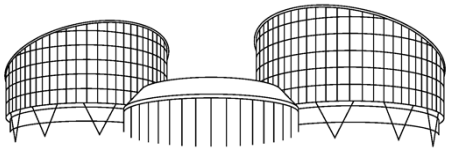

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MARGARI v. GREECE

(Application no. 36705/16)

JUDGMENT

Art 8 • Private life • Photographs and personal data of a defendant in criminal proceedings published in the press on public prosecutor's order for six months after charges brought, without her prior knowledge and consent • Objective usefulness of publishing the material served a sufficiently pressing social need in case-circumstances • No distinction made between charges against applicant and co-defendants in published police announcement executing prosecutor's order • Processing of personal data relating to criminal charges called for enhanced protection due to its particular sensitivity • Need for such sensitive data to accurately reflect the situation and the charges against an accused person, with regard to the observance of the presumption of innocence • Existing domestic safeguards of prior notification and right of appeal against prosecutor's decision not applicable in relation to charges at issue • Interference not sufficiently justified and disproportionate

STRASBOURG

20 June 2023

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 Margari v. Greece,

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

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

Having regard to:

the application (no. 36705/16) 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, Ms Eleni Margari ("the applicant"), on 17 June 2016;

the decision to give notice to the Greek Government ("the Government") of the complaints under Articles 8 and 13 of the Convention concerning the publication of the photograph of the applicant together with the charges pending against her and the lack of a remedy in that regard, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 16 May 2023,

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

INTRODUCTION

1. The application concerns the publication of the applicant's photograph and personal data in the press for a period of six months after she had been charged with certain offences. The applicant complained that the publication had taken place following an order of the public prosecutor to that effect, without her having prior knowledge of it, without her being able to contest the decision and without her being distinguished from her co-accused as regards the offences she had been charged with, which gave the public the impression that she had been charged with more serious (forms of) offences than was actually the case.

THE FACTS

2. The applicant was born in 1978 and lives in Athens. She was represented by Mr K. Farmakidis-Markou, a lawyer practising in Athens.

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

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

5. On 16 November 2015 the applicant was arrested in the context of a police investigation, along with other six persons. The public prosecutor of the Athens Court of First Instance charged the applicant with the offences of aiding and abetting fraud, forgery and use of forged documents, and also with participation in a criminal organisation contrary to Article 187 § 5 of the Criminal Code. The applicant was released from detention pending trial after making her defence statement on 19 November 2015, on condition that she did not leave the country.

6. The applicant was charged with joining a criminal organisation formed by some of her co-defendants in order to commit fraud in relation to property transactions. They had allegedly approached the owners and prospective buyers pretending to be estate agents and, using forged documents, had transferred or promised to transfer ownership of the properties in question in order to receive a deposit and keep it for themselves, and in that way had obtained more than 700,000 euros.

7. On 25 November 2015 the Department of Public Security of the Eastern Attica Police asked the public prosecutor to publish the personal data and photographs of the accused pursuant to Article 2 (b) and Article 3 § 2 of Law no. 2472/97 in order to protect society from similar actions, and to investigate whether there were other cases in which the accused had participated.

8. Following this, the public prosecutor of the Athens Court of First Instance issued order no. F34/2015, which authorised the publication of the personal data and photographs of seven of the accused persons, including the applicant, by any media outlets and relevant websites for a period of six months, from 2 December 2015 until 2 June 2016. The order was approved by the public prosecutor of the Athens Court of Appeal, who considered that all the legal conditions for such an order had been met.

9. According to the applicant, the announcement was published on 16 December 2015 on the website of the Hellenic Police. It referred to "members of a criminal organisation that committed fraud at the expense of property owners in Psychiko and Voula" (areas of Attica). The applicant was the third person mentioned in the announcement, which mentioned that the people described had been charged "with offences of fraud committed jointly, forgery and use of forged documents, issuing false certificates, falsification of documents, knowingly filing a false criminal complaint and breach of the law in relation to money laundering, as applicable".

10. On 26 December 2015 the applicant was informed by some friends of the publication of her personal data that had been reproduced in various media outlets and websites. She then requested a copy of the public prosecutor's order, which she received on 11 January 2016. In the order she was mentioned fourth and the offences with which each accused was charged were distinguished from the charges against the other persons featuring in the announcement.

11. At the end of the main investigation, the accused persons were committed for trial in the three-member Athens Criminal Court of Appeal. By judgment no. 3126/2017 delivered on 22 June 2017, the applicant was convicted and sentenced to eleven years and six months' imprisonment without suspensive effect. The applicant and her co-accused appealed against that decision before the five-member Athens Criminal Court of Appeal. The appeals were heard on 16 September 2022 and on various subsequent dates. According to the information provided by the Government, the applicant did not appear before the appellate court, nor was she represented, which will result in her appeal being rejected as undefended. It follows from the file that the applicant is considered a fugitive.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. EUROPEAN LAW

12. The relevant parts of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as in force at the material time, which was later repealed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), read as follows:

> "(34) Whereas Member States must also be authorized, when justified by grounds of important public interest, to derogate from the prohibition on processing sensitive categories of data where important reasons of public interest so justify in areas such as public health and social protection - especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system - scientific research and government statistics; whereas it is incumbent on them, however, to provide specific and suitable safeguards so as to protect the fundamental rights and the privacy of individuals;
>
> ...
>
> (45) Whereas, in cases where data might lawfully be processed on grounds of public interest, official authority or the legitimate interests of a natural or legal person, any data subject should nevertheless be entitled, on legitimate and compelling grounds relating to his particular situation, to object to the processing of any data relating to himself; whereas Member States may nevertheless lay down national provisions to the contrary;
>
> ..."

Article 8
The processing of special categories of data

"...

5. Processing of data relating to offences, criminal convictions or security measures may be carried out only under the control of official authority, or if suitable specific safeguards are provided under national law, subject to derogations which may be granted by the Member State under national provisions providing suitable specific safeguards. However, a complete register of criminal convictions may be kept only under the control of official authority.

Member States may provide that data relating to administrative sanctions or judgements in civil cases shall also be processed under the control of official authority.

..."

Article 13
Exemptions and restrictions

"1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 6 (1), 10, 11 (1), 12 and 21 when such a restriction constitutes a necessary measure to safeguard:

...

(d) the prevention, investigation, detection and prosecution of criminal offences, or of breaches of ethics for regulated professions;

..."

II. DOMESTIC LAW

A. The Constitution

13. The relevant Articles of the Greek Constitution read as follows:

Article 9A

"All persons have the right to be protected from the collection, processing and use, especially by electronic means, of their personal data, as specified by law. The protection of personal data shall be ensured by an independent authority, which shall be constituted and shall operate as specified by law."

Article 25

"1. The rights of the human being as an individual and as a member of society and the principle of the welfare state based on the rule of law shall be guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights shall also apply to the relations between individuals where appropriate. Restrictions of any kind which, in accordance with the Constitution, may be imposed upon these rights shall be provided for either directly by the Constitution or by statute should there be a corresponding reservation, and shall respect the principle of proportionality.

..."

B. The Criminal Code

14. The relevant Articles of the Criminal Code read as follows:

Article 187
Criminal organisation

"1. A sentence of imprisonment of up to ten years may be imposed on any person who sets up or becomes a member of a structured and permanently active group made up of three or more persons (an organisation) for the purpose of committing the serious crimes provided for by Articles 207 (forgery), 208 (circulation of counterfeit currency), 216 (falsification of documents), 218 (falsification and abuse of official stamps), 242 (false testimony or distortion), ... 374 (aggravated theft), 375 (embezzlement), 380 (robbery), 385 (extortion), 386 (fraud), 386A (computer fraud), 404 (usury) ...

...

5. Save for the cases provided for in paragraph 1 [of this Article], a person who unites with another to commit a serious crime (as a criminal organisation) shall be liable to a term of imprisonment of at least six months. A person who unites with another, as provided for by the previous sentence, in order to commit a misdemeanour punishable by at least one year's imprisonment with the aim of receiving a financial or other material benefit or causing harm to life, bodily integrity or sexual freedom shall be liable to a term of at least three months' imprisonment."

C. The Civil Code and its Introductory Law

15. The relevant Articles of the Civil Code provide as follows:

Article 57

"Any person whose personal rights are unlawfully infringed shall be entitled to bring proceedings to ensure the cessation of the infringement and restrain any future infringement ...

In addition, the right to claim damages on the basis of the provisions concerning unlawful acts shall not be excluded."

Article 59

"In cases covered by the preceding two Articles, the court, when giving judgment at the request of the person whose rights have been infringed and taking account of the nature of the infringement, may also order the person at fault to afford redress for any non-pecuniary damage caused. This may entail the payment of a sum of money, a public announcement and/or any other measure that is appropriate in the circumstances."

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

"The State shall be duty bound to make good any damage caused by unlawful acts or omissions attributable to its bodies in the exercise of public authority, except where the unlawful act or omission was in breach of an existing provision of law but was intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

D. Law no. 2472/1997 on the protection of individuals with regard to the processing of personal data

17. At the material time, the processing of personal data was governed by Law no. 2472/1997 transposing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data into Greek law. The relevant provisions of the Law read as follows:

Article 2
Definitions

"...

(b) 'Sensitive data' shall mean any data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health, social welfare and sexual life, criminal charges or convictions, as well as participation in associations dealing with the above-mentioned areas. In particular, with regard to criminal charges or convictions, the prosecutor's office may authorise the publication [of personal data] in relation to the offences referred to in Article 3 § 2 (b) by an order of the prosecutor of the Court of First Instance, or the prosecutor of the Court of Appeal if the case is pending before the appellate court. The order shall include detailed and specific reasons, and shall define the mode of publication and the period for which it shall last. The publication shall serve the aims of protecting society, minors or vulnerable or disadvantaged sectors of the population, and facilitating the State's task of punishing the above-mentioned offences. The defendant or convicted person shall be allowed to lodge an appeal against the prosecutor's order within two days of its being notified to him or her, with the Head of the Prosecutor's Office of the Court of First Instance, or of the Court of Appeal if the case is pending before the appellate court, who shall decide within two days. Until the appropriate prosecutor has taken his or her decision, the execution of the order and the publication of the data shall be forbidden.

As an exception, in relation to the serious crimes defined in Article 187 and Article 187 A and the 19th Chapter of the Criminal Code, namely 'offences against sexual freedom and offences of financial exploitation of sexual life', the prosecutor's order shall be executed immediately and shall be approved within twenty-four hours by the Head of the Prosecutor's Office of the Court of Appeal if it has been issued by the prosecutor of the Court of First Instance. Otherwise, it shall automatically cease to be valid on the expiry of a period of twenty-four hours.

The provisions of the two previous sentences shall apply by analogy to any offences where the perpetrator is considered by the appropriate prosecutor to present a particular danger to public order and security and is wanted for arrest or when the perpetrator's residential address is unknown."

Article 3

"...

2. The provisions of this law shall not apply to the processing of personal data:

...

(b) by the judicial and prosecuting authorities and services acting under their immediate supervision in the administration of justice or for their operational needs in investigating criminal acts that are punished as serious crimes or misdemeanours committed with intent, and especially crimes against life, against sexual freedom, relating to financial exploitation of sexual freedom, against personal liberty, against property, against financial rights, breaches of the law relating to drugs, threats to public security, or crimes against minors ...

The current substantive and procedural criminal provisions shall be applicable to the above."

E. Hellenic Data Protection Authority

18. The Hellenic Data Protection Authority issued decision no. 128/2012 on the publication of the personal data of certain persons charged with criminal offences in the context of other domestic cases. It stated, among other things, the following:

"...

3. More specifically, it goes without saying that the prosecuting authorities, in exercising their above-mentioned powers, as guarantors of the observance of the Constitution and the law, will apply Article 9A of the Constitution..., as well as the substantive provisions of Law no. 2472/1997 and in particular the proportionality principle. Consequently, acting in accordance with that principle, they will consider whether, in order to achieve the purposes of the above-mentioned provision [Article 2 (b), second sentence] (recourse to which should be had sparingly), it is necessary to publish personal data relating to criminal charges or convictions, and will take into account the fact that publication under the above-mentioned provision is tolerated, in accordance with the Constitution and Law no. 2472/1997, only if the personal data published are absolutely necessary and appropriate to achieve the aim pursued as mentioned in the prosecutor's order, whether for the protection of society or minors or to investigate the full extent of the particular offence in respect of which the charges have been brought and the preliminary or main investigation is being conducted, in the context of which the publication was ordered. Moreover, the person issuing the order will consider whether that aim may be achieved solely by reference to the prosecution and to data identifying the alleged perpetrator that are absolutely necessary and closely linked to the case and will avoid any excessive publication of personal data, especially sensitive data, in view of the burdensome consequences of the publication of such data, which in most cases are irreversible ..."

THE LAW

I. PRELIMINARY ISSUE – CONTINUED EXAMINATION OF THE APPLICATION UNDER ARTICLE 37

19. In reply to a written question to the applicant as to whether there was still contact between her and her representative, the representative indicated that he had had sporadic communication with the applicant until 2022 but that when he had tried to contact the applicant after receiving letters from the Court's Registry, he had been unsuccessful. He stated that he could not

reasonably conclude that his power of attorney had been revoked or that the applicant wished to withdraw her application to the Court. He added that he was aware that the applicant suffered from various mental and physical health issues, but that these were not so serious as to suggest that she no longer had the capacity to pursue her legal rights and interests.

20. In view of these circumstances, the Court considers it necessary first to examine whether it is justified to continue the examination of the application in the light of the criteria set forth in Article 37 of the Convention, which reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

21. The relevant principles and the Court's case-law on the matter have been summarised in *N.D. and N.T. v. Spain* ([GC] nos. 8675/15 and 8697/15, §§ 72-77, 13 February 2020).

22. The Court notes that in the present case, the representative's letter casts doubt on his continued communication with the applicant as of 2022, as well as on the applicant's wish to pursue the application. That being said, the Court observes that, even if the circumstances of a case lead to the conclusion that an applicant no longer wishes to pursue the application, it may continue its examination "if respect for human rights as defined in the Convention and the Protocols thereto so requires" (Article 37 § 1 *in fine*). Circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto and which require the continued examination of the application exist when such an examination would contribute to elucidating, safeguarding and developing the standards of protection under the Convention (see, for example, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 90, ECHR 2012 (extracts)).

23. The Court considers that the subject matter of the present application – the publication of personal data by the prosecuting authorities in the context of pending criminal proceedings – involves an important question of general interest not only for Greece but also for other States Parties to the Convention. There are therefore special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto which require the further examination of the application on its merits.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicant complained that the publication of her photograph and personal data in the press for a period of six months following her being charged with certain offences had violated her right to private life as provided for in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' arguments

25. The Government argued that the applicant had not exhausted the available domestic remedies. In particular, the applicant had lodged her application with the Court on 17 June 2016, that is to say, after the expiry of the validity of the prosecutor's order on the basis of which her photograph and personal data had been published. That meant that by lodging her application with the Court, the applicant was seeking an *ex post facto* finding of a violation of her right to privacy and potentially an award of compensation by way of just satisfaction. However, she could have achieved that result by lodging an action under Articles 57 and 59 of the Civil Code and Article 105 of the Introductory Law to the Civil Code in conjunction with Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the Convention. Relying on a series of judgments of the Supreme Administrative Court and administrative courts, the Government submitted that an application for compensation for damage caused by unlawful acts or omissions by the State could result in an award of compensation for pecuniary and non-pecuniary damage and it was therefore an appropriate and effective legal remedy that applicants should use, whether they attributed the unlawful action to the prosecutor (as part of the judiciary), the police or the legislature. The Supreme Administrative Court by its judgment no. 799/2021 had also ruled that the State's liability for compensation under Article 105 of the Introductory Law to the Civil Code was engaged even when the violation was of an international treaty rather than domestic law. The Government further noted that the Court had acknowledged the availability and effectiveness of that remedy for alleged violations of Article 8 and Article 6 § 2 of the Convention in *Anastassakos v. Greece* ((dec.), no. 41380/06, 3 May 2011).

26. The applicant replied that at the time she had lodged her application with the Court there had been only one judgment of the Supreme

Administrative Court (no. 1501/2014) in which it had been held that an action for damages could be brought even when the damage in question had been caused by a manifest error of judgment on the part of a judicial body. It was only recently that the Supreme Administrative Court had stated unambiguously that the liability of the State was engaged by acts and omissions of judicial bodies (judgment no. 799/2021). Having regard to the fact that, at the time of lodging the application, there was clear Supreme Administrative Court case-law indicating that any action against the decision of the public prosecutor would have been ineffective, the applicant argued that she was not required to have used that legal remedy.

2. The Court's assessment

(a) General principles

27. The right to protection of one's reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010; and *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007, and the authorities cited therein). This also applies to a person's honour (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; *Sanchez Cardenas v. Norway*, no. 12148/03, § 38, 4 October 2007; and *Egill Einarsson v. Iceland*, no. 24703/15, § 33, 7 November 2017). The concept of "private life" is a broad term not susceptible to exhaustive definition (see, among other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 109, ECHR 2014, and *Gillberg v. Sweden* [GC], no. 41723/06, § 66, 3 April 2012) which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as a name or elements relating to a person's right to their image (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008, and *Axel Springer AG*, cited above, § 83, with further references). It covers personal information which individuals can legitimately expect should not be published without their consent (see *Axel Springer AG*, cited above, § 83; *Saaristo and Others v. Finland*, no. 184/06, § 61, 12 October 2010; and *Flinkkilä and Others v. Finland*, no. 25576/04, § 75, 6 April 2010).

28. The concept of private life includes elements relating to a person's right to his or her image, and the publication of a photograph falls within the scope of private life (see *Gurgenidze v. Georgia*, no. 71678/01, § 55, 17 October 2006; *Sciacca v. Italy*, no. 50774/99, § 29, ECHR 2005-I; and *Von Hannover v. Germany*, no. 59320/00, §§ 50-53, ECHR 2004-VI). A person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right of each person to the protection of his or her image is thus one of the essential components of personal

development and presupposes the right to control the use of that image. Whilst in most cases the right to control such use involves the possibility for an individual to refuse publication of his or her image, it also covers the individual's right to object to the recording, conservation and reproduction of the image by another person (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 89, 17 October 2019, with further references).

29. The Court reiterates that in order for Article 8 to come into play, an attack on a person's reputation or honour must attain a certain level of seriousness and be carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 72, ECHR 2016).

30. Under Article 35 § 1 of the Convention, the Court may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. The Court also reiterates that it is incumbent on a Government pleading non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, in particular, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V; *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Vučković and Others v. Serbia (preliminary objection)* [GC], no. 17153/11 and 29 others, § 74, 25 March 2014; and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 85, 9 July 2015). Once that burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Prencipe v. Monaco*, no. 43376/06, § 93, 16 July 2009).

(b) Application in the present case

31. Turning to the circumstances of the present case, it is uncontested that the dissemination of the applicant's photograph and details of the criminal charges against her attained the requisite level of seriousness to attract the protection of Article 8 of the Convention and the Court sees no reason to hold otherwise.

32. As regards the Government's objection related to the requirement to exhaust domestic remedies, the Court notes that in so far as the applicant's complaint is related to the prosecutorial order, at the time the applicant lodged her application with it, it had indeed not been unambiguously acknowledged in the domestic case-law that an individual could be compensated under Article 105 of the Introductory Law to the Civil Code for errors made by the judiciary. The relevant decision adduced by the Government, acknowledging

the possible responsibility of the State for errors made by the judiciary that were in breach of EU law dates from 2021 (Plenary of the Supreme Administrative Court, decision no. 799/2021). In this regard, the Court reiterates that the requirement for the applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). Moreover, Article 105 of the Introductory Law to the Civil Code required an illegal act or omission by the State in order for an individual to have the right to be compensated (see *Dikaiou and Others v. Greece*, no. 77457/13, § 71, 16 July 2020). The applicant in the present case did not contest that the prosecutor's actions were in accordance with the law; rather, she focused on the legal provisions which provided for the procedure that was followed by the domestic authorities, arguing that they were disproportionate and in breach of her rights under Article 8 of the Convention. Therefore, this case should be distinguished from *Anastassakos* (cited above), which was cited by the Government, but which concerned the disclosure of a confidential report to the media in breach of domestic law. The Government have not adduced any domestic decision in which the courts have compensated an individual for acts that were in accordance with domestic law but in breach of the Convention. In particular, apart from decision no. 799/2021 that was issued long after the present application was lodged with the Court, the decisions adduced by the Government do not concern errors made by the judiciary.

33. As regards the part of the applicant's complaint relating to the flawed presentation of the charges in the police website, the Court notes that the publication of the applicant's photograph and relevant data by the police was in execution of the prosecutor's order. According to domestic decision no. 1501/2014 of the Plenary of the Supreme Administrative Court mentioned by the applicant above, the police's actions in execution of a prosecutor's order should not be attributed to them without being connected to that order. It follows from that domestic decision that, should the applicant lodge an application under Article 105 of the Introductory Law to the Civil Code against the publication of the relevant data by the police, it would still fall under the case-law concerning errors made by the judiciary, which pursuant to that decision, require a manifest error of judgment to establish the State liability. In any event, and should the publication be regarded isolated from the prosecutor's order, it has not been argued by the applicant that that publication was in breach of domestic law, which is a prerequisite for the application of Article 105 of the Introductory Law to the Civil Code. The applicant's arguments focus rather on the fact that there are not sufficient details in it to distinguish each defendant from the others in respect of the crimes charged with (see paragraph 39 below). In the Court's view such action would have no chances of success and no relevant case-law has been adduced by the Government to demonstrate otherwise.

34. Having regard to these considerations, and in the absence of any relevant domestic case-law, the Court concludes that the remedy put forward by the Government was not effective in the circumstances of the present case and the applicant did not have to have recourse to it.

35. The Court further 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' arguments

36. The applicant argued that the publication of her photograph and personal data in the press for a period of six months following her being charged with certain offences, without her having prior knowledge of the publication, without her being able to contest the decision and without her being distinguished from her co-accused as regards the offences she had been charged with, had given rise to a violation of Article 8 of the Convention. The announcement in the press had given the public the impression that she had been charged with more serious (forms of) offences than was actually the case, while at the same time she had been unable to lodge an appeal with the public prosecutor of the Court of Appeal against the decision of the public prosecutor at the Court of First Instance.

37. The procedure followed in the applicant's case had not entailed an assessment of whether it had been necessary to publish the applicant's data and photograph. The automatic procedure which allowed the prosecutor to publish those data under the pretext of being "useful" therefore meant that Greek law was in breach of the Convention; alternatively, the lack of justification for the publication indicated a presumption that the applicant was guilty, in which case the violation of Article 8 was obvious.

38. In addition, the announcement in the press had not made a distinction between forming a criminal organisation under Article 187 § 1, which the applicant's co-defendants had been accused of, and participation in a criminal organisation under Article 187 § 5 of Greek Criminal Code, of which the applicant had been accused, nor had it mentioned the fact that she had been released after her defence statement, which indicated the existence of a lower level of suspicion of guilt. The practice of publishing all the data together without differentiating between the defendants was not fair, given that information on criminal charges should always be accurate.

39. Lastly, the applicant noted that there was a difference between the prosecutor's order and the police announcement, which was the one that had also been published in the press. In the former, the defendants had been distinguished as regards the exact offences with which they had been charged, but in the latter, the charges had appeared without the relevant distinctions being made. However, the applicant could not complain to the domestic

courts about that difference, even though it was the prosecutor's responsibility to oversee the execution of his orders.

40. The Government stated that an individual had the right to protection of his or her personal data pursuant to Article 9A of the Greek Constitution. In accordance with the domestic case-law and the decisions of the Hellenic Data Protection Authority, any interference with that right should observe the principle of proportionality. In the present case, the publication of the applicant's photograph and personal data had been permitted under Article 2 (b) and Article 3 § 2 (b) of Law no. 2472/1997, which had transposed Directive 95/46/EU into Greek law. Moreover, recital 43 of the preamble to that Directive allowed member States to impose restrictions if they were necessary for criminal investigations and prosecutions.

41. In addition, Article 8 of the above-mentioned Directive provided for the processing of personal data relating to criminal convictions on condition that it was under the control of a public authority. Lastly, as provided in Article 3 § 2 (b) of Law no. 2472/1997, that Law did not apply to the processing of personal data by judicial or prosecuting authorities in the context of criminal justice.

42. As regards the applicant, the Government noted that she had been charged with participation in a criminal organisation under Article 187 of the Criminal Code. After the charges had been brought, the police had asked the prosecutor to publish photographs and personal data of the accused in the case. The prosecutor of the Court of First Instance, considering the offences of which the defendants were accused to have undermined the value of the human being as protected by Article 2 of the Constitution, ordered the publication of the personal data of seven defendants, including the applicant, with the aim of protecting society and facilitating the investigation of other possible offences they might have committed.

43. In any event, prosecutor's order no. F34/2015 had explicitly mentioned the charges against each individual defendant and the relevant provisions of the Criminal Code, as well as the relevant provisions of Law no. 2472/1997 allowing publication. As regards the applicant, it was mentioned that she had been charged with aiding and abetting fraud (Articles 47 and 368 of the Criminal Code), aiding and abetting forgery and the use of forged documents (Articles 216 and 217 of the Criminal Code) and participation in a criminal organisation (Article 187 of the Criminal Code). Moreover, publication had been ordered for a limited period of time, namely from 2 December 2015 at 12 noon to 2 June 2016 at 12 noon.

44. Because the offences included one of belonging to a criminal organisation provided for by Article 187 of the Criminal Code, the above-mentioned prosecutor's order had not been notified to the applicant but had been submitted for approval to the prosecutor of the Court of Appeal pursuant to Article 2 (b) of Law no. 2472/1997, and following that it had been transferred to the police for execution.

45. The Government therefore submitted that there had been no violation of the Greek Constitution or the Convention. The publication of the applicant's personal data and photograph was provided for by law and had served a lawful purpose, namely the protection of society and the investigation of other offences that the defendants might have committed. Moreover, those purposes had been explicitly mentioned in the prosecutor's order. Publication had been ordered only for a limited period of time, which was the minimum period for achieving the above-mentioned aims, and had taken place after its lawfulness had been reviewed by two prosecutors, namely the prosecutor at the Court of First Instance and the prosecutor at the Court of Appeal.

2. The Court's assessment

(a) General principles

46. The relevant general principles have been recently reiterated in *L.B. v. Hungary* [GC] (no. 36345/16, §§ 108-109, 115 and 118-126, 9 March 2023) with further references.

47. The necessity of protecting the confidentiality of certain types of personal data may sometimes be outweighed by the public interest in the investigation and prosecution of crime and in the public nature of court proceedings (see *Avilkina and Others v. Russia,* 2013, § 45, and *Z v. Finland*, 25 February 1997, § 97, *Reports* 1997-I). The appropriate national authorities should be afforded some leeway in striking a fair balance between, on the one hand, the protection of the public nature of judicial proceedings, which is necessary to uphold trust in the courts, and, on the other hand, the interests of a party or of a third person in maintaining the confidentiality of his or her data (see *C.C. v. Spain*, no. 1425/06, § 35, 6 October 2009). Any measure liable to make public an individual's personal data, whether or not he or she is a party or a third party to judicial proceedings, should meet an overriding social need (see *Vicent Del Campo v. Spain*, no. 25527/13, § 46, 6 November 2018) and should be limited as far as possible to what is rendered strictly necessary by the specific features of the proceedings (see *L.L. v. France*, no. 7508/02, § 45, ECHR 2006-XI).

48. As regards the use of a photograph, the Court has considered that where a photograph published within the context of reporting on pending criminal proceedings has no informational value in itself, there must be compelling reasons to justify an interference with the defendant's right to respect for his or her private life (see *Khuzhin and Others v. Russia*, no. 13470/02, § 117, 23 October 2008).

49. Lastly, the Court has recognised that, in the light of Article 10 of the Convention, Article 6 § 2 cannot prevent the authorities from informing the public about ongoing criminal investigations, but it requires that they do so with all the discretion and circumspection necessary if the presumption of

innocence is to be respected (see *Allenet de Ribemont v. France*, 10 February 1995, § 38, Series A no. 308). Similarly, it has accepted that the publication of photographs of suspects cannot in itself constitute a violation of the presumption of innocence (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 47, 28 October 2004).

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

50. Turning to the circumstances of the present case, the Court finds, and it has been uncontested between the parties, that there has been an interference with the applicant's right to respect for her private life. It therefore remains to be examined whether the interference was justified under Article 8 § 2. Such interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society" in order to achieve them.

51. In this connection, it is undisputed between the parties that the above-mentioned interference was in accordance with the law. In particular, Article 2 (b) of Law no. 2472/1997, as in force at the material time, allowed the public prosecutor to order the publication of personal data in relation to certain offences as set out in Article 3 § 2 of the same law, under certain conditions, such as notification of the subject of the personal data, the inclusion of reasons for the order and the right of the subject to lodge an appeal. Article 2 (b) provided for derogation from some of the above-mentioned conditions for certain offences, including creating and joining a criminal organisation. The Court accepts therefore that the interference was in accordance with the law.

52. As to the question of whether the publication pursued any of the legitimate aims referred to in Article 8 § 2 of the Convention, the Court notes that the above-mentioned domestic provisions specified that such publication served the purposes of the protection of society, especially of minors and vulnerable or disadvantaged sectors of the population, and facilitated the State's task of punishing the above-mentioned offences. The public prosecutor, in his order no. F34/2015, justified the publication of the photograph and the data by reference to the need to protect society and to aid the gathering of further information in relation to those or further offences. The Court therefore concludes that the publication took place in order to protect the rights and freedoms of others, and thus pursued legitimate aims under Article 8 § 2 of the Convention.

53. It therefore remains to be seen whether the publication was necessary in a democratic society in order to achieve the above-mentioned aims. In this connection, the Court reiterates that an interference will be considered "necessary in a democratic society" in pursuit of a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities

to justify it are "relevant and sufficient" (see, for example, *Fernández Martínez*, cited above, § 124, and *S. and Marper*, cited above, § 101, and the authorities cited therein). In cases concerning the disclosure of personal data the Court has recognised that the relevant national authorities should be allowed a margin of appreciation in striking a fair balance between the conflicting public and private interests. However, this margin goes hand in hand with European supervision (see *Funke v. France*, 25 February 1993, § 55, Series A no. 256-A) and its scope depends on such factors as the nature and seriousness of the interests at stake and the gravity of the interference (see *Z v. Finland*, cited above, § 99).

54. In the present case the applicant was charged with certain offences. The public prosecutor made use of his legal power to order the publication of photographs of the accused persons along with the offences they had been charged with, specifying the reasons for publication and the period of time for which the order would be valid, namely six months. In this connection the Court accepts that criminal proceedings have specific features that must be taken into account (compare *Vicent del Campo*, cited above, § 47). In particular, it reiterates that the necessity of protecting the confidentiality of certain types of personal data may sometimes be outweighed by the interest in the investigation and prosecution of crime and in the public nature of court proceedings (see, *mutatis mutandis*, *Avilkina and Others*, cited above, § 45, and *Z v. Finland*, cited above, § 97). However, the fact of being the subject of criminal proceedings does not curtail the scope of the broader protection of her private life which the applicant enjoys as an "ordinary person" (see *Sciacca*, cited above, § 29, and *Khuzhin and Others*, cited above).

55. In this connection, the Court notes that in the present case the prosecutor referred to the need to collect more information on other possible offences the accused might have committed and the protection of society as the legitimate aims required to justify publication. Furthermore, the prosecutor's order contained only the information that was strictly necessary to achieve those aims, namely the photograph and the offences with which the applicant had been charged, without any further statement that could be considered a potential breach of the presumption of innocence. This situation can therefore be distinguished from that in *Khuzhin and Others* (cited above), in which the Court held that the publication of the accused person's photograph did not have any informational value as the applicant in that case was in custody. In the present case, the applicant was not in custody and in the Court's view, the authorities could legitimately enlist public support to investigate whether there were any other offences in which the applicant and her co-defendants could have been involved.

56. The Court has already held that the objective usefulness of photographs taken by the authorities after arresting an individual suspected of committing an offence may render their retention "necessary in a democratic society" for the purposes of countering crime (see *Suprunenko*

v. Russia (dec.), no. 8630/11, § 65, 19 June 2018). The same considerations apply in the context of the publication of the applicant's photograph together with information about the charges against her, namely that the objective usefulness of publishing the material in question served a sufficiently pressing social need in the prevailing circumstances and taking into account the fact that it ceased after a period of six months.

57. Turning to the assessment of the proportionality of that publication and whether the authorities provided relevant and sufficient reasons for it, the Court observes that Greek domestic law provides for certain safeguards when the prosecutor orders the publication of personal data and photographs in the context of pending criminal proceedings, such as notification to the defendant beforehand and a right of appeal. However, in the specific case of setting up or joining a criminal organisation the above-mentioned safeguards do not apply. In particular, the applicant was not informed officially of the publication of her photograph and personal data, either before the publication or afterwards, but was informed of it accidentally through her friends. The Court takes issue with this aspect of the domestic law. In particular, it has already found a violation of Article 8 of the Convention in cases in which the photographs of accused people had been given to the press without their consent when there was no basis for this in domestic law (see *Sciacca*, cited above, § 30) or when the interference was not justified (see *Khuzhin and Others*, cited above, § 117). Although a legally binding obligation to obtain an accused person's consent before the publication of his or her photograph and of the charges faced could run counter to the purpose of the law, the Court nevertheless considers that the applicant should at least have been notified prior to the dissemination of her photograph and the details of the pending criminal charges, since the fact of being the subject of criminal proceedings did not curtail the scope of the broader protection of her private life which she enjoyed as an "ordinary person" (see *Sciacca*, cited above, § 29).

58. Moreover, the applicant had no right to appeal against the prosecutor's order for the publication of her photograph and personal data. The law provided that for specific categories of offences, the order would be in force immediately and would be approved by the prosecutor of the Court of Appeal, but without specifying the criteria for such approval (see paragraph 17 above). Even though Article 8 of the Convention contains no explicit procedural requirements, it is important for the effective enjoyment of the rights guaranteed by this provision that the relevant decision-making process is fair and such as to afford due respect to the interests safeguarded by it. Such a process may require the existence of an effective procedural framework whereby an applicant can assert his or her rights under Article 8 under conditions of fairness (see *Ciubotaru v. Moldova*, no. 27138/04, § 51, 27 April 2010). However, in the circumstances of the present case, the applicant had no opportunity either to be heard prior to the decision being

taken or to apply for a review and put forward her arguments after the decision was taken.

59. Lastly, the Court takes note of the applicant's argument that she had only been charged with the misdemeanour of joining a criminal organisation as provided for in Article 187 § 5 of the Criminal Code and not with the more serious form of that offence as provided for in Article 187 § 1 of the Criminal Code. While the prosecutor's order described with sufficient clarity the exact offences that the applicant had been accused of, the police announcement in execution of the prosecutor's order made no distinction among the defendants, stating merely that they had been accused of the offences "as applicable". The police announcement was later published in the media. In this connection, the Court considers that the processing of personal data relating to criminal charges calls for enhanced protection because of the particular sensitivity of the data at issue (compare the judgment of 22 June 2021 of the Court of Justice of the European Union (Grand Chamber) in *Latvijas Republikas Saeima (Penalty points*), C-439/19, EU:C:2021:504). It is therefore of the utmost importance that when sensitive data are being published in the context of pending criminal proceedings or in the context of the investigation of criminal offences that those data accurately reflect the situation and the charges pending against an accused person, regard also being had to the observance of the presumption of innocence.

60. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's right to respect for her private life occasioned by the prosecutor's order and the police announcement was not sufficiently justified in the particular circumstances of the case and, notwithstanding the national court's margin of appreciation in such matters, was disproportionate to the legitimate aims pursued. Accordingly, there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. The applicant complained that she did not have at her disposal an effective remedy for her complaints under Article 8, in violation of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

62. Having regard to the findings under Article 8 of the Convention in paragraphs 58 and 60 above, the Court considers that, although the complaint under Article 13 of the Convention is closely linked to the complaint under Article 8 and therefore has to be declared admissible, it is not necessary to examine it separately (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 307, ECHR 2015).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage, stating that she had been stigmatised by the prosecutor's order and the police announcement, which had been given to the press and had continued to circulate even after the period of six months had ended.

65. The Government argued that the finding of a violation should be sufficient compensation for any non-pecuniary damage suffered by the applicant and that the sum requested was in any event disproportionate and excessive in view of the circumstances of the present case and Greece's financial difficulties.

66. The Court considers that, in the circumstances of the present case and in view of the fact that the applicant is considered a fugitive (see paragraph 11 above), its finding of a violation constitutes sufficient just satisfaction and accordingly makes no award under this head.

B. Costs and expenses

67. The applicant did not claim any amount in respect of costs and expenses. The Court therefore makes no award under that head.

FOR THESE REASONS, THE COURT

1. *Holds*, by four votes to three, that respect for human rights requires it to continue the examination of the case;

2. *Declares,* by a majority, the application admissible;

3. *Holds*, by four votes to three, that there has been a violation of Article 8 of the Convention;

4. *Holds,* by six votes to one, that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 20 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Judge Serghides;
(b) joint dissenting opinion of Judges Roosma and Zünd.

P.P.V.
M.B.

DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicant, who is a fugitive from the Greek criminal justice system and authorities (see paragraphs 11 and 66 of the judgment), complained that the publication by the Greek police of her photograph and personal data in the press for a period of six months after she had been charged with certain offences had violated her right to respect for her private life, as guaranteed in Article 8 of the Convention. She also complained that she had not had at her disposal an effective remedy for her complaints under Article 8, in violation of Article 13. Lastly, she asked the Court to award her just satisfaction for non-pecuniary damage.

2. Article 35 § 3 (a) of the Convention, dealing with admissibility criteria, provides that "[t]he Court *shall declare inadmissible any individual application* ... if it considers that ... the application is ... *an abuse of the right of individual application*" (emphasis added). Moreover, paragraph 4 of the same Article provides the following: "The Court *shall reject any application* which it considers *inadmissible* under *this Article*. It may do so *at any stage* of the proceedings" (emphasis added).

3. As I have argued elsewhere (see my partly dissenting opinion, §§ 4-5, in *Saure v. Germany,* no. 8819/16, 8 November 2022), an abuse of the right of individual application must be considered parasitic in relation to that right and one of its greatest "enemies" as well as one of the worst adversaries of the effective protection of human rights more generally. This is so, because the concept of "abuse" must be understood as a harmful exercise of the right of individual application, for a purpose other than that for which it is intended, namely, the effective protection of human rights. The right of individual application, which is institutionalised and guaranteed by Article 34 of the Convention, is one of the most significant features of the Convention. The jurisdiction or power of the Court to dismiss as inadmissible those applications which constitute an abuse of the right of individual application, at any stage of the proceedings, even of its own motion, is based not only on Article 35 §§ 3 (a) and 4 of the Convention, quoted above (see paragraph 2), but also on Articles 19 and 32 of the Convention, as well as on its inherent jurisdiction, since this issue is related to the jurisdiction, power and function of the Court.

4. On 22 June 2017 the applicant was convicted and sentenced by the three-member Athens Criminal Court of Appeal to eleven years and six months' imprisonment without suspensive effect, but she, ever since, has remained a fugitive (see paragraphs 11 and 66 of the judgment), without any explanation on her part as to why she is not surrendering herself to the Greek authorities so as to serve her sentence. Her lawyer, in his recent update to the Court (dated 10 March 2023), states that until the year 2022 he had sporadic correspondence with her, but that since then, despite his efforts, he has not been able to re-establish contact with the applicant. As stated in paragraph 11

of the judgment, the applicant and her co-accused appealed against the above-mentioned conviction to the five-member Athens Criminal Court of Appeal. However, according to the information provided by the Government (dated 9 February 2023), the applicant never appeared before that appellate court, nor was she represented, with the result that her appeal would be rejected as undefended and it follows from the file that the applicant is considered to be a fugitive (see paragraph 11 of the judgment). This information was sent by the Court to the applicant's lawyer for comment and in his letter of 10 March 2023 to the Court he points out that he is not handling any case for the applicant other than her present application before the Court. Regrettably, there is no information in the file as to the efforts that the Greek police have made to trace and arrest the applicant and to take her into custody or why they have failed to do so. The fact that the applicant appealed against her conviction and sentence is evidence that she was informed about the relevant judgment, but she has not surrendered herself to the Greek authorities to serve her prison sentence.

5. Consequently, the applicant has shown complete disrespect for the rule of law of her own country, namely Greece, against which this application was lodged. The fact of maintaining her application before the Court – as this application relates to the facts of the same case for which she was ultimately convicted and sentenced – is unquestionably, in my humble view, an abuse, on the part of the applicant, of the right of individual application, and her application must therefore be rejected as inadmissible under Article 35 § 3 (a) and (c) of the Convention. I would add a word of clarification: I use the phrase "maintaining her application" here, instead of the phrase "lodging her application", because when the applicant lodged her application before the Court, namely on 16 June 2016, it was prior to her conviction and sentence, which took place on 22 June 2017, and therefore she was not at that time a fugitive. Thus her application came to constitute an abuse of individual application from 22 June 2017, when the applicant was convicted and sentenced, since which time she has not surrendered herself to serve her sentence.

6. This is the first time, to the best of my knowledge, that a case has come before the Court with similar facts to those of the present one (other than in extradition cases), where an applicant is a fugitive from the criminal justice system and authorities and yet the application, constituting an abuse of individual application, seeks Convention protection from the Court. Such an application should not be allowed to make a mockery of the procedure before the Court and undermine its role and credibility as an international human rights institution.

7. The applicant's conduct is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper function of the Court, which expects applicants to come before it with clean hands and with the higher standard of good faith (*uberrima fides*)

and not to ask it to afford them Convention protection while they themselves are fugitives from justice and are in continuous violation of the rule of law. In this connection, it should not be overlooked: firstly, that the role of the Convention mechanism is subsidiary to that of the national authorities, and the efficiency and effectiveness of the Convention system is based on this premise; secondly, that one of the fundamental principles which lies at the heart of the Convention and is enshrined in each of its provisions safeguarding human rights and is also mentioned in its Preamble, as well as in Article 3 and the Preamble to the Statute of the Council of Europe, is the principle of the rule of law; and thirdly, that the Convention is a European and international human rights treaty and, as such, is part of the European and international rule of law. In my view, the Court, which applies the Convention and the principle of the rule of law and ensures by virtue of Article 19 of the Convention the observance of the engagements undertaken by the High Contracting Parties in the Convention, including, of course, the observance that national courts meet the requirements of effective judicial protection, cannot be considered to fulfil its role and mission if it allows an applicant who does not respect the rule of law, by remaining a fugitive, to come before it and endeavour to vindicate his or her rights, by seeking protection from the Court. The most essential requirement of the rule of law is that everyone, without discrimination, must respect and abide by the law and the decisions of the courts.

8. I regret that, though the judgment takes into account the fact that the applicant is a fugitive when dealing with her claim in respect of non-pecuniary damage under Article 41 of the Convention (see paragraph 66 of the judgment), it does not do the same when dealing with her complaint under Article 8 of the Convention and in ultimately finding that there has been violation of this Article. With all due respect, the approach followed by the judgment is not a consistent and coherent one. The character of the present application as an abuse of individual application affects its totality and therefore it pervades all the applicant's complaints and not only some of them. The rejection of the whole of the application as inadmissible, as this opinion proposes, should have been, in the circumstances of the case, the most appropriate manner of dealing with the application.

9. In view of the above, I would reject the application as inadmissible and this is the reason why I have voted against all five of the judgment's operative provisions. By way of clarification, I voted against points 4 and 5 not because I took a contrary view on those precise issues but because I considered the provisions to be without object as a consequence of my finding of inadmissibility.

JOINT DISSENTING OPINION OF JUDGES ROOSMA AND ZÜND

1. To our regret we are unable to follow the majority in this case. Our disagreement primarily lies in the question of exhaustion of domestic remedies, which is intrinsically related to the existence or otherwise of adequate procedural guarantees available to the applicant for asserting her rights under Article 8 – an issue pertaining to the merits of the case.

2. The decision to publish the applicant's photograph and personal data was taken by a public prosecutor at the request of the police, who had found that this was necessary in order to protect society from similar actions, and to investigate whether there were other cases in which the accused had participated. The prosecutor's order was approved by a higher prosecutor (see paragraphs 7 and 8 of the judgment). The applicant was not informed about those decisions and upon subsequent investigation it became evident that the announcement published on the website of the Hellenic Police did not correspond verbatim to the public prosecutor's order: the published announcement was less specific in respect of the particular charges brought against each of the accused and, according to the applicant, had given the public the impression that she had been charged with more serious forms of offences than had actually been the case.

3. Unlike the majority, we are not convinced that the applicant should have been notified of the intended publication prior to the dissemination of her photograph and the details of the pending criminal charges (see paragraph 54 of the judgment). We would point out that the criminal case concerned the defrauding of owners and prospective buyers of real estate by the defendants, who had pretended to be estate agents. It was an evident matter of urgency to warn the public about persons who had been charged with such offences and to urge possible further victims to come forward. The publication took place when the applicant had been released pending trial.

4. As concerns *ex post facto* remedies – which would have been sufficient in our view – the parties differed as to their availability. The Government referred to Articles 57 and 59 of the Civil Code and Article 105 of the Introductory Law to the Civil Code, under which, in their submission, it would have been possible to establish a violation of the right to respect for private life and claim compensation. In that connection, they relied on a series of judgments of the Supreme Administrative Court and administrative courts relating to compensation for damage caused by unlawful acts or omissions by the State. They also referred to a ruling by the Supreme Administrative Court (judgment no. 799/2021), according to which the State's liability for compensation was engaged even when the violation was of an international treaty rather than domestic law, and noted that the Court had acknowledged the availability and effectiveness of that remedy for alleged violations of Article 8 and Article 6 § 2 in *Anastassakos v. Greece* ((dec.), no. 41380/06,

3 May 2011 – see paragraph 25 of the judgment). According to the applicant, there had been only one judgment of the Supreme Administrative Court (no. 1501/2014) at the material time in which it had been held that an action for damages could be brought even when the damage in question had been caused by a manifest error of judgment on the part of a judicial body. Furthermore, in the applicant's submission it had been only recently that the Supreme Administrative Court had stated unambiguously that the liability of the State was engaged by acts and omissions of judicial bodies (judgment no. 799/2021). She insisted that at the time of lodging the application, there had been clear Supreme Administrative Court case-law indicating that any action against the decision of the public prosecutor would have been ineffective, and therefore she had not been required to have used that legal remedy (see paragraph 26 of the judgment).

5. In our view, the above arguments made by the parties do not allow us to make a firm conclusion as to the effectiveness or otherwise of a remedy against a decision of the prosecutor or the allegedly unlawful execution of that decision by the police. The majority considered that at the material time it had "not been unambiguously acknowledged in the domestic case-law" that a person could be compensated for an alleged violation in a case like the present one (see paragraph 32 of the judgment). This may well be so, but in our view such a standard for assessing whether the domestic remedies have been exhausted is far too high and neglects the principle of subsidiarity. The applicant acknowledged that after she had lodged her application with the Court, the Supreme Administrative Court had stated unambiguously that the liability of the State was engaged by acts and omissions of judicial bodies (see paragraph 26 of the judgment) – something that, according to the Government, had already happened at an earlier stage. Leaving aside the question whether the domestic case-law allowed for a distinction to be made between the orders of prosecutors and the acts carried out by the police to execute such orders, we note that even in respect of complaints against prosecutors, this consolidation of domestic case-law would have never come into being if all potential victims in cases like the present one had forgone any attempt to apply to domestic courts and turned directly to the European Court of Human Rights. The acceptance of such complaints not only contributes to the excessive caseload of the Court but also has adverse effects on the development of domestic case-law. In any event, the Court has held that it is incumbent on the Government pleading non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018). In the present case the Government referred to specific provisions of domestic law, as well as domestic judgments confirming the availability of the remedy indicated by them. Furthermore, we see no reason

why State liability should depend on whether the authorities are in breach of domestic or international law. Mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 74 and 84, 25 March 2014). Like the Government, we cannot overlook the fact that in *Anastassakos* (cited above) the Court had already acknowledged the existence of the domestic case-law submitted by the Government according to which civil liability of the State had been – at least partly – accepted for acts and omissions attributed to judicial authorities.

6. As to the merits, we note that the majority's finding of a violation was based to a significant extent on the procedure used by the domestic authorities for the publication of the information about the applicant, including her alleged lack of opportunity to apply for a review after the decision had been taken. Since we already disagree on that point, we do not need to take a firm position on the remainder of the elements leading to the finding of a violation by the majority. We would limit ourselves to noting that the gravity of the offence was characterised by the applicant's sentence of eleven years' imprisonment and that the kind of offence in question could well be seen as weighing heavily in favour of publishing information about the applicant – who was not in pre-trial detention – in order to warn other persons and to seek further possible victims to ensure the proper conduct of the criminal investigation.