



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

COURT (CHAMBER)

CASE OF STAMOULAKATOS v. GREECE

(Application no. 12806/87)

JUDGMENT

STRASBOURG

26 October 1993

In the case of Stamoulakatos v. Greece*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. MATSCHER,

Mr B. WALSH,

Mr C. RUSSO,

Mr N. VALTICOS,

Mrs E. PALM,

Mr A.N. LOIZOU,

Mr F. BIGI,

Mr L. WILDHABER,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 April and 20 September 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 September 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12806/87) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek citizen, Mr Nicolas Stamoulakatos, on 18 July 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 paras. 1 and 3 (art. 6-1, art. 6-3).

* The case is numbered 30/1992/375/449. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30), to whom the President gave leave to address the Court in Greek (Rule 27 para. 3).

3. The Chamber to be constituted included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 September 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mrs E. Palm, Mr A.N. Loizou, Mr F. Bigi and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 17 February 1993. In a letter of 5 February 1993 the applicant's lawyer had indicated that he no longer intended filing a memorial. On 20 March the Secretary to the Commission made it known that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 April 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr V. Kondolaimos, Adviser to the Legal Council of State, Delegate of the Agent;

- for the Commission

Mr C.L. Rozakis, Delegate;

- for the applicant

Mr A. Vyrinis, dikigoros (lawyer), Counsel.

The Court heard addresses by them and also replies to its questions.

AS TO THE FACTS

6. Mr Nicolas Stamoulakatos, a Greek national, is a retired journalist. He currently lives in London.

Before the material time, he had been convicted by the Salonika Criminal Court of forgery, uttering and fraud, in 1974, and by the Agrinion Criminal Court for insulting the authorities, in 1979. Furthermore, in 1978 and 1979

eight separate sets of proceedings were brought against him in the Athens Criminal Court for insulting a public officer, fraud, defamation, misappropriation, forgery, uttering and causing bodily harm. All these proceedings took place in the applicant's absence; three sets of them are in issue before the Court.

A. The applicant's convictions

1. The conviction for insulting the authorities

7. On 5 April 1979 in a telegram sent to several public figures, including the Greek President and various ministers, and to the press, the applicant described certain members of the public prosecutor's office and the Indictment Division of the Court of Cassation as "collaborators of the colonels' regime", "chief torturers", "admirers of Adolf Hitler", "perjurers", "agents of death", "fabricators of incriminating evidence against democrats", "justicemongers" and "trainers of fascists". The telegram, which was signed by Mr Stamoulakatos, also gave his professional address at 59 Panepistimiou Street, Athens.

8. An investigating judge at the Athens Criminal Court summoned Mr Stamoulakatos for questioning in connection with an investigation he had started in respect of him. The court bailiff took the summons to 59 Panepistimiou Street and as he did not find the applicant there, gave it to Mr Masson, a lawyer who had his office at the same address. The applicant confirmed by telegram that he had been informed of the summons, but he failed to appear.

9. On 15 May 1979 a police officer served on him a summons to appear before the Criminal Court to answer a charge of insulting a public officer. Since he was unable to serve it on the applicant in person, he gave the document to Mr Vassilakis, one of Mr Stamoulakatos's colleagues (pursuant to Article 155 of the Code of Criminal Procedure); the applicant did not appear at the hearing on 25 May 1979.

10. After ruling that the defendant had been properly summoned, the Criminal Court decided to hear the case and to give judgment "as if [the defendant] were present" (under Article 340 para. 3 of the Code of Criminal Procedure). After two prosecution witnesses and the prosecutor had been heard, Mr Stamoulakatos was convicted and sentenced to two years' imprisonment. The judgment (no. 16438/1979) was filed at Athens Town Hall on 12 November 1979, as the authorities regarded the applicant as having no known address (Article 156 para. 2 of the Code of Criminal Procedure).

2. The conviction for fraudulent conversion of securities and slander

11. On 28 August 1979 an investigating judge at the Athens Criminal Court decided to interview the applicant about a complaint lodged by a Mrs Kritikou. The summons was taken to 59 Panepistimiou Street and again given to Mr Masson; Mr Stamoulakatos failed to appear.

12. On 12 September 1979 Mrs Papargyriou, an employee of the applicant's, informed the investigating judge that Mr Stamoulakatos had been in New York since 10 May 1979 and gave him his address.

On 15 February 1980 the public prosecutor's office served a summons to appear before the Criminal Court at the applicant's professional address in Athens; it was handed over to Mrs Papargyriou (pursuant to Article 155 previously cited).

13. On 3 March 1980 the Criminal Court decided (under Article 340 para. 3 previously cited) to proceed with the trial notwithstanding the absence of the defendant, who had, it ruled, been properly summoned. It imposed a sentence of eight months' imprisonment, which it converted into a fine. The judgment (no. 8439/1980) was lodged on 19 September 1980 at Athens Town Hall on the ground that neither the prosecuting authority nor the authority responsible for effecting service knew Mr Stamoulakatos's address.

3. The conviction for forgery and uttering

14. Mrs Kritikou having made a second complaint, the applicant was charged with forgery and uttering in that he had altered the wording of a cheque he had received from her and had attempted to cash it.

On 13 October 1980 a police officer delivered the summons to appear before the Criminal Court to 59 Panepistimiou Street. When he found that the applicant was "unknown" at that address, had not communicated any other to the public prosecutor's office and had no relatives on whom service could be effected, he lodged the summons at Athens Town Hall (pursuant to Article 156 para. 2 previously cited).

15. The Criminal Court proceeded despite Mr Stamoulakatos's absence, and on 11 December 1980 he was convicted and given an immediate custodial sentence of two years. The judgment (no. 42211/1980) was delivered to Athens Town Hall (pursuant to Article 156 para. 2 previously cited).

B. The applicant's appeals

16. Mr Stamoulakatos states that he left Greece in May 1979 but he does not give the exact date of his departure. He went to New York and then London, where he worked until 1985 as a journalist. Following two convictions by Acton Crown Court, he went to Cyprus and then to Belgium,

where he was arrested on 19 September 1985 and extradited to Greece on 23 December. He was imprisoned at Ioannina and later at Piraeus and was conditionally released on 7 April 1987.

While he was serving his sentence, he appealed against the three judgments of the Athens Criminal Court (see paragraphs 10, 13 and 15 above). He complained that he had not been duly summoned and that he had therefore been unable to defend himself against the charges against him; he also complained that service of the judgments had been irregular.

1. The appeals against judgment no. 16438/1979

17. On 21 July 1986 Mr Stamoulakatos appealed to the Athens Court of Appeal against judgment no. 16438/1979 (see paragraph 10 above).

18. In a judgment of 29 October 1986 the Court of Appeal declared the appeal inadmissible for the following reasons:

"...

The judgment was served on him on 12 November 1979, as appears from the record of service made by the bailiff T. Vassilas. He appealed on 21 July 1986, after the statutory time-limit, without indicating in his pleadings any valid reason for appealing out of time;

The evidence discloses no circumstance that would justify a late appeal, and the court is not convinced that the defendant was prevented by force majeure from lodging an appeal in time. The appeal must consequently be declared inadmissible since, irrespective of the fact that the defendant has not stated what his known address was at the time of service or why he did not appeal in time, it has not been proved at all that the impugned service was void. It has been established, on the contrary, that it was lawful, as the prosecuting authorities did not know where the defendant lived. The allegation of forgery in respect of the record of service is wholly unfounded and ... an investigation of the point would clearly be devoid of purpose since, at all events, the defendant was aware of his conviction from the end of 1985, when he was extradited to Greece.

..."

19. The applicant lodged an appeal on points of law, which the Court of Cassation dismissed on 13 February 1987, holding that the Court of Appeal had provided sufficient reasons for its decision.

20. On 2 January 1990 Mr Stamoulakatos made an application for a retrial (*aitissi epanalipseos tis diadikassias*) under Article 525 of the Code of Criminal Procedure to the Indictment Division of the Athens Court of Appeal. He relied on Article 4 para. 2 of Protocol No. 7 (P7-4-2) to the Convention and asked for judgment no. 16438/1979 (see paragraph 10 above) to be set aside.

The Indictment Division dismissed the application on 14 February 1991. It noted that the impugned summons had been taken to Mr Stamoulakatos's professional address, which was known to the authorities at the time, and

handed to one of his colleagues. The trial in absentia which followed was therefore in no way contrary to Article 6 (art. 6) of the European Convention or to the European Court's judgment of 12 February 1985 in the *Colozza v. Italy* case (Series A no. 89).

The applicant appealed on points of law against that decision on 14 May 1991, but the Court of Cassation dismissed the appeal on 23 December 1991 for failure to comply with the 30-day time-limit laid down in Article 473 para. 1 of the Code of Criminal Procedure.

2. The appeals against judgment no. 8439/1980

21. On 16 July 1986 the Athens Court of Appeal declared an appeal by the applicant against judgment no. 8439/1980 (see paragraph 13 above) inadmissible. It said, *inter alia*:

"...

No evidence has been adduced that justifies appealing out of time and the Court is not persuaded that the defendant was prevented by force majeure from appealing before the statutory time-limit. More particularly, he alleged that on 19 September 1980 his address was not unknown and that service of the judgment appealed against, effected according to the rules applicable to persons whose address is unknown, was not valid; in the alternative, he submitted that it was not valid because it was lodged at Athens Town Hall and not at the town hall of Paleo Faliro. As to this contention, the court notes the following: from the record of service of 19 September 1980 it appears that the officer responsible for service went to the defendant's last known address, namely 59 Panepistimiou Street, Athens, and that finding neither the defendant nor his wife nor any of his relatives, he lodged the document to be served with the mayor of Athens, who displayed it on the very same day in the appropriate place It should be emphasised that the fact that the defendant formerly lived at 59 Panepistimiou Street ... had been certified at the investigation stage and that this was why - as was disclosed in the record of service of the summons of 28 August 1979 to appear before the investigating judge - service was effected at that address and on the person who shared that address with the defendant. It should furthermore be noted that the offices of the newspaper *International Free Observer* were at that address, its headquarters - according to its issue of 16 September 1980 - being in New York, where the defendant was its correspondent On 17 June 1980 [the defendant], in a complaint to the Athens public prosecutor's office, confirmed that he lived in New York (without giving any address) and that he was temporarily living in London, at 29 Summer Place, London SW7, England. Two days before the impugned service ..., i.e. on 17 September 1980, the European Commission of Human Rights had drawn up a document giving the defendant's address (evidently supplied by him) as 41 Old Brompton Road, GB - London SW7. No other evidence was adduced concerning the defendant's permanent or temporary address ... during the period from 3 March 1980 ... to 19 September 1980. Evidence was, on the other hand, brought from the period after [this latter date] (such as the documents from the Consulate-General of Greece in London ..., which give the defendant's address as 10 Townsend Way, Northwood, Middlesex HA 1TF, London, and an envelope from the European Commission of Human Rights date-stamped 7 March 1986 and addressed to the applicant at 1-2, Poseidonos Avenue, Paleo Faliro); however, since this evidence refers to a period well after 19 September 1980, it does not suffice to establish that the defendant had a

known address, in particular one known to the authorities responsible for service and for the prosecution. All the aforementioned evidence shows ... that on 19 September 1980 the defendant's address really was unknown: he had left 59 Panepistimiou Street in Athens, his known address until then, and was travelling between his (unknown) address in New York and his temporary addresses in London, the nearest of which in time to 19 September 1980 - 41 Old Brompton Road, GB - London SW7 - was known neither to the Greek prosecuting authority nor to the authority responsible for service.

The defendant's submission must therefore be rejected as being ill-founded.

Since nothing proves that the appeal was brought out of time owing to force majeure (which the notice of appeal does not even claim) ..., the appeal must be declared inadmissible.

..."

22. Mr Stamoulakatos brought an appeal on points of law, which the Court of Cassation dismissed on 4 November 1986. Having been summoned to appear while he was serving his sentence, he did not attend.

23. On 2 January 1990 he made an application for a retrial to the Indictment Division of the Athens Court of Appeal. He relied on Article 4 para. 2 of Protocol No. 7 (P7-4-2) to the Convention and asked for judgment no. 8439/1980 (see paragraph 13 above) to be set aside.

On 14 February 1991 the Indictment Division dismissed the application on the ground that the file disclosed no procedural defect and that the trial in absentia had not in any way been contrary to Article 6 (art. 6) of the Convention or to the Colozza judgment. It noted that the summons to appear before the Criminal Court, which had been delivered to the address at which the applicant submitted that it should have been served on him at the time, had been given to Mrs Papargyriou pursuant to Article 155 para. 1 of the Code of Criminal Procedure. Furthermore, Greek national law did not oblige the court to assign counsel officially to defend a person accused of a criminal offence. Lastly, Mr Stamoulakatos had not pleaded any impediment such as would have justified adjourning the hearing (Article 349 of the Code of Criminal Procedure).

On 14 May 1991 the applicant appealed on points of law against that judgment, but on 23 December 1991 the Court of Cassation dismissed the appeal for failure to comply with the 30-day time-limit laid down in Article 473 para. 1 of the Code of Criminal Procedure.

3. The appeals against judgment no. 42211/1980

24. On 24 December 1985 the applicant lodged an appeal against judgment no. 42211/1980 (see paragraph 15 above) and made an application (under Article 430 of the Code of Criminal Procedure) to have the judgment set aside. He withdrew the appeal on 27 January 1986. On 19 March 1986 the Athens Criminal Court ruled that the application was admissible but

dismissed it as the applicant had not adduced any evidence to prove that he had a known address at the material time.

25. On 3 June 1987 the Court of Cassation held that an appeal on points of law brought by the applicant was barred by Article 431 para. 3 of the Code of Criminal Procedure.

26. On 18 December 1989 Mr Stamoulakatos applied to the Indictment Division of the Athens Court of Appeal for a retrial in respect of judgment no. 42211/1980.

On 14 February 1991, after considering the file forwarded by the Criminal Court, the Indictment Division noted that the applicant had properly been summoned as a person whose address was unknown; that it had proved impossible to reach him at the address at which, by his own account, he was to be found; that he had not notified the authorities of any change of address and the file did not disclose the existence of any relatives who could accept service; and that after leaving his known address, he travelled from place to place, which made it impossible to pinpoint his whereabouts. Accordingly, the proceedings ending in his conviction were not in any way defective and the trial in absentia was contrary neither to Article 6 (art. 6) of the Convention nor to the Colozza judgment. As to the new facts relied on by Mr Stamoulakatos in support of his application for a retrial, the Indictment Division concluded that, far from undermining the lower court's judgment, they confirmed its soundness.

On 14 May 1991 Mr Stamoulakatos appealed on points of law against that judgment, but the appeal was dismissed by the Court of Cassation on 23 December 1991 for failure to comply with the 30-day time-limit laid down in Article 473 para. 1 of the Code of Criminal Procedure.

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Stamoulakatos applied to the Commission on 18 July 1986. He relied on Articles 3, 4, 5, 6 paras. 1 and 3, 8, 9, 10, 11 and 14 (art. 3, art. 4, art. 5, art. 6-1, art. 6-3, art. 8, art. 9, art. 10, art. 11, art. 14) of the Convention and Article 1 of Protocol No. 1 (P1-1). In relation to Article 6 paras. 1 and 3 (art. 6-1, art. 6-3) he complained that he had not been properly summoned to appear in the proceedings which led to his conviction and that he had therefore been unable to defend himself against the charges against him.

28. In a partial decision of 6 June 1990 the Commission declared the application (no. 12806/87) inadmissible except for the complaints based on Article 6 (art. 6), of which it postponed consideration until the outcome of certain proceedings pending in the national courts was known; it declared these complaints admissible on 15 April 1991. On 8 June 1990 it had

dismissed an application by Mr Stamoulakatos inviting it to indicate interim measures to the Greek Government under Rule 36 of its Rules of Procedure.

In its report of 20 May 1992 (made under Article 31) (art. 31), the Commission expressed the opinion, by ten votes to four, that there had been a violation of Article 6 paras. 1 and 3 (art. 6-1, art. 6-3). The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

THE GOVERNMENT'S PRELIMINARY OBJECTIONS

29. The Government's primary submission, as before the Commission, was that Mr Stamoulakatos's complaints did not come within the Court's jurisdiction *ratione temporis* because they related to events which had taken place before 20 November 1985, when Greece's acceptance of the right of individual petition took effect (Article 25) (art. 25). The breach of which the applicant complained originated in three convictions dating from 1979 and 1980 (see paragraphs 10, 13 and 15 above); the fact that he had subsequently lodged appeals could not affect the period that the Court had to consider in order to rule on the objection.

The Government also submitted that the applicant had not exhausted domestic remedies, since at the time he applied to the Commission the Greek courts had still not ruled on his applications for retrials (see paragraphs 20, 23 and 26 above).

30. According to the majority of the Commission, the Convention institutions could not take cognisance of the trials held in absentia in 1979 and 1980 but the same was not true of the appeals and the application to set aside; these were lodged after November 1985 and could give rise to violations of Article 6 (art. 6) in their own right, as their purpose was to secure a rehearing of Mr Stamoulakatos's complaints with him present and, above all, to challenge the circumstances in which the authorities had issued the summonses in issue. A minority of four members of the Commission, however, expressed their agreement with the Government in substance.

31. At the Court hearing, Counsel for the applicant noted that Mr Stamoulakatos had lodged his appeals and application while he was in

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 271 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

custody, after the recognition of the right of individual petition. The Government's objection was thus contrary not only to the Greek Constitution and Article 2 of the Criminal Code (retrospective effect of new criminal legislation more favourable to an accused) but also to the Convention, ratified by Greece on 28 March 1953.

32. The Court finds that the events which gave rise to the proceedings against the applicant, together with the three judgments of the Athens Criminal Court, are covered by the time limitation in Greece's declaration in respect of Article 25 (art. 25) of the Convention, which reads:

"... the Government of Greece recognises, for the period beginning on 20 November 1985 and ending on 19 November 1988, the competence of the European Commission of Human Rights to receive petitions addressed to the Secretary General of the Council of Europe, by any person, non-governmental organisation or group of individuals claiming, in relation to any act, decision, facts or events subsequent to this date, to be the victim of a violation of the rights set forth in the Convention and in the Additional Protocol (P1) ..."

33. As to his appeals and applications against those judgments, the applicant complained only that they were ineffective in that they did not enable him to obtain from a court which had heard him - as he was entitled to under the Convention - a fresh determination of the merits of the charges on which he had been tried in absentia. Thus, although those appeals and applications were lodged after the "critical" date of 19 November 1985, they were closely bound up with the proceedings that had led to his conviction; both in his appeals and in his applications to set aside and for retrials, he complained of the unlawfulness of the summonses and of the service of the judgments given in absentia. Divorcing these appeals and applications from the events which gave rise to them would, in the instant case, be tantamount to rendering Greece's aforementioned declaration nugatory. It is reasonable to infer from that declaration that Greece cannot be held to have violated its obligations for not affording any possibility of a retrial to those who had been convicted in absentia before 20 November 1985.

In sum, the objection is well-founded.

34. This conclusion makes it unnecessary to examine the Government's other arguments.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it cannot deal with the merits of the case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 October 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar