compatible with the right of access to a court under Article 6 § 1 of the Convention.

49. They further argued that the findings of judgment no. 115/2017 regarding the admissibility of the three above-mentioned grounds, which had contradicted each other in important aspects, had been correct. As regards the first and perhaps the second ground, judgment no. 749/2011 of the Supreme Administrative Court (which had been relied on by the applicant) had concerned the starting date of the limitation period in respect of a claim for compensation against the State under Article 105 of ILCC – which was not the same as the legal basis (Article 22 § 1 of Law no. 1650/1986) for the applicant's claim. In any event, judgment no. 749/2011 had held that the limitation period in respect of all claims against the State was five years (not twenty years) and started from the end of the year within which the validity of the harmful act in question started. This would mean that in the applicant's case his claim would have been proscribed since 1997.

50. The Government further argued that other judgments relied on by the applicant (including judgments nos. 832/1983, 3550/1988 and 2566/2002)

had not concerned the crucial issue of when the limitation period in respect of a claim against the State started, but rather the completely different issue of the "reasonable period" within which the authorities could revoke administrative decisions. In any event, the Supreme Administrative Court had replied that the impugned judgment had not been based on Article 1 (the sole Article) of Law no. 216/1968 that concerned the "reasonable period" within which the authorities could revoke administrative decisions.

51. As regards the third ground for the applicant's appeal on points of law, the Court judgments relied on by the applicant had not concerned the specific legal issue regarding the starting point of the limitation period in respect of a claim for compensation arising from Law no. 1650/1986. *Forminster Enterprises Limited v. the Czech Republic* (no. 38238/04, § 65, 9 October 2008) had concerned a violation of Article 1 of Protocol No. 1 owing to the excessive length of proceedings for the seizure of the applicant company's assets. Judgments in the above-cited cases of *Kokkinis* and *Reveliotis* had concerned violations of the same provision because of the Court of Auditors' interpretation and the application of a legal provision concerning the limitation period in respect of the right to apply for a pension (rendering it essentially dependent on the time taken by the administrative authorities and the courts to decide).

52. The Government further argued that the Supreme Administrative Court had fully reasoned the dismissal of the second ground for the applicant's appeal on points of law. Given that the applicant (in arguing the admissibility of that ground) had referred to the first ground only in vague terms (stating that "as regards the second ground for [the applicant's] appeal, that which has been noted immediately above should apply"), it was not clear to which judgment the applicant was arguing that there had been contrariety. Article 249 of the Civil Code and the limitation period of twenty years applied in respect of civil claims – not public-law claims. There was no doubt or dispute regarding the interpretation of the provisions of Law no. 2362/1995 concerning the limitation period in respect of claims against the State that were clear – provided that the starting point of the limitation period concerning such claims was linked to specific facts and was foreseeable.

53. As regards the applicant's assertion that, in any event, regarding the legal issues in question there existed no case-law of the Supreme Administrative Court, the Government pointed out that in view of the fact that the court had not replied to that assertion, it had obviously rejected it implicitly. That assertion had not been formulated in a manner deemed admissible by the standard and accessible case-law of the Supreme Administrative Court (see paragraph 38 above). It had not specified in respect of which legal issues crucial for the resolution of the dispute there existed no case-law. The grounds relied on by the applicant were also contradictory, unclear and confusing. Supreme courts were not obliged to provide detailed

reasoning when declining to examine an application within the filtering procedure.

54. The Supreme Administrative Court had dismissed all arguments with complete and extensive reasoning and had applied consistently its established and well-known case-law; its interpretation had therefore been lucid and had fully clarified the meaning of the requirement at issue. The applicant had not been taken unawares, as a long time had elapsed from the entry into force of Law No. 3900/2010 on 1 January 2011 until the lodging of the appeal on points of law on 29 June 2015.

55. Furthermore, the Government maintained that any case-law relied on by the appellant had to concern the interpretation of the same legal matter as that which the impugned judgment concerned and not a similar or analogous one. That matter had to be decisive for the resolution of the dispute and not relate to an aspect of the dispute that was of secondary importance. Those conditions had not been met in the present case as the Supreme Administrative Court had held, giving full reasoning. There had been no excessive formalism; rather, there had been an obvious failure on the applicant's part to comply with the procedural requirements. The applicant had not put forward a single valid argument for the admissibility of his appeal.

56. Lastly, the Government argued that the admissibility requirement that the appellant specify the grounds for the admissibility of an appeal on points of law aimed at facilitating the speedier processing of the case by the court in question and did not impose an excessive burden. Even if it were accepted that there had been an interference with the applicant's right of access to a court, that interference was provided for by law and was clear and foreseeable, given that his appeal had been addressed to a supreme court that exercised a special role. It pursued the legitimate aim of maintaining the authority of the judiciary by speeding up proceedings in respect of which a delay would lead to a denial of justice, discouraging any resort to "superficial" and insignificant legal remedies, and enabling the Supreme Administrative Court to focus on its mission – namely, the unification of case-law and the establishment of legal certainty. Lastly, the principle of proportionality had been complied with as the case had been examined on the merits at two lower instances and the applicant had enjoyed the guarantees of a fair trial at each stage.

2. The Court's assessment

(a) General principles

57. The Court deems it appropriate to examine the applicant's complaints from the perspective of the right of access to a court, as guaranteed by Article 6 § 1 of the Convention (see *Kurşun v. Turkey*, no. 22677/10, § 93, 30 October 2018, and *Cañete de Goñi v. Spain*, no. 55782/00, § 33, ECHR 2002-VIII). It refers in this connection to the recapitulation of its

case-law concerning access to court in *Zubac v. Croatia* ([GC] no. 40160/12, §§ 76-79, 5 April 2018).

58. In particular, Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with – for instance the guarantee to litigants of an effective right of access to the courts for the determination of their civil rights and obligations (ibid., § 80, with further references). However, it is not the Court's task to express a view on whether the policy choices made by the Contracting Parties defining the limitations on access to a court are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the Convention.

59. Similarly, the Court's role is not to resolve disputes over the interpretation of domestic law regulating such access but rather to ascertain whether the effects of such an interpretation are compatible with the Convention (ibid., § 81, with further references). The manner in which Article 6 § 1 applies to courts of appeal or of cassation depends on the special features of the proceedings concerned, and account must be taken of the entirety of the proceedings conducted under the domestic legal order and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (ibid., § 82, with further references therein).

60. It is well enshrined in the Court's case-law that "excessive formalism" can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. This usually occurs in cases involving a particularly strict construction of a procedural rule, preventing an applicant's action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (ibid., § 97). An assessment of a complaint of excessive formalism in the decisions of the domestic courts will usually be the result of an examination of the case taken as a whole, having regard to the particular circumstances of that case (ibid., § 98). In making that assessment, the Court has often stressed the issues of "legal certainty" and "proper administration of justice" as two central elements for drawing a distinction between excessive formalism and an acceptable application of procedural formalities. In particular, it has held that the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and instead form a sort of barrier preventing the litigant from having his or her case determined on the merits by the relevant court (see, for instance, *Zubac*, cited above, § 98; *Kart v. Turkey* [GC], no. 8917/05, § 79, 3 December 2009; *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 98, 23 October 2018; and *Efstathiou and Others v. Greece*, no. 36998/02, § 24, 27 July 2006).

61. The Court reiterates that according to its established case-law, Article 6 requires the domestic courts to adequately state the reasons on which their decisions are based (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 185, 6 November 2018). Without requiring a detailed answer to every argument, this obligation presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (ibid., § 185, with a further reference).

62. The extent to which the duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question of whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 37, 20 March 2009, with further references).

(b) Application to the present case

63. The dispute in the instant case relates to the right to compensation where restrictions on property have been imposed for reasons of environmental protection. The Supreme Administrative Court rejected the applicant's appeal on points of law for non-compliance with admissibility requirements. The Court notes that the applicant's access to a court for the purpose of determination of his civil rights was thus restricted by the Supreme Administrative Court's judgment.

(i) Legitimate aim

64. The admissibility requirements to be complied with in lodging an appeal on points of law were set out in Article 53 § 3 of Presidential Decree no. 18/1989, as amended by Article 12 § 1 of Law no. 3900/2010. They required that an appellant rely on specific arguments (to be included in the appeal on points of law) concerning (i) the lack of any case-law of the Supreme Administrative Court, or (ii) the fact that the appellate court's judgment had been contrary to the relevant case-law of the Supreme Administrative Court or another supreme court or to a final judgment delivered by an administrative court (see paragraphs 13 and 35 above). The amendment was introduced in order to substantially accelerate judicial proceedings and reduce the large number of appeals on points of law that did not raise important legal issues (as explained in the explanatory memorandum to Law no. 3900/2010 – see paragraph 35 above).

65. The Supreme Administrative Court has developed case-law in respect of the above-stated requirements (see paragraphs 25-26 and 37-38 above). It inferred, for instance, from Article 53 § 3 that an appellant – when presenting "each single ground for appeal on points of law" – should raise a "specific legal issue" regarding which there should either be no relevant case-law or the relevant findings of the impugned judgment should be contrary to case-law that should be "crucial for the resolution of the dispute". It also required that judgments regarding the same crucial legal matter should be considered to constitute relevant "case-law" – not simply judgments concerning an analogous or similar matter. It was further required that an appellant specifically cite the judgment, in respect of the same legal matter, to which the impugned judgment was contrary.

66. The Court considers that the admissibility requirements, as interpreted by the Supreme Administrative Court's case-law, were aimed at ensuring the proper administration of justice and at allowing the Supreme Administrative Court to effectively exercise its judicial functions (see also *Papaioannou*, cited above, § 41). The Court further holds that they also pursued the legitimate aim of preserving the role of the Supreme Administrative Court in ensuring the unification of case-law and therefore compliance with the principle of legal certainty (see paragraph 56 above; see also *Trevisanato v. Italy*, no. 32610/07, §§ 36-37, 15 September 2016).

67. The question to be examined next is whether the application of these requirements in the present case, which led to the dismissal of the applicant's appeal on points of law, was proportionate to the aims sought to be achieved or whether it undermined the very essence of the applicant's right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

(ii) Proportionality of the restriction

(α) Dismissal of the third ground

68. While it is not for the Court to call into question the legal reasoning followed by the Supreme Administrative in interpreting domestic law, the Court reiterates that, in applying procedural rules, national courts must avoid excessive formalism that can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. The Court notes that the applicant, when stating his third ground for lodging an appeal on points of law, raised the issue that national law as applied by the appellate court in relation to his claim had not been sufficiently foreseeable and precise as regards the start of the limitation period. He relied on the fact that it followed the lapse of a "reasonable period" – an abstract notion that created uncertainty. He argued that this was contrary to Article 1 of Protocol No. 1 to the Convention and the findings of the appellate court were contrary to *Forminster Enterprises Limited, Reveliotis* and *Kokkinis* (see paragraphs 17-18 and 21 above). The Supreme Administrative Court

dismissed this allegation as unfounded, holding that the invoked judgments had "not [concerned] the specific legal matter on which the appellate court's judgment [had] decided" (see paragraph 30 above).

69. The Court further observes that the above-cited cases of *Kokkinis* and *Reveliotis* concerned a violation of the right to property owing to the way in which the relevant courts had interpreted and applied national law in determining the date from which the applicants could receive retroactive payment of their pension rights. The relevant period had been considered to have started from the time when the courts had finally decided on the applicants' cases and not from the much earlier point in time when the administrative authorities had unlawfully refused the applicants' requests for the payment of their pension rights. This criterion, which had made the payment dependant on the administrative courts' own activity, appeared random and likely to lead to contradictory and poorly justified results. The Court held that the rule of law – one of the fundamental principles of a democratic society and inherent in all the articles of the Convention – requires that the starting point or expiration of limitation periods be clearly defined and linked to specific and objective facts. On the other hand, when the setting of the date from which a litigant can pursue his or her claims depends on "fortuitous, unforeseeable events outside his sphere of influence", the imperatives of the rule of law are hard to satisfy (see the above-cited cases of *Kokkinis*, § 34, and *Reveliotis*, § 32).

70. It is not the Court's task to examine whether this plea was well-founded. It falls to the national courts to determine questions of that nature. The Court confines itself to observing that it is not necessary to conduct such an examination in order to conclude that the submissions – in particular those relating to the Court judgments cited by the applicant – were in any event relevant (see, *mutatis mutandis*, *Nikolay Genov v. Bulgaria*, no. 7202/09, § 29, 13 July 2017, and *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A). Under Article 91 of Law no. 2362/1995, the five-year limitation period in respect of a claim against the State starts at the end of the financial year in which that claim arose and became pursuable in the courts (see paragraph 33 above). The appellate court considered that the applicant's claim for compensation had arisen – in the absence of a specific provision in respect of cases such as the instant case – after a "reasonable period" had elapsed from the imposition of the above-mentioned restrictive measure (see paragraphs 11-12 above). Obviously, that "reasonable period" after which it was considered that the claim arose exerted an influence on the start of the limitation period. The precise length of that "reasonable period" was not stipulated in any legal provision, but it was laid down judicially at five years. It could reasonably be subject to different interpretations. On the other hand, the above-cited cases of *Kokkinis* and *Reveliotis* concerned in substance the same legal question in so far as they concerned the need to have the starting point of limitation periods clearly defined and linked to specific and objective

facts rather than being dependent on fortuitous, unforeseeable events – even if the Court had ruled on different types of claims and situations in those cases.

71. The Supreme Administrative Court rejected the applicant's third ground by limiting itself to indicating, without further explanation, that the invoked judgments did "not concern the specific legal matter on which the appellate court's judgment had decided". Notwithstanding the particularities of the procedure to be followed by appellants before the Supreme Administrative Court as a cassation court in order to ensure the cohesion of case-law and the possibility of imposing more rigorous requirements for an appeal on points of law to be declared admissible (see, *Papaioannou*, cited above, § 49), recourse to a condition derived from jurisprudence in respect of the admissibility requirements of an appeal on points of law would require adequate reasoning (see, *mutatis mutandis*, *Tourisme d'affaires v. France*, no. 17814/10, § 30, 16 February 2012). In the Court's view, the Supreme Administrative Court did not clarify in any practical terms why it considered that the Court's judgments did not concern the same legal matter as that concerned by the instant case, and this is even more true in view of the requirement that the national courts are obliged to examine with particular care and rigour cases involving the rights and freedoms guaranteed by the Convention or its Protocols (see, for instance, *Paun Jovanović v. Serbia*, no. 41394/15, § 108, 7 February 2023, and *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 96, 28 June 2007). In this respect, the Court emphasises that the applicant explicitly argued that the appellate court's findings were contrary to the Court's case-law and violated Article 1 of Protocol No. 1 to the Convention.

72. The Government maintained that the Supreme Administrative Court had applied consistently its established and well-known case-law and that the meaning of the requirement at issue had been clarified. However, they did not establish how the applicant was expected to have identified case-law regarding the same legal matter when judgments of domestic courts, and most importantly, administrative courts, were not published in any official journal or accessible database to which the applicant or his lawyer had access. The Court finds that by interpreting the requirement at issue without taking into account the practical obstacles encountered by the applicant in accessing domestic case-law, the Supreme Administrative Court took a formalistic approach in its implementation of procedural requirements and in the manner in which it rejected the applicant's third ground for appeal on points of law. That approach has not been shown to be necessary in order to ensure legal certainty or the proper administration of justice and has to be regarded as excessively formalistic (see, for instance, *Xavier Lucas v. France*, no. 15567/20, § 57, 9 June 2022).

73. Even if the workload of the Supreme Administrative Court was likely to cause difficulties in the ordinary functioning of processing appeals on

points of law, the fact remains that limitations on access to the courts of cassation cannot restrict, by an overly formalistic interpretation, the right of access to a court in such a way or to such an extent that this right is infringed in its very substance (see *Zubac*, cited above, § 98; *Succi and Others v. Italy*, nos. 55064/11 and 2 others, § 81, 28 October 2021; *Vermeersch v. Belgium*, no. 49652/10, § 79, 16 February, 2021; *Efstratiou and others v. Greece*, no. 53221/14, § 43, 19 November, 2020; and *Trevisanato*, cited above, § 38).

74. In view of the foregoing considerations, the Court cannot but conclude that the Supreme Administrative Court's decision to dismiss the applicant's third ground for appeal of points of law because it considered that the invoked Court's judgments did not concern the specific legal matter on which the appellate court's judgment had decided amounted to excessive formalism and prevented the applicant from having the merits of his claims examined by that court.

(β) Dismissal of the first ground

75. The Court notes that, under Article 53 § 3 of Presidential Decree no. 18/1989, "[a]n appeal on points of law may be lodged only when the litigant maintains by specific arguments, contained in [his or her] substantive appeal on points of law, that there is no case-law of the Supreme Administrative Court ..." (see paragraph 35 above). The Supreme Administrative Court had clarified in its case-law that such arguments must be made in a precise manner, and that a laconic allegation concerning the total lack of relevant case-law of the Supreme Administrative Court without a specific determination of the legal matter to which it referred was vague and insufficient. The Supreme Administrative Court deemed that an appellant's argument in support of the admissibility of an appeal on points of law that there was no case-law in general had to be rejected as inadmissible as such an argument did not identify independently and precisely the legal matter raised and its relevance to the outcome of the case (see paragraph 38 above).

76. In the present case the Supreme Administrative Court justified the dismissal of the applicant's submissions that the impugned judgment calculated incorrectly the limitation period and contrary to existing case-law of the Supreme Administrative Court. It held that the cited judgment no. 749/2011 concerned the question of the limitation period in respect of a claim for compensation based on the tort liability of the State and not the legal matter at issue regarding the starting point of the limitation period in respect of a claim for compensation under Article 24 § 6 of the Constitution (see paragraph 28 above). It further held that the impugned appellate court's judgment had not applied the provisions of Law no. 261/1968 relating to the "reasonable period" for the revocation of administrative decisions. It results from the above that the Supreme Administrative Court did not hold for relevant the other judgments cited by the applicant which concerned the

question of whether a period longer than five years could be considered "reasonable" as regards the revocation of administrative decisions.

77. At the same time, the Supreme Administrative Court did not provide any response to the applicant's submission that the assertions of the impugned judgment as regards the starting point of the limitation period and the length of the "reasonable period" were incorrect and that alternatively there did not exist any case-law on these legal matters. In the above circumstances that issue was decisive for the Supreme Administrative Court's decision on whether or not to admit the applicant's appeal on points of law and to decide on its merits and required a specific and express reply. In the absence of such a reply, it is impossible to ascertain whether the Supreme Administrative Court simply neglected to deal with the submission or whether it dismissed it upon its examination and, if so, for which reasons (see *Hiro Balani v. Spain*, 9 December 1994, § 28, Series A no. 303-B).

78. The Court notes in particular that the applicant explicitly referred, when arguing the admissibility of the first ground for his appeal on points of law, to the lack of any relevant case-law supporting the finding that the limitation period in respect of his claim for compensation started after a "reasonable period" and the finding that five years should be the length of that "reasonable period" (see paragraph 19 above). He also referred, when setting out his third ground, to such alleged absence of sufficiently accessible case-law in respect of the determination of what constituted a "reasonable period" ("as it would be in particular mentioned in the relevant section on admissibility" – see paragraph 18 above). The Court cannot but observe that the applicant identified the crucial legal issues raised by his arguments and their relevance for his dispute, namely the starting point of the limitation period in respect of a claim for compensation under Article 24 § 6 of the Constitution and the length of the "reasonable period". One could reasonably have expected that the Supreme Administrative Court would address them. Moreover, the Court does not accept the Government's argument that the applicant's submissions in this particular respect were so unclear and confusing that it was unnecessary for the court to refer to them, as it can reasonably be assumed that the arguments on the lack of case-law were formulated in a sufficiently clear and precise manner (see paragraph 53 above).

79. The applicant was required to adduce case-law to which the assertions of the appellate court's judgment were contrary or to put forward the absence of case-law. The Court emphasises in that respect that judgments delivered by the administrative justice were not published in any official journal or accessible database containing the entire case-law to which the applicant or his lawyer had access. This would have significantly hindered his ability to find relevant case-law even if the applicant had been represented by a lawyer. To consider that this allegation was not formulated in an admissible manner and to expect the applicant to have further substantiated his argument that no

relevant case-law existed is not only unreasonable but also constitutes a disproportionate burden on him.

80. The Court further takes note of the Government's argument that the purpose of the admissibility provision was to enable the rejection of appeals on legal matters that had already been resolved. However, the Supreme Administrative Court did not assert in the impugned judgment that the legal matter had been already resolved, pointing to prior jurisprudence that would have also disproved the applicant's allegation regarding the lack of any relevant case-law.

81. It is important that reasons be given by the national court regarding the application of domestic law, as this makes it possible to verify that a "fair balance" has been struck between the legitimate concern to ensure compliance with the procedural requirements for lodging an appeal on points of law on the one hand, and the right of access to a court on the other hand (see *Ghrenassia v. Luxembourg*, no. 27160/19, §§ 34-37, 7 December 2021). Given the circumstances of the case, and having regard to the dismissal by the Supreme Administrative Court of the applicant's arguments (when presenting the first ground for his appeal on points of law) regarding the alleged lack of any relevant case-law, it has not been established that a fair balance was maintained between, on the one hand, the legitimate concern of the Supreme Administrative Court to ensure compliance with the procedural requirements surrounding the lodging of an appeal on points of law and, on the other hand, the right of access to court.

(γ) Dismissal of the second ground

82. The applicant submitted that the law did not stipulate a clear and pre-defined limitation period based on objective criteria. He therefore argued that in respect of his specific claim a limitation period of twenty years should apply. Furthermore, in support of his assertion that his second ground for his appeal on points of law was admissible, the applicant maintained that: "As regards the second ground for appeal, that which has been mentioned immediately above should apply" (see paragraphs 16-20 above). The Supreme Administrative Court declared the ground inadmissible as it did not determine the legal matter in an independent and precise manner and how that legal matter was decisive for the resolution of the dispute at issue.

83. The Court refers to the requirement stipulated by law that an appellant advance specific arguments to support the assertion that there exists no case-law of the Supreme Administrative Court, or that the impugned judgment in question is contrary to relevant case-law. The applicant did not do so, instead merely referring in vague terms to his previous submissions without indicating to which arguments and case-law he was referring. Taking into account the aforesaid requirement and the response of the Supreme Administrative Court in respect of the applicant's second ground for appeal, the dismissal of this ground cannot be considered to have constituted an

excessively formalistic decision that prevented the examination of the applicant's appeal on points of law (see Succi and Others, cited above, §§ 102-05).

(iii) Conclusion

84. In view of the above, the Court finds that (i) the very restrictive interpretation by the court of last instance in the context of the third ground for appeal of the fulfilment of the condition that the invoked case-law shall be that which has been formulated in respect of the same legal matter, (ii) the absence of any response from the Supreme Administrative Court in respect of the applicant's first ground of appeal and the applicant's crucial submissions regarding the lack of any relevant case-law, and (iii) the lack of an accessible comprehensive case-law database, precluded an examination of the merits of the case. It impaired the very essence of the applicant's right of access to a court for the purpose of the determination of his civil rights and obligations (see, for instance, *Ghrenassia*, cited above, § 37; *Louli-Georgopoulou v. Greece*, no. 22756/09, §§ 47-48, 16 March 2017; and *Dumitru Gheorghe v. Romania*, no. 33883/06, § 34, 12 April 2016).

85. The Court observes that the Government relied on the judgment in *Papaioannou* (cited above) arguing that the admissibility requirements had been found compatible with the right of access to a court (see paragraph 48 above). It notes that the present case differs from that case in which the Court found that there had been no violation of Article 6 § 1 of the Convention. In that case the appellant had maintained in his appeal that the admissibility requirement relating to the contrariety of an impugned judgment with existing case-law was unconstitutional because it elevated case-law to the rank of source of law and was therefore void. As regards the requirement relating to an alleged lack of case-law, he had argued that there was no case-law in respect of the question under examination. The Supreme Administrative Court rejected his appeal for non-compliance with the admissibility requirements, deeming that the question of conformity of the provisions at issue with the Constitution had already been confirmed by abundant case-law. As for the argument relating to the absence of case-law, the Supreme Administrative Court set out its reasons and specifically stated in its judgment that that argument had been formulated in an affirmative and succinct manner and that it had not specified the legal question in respect of which there was an absence of case-law.

86. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

87. The applicant complained that the manner in which the domestic courts applied the provisions as regards the starting point of the limitation period in respect of the type of claim provided for by Article 24 § 6 of the Constitution and by Article 22 §§ 1 and 4 of Law no. 1650/1986, and deemed that that period had started after the lapse of a "reasonable period" of five years had impaired the essence of his right to the peaceful enjoyment of his property. He alleged a violation of Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

88. The Government contended that this alleged violation arose from the same facts as those of the applicant's complaint under Article 6 § 1. They argued that his claim had been considered by the courts to have been proscribed and that it would have been further dismissed on the merits by the Supreme Administrative Court. They also maintained that his claim did not have a sufficient basis in national law and the applicant did not have a "legitimate expectation" of obtaining a property right. As the applicant's claim for compensation could not be considered a "possession", the complaint should be dismissed for being incompatible *ratione materiae* with the provisions of the Convention.

89. The applicant contested these arguments.

90. Having regard to the facts of the case, the parties' submissions and its findings under Article 6 § 1 of the Convention (see paragraphs 63-86 above), the Court considers that it has examined the main legal question raised in the present application and that it is not necessary to examine the admissibility and merits of the complaint raised under Article 1 Protocol No. 1 (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant sought compensation in the amount of 120,000 euros (EUR) in respect of pecuniary damage resulting from the reduction of the value of his property and its use as a fish farm, and EUR 80,000 for his loss of earnings. He also claimed EUR 20,000 in respect of non-pecuniary damage.

93. The Government submitted that there was no causal link between the violation complained of as regards the applicant's right of access to a court and the alleged pecuniary damage sustained. With regard to non-pecuniary damage the Government contended that the amount claimed was excessive and unjustified. They further submitted that a finding of a breach of the Convention would constitute sufficient just satisfaction.

94. The Court cannot speculate on what the outcome of the proceedings on the applicant's appeal on points of law would have been if it had been examined on the merits. It therefore rejects the claim in respect of pecuniary damage. However, as the applicant must have sustained non-pecuniary damage as a result of the violation of Article 6 § 1, the Court, making its assessment on an equitable basis, as required by Article 41, awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

95. The applicant did not make any claims in respect of costs and expenses. Accordingly, there is no call to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's daughter has standing to pursue the application in his stead;

2. *Declares* the complaint concerning Article 6 § 1 of the Convention admissible;

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

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *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, EUR 6,000 (six thousand 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-stated amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 19 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President