



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

AFFAIRE STAMOULAKATOS c. GRÈCE (N° 2)

CASE OF STAMOULAKATOS v. GREECE (No. 2)

(164/1996/783/984)

ARRÊT/JUDGMENT

STRASBOURG

26 novembre/November 1997

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SUMMARY¹

Judgment delivered by a Chamber

Greece – length of proceedings in the Audit Court

I. GOVERNMENT’S PRELIMINARY OBJECTIONS

Non-exhaustion of domestic remedies: Government have not shown that the Audit Court would have given the applicant's case priority had he made a request to that effect.

Lack of competence *ratione temporis*: although applicant’s claim was based on the allegation that he had suffered torture between 1967 and 1974, Court has only to examine the complaint relating to the length of the proceedings, which were brought after the acceptance by Greece of the right of individual petition.

Conclusion: objections dismissed (unanimously).

II. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

The right to a pension is a civil right.

Conclusion: Article 6 § 1 applicable (unanimously).

B. Compliance

Period to be taken into consideration began on date on which applicant lodged an appeal with the Audit Court and has not yet ended (nine and a half years thus far).

Reasonableness of the length of proceedings: case not especially complex – applicant not responsible for the length of the proceedings – several periods of inactivity noted – overall length of time and importance of what was at stake for the applicant borne in mind.

Conclusion: violation (unanimously).

III. ARTICLE 13 OF THE CONVENTION

Not necessary to consider the case under this provision (unanimously).

1. This summary by the registry does not bind the Court.

IV. ARTICLE 50 OF THE CONVENTION

Pecuniary damage: no causal link established between violation found and loss alleged.

Non-pecuniary damage: award on equitable basis.

Costs and expenses, domestic proceedings: none established.

Costs and expenses, Strasbourg proceedings: applicant is not entitled to be reimbursed for his own work, no expenses shown.

Conclusion: respondent State to pay applicant specified sum in respect of non-pecuniary damage (unanimously).

COURT'S CASE-LAW REFERRED TO

26.11.1992, Brincat v. Italy; 9.12.1994, Schouten and Meldrum v. the Netherlands; 16.9.1996, Akdivar and Others v. Turkey; 28.5.1997, Pauer v. Austria; 29.5.1997, Georgiadis v. Greece; 27.6.1997, Philis v. Greece (no. 2)

In the case of Stamoulakatos v. Greece (no. 2)¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr K. JUNGWIERT,

Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 30 August and 22 October 1997,

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

PROCEDURE

1. The case was referred to the Court by the Greek Government (“the Government”) on 9 December 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 27159/95) against the Hellenic Republic lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a Greek national, Mr Nicolas Stamoulakatos, on 1 April 1995.

The Government’s application referred to Articles 44 and 48. The object of the application 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 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 164/1996/783/984. 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.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and sought leave to present his own case. The President of the Chamber declined to grant such leave and invited the applicant to nominate as his representative an advocate qualified to practise in any of the States Parties to the Convention and resident in one of them (Rule 30 § 1). The applicant failing to appoint a representative within the time-limit set for that purpose by the President of the Chamber, the Court proceeded on the assumption that he did not wish to take part in the proceedings.

3. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr R. Macdonald, Mr C. Russo, Mr A. Spielmann, Mrs E. Palm, Mr K. Jungwiert and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. On 25 April 1997 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from the Court's usual procedure had been met (Rules 26 and 38).

5. On 20 and 22 May 1997 the applicant submitted documents setting out his claim for just satisfaction under Article 50 of the Convention. On 18 June 1997 the Government submitted a memorial and on 19 June they submitted a letter in response to the applicant's claims under Article 50. The Delegate of the Commission submitted his observations on these documents on 22 July.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The applicant is a Greek national born in 1936 and currently resident in the United Kingdom.

7. On 23 February 1987 he submitted to the Prefecture of Athens an application for a disability pension under section 31 of Law no. 1543/85.

8. On the orders of the Prefecture an administrative inquiry was carried out by the Municipality of Moshato, which concluded on 15 December 1987 that the applicant was entitled to a pension because he had been tortured during the dictatorship and had suffered irreparable damage to his health as a result.

9. On 29 January 1988 the Health Committee of the Prefecture of Athens advised the General Accounting Office of the State (*Geniko Logistirio tou Kratous*) to grant the applicant a pension. The Health Committee considered that the applicant had been incarcerated because of his activities against the military dictatorship and had been tortured. As a result, his right hand was paralysed.

10. On 23 May 1988 the Pensions Regulatory Service (*Ypiressia Kanonismou Syntaxon*) of the General Accounting Office rejected the applicant's application on the ground that the conditions of section 31 of Law no. 1543/85 (see paragraph 19 below) were not fulfilled. The General Accounting Office considered that the applicant's allegations were not proved by court decisions or public documents issued before 14 June 1984 and that the applicant had not been injured as a result either of his direct involvement in the struggle against the dictatorial regime or his opposition thereto. On 14 June 1988 the applicant appealed to the Audit Court (*Elenktiko Synedrio*).

11. The applicant's appeal was heard by the Third Chamber of the Audit Court on 2 December 1988. It was rejected on 10 March 1989. The Third Chamber considered that the applicant's allegations were not proven by a court decision or public document issued before 14 June 1984. It also found that the torturing of the applicant during the dictatorship had not resulted in an "injury" but in an "illness". The law, however, provided for the award of a pension to persons who had been "injured" as a result of their opposition to the dictatorship.

12. On 17 April 1989 the applicant lodged an appeal on points of law with the Audit Court sitting in plenary, claiming that the Third Chamber had erred in law.

13. The Plenary held a hearing on 9 October 1991 at which the applicant did not appear. On 24 June 1992 the Audit Court decided that the applicant had not been duly summoned and adjourned the case.

14. Another hearing was held on 4 November 1992 at which the applicant was duly represented. On 26 May 1993 the Audit Court upheld the applicant's appeal, on the ground, *inter alia*, that the Third Chamber had failed to examine in depth the cause of the paralysis of the applicant's right hand. It sent the case back to its Third Chamber for reconsideration.

15. The Third Chamber held a hearing on 22 October 1993 at which the applicant was neither present nor represented. On 28 January 1994 it decided to adjourn the case. It ordered the applicant to produce within two months a number of decisions issued in the context of criminal proceedings against the applicant before 14 June 1984. It also sent the applicant's file to the Health Committee of the Region of Attica ordering it to examine the applicant and to deliver an opinion on the following issues: Was the

applicant's paralysis the result of "injury" or "illness"? What was the extent of his disability? Was there any relationship between his disability and his activities during the dictatorship?

16. On 25 November 1994 the Health Committee considered that it could not deliver an opinion on the applicant's case in the absence of any evidence that the applicant's health condition was related to his activities during the dictatorship. On 29 March 1995 the applicant was informed of the Committee's decision not to deliver an opinion.

17. On 6 October 1995 the Third Chamber of the Audit Court held a fresh hearing.

18. A further hearing was held on 29 November 1996. The Court has not been informed of any decision of the Third Chamber of the Audit Court. The Government state that judgment is to be delivered shortly.

II. RELEVANT DOMESTIC LAW

19. Section 31 of Law no. 1543/85 provides the following:

"All Greek citizens who were injured by or as a result of their direct involvement in the struggle against the dictatorial regime of 21 April 1967 to 23 July 1974 or as a result of their opposition to the above-mentioned regime are entitled to a pension paid by the State Treasury, provided that the above-mentioned circumstances have been recognised in a court decision based on public documents issued no later than 14 June 1984.

..."

This provision does not create a right to a pension for persons who contracted an illness, as distinct from an injury, through their opposition to the dictatorship. Such a right was however created by a law of 1988 which is not relevant to the present case.

20. The award of a pension is not automatic but has to be applied for through the Prefecture to the Pensions Regulatory Service of the General Accounting Office.

21. An objection against the decision of the Pensions Regulatory Service can be brought before the Pensions Verification Board of the General Accounting Office (Article 66 of the Civilian and Military Pensions Code).

An appeal lies within one year to a Chamber of the Audit Court (Article 48). A further appeal, on points of law, lies within one year (Articles 109 and 114) to the plenary Audit Court, which has the power to refer the case back to the competent Chamber (Article 116).

PROCEEDINGS BEFORE THE COMMISSION

22. Mr Stamoulakatos applied to the Commission on 1 April 1995. He relied on Articles 6 § 1 and 13 of the Convention, complaining of the length of the proceedings in question and the lack of an effective remedy in that connection. He also complained under Articles 5 and 14 of the Convention of the failure to award him a pension.

23. On 12 April 1996 the Commission declared the application (no. 27159/95) admissible in so far as it concerned Articles 6 § 1 and 13 and inadmissible for the remainder. In its report of 4 September 1996 (Article 31), it expressed the opinion by twelve votes to one that there had been a violation of Article 6 § 1 of the Convention and that it was not necessary also to examine the case under Article 13. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

24. The Government invited the Court "to reject the application ... as inadmissible and unfounded".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

25. As they had done before the Commission, the Government submitted that the applicant had failed to exhaust domestic remedies. According to the Government, the applicant had never applied to the domestic authorities to speed up the proceedings. In particular, he had failed to apply for his case to be given priority.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

26. The Court recalls that under Article 26 of the Convention normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 66). It is incumbent on the Government claiming non-exhaustion to satisfy the Court 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 one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*ibid.*, § 68).

The Government have not shown that the Audit Court would have considered giving the applicant's case priority had he made such a request. It follows that the Court cannot find that such a remedy would have been effective. Moreover, the relevant authorities have a duty to administer justice expeditiously (see, *mutatis mutandis*, the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1086, § 49). The preliminary objection of non-exhaustion of domestic remedies must accordingly be dismissed.

B. Lack of competence *ratione temporis*

27. The Government also reiterated their argument to the Commission that as the events which were at the origin of the applicant's claim before the domestic court occurred well before the acceptance by Greece of the right of individual petition, the Commission ought to have declared the application inadmissible *ratione temporis*.

28. The Court would however observe that, although the applicant's claim before the domestic court was based on the allegation that his condition was caused by torture suffered between 1967 and 1974, it has not to examine these allegations but only the complaint relating to the length of the judicial proceedings brought by the applicant with a view to securing a pension.

Greece accepted the right of individual petition (Article 25 § 1 of the Convention) on 20 November 1985. The proceedings in issue were brought well after that date (see paragraph 10 above and paragraph 32 below). It follows that this objection too must be dismissed.

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

29. The applicant alleged that his case had not been dealt with within a "reasonable time". He relied on Article 6 § 1 of the Convention, which provides:

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

The Commission agreed with the applicant that there had been a violation of that provision. The Government denied this.

A. Applicability of Article 6 § 1

30. The Government disputed the applicability of Article 6 § 1 to the present case. In their view, the right to a pension based on a special law, such as Law no. 1543/85, belonged exclusively to public law. They contended that the entitlement asserted by the applicant did not derive from any form of private agreement or from any other legal provision which belonged to the sphere of civil law as defined in the domestic legal order. It was, on the contrary, a matter within the competence of the administrative courts.

31. The Court would recall that the concept of “civil rights and obligations” is not to be interpreted solely by reference to the respondent State’s domestic law and that Article 6 § 1 applies irrespective of the status of the parties, as of the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter (see, as a recent authority, the *Georgiadis v. Greece* judgment of 29 May 1997, Reports 1997-III, p. 959, § 34).

The Court sees no reason to deviate from its case-law according to which the right to a pension is a civil right (see, as a recent authority, the *Pauger v. Austria* judgment of 28 May 1997, Reports 1997-III, p. 894, § 45). Article 6 § 1 is accordingly applicable.

B. Compliance with Article 6 § 1

1. Period to be taken into consideration

32. The Court shares the view of the Commission and the Government that the period to be taken into consideration began on 14 June 1988, the date on which the applicant lodged an appeal with the Audit Court (see paragraph 10 above). To the best of the Court’s knowledge, it has not yet ended as no final judgment has so far been delivered. It accordingly amounts to some nine and a half years thus far.

2. Reasonableness

33. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in

particular the complexity of the case and the conduct of the applicant and of the relevant authorities, and that it is also necessary to take account of what is at stake for the applicant in the litigation (see, as a recent authority, the above-mentioned *Philis* (no. 2) judgment, p. 1083, § 35).

34. According to the Government, the case was complex but the various Chambers of the Audit Court had been able to deal with each stage of the case expeditiously. Moreover, the applicant himself had contributed to the delays by tarrying between the giving of decisions and the lodging of appeals, and by changing his address frequently. They also pointed to the case-load of the plenary Audit Court, which heard a hundred cases each month.

35. In the Commission's opinion the case was not particularly complex, and the behaviour of the applicant was not in itself sufficient to explain the length of the proceedings. The Commission further drew attention to delays for which in its view the judicial authorities were responsible.

36. The Court notes that the issue to be decided was whether the applicant's medical condition was a consequence of torture at the hands of the dictatorial regime and, if so, entitled him to a special disability pension. Admittedly, this involved the assessment of medical evidence as well as the examination of court decisions and public documents. Nevertheless it has not been suggested that the establishment of the facts was particularly difficult. Nor were there any intricate legal questions involved. It therefore appears that the task faced by the domestic courts was not especially complex.

37. As to the behaviour of the applicant, the Court observes that he appealed against the decision of the Third Chamber of the Audit Court little more than a month after it was given (see paragraphs 11 and 12 above). It has not been suggested that he asked for any hearing to be postponed or sought any extension of time-limits to submit documents. Although his frequent changes of address may have made it difficult to summon him to the hearing of 9 October 1991 (see paragraph 13 above), it is a fact that the Audit Court itself held on 24 June 1992 that the necessary formalities for summoning the applicant had not been observed by the authorities themselves. Accordingly the applicant cannot be held responsible for the length of the proceedings.

38. The Court notes with concern that nearly two years and six months were allowed to pass between the lodging of the applicant's appeal on points of law on 17 April 1989 and the hearing of 9 October 1991, after which it took the plenary Audit Court a further eight months, until 24 June 1992, to give a decision ordering an adjournment. After a new hearing had been held some four months later, on 4 November 1992, another period of six months elapsed until the decision of 26 May 1993. The workload of the plenary Audit Court does not provide a justification for these delays, the Contracting Parties being under an obligation to ensure that their judicial

authorities comply with the requirements of Article 6 (see, among many other authorities, the Schouten and Meldrum v. the Netherlands judgment of 9 December 1994, Series A no. 304, p. 26, § 67).

After the case had been referred back to the Third Chamber of the Court of Audit, it took the Health Committee of the Region of Attica almost ten months to decide that it could not deliver an opinion (see paragraphs 15 and 16 above). Since then, two more hearings have been held at intervals of nearly ten and nearly fourteen months respectively. The Government have not given any explanation for these lapses of time.

39. Bearing in mind the overall length of time taken by the proceedings, namely nine and a half years already, and the importance of what was at stake for the applicant, namely his entitlement to a disability pension and thus a significant portion of his livelihood, the Court is of the opinion that the length of proceedings went beyond what can be considered “reasonable” under Article 6 § 1. There has accordingly been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant complained that he had not had available to him an effective remedy against the above violation of Article 6, contrary to Article 13, which provides:

“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.”

41. Like the Commission, the Court does not find it necessary to examine the present case under Article 13 in addition to Article 6.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION

42. Article 50 of the Convention provides as follows:

“If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

43. The applicant asked the Court to award him a sum of money equivalent to the pension to which he claimed to be entitled, namely 10,700,000 drachmas (GRD). He also claimed interest on this sum to an amount of GRD 2,140,000.

44. The Government and the Delegate of the Commission concurred in stating that the applicant had not shown that the loss alleged was the direct result of the length of the proceedings.

45. The Court agrees with the Government and the Commission as to the absence of a causal link between the violation found and the loss alleged.

B. Non-pecuniary damage

46. The applicant claimed GRD 30,000,000 to compensate him for the distress and anxiety which he had suffered as a result of the length of the proceedings.

47. The Government stated that the applicant was entitled to compensation for “any damage arising directly from a violation found by the Court”.

48. The Delegate of the Commission suggested that the Court award the applicant GRD 1,000,000 under this head.

49. Deciding on an equitable basis, the Court awards the applicant GRD 1,000,000 for non-pecuniary damage.

C. Costs and expenses

50. The applicant claimed GRD 6,600,000 for costs and expenses which he had allegedly incurred in the domestic and Strasbourg proceedings.

51. The Government considered that the applicant was entitled only to reimbursement of costs “necessarily and verifiably” incurred.

52. The Delegate of the Commission considered that the applicant could be awarded a token sum of GRD 100,000 in respect of the Strasbourg proceedings, given that he represented himself.

53. According to the Court’s established case-law, an award can be made in respect of costs and expenses incurred by the applicant in order to prevent the violation found or obtain redress therefor, but only in so far as these have been actually and necessarily incurred and are reasonable as to quantum.

It is not established that the applicant incurred any costs and expenses in the domestic proceedings in an attempt to have them speeded up. In addition, the applicant chose to present his own case before the Court and the Commission, neither of which held a hearing. He is not entitled to be reimbursed for his own work (see the *Brincat v. Italy* judgment of 26 November 1992, Series A no. 249-A, p. 13, § 29) and has not shown that he has incurred any expenses referable to the Strasbourg proceedings. The applicant's claims in respect of costs and expenses must therefore be dismissed.

D. Default interest

54. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;
2. *Holds* that Article 6 § 1 of the Convention is applicable and has been violated;
3. *Holds* that it is not necessary to examine the case under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) drachmas in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 November 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar