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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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Meeting: 1577th meeting (December 2026) (DH)

Item reference: Action Report (03/11/2026)

Communication from Greece concerning the case of Zouboulidis v. Greece (no. 3) (Application No. 57246/21)

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Réunion : 1577e réunion (décembre 2026) (DH)

Référence du point : Bilan d'action (03/11/2026)

Communication de la Grèce concernant l'affaire Zouboulidis c. Grèce (n° 3) (Requête n° 57246/21) ***[anglais uniquement]***

DH-DD(2026)1463: Communication from Greece
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DGI
03 NOV. 2026
SERVICE DE L'EXECUTION DES ARRETS DE LA CEDH

Zouboulidis v. Greece (No. 3)

(Appl. No. 57246/21, final on 4 September 2024)

Action Report

I. CASE DESCRIPTION

1. This case concerns a violation of the applicant's right for access to court on account of the dismissal in 2021 by the Supreme Administrative Court ("the SAC") of his action against the State for compensation for damage allegedly caused to him by a judgment delivered by the Court of Cassation in 2021 (violation of Article 6 § 1).

2. The Court found that the Supreme Administrative Court's decision not to apply by analogy article 105 of the introductory Law of the Civil Code ("the ILCC"), until specific legislation in respect of the State's liability for acts of the judicial bodies was enacted, was inconsistent with the previous case law and practice of the same court (which started with the SAC 1501/2014) consisting in accepting the application of article 105 of the ILCC by analogy as legal basis for state liability action for errors committed by members of the judiciary (§73). The new interpretation set out in the domestic decision at issue (SAC 800/2021) which had the effect that the applicant's action was considered inadmissible combined with the fact that the necessary legislation (that could be used as a legal basis for this claim) had not been enacted for more than seven years (following the above SAC 1501/2014), placed a disproportionate restriction on the applicant's right of access to a court for an undetermined period which created legal uncertainty to the applicant's detriment (§ 81).

3. More specifically, the applicant who had been working since 1992 on the basis of a private-law employment contract of indefinite duration as an auxiliary staff member at the Greek embassy in Germany made an unsuccessful claim for an increase of expatriation allowance in 1998. Following proceedings before domestic courts, which ended unsuccessfully in 2001, he took a case to the European Court of Human Rights *(Zouboulidis v. Greece,* no. 7757 4/01). The Court found a violation of Article 6 § 1 (right to a fair trial) of the Convention and awarded him 5,000 euros (EUR) in respect of non-pecuniary damage as the rejection of his

claim by the Court of Cassation had amounted to excessive formalism. Subsequently, the applicant took a case in 2007 to the Greek courts on the State's liability for actions of judicial bodies, claiming compensation for the damage which he had suffered caused by the said judgment of the Court of Cassation in 2001. He relied on article 105 of the ILCC.

4. In the meantime, and on another case, in April 2014 the Plenary of the Supreme Administrative Court ruled that article 105 of the ILCC could be used by analogy as a legal basis for state liability in respect to manifest errors committed by members of the judiciary.

5. Turning to the case under consideration, the administrative courts on first instance (4997/2015) and on appeal (1107/2017) held in 2015 and 2017 respectively that the State was liable for the damage caused by manifest error on the part of the judiciary and that it would be incompatible with Article 4 § 5 of the Constitution that damage caused by the conduct of any State body to remain uncompensated; however, both courts rejected the claims in the particular case of the applicant as the error attributed to the judgment of the Court of Cassation was not considered manifest.

6. Following an appeal on points of law by the applicant, the Supreme Administrative Court issued its judgment 800/2021. It held that article 4 § 5 of the Constitution established that the State was liable for actions of its bodies which had caused damage, irrespective of whether the actions had been unlawful. This included acts or omissions of the judiciary. However, it also held that Article 105 of the ILCC, which refers to bodies of the State, could not be applied as regards judicial authorities. For the Supreme Administrative Court, as long as the terms of the unlawfulness of the conduct, the extent of the compensatory claims and the competent courts had not been determined by law, the damage at issue could not be redressed and the relevant claims were not enforceable in the courts.

7. The Supreme Administrative Court allowed the appeal on points of law, quashed the appellate judgment and first-instance judgment, and declared the applicant's action inadmissible on jurisdictional grounds.

II. INDIVIDUAL MEASURES

Payment of just satisfaction

8. The Court awarded the applicant 5 000 EUR in respect of non-pecuniary damage, and 1 860 EUR in respect of costs and expenses. Just satisfaction awarded by the Court in respect of non-pecuniary damage was timely paid (see letter with ref. no 103-544/A22635/17-10-2024). Payment information was published on 30/10/2024, while the deadline for the applicant to complain has passed

Further measures - reopening proceedings

9. Following the Court's judgment, the applicant lodged a request for re-examination of his case by the Supreme Administrative Court, pursuant to Article 69A of Presidential Decree 18/1989. The Supreme Administrative Court, by virtue of its judgment 1279/2026 published on 8 September 2026 upheld the reopening application and quashed the impugned judgment (800/2021) accepting that in order to remedy the violation found by the Court, the SAC needs to examine the case with its previous case-law (SAC 1501/2024) before the impugned reversal (SAC 800/2021). Subsequently, it re-examined the case on its merits and rejected the application for cassation on the basis that in this particular case the prerequisites set by case-law are not met, since there is no manifest error of the domestic judgment (Court of Cassation 1143/2001).

10. In particular the Supreme Administrative Court, considered that in order to remedy the established violation of Article 6 par. 1 of the Convention, within the meaning of the Zouboulidis (No.3) judgment of the Court and in accordance with the obligation to comply with a final decision of the Court, the case must be examined on the basis of the interpretation adopted in its decision 1501/2014 of its Plenary Session regarding the implementation of the jurisdiction of the administrative courts. The interpretation adopted in said judgment (1501/2014) is the interpretation of the relevant provisions[1] and the jurisdiction of the domestic courts as it was adopted before the reversal of the case law by decision 800/2021 of the Plenary Session of the Supreme Administrative Court, which according to ECtHR placed a disproportionate restriction on the applicant's right of access to a court (§ 20 of the SAC 1279/2026).

11. Examining the appeal on cassation on its merits the SAC noted the following: It is for the

[1] Articles 4 par. 5 of the Constitution and 105 of the ILCC.

domestic court, in the context of the examination of the conditions laid down in Article 105 of the ILCC on the liability of the State for compensation for an error in a judicial decision, to determine whether the error found in the judgment of the ECtHR also constitutes a manifest error within the meaning of Article 105 of the ILCC. The SAC considered that the Administrative Court of Appeal was right to rule that the characterization of the judgment of the 1143/2001 decision of the Court of Cassation as excessively formalistic by the judgment of the ECtHR of 14 December 2006 does not equate, without a doubt, to the determination of the relevant error as manifest within the meaning of Article 105 of the ILCC. The Administrative Court of Appeal lawfully took into account the elements of the specific case (legislation, case law, established procedural practice for drafting legal documents, legal certainty) in order to form its judgment that there was no manifest error in the present case of the 1143/2001 decision of the Court of Cassation, in order to establish the liability of the State to compensate the appellant and, furthermore, it lawfully held that these did not constitute the legal concept of manifest error within the meaning of Article 105 ILCC.

12. The SAC based this finding, notably, on the following considerations:

a) there was case law of the Court of Cassation as to the interpretation of Article 566 par. 1 of the Code of Civil Procedure, on the basis of which the Supreme Court rejected the two grounds of appeal as vague in its decision 1143/2001,

b) the aforementioned decision of the Court of Cassation was not contrary to Greek law, arbitrary or disproportionate in relation to the Convention[2], nor could the interested party expect a different application of the Code of Civil Procedure - which would create a problem with the principle of legal certainty,

c) it does not appear that there was a judgment from the ECtHR prior to the case under consideration - and therefore could have been known to the Greek judges - that there is a violation of Article 6 par. 1 of the ECHR as regards the interpretation of Article 566 par. 1 of the Code of Civil Procedure, which would oblige the Court of Cassation to depart from its previous case law on the interpretation of this article,

[2] See the previous relevant Court' judgment see, to this effect, Brechos v. Greece (dec.), no 7632/04, 11 April 2006)". In the case of Brechos v. Greece (on admissibility) cited in the judgment of the ECtHR of 14.12.2006, the Supreme Court rejected as inadmissible grounds of appeal based on an alleged violation of the ECHR, on the ground that the applicant had failed to invoke this legal basis in the main action or before the courts on the merits, as required by Article 562 par. 2 of the Code of Civil Procedure. The ECtHR held that there was no obstruction of the applicant's right of access to the Supreme Court and rejected the complaint in question as manifestly unfounded pursuant to Article 35 par. 3, 4 of the Convention.

d) the ECtHR's ruling that the dismissal of the appeal constitutes an excessively formalistic approach ("une approche par trop formaliste") approach to the conditions for the admissibility[3] concerned the violation of Article 6 of the Convention on account of the restriction imposed by the ECtHR on the applicant's right of access to a court. However, the ECtHR's judgment by itself, despite its emphatic wording ("par trop formaliste"), does not constitute a manifest error of the Court of Cassation's decision 1143/2001. **In other words, excessive formalism does not necessarily amount to manifest error, and this has to be examined in the context of all relevant circumstances as the ones examined by the Supreme Administrative Court.**

13. Conclusion: From all the above, it is clear that the applicant availed himself of reopening of his domestic case; that the impugned judgment was quashed; that the violations found was remedied given that **the root cause of the violation** (the new interpretation adopted in SAC 800/2021) **was addressed by reversal to the previous case-law** (Convention compliant interpretation – SAC 1501/2014). The fact that the applicant's appeal was ultimately rejected does not cast a doubt on the above conclusion, given that this was done in the context of reopening proceedings **within the spirit of the Court's** judgment in Zouboulidis (No.3) following extensive reasoning and taking into account that the Court did not include any findings in the same judgment concerning whether or not in this particular case the domestic court's findings (Court of Cassation 1143/2001) constituted a manifest error.

III. GENERAL MEASURES

Change in case law – SAC Plenary 1279/2026 – State liability for acts of the judiciary is possible in cases where damage was attributed to their manifest error

14. The judgment analysed above under individual measures constitutes a landmark judgment which affects also general measures and plays the role of the key necessary and sufficient general measure to avoid similar violations in the future.

[3] This issue was addressed with the Court of Cassation Plenary decision no. 14/2010 regarding the admissibility criteria of applications in cassation and the judgments of the Court. See *Alvanos* case (Appl. No. 38731/05) and Final Resolution CM/ResDH(2016)178.

15. Following this judgment, SAC's case-law has returned to its findings on the landmark judgment SAC 1501/2014, which has not been criticised by the Court. As explained above according to this judgment the State was liable for the acts of its bodies which cause damage when those acts were unlawful or when they were lawful but caused serious and significant damage. Article 4 § 5 of the Constitution required that the legislature determine the conditions for the compensation for damage caused by any State body, taking into account the nature and the mission of the bodies which carry out the activities of the State under its three branches (executive, legislative and judiciary). It accepted that Article 105 of the ILCC directly applied to the bodies of the legislative and executive branches; it did not specifically refer to the acts of judicial bodies because the State's liability for compensation for the erroneous interpretation of law or assessment of facts was not compatible with the nature of judicial work in respect of which the Constitution guaranteed judicial independence. The court held that the State was thus liable to compensate only for damage caused by a manifest error on the part of the judicial bodies. As the Constitution did not allow damage caused by State bodies to remain uncompensated for, the court held that until the legislature enacted specific legislation in respect of the State's liability for acts of the judicial bodies, Article 105 should be applied by analogy in cases where damage was attributed to their manifest error. An error would be considered manifest depending on the specific characteristics of the case which rendered the error justifiable or not (§ 11).

16. In a nutshell, following SAC 1279/2026, the case law reverted to the findings of the SAC 1501/2014 and State liability for acts of the judiciary is possible by applying Article 105 of ILCC by analogy in cases where damage was attributed to their manifest error.

Reflection on the possibility to amend the law

17. It is recalled that in the Government's Action Plan of 5 March 2025 (*DH-DD(2025)276*) it was reported that in response to the Court's finding a committee of experts was established by decision of the Minister of Justice of 17 November 2024 and was tasked with presenting draft legislation on the state liability for acts or omissions of the judiciary. To this day there is no concrete legislative proposal.

Scope of the necessary measures – root cause of the violation found

18. The root cause of the violation was the new interpretation set out in the impugned judgment (SAC 800/2021) which had the effect that the applicant's action was considered

inadmissible **combined** with the fact that legislation has not been enacted for more than seven years, as this combination placed a restriction on the applicant's right of access to a court for an undetermined period [which must at the very least be considered as creating legal uncertainty to the applicant's detriment (§ 81)].

19. It follows from the above findings of the Court that the necessary general measures should **either** include the change in the case-law interpretation of the relevant provisions that would allow to pursue the damages claim (which already is reported in the current Action Report) ***or*** the adoption of the special provision mentioned in the above case-law or otherwise amendment of the legal framework that would regulate this issue. It is therefore evident that the above change in the case-law suffices as a general measure to avoid similar violations in the future as this change addressed one of the elements that -noted by the Court- only combined amounted to a violation.

20. With regard to the content of the state labiality foreseen (only in cases of manifest error) it should be noted that in the words of the Court in Zouboulidis (No. 3) the Court's role is not to approve or disapprove as such the solution ultimately adopted by the Supreme Administrative Court as regards the State's liability for damage caused by judicial bodies but is limited to that of verifying the compatibility with the Convention of the effects of such an interpretation (§ 77). Following the above measures, the right to claim damages in the context of State liability for actions of the judiciary is clearly foreseen and thus there is no legal uncertainty as in the impugned judgment (§ 83), while the choice of the case law to accept State liability for acts of the judiciary for manifest error is in principle in line with Convention (*See* for example Association Innocence en danger and association enfance et partage, Appl. 15343/15 and 16806/15, final on 04/09/2020, §193).[4]

[4] *« 193. In the present case, it does not appear unreasonable for the French legislature to have laid down a framework to govern the possibility of establishing the State's civil liability in this particular context, by requiring [the existence of] gross negligence, which could consist of an accrual of instances of ordinary negligence entailing a failure of the justice system, with a view to protecting the independence of the justice system. The Court can accept the Government's argument that this demarcation was intended to protect judicial independence and to guarantee a certain serenity in the tasks of investigating and judging, without fear of condemnation from individuals who were unhappy with judicial decisions. Thus, the Court can accept that establishing a limited context for State civil liability corresponds to a choice by the legislature, in the light of the organisational complexity of the justice system and the specificity of the judicial function, including investigative and police activities. It reiterates, however, that in accordance with the requirements of Article 13, the choice of such a framework must in any event provide a remedy that is "effective" in practice as in law.»*

Publication and Dissemination

21. The Court's judgment has been translated into Greek and published on the official web site of the Legal Council of the State (www.nsk.gov.gr). Furthermore, the Court's judgment, accompanied by a detailed letter by the Government Agent highlighting the shortcomings identified, was sent to the President of the Supreme Administrative Court and the Commissioner for administrative courts. Subsequently the latter transmitted the judgment along with the Agent's document to all judges of administrative courts.

22. The Court's judgment received wide publication on legal and regular sites. It has also been raised as a subject of debate at legal conferences.

IV. CONCLUSION

23. In view of the above mentioned the Greek Government considers that it has complied with its obligations under article 46 of the European Convention on Human Rights and consequently requests the Committee of Ministers of the Council of Europe to terminate their supervision of this case.