



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

CASE OF PORTINGTON v. GREECE

(109/1997/893/1105)

JUDGMENT

STRASBOURG

23 September 1998

In the case of Portington v. Greece¹,

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 THÓR VILHJÁLMSOON, *President*,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr J.M. MORENILLA,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr U. LÖHMUS,

Mr P. VAN DIJK,

Mr V. BUTKEVYCH,

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

Having deliberated in private on 30 June and 25 August 1998,

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 11 December 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 28523/95) against the Hellenic Republic lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a British national, Mr Philip Portington, on 11 May 1995.

The Government’s application referred to Articles 44 and 48 of the Convention and Rule 32 of Rules of Court A. 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 of the Convention.

Notes by the Registrar

1. The case is numbered 109/1997/893/1105. 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), the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30). The Government of the United Kingdom, having been informed by the Registrar of their right to intervene (Article 48 (b) of the Convention and Rule 33 § 3 (b)), indicated that they did not intend to do so.

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. Ryssdal, the then President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, Mr R. Bernhardt, Vice-President of the Court at the time, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr C. Russo, Mr J.M. Morenilla, Mr D. Gotchev, Mr B. Repik, Mr P. van Dijk and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Thór Vilhjálmsson, the new Vice-President of the Court, replaced as President of the Chamber, Mr Ryssdal, who died on 18 February 1998 (Rule 21 § 6, second sub-paragraph), and Mr U. Löhmus, the first substitute judge, became a full member of the Chamber (Rule 22 § 1).

4. As President of the Chamber at the time (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 1 April and 20 April 1998 respectively, Mr Bernhardt, the Vice-President of the Court at the time, having acceded to the applicant's request for an extension of the time-limit for the submission of his memorial.

5. On 24 August 1998, having consulted the Agent of the Government and the Delegate of the Commission, the President of the Chamber acceded to the applicant's request for legal aid (Rule 4 of the Addendum to Rules of Court A).

6. In accordance with the President's decision the hearing took place in public in the Human Rights Building, Strasbourg, on 24 June 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr A. APESOS, Adviser,

State Legal Council,

Mrs V. PELEKOU, Legal Assistant,

State Legal Council,

Delegate of the Agent,

Counsel;

(b) *for the Commission*

Mr C.L. ROZAKIS,

Delegate;

(c) *for the applicant*

Mr K. STARMER, Barrister-at-Law,

Counsel,

Mr A. MCCOOEY, Solicitor,

Mr J. MCCOOEY, Solicitor,

Advisers.

The Court heard addresses by Mr Rozakis, Mr Starmer and Mrs Pelekou.

AS TO THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant is a British citizen born in 1950. He is currently detained in Wandsworth Prison, London.

8. In 1986, on a date which has not been specified, while crossing the frontier into Greece the applicant was arrested and charged with committing a murder in July 1985 on his previous visit to Greece as well as with using and carrying arms. He denied the charges.

9. The applicant was remanded in custody by the magistrates of Kastoria on a date which has not been specified. On 28 February 1986 he was committed for trial by the Indictments Division of the First Instance Criminal Court (*Symvoulío Plimmielodikon*) of Kastoria. On 27 November 1987 his appeal against the decision of 28 February 1986 was dismissed by the Indictments Division of the Salonika Court of Appeal (*Symvoulío Efetón*) which further charged him with robbery.

10. On 17 February 1988, after a hearing which lasted one day, the Salonika Criminal Court (*Mikto Orkoto Dikastirio*) composed of jurors and professional judges convicted the applicant of all the charges. He was sentenced to the death penalty for murder, to life imprisonment for robbery and to five years' imprisonment for carrying and using arms. On 18 February 1988 the applicant appealed against the verdict on the ground that the evidence before the trial court did not sustain a finding of guilt.

11. On 6 October 1989 the applicant's appeal came for hearing before the Salonika Criminal Court of Appeal (*Mikto Orkoto Efetio*). The applicant was represented by officially appointed counsel, Mr H. Nine prosecution witnesses were absent. According to the Government, the applicant, through his defence counsel, requested an adjournment on the ground that, while none of the witnesses present had first-hand information about the murder, there was a person in England who knew about the case and who should be called to testify. The Court of Appeal granted the applicant's request and adjourned the hearing *sine die* to enable further evidence to be obtained.

The applicant disputes this and maintains that he did not instruct his lawyer to apply for an adjournment and that the Court of Appeal adjourned the case on the ground that it was necessary to hear the testimony of all the witnesses, including the nine who were absent at the appeal hearing.

12. The applicant's appeal came for hearing again on 19 April 1991. According to the Government, the applicant asked for the adjournment of the case on the ground that a certain lawyer, Mr G., who had taken over his case a year before was not present at the hearing. Mr H., who was present, stated that he was prepared to defend the applicant. The prosecutor considered that the case should be heard on that day. The court decided to adjourn *sine die* to enable the applicant to be represented by Mr G. The applicant submits that he did not request that the court adjourn *sine die* but merely sought a brief adjournment to enable him to arrange his legal representation.

13. On 8 February 1993 the applicant appeared again before the Court of Appeal, represented by another counsel, Mr S. The defence asked for an adjournment on the ground that six prosecution witnesses were absent. The prosecution agreed and the court adjourned *sine die*. The applicant claims that he did not request that the court adjourn *sine die* but merely requested that all witnesses be present. Between 27 May 1993 and 31 December 1993, 16 February 1994 and 17 February 1994, 7 March 1994 and 11 March 1994, 16 March 1994 and 18 March 1994, 21 March 1994 and 13 May 1994 and 16 May 1994 and 30 June 1994 lawyers were on strike.

14. A new hearing for the applicant's appeal was fixed for 5 December 1994. According to the Government, the applicant asked for an adjournment on the ground that he wanted to be represented by a lawyer whom the British Embassy had found for him and whom he did not name. The prosecutor agreed and the court adjourned *sine die*. The applicant submits however that this reflects the position as at 19 April 1991 (see paragraph 12 above), and by December 1994 he was represented by Mr E., and did not want to change lawyers.

15. The applicant's appeal was finally heard on 12 February 1996. The Court of Appeal upheld his conviction but commuted his death sentence to life imprisonment. At the time of the Court's consideration of the case the applicant had lodged an appeal on points of law.

PROCEEDINGS BEFORE THE COMMISSION

16. Mr Portington applied to the Commission on 11 May 1995. He complained under Article 6 § 1 of the Convention of the length of the criminal proceedings against him.

17. The Commission (First Chamber) declared the application (no. 28523/95) admissible on 16 October 1996. In its report of 10 September 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

18. The applicant in his memorial requested the Court to find that the facts of the case disclosed a violation of Article 6 § 1 of the Convention and to award him just satisfaction under Article 50.

The Government for their part requested the Court to find that Article 6 § 1 had not been violated in the present case.

AS TO THE LAW

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

19. The applicant contended that the criminal appeal proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

The Commission agreed with the applicant's arguments whereas the Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

20. The Court notes that the applicant's complaint concerns the length of the appeal proceedings before the Salonika Criminal Court of Appeal. Therefore, the period to be taken into account began on 18 February 1988, the date on which he lodged an appeal against the judgment of the trial court, and ended on 12 February 1996, when his appeal was finally heard

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* 1998), but a copy of the Commission's report is obtainable from the registry.

and judgment delivered by the Court of Appeal (see paragraphs 10 and 15 above). The appeal proceedings accordingly lasted almost eight years.

B. Reasonableness of the length of the proceedings

21. The Court will assess the reasonableness of the length of the proceedings in the light of the 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. On the latter point, what is at stake for the applicant has also to be taken into account (see, among other authorities, the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

1. Complexity of the case

22. The applicant submitted that the case was not complex. He pointed out that he was the only defendant involved and that all the charges against him arose out of the same event. Moreover, the evidence before the Court of Appeal was not voluminous and the court's task was not complicated by the need to consider any expert evidence. The legal issues raised by the case were not complex and the trial took just one day.

23. The Government maintained that the case was complex. It involved voluminous evidence which had to be obtained in part from abroad. In addition, the nature of the charge contributed to the complexity of the case.

24. The Commission considered that the case was of a certain complexity since it involved an appeal against a conviction on a murder charge.

25. The Court considers that, even though the case was of some complexity, having regard to the serious nature of the conviction and the applicant's grounds of appeal, it cannot be said that this in itself justified the length of the proceedings on appeal. In this regard it is noteworthy that it took the trial court just one day to hear the case and deliver judgment and the Court of Appeal also one day to dispose of the appeal (see paragraphs 10 and 15 above). As the length of the proceedings cannot be explained in terms of the complexity of the issues involved, the Court will examine it in the light of the conduct of the applicant and the national authorities (see paragraph 21 above).

2. Conduct of the applicant

26. The applicant maintained that his conduct did not contribute in any way to the length of the proceedings. On the contrary, throughout the whole of the period of the appeal proceedings he had requested that his case be listed for hearing. He also enlisted numerous groups and individuals to

make requests on his behalf to expedite the proceedings. Furthermore, the applicant contended that he had not requested adjournments of hearings on 6 October 1989 and 5 December 1994 (see paragraphs 11 and 14 above). As to his requests for adjournments on 19 April 1991 and 8 February 1993, he did not ask the court to adjourn *sine die* but merely sought brief adjournments to allow his lawyer and prosecution witnesses to be present (see paragraphs 12–13 above).

27. The Government submitted that the applicant had requested all the adjournments of the appeal hearings and was therefore solely responsible for the delays in his case. He never availed himself of the possibility under the Code of Criminal Procedure to ask for brief adjournments. Even if the periods in between individual appeal hearings had been shorter, this would have made no difference to the applicant since he was not ready for the appeal hearing. His only concern was to have it adjourned irrespective of the resulting delays. Furthermore, he had never complained before the appellate court about the length of the proceedings and he had lodged his application with the Commission only shortly before the final appeal hearing.

28. The Commission agreed with the Government that the applicant had requested a number of adjournments. However, the Delegate of the Commission pointed out that the applicant's requests had been based on plausible grounds and did not justify the *sine die* referrals and excessive delays in rehearing the case.

29. The Court notes that there is disagreement about whether all the adjournments of hearings were requested by the applicant. Nevertheless, even if all the delays were attributable to requests made by him and he may be considered on that account to be responsible for some of the delay which resulted, this cannot justify the length of the periods in between individual hearings and certainly not the total length of the appeal proceedings – almost eight years (see, *mutatis mutandis*, the Zana v. Turkey judgment of 25 November 1997, *Reports* 1997-VII, p. 2552, § 79).

3. *Conduct of the national authorities*

30. The applicant submitted that the respondent State was responsible for most, if not all, delays in the proceedings. He contended that the national authorities bore the responsibility for not ensuring the presence of witnesses on 6 October 1989 and 8 February 1993, which led to the adjournment of hearings. Although he might have contributed to some extent to the overall delay by asking on 19 April 1991 for an adjournment to arrange for his representation, the delays in listing the case after that date and other adjournments were attributable to the national authorities (see paragraph 12 above).

31. The Government maintained that the time which elapsed between individual hearings was entirely reasonable and justified. In particular, the Government pointed out that the delay in listing the first hearing after the applicant had lodged an appeal on 18 February 1988 was caused by the need to take several procedural measures, such as the transfer of the case file to the appellate court and the referral of the case to the public prosecutor at that court. As for the adjournment of the hearing on 6 October 1989, this was caused by the applicant who wanted to have his witness residing in England testify and not by the absence of the nine prosecution witnesses whose evidence could in any event have been readily read out from the transcripts available to the court (see paragraph 11 above). Further, all the subsequent delays in listing the case were the responsibility of the applicant who had asked for adjournments. Witnesses had to be summoned anew before each hearing.

In addition, the Salonika Court of Appeal, which had dealt with the applicant's case, was an assize court responsible for a large number of serious cases and whose jurisdiction extended over a wide area. The Government also recalled that between 27 May 1993 and 30 June 1994 lawyers had been on strike on several occasions and this factor also contributed to the length of the proceedings (see paragraph 13 above).

32. The Commission considered that the State authorities were responsible for several periods of inactivity in the proceedings. In particular, the respondent State was responsible for a delay between 18 February 1988 when the appeal was lodged and 6 October 1989 when the first hearing was held. As that hearing had to be adjourned because nine prosecution witnesses were absent, the national authorities were also responsible for the delay preceding the second listing of the case on 19 April 1991. The Commission further considered that the respondent State was responsible for the remaining delays even though the applicant also bore a certain degree of responsibility because of his two requests for adjournments on 19 April 1991 and 5 December 1994.

For the above reasons the Commission concluded that the length of the proceedings failed to meet the "reasonable time" requirement.

33. The Court notes that there were several periods of inactivity in the appeal proceedings before the Salonika Criminal Court of Appeal. After the applicant had filed an appeal on 18 February 1988 the case lay dormant for over one year and seven months until it was listed for the first hearing on 6 October 1989 (see paragraphs 10–11 above). The Government have sought to explain this by reference to the procedural measures which had to be taken in order to have the case file transferred to the appellate court (see paragraph 31 above). However, the Court considers that this cannot explain such an excessive delay, which must be imputed to the authorities.

Furthermore, after 6 October 1989, the case was relisted on four occasions: 19 April 1991, 8 February 1993, 5 December 1994 and

12 February 1996. This gave rise to periods of inactivity in between the dates set for hearing lasting: one year, six months and twelve days; one year, nine months and nineteen days; one year, nine months and twenty-six days and one year, two months and six days (see paragraphs 11-15 above). As regards the Government's submissions that the length of the third of those periods (one year, nine months and twenty-six days) was caused by the lawyers' strikes, it is to be noted that a period of over five months elapsed after the end of the strikes and before the case was listed on 5 December 1994 (see paragraphs 13-14 above). This delay also has to be attributed to the conduct of the national authorities. As for these and the remaining periods of inactivity, they cannot be excused by the volume of work with which the Salonika Criminal Court of Appeal had to contend at the relevant period. The Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see the above-mentioned *Philis* (no. 2) judgment, p. 1084, § 40).

4. Conclusion

34. The Court concludes that the complexity of the case and the applicant's conduct are not in themselves sufficient to justify the length of the appeal proceedings. Although it is true that the applicant may be responsible for some delay in the proceedings resulting from his requests for adjournments, the overall delay was essentially due to the way in which the authorities handled the case. Regard being had to the importance of what was at stake for the applicant, who was sentenced to the death penalty by the trial court, a total lapse of time in hearing his appeal of approximately eight years cannot be regarded as reasonable. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

35. The applicant claimed just satisfaction under Article 50 of the Convention, which provides:

"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. Non-pecuniary damage

36. The applicant sought compensation for non-pecuniary damage. He submitted that he had suffered anxiety about the uncertainty of his fate and frustration as a result of increasing delays in the hearing of his appeal. The applicant left the amount to be awarded to the discretion of the Court.

37. The Government contended that the applicant had not suffered any damage as a result of the delay in hearing his appeal since his conviction was upheld by the appellate court. The fact that his death sentence was commuted to life imprisonment did not make any difference as it was widely known that a death penalty had not been carried out in Greece since 1975.

38. The Delegate of the Commission did not comment on this claim.

39. In the circumstances of the case, the Court considers that the present judgment constitutes in itself sufficient just satisfaction.

B. Costs and expenses

40. The applicant requested the Court to award him the sum of 20,032.60 pounds sterling (GBP) inclusive of value-added tax in respect of legal fees which he incurred in the Strasbourg proceedings.

41. The Government submitted that only expenses that have been justified and were absolutely necessary should be awarded to the applicant. The Delegate of the Commission did not comment on this claim.

42. The Court, deciding on an equitable basis, awards the applicant the sum of GBP 15,000 less the sum of 14,549 French francs received by way of legal aid from the Council of Europe.

C. Default interest

43. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 § 1 of the Convention has been violated;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any alleged non-pecuniary damage;

3. *Holds*

- (a) that the respondent State is to pay the applicant, within three months, 15,000 (fifteen thousand) pounds sterling in respect of costs and expenses less 14,549 (fourteen thousand five hundred and forty-nine) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment;
- (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

Signed: Thór VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar