



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

FIRST SECTION

**CASE OF TARBUK v. CROATIA**

*(Application no. 31360/10)*

JUDGMENT

STRASBOURG

11 December 2012

*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 Tarbuk v. Croatia,**

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyev,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 20 November 2012,

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

## PROCEDURE

1. The case originated in an application (no. 31360/10) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Dušan Tarbuk (“the applicant”), on 14 May 2010.

2. The applicant was represented by Mr D. Ivanić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 5 September 2011 the complaint concerning the applicant’s right to a fair trial was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Zagreb.

5. On 23 October 1995 the applicant was arrested and placed in pre-trial detention on suspicion of having committed the criminal offence of espionage in connection with the Homeland war in Croatia. The applicant was arrested as a member of a larger group of eighteen persons who were all suspected of the same offence.

6. On 24 September 1996 the General Amnesty Act (*Zakon o općem oprostu*) was enacted; it ordered a general amnesty in respect of all criminal offences committed in connection with the war in Croatia in the period between 17 August 1990 and 23 August 1996, save in respect of those acts which amounted to the gravest breaches of humanitarian law or to war crimes, including genocide.

7. Pursuant to the General Amnesty Act, the criminal proceedings against the applicant were discontinued on 7 October 1996 and he was immediately released from detention.

8. On 9 June 1998 the applicant lodged a civil action against the State in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking damages for his detention. He relied on Article 480 of the Code of Criminal Procedure (*Zakon o kaznenom postupku*), which provided that anyone who had been in pre-trial detention but against whom criminal proceedings had either not been instituted or had been discontinued by a final decision was entitled to compensation.

9. On 2 June 1999 an amendment was enacted to the Code of Criminal Procedure (Article 484(a) of the Code of Criminal Procedure) which provided that no compensation was to be granted in connection with the detention of persons against whom criminal proceedings had been discontinued pursuant to a pardon or amnesty under special laws or decisions.

10. Another amendment to the Code of Criminal Procedure was enacted on 27 October 1999, specifying that Article 484(a) concerned criminal offences committed in the period between 17 August 1990 and 23 August 1996.

11. On 28 May 2004 the Zagreb Municipal Court dismissed the applicant's compensation claim on the ground that it had no legal basis.

12. The applicant lodged an appeal against the above judgment with the Zagreb County Court (*Županijski sud u Zagrebu*) on 7 July 2004, claiming that the Zagreb Municipal Court had misinterpreted the relevant law.

13. The Zagreb County Court dismissed the applicant's appeal on 31 January 2006 on the ground that under Article 484(a) of the Code of Criminal Procedure his compensation claim was extinguished. The relevant part of the decision reads as follows:

“Under Article 480 [of the Code of Criminal Procedure], a person who has been detained and against whom the proceedings have been discontinued is entitled to compensation.

However, in the present case amendments to the Code of Criminal Procedure (Official Gazette no. 58/1999) introduced Article 484(a), which provides that there is no ground to [award compensation] under Articles 476-484 of that Code if a pardon or amnesty has been granted under special laws or decisions.

That provision was amended by the amendments to the Code of Criminal Procedure (Official Gazette no. 112/1999), in that after the word “amnesty” the further words

“for criminal offences committed in the period between 17 August 1990 and 23 August 1996” were added.

These amendments excluded the application of Article 480 of the Code of Criminal Procedure, which provided for a right to compensation for persons who had been detained but against whom the proceedings had ultimately been discontinued, if the proceedings had been terminated under section 2, paragraph 2, of the General Amnesty Act, which concerned criminal offences committed in the period between 17 August 1990 and 23 August 1996.

Since at the time when the first-instance judgment was adopted the said provision, which excluded application of Article 480 of the Code of Criminal Procedure, was in force, and since it had retroactive application, the first-instance court correctly applied the relevant law when it dismissed the claim for damages.”

14. On 13 April 2006 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovni sud Republike Hrvatske*) complaining, *inter alia*, about the retroactive application of Article 484(a) of the Code of Criminal Procedure to his civil action, which had been lodged a year before that provision had been introduced.

15. On 28 August 2007 the Supreme Court dismissed the applicant’s appeal on points of law, reiterating the reasoning of the Zagreb County Court. The Supreme Court also added:

“The appellant is wrong when he claims that [Article 484(a) of the Code of Criminal Procedure] does not foresee retroactive application of that provision. On the contrary, it has retroactive effect since it excluded application of Article 480 of the Code of Criminal Procedure, which provided for compensation for a claimant who had been granted an amnesty for offences committed in the period between 17 August 1990 and 23 August 1996, such as those with which the claimant in the present case was charged and in respect of which the criminal proceedings were discontinued. The wording of the amended Article 484(a) of the Code of Criminal Procedure (Official Gazette no. 112/1999) leaves no doubt as to its retroactive application.”

16. The applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) on 19 November 2007, reiterating his argument that the retroactive application of Article 484(a) of the Code of Criminal Procedure to his civil action, which had been lodged one year before that provision had come into force, had extinguished his right to compensation. He asked the Constitutional Court to quash the judgments of the lower courts.

17. On 5 November 2009 the Constitutional Court dismissed the applicant’s constitutional complaint, endorsing the arguments of the lower courts. That decision was served on the applicant on 18 December 2009.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *Constitution*

18. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/1990, 135/1997, 113/2000, 28/2001) read as follows:

#### **Article 5**

“In Croatia the laws shall comply with the Constitution ... “

#### **Article 25**

“ ...

Anyone who has been unlawfully deprived of liberty or convicted shall have, according to law, a right to compensation or a public apology.

#### **Article 29**

“In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law.”

### *Constitutional Court Act*

19. The relevant parts of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/1999, 29/2002 and 49/2002) read as follows:

#### **Section 62**

“1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision of a State body, a body of local or regional self-government, or a legal person with public authority, affecting his or her rights and obligations, or concerning a suspicion or an accusation of a criminal act, has violated his or her human rights or fundamental freedoms or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: a constitutional right) ...”

### *Code of Criminal Procedure*

20. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette no. 110/1997, which were enacted on 3 October 1997 and came into force on 1 January 1998), read as follows:

#### **Article 478**

“ ...

(3) A claim for compensation shall be lodged against the Republic of Croatia.”

**Article 480**

“(1) The right to compensation shall be recognised also in respect of a person:

1. who has been in pre-trial detention but against whom criminal proceedings were either not instituted or were discontinued by a final decision ...”

21. The relevant part of the amendments to the Code of Criminal Procedure, enacted on 2 June 1999 and 27 October 1999 (published in the Official Gazette nos. 58 of 6 June 1999 and 112 of 29 October 1999 respectively), reads:

**Article 484 (a)**

“Special laws and decisions adopted as acts of mercy by which perpetrators of criminal offences have been pardoned or granted an amnesty in respect of criminal offences committed between 17 August 1990 and 23 August 1996 cannot serve as a basis for the application of Articles 476 to 484 of this Code.”

*General Amnesty Act*

22. The relevant part of the General Amnesty Act (*Zakon o općem oprost*u, Official Gazette, no. 80/1996) reads as follows:

**Section 1**

“This Act grants general amnesty from criminal prosecution and proceedings to the perpetrators of criminal offences committed during the aggression, armed rebellion or armed conflicts and in connection with the aggression, armed rebellion or armed conflicts in the Republic of Croatia.

No amnesty shall apply to the execution of final judgments in respect of perpetrators of the criminal offences under paragraph 1 of this section.

Amnesty from criminal prosecution and proceedings shall apply to offences committed between 17 August 1990 and 23 August 1996.”

**Section 2**

“No criminal prosecution or criminal proceedings shall be instituted against the perpetrators of the criminal offences under section 1 of this Act.

Where a criminal prosecution has already commenced it shall be discontinued and where criminal proceedings have been instituted a court shall issue a decision terminating the proceedings of its own motion.

Where a person granted amnesty under paragraph 1 of this section has been detained, he or she shall be released.”

**Section 3**

“No amnesty under section 1 of this Act shall be granted to perpetrators of the gravest breaches of humanitarian law, which have the character of war crimes, namely, the criminal offence of genocide under Article 119 of the Basic Criminal Code of the Republic of Croatia (Official Gazette no. 31/1993, consolidated text, nos. 35/1993, 108/1995, 16/1996 and 28/1996); war crimes against the civilian population under Article 120; war crimes against the wounded and sick under Article 121; war

crimes against prisoners of war under Article 122; organising groups [with the purpose of committing] or aiding and abetting genocide and war crimes under Article 123; unlawful killing and wounding of the enemy under Article 124; unlawful taking of possessions from the dead or wounded on the battleground under Article 125; use of unlawful means of combat under Article 126; offences against negotiators under Article 127; cruel treatment of the wounded, sick and prisoners of war under Article 128; unjustified delay in repatriation of prisoners of war under Article 129; destruction of cultural and historical heritage under Article 130; inciting war of aggression under Article 131; abuse of international symbols under Article 132; racial and other discrimination under Article 133; establishing slavery and transferring slaves under Article 134; international terrorism under Article 135; putting at risk persons under international protection under Article 136; taking hostages under Article 137; and the criminal offence of terrorism under the provisions of international law.

No amnesty shall be granted to perpetrators of other criminal offences under the Basic Criminal Code of the Republic of Croatia (Official Gazette no. 31/1993, consolidated text, nos. 35/1993, 108/1995, 16/1996 and 28/1996) and the Criminal Code of the Republic of Croatia (Official Gazette no. 32/1993, consolidated text, nos. 38/1993, 28/1996 and 30/1996) which were not committed during the aggression, armed rebellion or armed conflicts and are not connected with the aggression, armed rebellion or armed conflicts in the Republic of Croatia.”

*Practice of the Constitutional Court*

23. In decision no. U-I-2023/2002 of 7 December 2005 the Constitutional Court dismissed a request for the review of the constitutionality of Article 484 (a) of the Code of Criminal Procedure brought by an applicant, R.V., alleging that that provision of the Code of Criminal Procedure was contrary to the Constitution, Article 5 § 5 of the Convention, and Article 3 of Protocol No. 7. The relevant part of the decision reads:

“[Article 25 § 4 of the Constitution] provides that anyone who has been unlawfully deprived of his liberty shall be entitled to compensation and a public apology. It follows that anyone who has been deprived of his liberty contrary to the law has a right to compensation for material and non-material damage, under the conditions and procedure established by law. The Constitution does not set out the conditions under which a person can claim damages. It was left for the lawmaker to regulate those conditions.

...

The impugned provision excluded those persons who were pardoned or granted an amnesty for offences committed during the armed conflict and war in Croatia under the special laws from being beneficiaries of the right to compensation ...

The Constitutional Court does not find the impugned provision contrary to Article 25 § 4 of the Constitution. This is primarily because the Constitution requires unlawfulness of the deprivation of liberty as the decisive element in respect of a right to compensation. Only in cases of an unlawful deprivation of liberty can the State be deemed responsible for material and non-material damage by the person who was deprived of his liberty.

An individual act of mercy has no influence on the fact of the lawfulness of the deprivation of liberty. The fact that the criminal proceedings against a person were discontinued on the ground of a pardon or amnesty also has no influence on the lawfulness of the deprivation of liberty. For deprivation of liberty to be lawful it is crucial that at the time of the deprivation of liberty there was a sufficient legal ground for it and that it was done in accordance with a procedure established by law. The beneficiary of the right to compensation is the person who was deprived of his liberty under circumstances in which it can be considered that there were flaws in the conduct of the domestic authorities.

This court also considers that it is the right of the lawmaker not to grant a right to compensation to those persons who, regardless of their guilt, have been exempted from criminal prosecution, or from serving their sentence. Where the criminal proceedings have been discontinued pursuant to a pardon or amnesty, it cannot be said that the person was deprived of his liberty under circumstances that lay a burden on the domestic authorities and for which the State can be held responsible.

The right to compensation under the impugned provision of the Code of Criminal Procedure vests in those persons who were convicted as a result of a miscarriage of justice, or persons who were deprived of their liberty but the criminal proceedings did not terminate in a conviction. This, accordingly, concerns reasons which lay a burden on the judicial authorities and for which the State is responsible.

Nor does the impugned provision conflict with the European Convention on Human Rights and Protocol No. 7.

In substance, the Convention, just like the Constitution, provides protection from the unlawful deprivation of liberty. The right to compensation concerns circumstances in which “a person has, by a final decision, been convicted of a criminal offence and subsequently had his conviction reversed” or “he has been pardoned, on the ground that a new or newly-discovered fact shows conclusively that there has been a miscarriage of justice“. Both situations suggest flaws in the conduct of the proceedings by the judicial authorities which have resulted in a miscarriage of justice or in circumstances suggesting a miscarriage of justice. The Convention requires that the deprivation of liberty be a result of flaws in the proceedings attributable to the State.”

## THE LAW

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

24. The applicant complained that he had not had a fair trial as provided for in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

## A. Admissibility

### 1. *The parties' arguments*

25. The Government submitted that the applicant had lodged his application with the Court outside the six-month time-limit. In the Government's view, this time-limit had started to run from when the judgment of the Supreme Court concerning the applicant's appeal on points of law was served on the applicant, namely on 25 October 2007, and not from the time of service of the decision of the Constitutional Court, which the applicant relied on when lodging his application with the Court on 14 May 2010. This was because the applicant had failed to expressly rely on the provision of the Constitution guaranteeing the right to a fair hearing when lodging his constitutional complaint.

26. The Government also argued that the applicant should have lodged a civil action for damages against the State if he had considered that he had sustained any damage as a result of the illegal or irregular actions of a judge in the civil proceedings.

27. The applicant argued that he had complied with the procedure provided for in the domestic law in that he had lodged his complaints about lack of fairness in the civil proceedings with the Constitutional Court, asking that court to quash the decisions of the lower courts.

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

28. The Court reiterates that the requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated, since not only are they combined in the same Article, but they are also expressed in a single sentence whose grammatical construction implies such correlation (see *Hatjianastasiou v. Greece*, no. 12945/87, Commission decision of 4 April 1990, and *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts)).

29. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. In this regard, the Court has already held that in order to comply with the principle of subsidiarity, before bringing complaints against Croatia to the Court applicants are in principle required to afford the Croatian Constitutional Court a possibility of remedying their situation (see *Orlić v. Croatia*, no. 48833/07, § 46, 21 June 2011).

30. The Court notes that in the course of the domestic proceedings the applicant first lodged an appeal with the Zagreb County Court against the first-instance judgment of the Zagreb Municipal Court dismissing his civil

action for damages, complaining about the retroactive application of the relevant law. When the Zagreb County Court dismissed his appeal, the applicant formulated the same complaints in his appeal on points of law before the Supreme Court and then in his constitutional complaint before the Constitutional Court. In his constitutional complaint the applicant complained that the retroactive application of Article 484(a) of the Code of Criminal Procedure to his civil action, which had been lodged one year before that provision had come into force, had extinguished his right to compensation, and asked the Constitutional Court to quash all the decisions of the lower courts.

31. As to the Government's arguments that in his constitutional complaint the applicant had failed to expressly rely on the provision of the Constitution guaranteeing the right to a fair hearing, the Court reiterates that the requirement to exhaust domestic remedies means that a complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits (see, among many others, *Gluhaković v. Croatia*, no. 21188/09, § 42, 12 April 2011, and *Saliba and Others v. Malta*, no. 20287/10, § 73, 22 November 2011).

32. Therefore, the Court considers that, by complaining about the retroactive application of the relevant law throughout the domestic proceedings, the applicant made normal use of the domestic remedies, as required by Article 35 § 1 of the Convention, before bringing the same complaints before the Court. Consequently, in lodging his application with the Court within the six-month time-limit after the decision of the Constitutional Court was served on him, the applicant complied with the six-month rule for lodging his application with the Court.

33. As to the Government's arguments that the applicant could have lodged a civil action for damages against the State on the ground of illegal or irregular actions on the part of the judge in the civil proceedings, the Court considers that complaints about a lack of fairness in proceedings are best addressed in the proceedings in connection with which such complaints are raised. Therefore, since he had pursued the relevant remedies in the course of the civil proceedings, it was not necessary for the applicant to lodge an additional civil action for damages against the State.

34. Against the above background, the Court considers that the Government's objections must be rejected.

35. The Court considers further that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

36. The applicant contended that the manner in which the national courts had applied the laws regulating the right to compensation in respect of detention to his case had been unfair. He argued that the Constitution and the relevant law, as in force at the time of his release from detention, had provided a right to compensation to all persons who had been detained but against whom the criminal proceedings had been discontinued. There had been no reason to apply these principles differently in his case and the fact that he had been granted an amnesty had been of no relevance since the General Amnesty Act had never excluded the right to compensation. That right had been extinguished one year after he had lodged his civil action for damages on account of the amendments to the Code of Criminal Procedure. The only purpose of the legislative amendments had been to avoid the payment of compensation for his detention – which had not been justified by any reasonable suspicion, much less a conviction – since at that time a number of claims for compensation had already been pursued in the domestic courts. In that way the Government had directly influenced the outcome of his pending civil proceedings and retroactively extinguished the right to compensation which had previously existed.

37. The Government argued that it had been the well-established practice of the domestic courts that Article 484(a) of the Code of Criminal Procedure had retroactive effect in that it extinguished the right to compensation of persons who had been detained but had then been granted an amnesty. Therefore, the applicant must have known about that practice of the domestic courts at least from August 2005 when the case-law of the Supreme Court was fully settled. Retroactive effect of certain provisions of law was within the competence of the law-maker and was not contrary to the Constitution. The decisions of the domestic courts dismissing the applicant's civil action had been based on the relevant domestic law, namely Article 484(a) of the Code of Criminal Procedure, and had been sufficiently reasoned. Moreover, all the applicant's arguments had been examined by the domestic courts at three levels of jurisdiction and also by the Constitutional Court, which had found that all the decisions of the lower courts had been based on the relevant domestic law.

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

#### **(a) General principles**

38. The Court reiterates that in the context of civil disputes it has repeatedly held that although, in principle, the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws in force, the principle of the rule of law and the notion of fair trial

enshrined in Article 6 preclude, except for compelling public-interest reasons, interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute (see, among many other authorities, *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no.301-B; *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, *Reports of Judgments and Decisions* 1997-VII; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 126, ECHR 2006-...).

39. The Court considers that these principles are essential elements of the concepts of legal certainty and protection of litigants' legitimate trust (see *Unédic v. France*, no. 20153/04, § 74, 18 December 2008).

40. Therefore, in assessing whether the interference by the legislature with the administration of justice, which had been designed to influence the judicial determination of a dispute by the introduction of retrospective provisions, infringed the applicant's right to a fair trial, the Court will primarily assess the existence of compelling public-interest reasons for such legislative changes (see *Scordino v. Italy (no. 1)* [GC], cited above, § 132). In addition, the Court must examine the effects of such legislative changes taken together with the method and timing of their enactment (see *Papageorgiou v. Greece*, 22 October 1997, § 38, *Reports* 1997-VI, and *Smokovitis and Others v. Greece*, no. 46356/99, § 24, 11 April 2002).

**(b) Application of these principles to the present case**

41. The Court notes that prior to the amendments of the Code of Criminal Procedure on 2 June and 27 October 1999, Article 480 of that Code provided for a right to compensation for anyone who had been in pre-trial detention but against whom criminal proceedings had either not been instituted or had been discontinued by a final decision. The applicant in the present case was detained from 23 October 1995 to 7 October 1996 and the criminal proceedings against him were discontinued pursuant to the General Amnesty Act of 24 September 1996 granting general amnesty from the criminal prosecution and proceedings to the alleged perpetrators of the criminal offences committed during, and in relation to, the Homeland war in Croatia (see paragraph 22). The General Amnesty Act does not, however, contain any provisions concerning the right to compensation.

42. The said amendments to the Code of Criminal Procedure of 2 June and 27 October 1999 excluded the application of Article 480 in cases where an amnesty had been granted in connection with criminal proceedings for offences allegedly committed in the period between 17 August 1990 and 23 August 1996 in connection with the aggression, armed rebellion or armed conflict in Croatia during the Homeland war. In the present case

these amendments had the effect of excluding the applicant as the beneficiary of the right to claim compensation under Article 480 of the Code of Criminal Procedure.

43. In order to discern the nature of these amendments and their influence on the applicant's particular situation, the Court must examine them against the rules and principles of the domestic legal system as a whole, in so far as they concern the right to compensation for detention in criminal proceedings which did not result in a conviction.

44. In this regard the Court notes that Article 25 § 4 of the Croatian Constitution provides for a right to compensation only for those individuals who have been unlawfully deprived of their liberty or unlawfully convicted (see paragraph 18). In its interpretation of this constitutional provision and the relevant provisions of the Code of Criminal Procedure, the Constitutional Court held that unlawfulness of detention and flaws in the conduct of proceedings attributable to the domestic authorities were decisive elements in respect of the right to compensation. Consequently, in the absence of unlawfulness or flaws in the conduct of the proceedings there was no call to award any compensation (see paragraph 23).

45. In the light of the principle that the domestic authorities are best placed to interpret the domestic law (see *Dolca v. Romania* (dec.), no. 59282/11, § 23, 2 September 2012), the Court accepts such an interpretation of the relevant domestic rules, particularly since they appear to be in compliance with the relevant provisions of the Convention.

46. In this connection, the Court reiterates that it has to examine the situation impugned by an applicant in the light of the Convention read as a whole (see, for example, *Büker v. Turkey*, no. 29921/96, § 31, 24 October 2000). The Court further reiterates that the right to compensation set forth in Article 5 § 5 of the Convention presupposes that a violation of one of the other paragraphs of Article 5 has been established, either by a domestic authority or by the Convention institutions (see, among many others, *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012). Similarly, the Court has held that the aim of Article 3 of Protocol No. 7 is to confer the right to compensation on persons convicted as a result of a miscarriage of justice where such conviction has been reversed by the domestic courts on the ground of a new or newly discovered fact (see, for example, *Matveyev v. Russia*, no. 26601/02, §§ 38-39, 3 July 2008).

47. The Court notes that in the present case the domestic authorities did not establish any miscarriage of justice or any unlawfulness in the applicant's detention, nor does the applicant claim that his detention was unlawful in itself or otherwise in breach of the Convention or the domestic law. The applicant rather claimed the right to compensation on the ground that, by virtue of the General Amnesty Act, the criminal proceedings against him had not terminated in a conviction.

48. However, the Court notes that the General Amnesty Act, as a sovereign act resulting in the applicant's immunity from criminal prosecution, cannot be considered to suggest that there was a miscarriage of justice or that the applicant's detention was unlawful, or that there was otherwise a ground on which the applicant could claim any compensation in connection with the criminal proceedings against him or his detention. It merely meant that the State had decided to grant a certain class of defendants, to whom the applicant belonged, immunity from further prosecution.

49. Therefore, it appears that a legal gap existed between the General Amnesty Act and the general provision of Article 480 of the Code of Criminal Procedure concerning the question of compensation for detention in a criminal case whose termination without a conviction was not due, as the Constitutional Court noted, to a lack of diligence or to arbitrariness on the part of the domestic authorities.

50. The Court is ready to accept that this legal gap had to be resolved by enacting the amendments to Article 480 of the Code of Criminal Procedure that had the effect of extinguishing the right to compensation where an amnesty had been granted (see, *mutatis mutandis*, *Unédic v. France*, § 77, cited above) even if it meant, in concrete terms, the retroactive application of these amendments to cases such as the applicant's. Moreover, the Convention organs have already held that, even in such fundamental areas of the protection of human rights as the right to life, the State is justified in enacting, in the context of its criminal policy, any amnesty laws it might consider necessary, with the proviso, however, that a balance is maintained between the legitimate interests of the State and the interests of individual members of the public (see *Dujardin and Others v. France*, no. 16734/90, Commission decision of 2 September 1991, Decisions and Reports 72, p. 236).

51. In this connection, the Court also observes that it has constantly held that, under Article 6 of the Convention, the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws in so far as there appear to be compelling grounds in the general interest, such as, in the Court's view, existed in the present case (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society*, cited above, § 112).

52. The Court is mindful of the fact that the amendments were enacted while the applicant's civil proceedings for compensation were pending, but it cannot fail to observe that the provision of Article 480 of the Code of Criminal Procedure, on which the applicant relied in his civil action, was not specific to cases involving an amnesty. Furthermore, the constitutional provision granting the right to compensation only to those individuals who have been unlawfully deprived of their liberty or unlawfully convicted had

already been in force. In that connection the Court notes that the Constitution is above the regular statutes (see paragraph 18).

53. Therefore, it cannot be said that it was absolutely unforeseeable that new legislation could be enacted with the effect of clarifying the existing general rules of the Code of Criminal Procedure (see, *mutatis mutandis*, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society*, cited above, § 112, and *Zielinski and Pradal and Gonzalez and Others*, cited above, § 59).

54. These amendments were enacted before the first-instance judgment in the applicant's case was adopted (see, by contrast, *Papageorgiou*, § 38) or any other relevant progress in the proceedings achieved, which distinguishes the case from other cases dealt with by the Court in which the legislative changes altered the course of proceedings which had been pending for years and in which an enforceable judgment had been adopted (see *Stran Greek Refineries and Stratis Andreadis*, cited above).

55. Against the above background, the Court considers that there has been no violation of Article 6 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicant also complained under Article 6 § 2 of the Convention that in the decisions of the national courts in the civil proceedings he was treated as having committed a criminal offence. He further complained, under Article 5 §§ 3 and 5 of the Convention, that his pre-trial detention had exceeded a reasonable time and that he had no right to compensation. Lastly, he invoked Article 7 of the Convention but without further elaboration.

57. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's right to a fair trial admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Isabelle Berro-Lefèvre  
President