



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

SECOND SECTION

CASE OF AGGA v. GREECE

(Application no. 37439/97)

JUDGMENT

STRASBOURG

25 January 2000

FINAL

25/04/2000

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Agga v. Greece,

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

Mr M. FISCHBACH, *President*,
Mr C. ROZAKIS,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 13 January 2000,

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

PROCEDURE

1. The case originated in an application against Greece lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Fundamental Rights and Freedoms (“the Convention”) by a Greek national, Mr Mehmet Agga, on 5 August 1997. The application was registered on 22 November 1997 under file no. 37439/97. The applicant is represented by Mr S. Emin, a lawyer practising in Komotini, and Mr T. Akillioglu, a lawyer practising in Ankara and the Government by Mr V. Kyriazopoulos of the Legal Council of the State, Acting Agent.

The applicant complained, *inter alia*, that, contrary to Article 6 § 1 of the Convention, criminal proceedings brought against him had not been heard within a reasonable time.

2. On 3 December 1997 the Commission (First Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on the merits.

The Government submitted their observations on 24 February 1998, to which the applicant replied on 27 April 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the case was transferred to the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr C. Rozakis, the judge elected in respect of Greece (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr M. Fischbach, the Vice-President of the Section (Rules 13 and 26 § 1 (a)). The other members

designated by the latter to complete the Chamber were Mr G. Bonello, Mrs. V. Strážnická, Mr P. Lorenzen, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)). Subsequently Mrs M. Tsatsa-Nikolovska replaced Mr Levits who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

5. On 24 November 1998, the Chamber declared admissible the applicant's complaint that the criminal proceedings against him had been unreasonably lengthy. It declared the remainder of the application inadmissible¹.

AS TO THE FACTS

6. The applicant is a Greek national, born in 1932 and resident in Xanthi.

7. The applicant was a candidate in the parliamentary elections of 18 June 1989. On 9 June 1989 Mr TOB complained to the police that the applicant had promised him a sum of money in exchange for his support in the elections.

8. On 13 June 1989 the public prosecutor of Xanthi instituted criminal proceedings against the applicant for attempting to bribe a voter. On 26 July 1989 the prosecutor summoned the applicant to appear before the three-member first instance criminal court (*trimeles plimmeliodikio*) of Xanthi on 12 September 1989 to be tried on this charge.

9. On 12 September 1989 the applicant was ill and the hearing was adjourned until 21 November 1989. On that date the hearing was adjourned until 9 January 1990 because the clerk of the court, following the instructions of his trade union, refused to work overtime. On 9 January 1990 three prosecution witnesses failed to appear. They were fined and the hearing was adjourned until 20 February 1990. On that date the applicant asked for an adjournment because he was ill. The hearing was adjourned until 19 June 1990. On 19 June 1990 TOB failed to appear. He was fined and the hearing was adjourned until 18 September 1990. On 18 September 1990 a further adjournment was ordered until 5 March 1991 because of the "work to rule" policy of the clerks of the court, according to which the clerks refused to work overtime.

10. The applicant was tried on 5 March 1991. He was found guilty and received a suspended sentence of four months' imprisonment. The applicant and the public prosecutor appealed. The case-file was transferred to the public prosecutor of the Court of Appeal of Thrace on 19 March 1991 who fixed a hearing for both appeals for 9 January 1995.

11. However, on that date the three-member court of appeal (*trimeles efetio*) of Thrace had to adjourn the hearing until 6 December 1995 because

¹ The text of the Court's decision is obtainable from the Registry.

of the “work to rule” industrial action of the clerks of the court. On 6 December 1995 the prosecution witnesses did not appear. They were fined and the hearing was adjourned until 4 March 1996.

12. The appeals were finally heard on 4 March 1996. The court heard TOB and two other prosecution witnesses who had heard TOB on the radio denouncing the applicant’s attempt to bribe him. It also heard the applicant and a defence witness. In a decision delivered on the same day, the court of appeal upheld the applicant’s conviction and sentence.

13. On 4 November 1996 the applicant appealed to the Court of Cassation complaining, *inter alia*, of a violation of Article 6 of the Convention because the court of appeal had seriously delayed the proceedings.

14. On 18 February 1997 the Court of Cassation rejected the applicant’s appeal considering, *inter alia*, that Article 6 of the Convention did not create any grounds of appeal in cassation other than the grounds provided for in the Code of Criminal Procedure.

AS TO THE LAW

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

15. The applicant complained of the length of the criminal proceedings instituted against him. He alleged a violation of Article 6 § 1 of the Convention, which provides:

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

16. The Government contested that submission on the ground that the delays in the proceedings had been caused by either the applicant’s own conduct or other events for which the State was not responsible, such as the failure of certain witnesses to appear and a strike by the lawyers.

A. Period to be taken into consideration

17. The relevant period began at the latest on 26 July 1989, when the public prosecutor of Xanthi informed the applicant of the proceedings against him (see paragraph 8 above). It ended on 18 February 1997 when the applicant’s appeal in cassation was rejected (see paragraph 14 above).

18. It therefore lasted seven years, six months and twenty-two days.

B. Reasonableness of the length of the proceedings

19. According to the Court's case-law, 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 the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the *Pélissier et Sassi v. France* judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 67, and the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

20. The Government submitted that there had not been any delays in the pre-trial phase of the proceedings. The proceedings before the first instance court had lasted approximately 18 months, which was reasonable. The applicant was responsible for the adjournments of 12 September 1989 and 20 February 1990. Moreover, the State could not be held responsible for the adjournments of 9 January 1990 and 19 June 1990, which had been caused by the absence of certain witnesses who had been properly summoned and who had been fined for their failure to appear. The industrial action of the clerks had only caused delays of seven months and five days. As regards the second instance proceedings, the Government contended that the delay in the fixing of the first hearing was related to the number of cases pending before the courts as a result of the lawyers' strike, an event for which the State was not responsible. Between the first and second adjournment there had been a delay of eleven months which was reasonable given the effects of the lawyers' strike. The second adjournment had had to be ordered because the witnesses had not been present again and there had been no significant delays after that. Finally, the Government pointed out that the cassation proceedings had been concluded within three and a half months.

21. The applicant submitted that the State was responsible for the delays arising from the absence of prosecution witnesses. The applicant himself was responsible for delays of six months and eight days. However, the reason for his failure to attend the hearing had been an illness caused by acute anxiety related to the criminal proceedings against him. In his view, the State should have taken measures to deal with the structural problems underlying the court clerks' industrial action. In any event, adjourned cases had to be given priority and not be placed at the end of the list. Finally, the applicant argued that the delays in the second instance proceedings were entirely unreasonable.

22. The Court considers that the case was not complex. Only five witnesses were heard on appeal.

23. As to the applicant's conduct, the Court notes that the first instance hearings of 12 September 1989 and 20 February 1990 were adjourned at the applicant's request because he was ill. This resulted in delays of six months.

24. As to the conduct of the authorities, the Court notes that the first instance hearing was adjourned on 21 November 1989, 9 January 1990, 19 June 1990 and 18 September 1990 as a result of the failure of prosecution witnesses to appear and industrial action by the clerks of the court. The Court considers that the State is responsible for the resultant delays of approximately one year.

25. The Court also notes that there was a period of inactivity of approximately three years and ten months between the date when the case-file was transferred to the public prosecutor of the court of appeal and the first adjournment of the appeal hearing. The Government, in order to justify this delay, make reference to a strike by the lawyers. The Court notes, however, that they have not provided any information about this strike. Even assuming that such a strike took place and that the State is not responsible for the delays resulting therefrom (*cf.* Eur. Court HR, *Pafitis and others v. Greece* judgment of 26 February 1998, *Reports 1998-I*, p. 459, § 96), the Court notes that the Government do not allege that it resulted in particular hearings being adjourned. Moreover, the Court considers that delays related to the backlog of cases resulting from such a strike come within the State's responsibility. In the light of the above, the Court considers that the period of inactivity until the first adjournment of the appeal hearing must be imputed to the Government. The Court also considers that the same holds true for the fourteen-month delay resulting from the adjournments of the appeal hearing on 9 January 1995 and 6 December 1995, which were due to industrial action by the clerks of the court and the failure of a prosecution witnesses to appear.

26. The Court recalls that Article 6 § 1 of the Convention imposes on the Contracting States the obligation to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see the above-mentioned *Pélissier and Sassi v. France* judgment, *op. cit.*, § 74). In the present case there were excessive delays that were attributable to the national authorities. Consequently, the Court considers that there has been a violation of Article 6 § 1 of the Convention because the "reasonable time" requirement has not been respected.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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. Non-pecuniary damage

28. In respect of non-pecuniary damage, the applicant sought the sum of 10,000,000 GRD. He claimed that the proceedings damaged his reputation.

29. The Government argued that there was no causal link between the alleged damage to the applicant's reputation and the length of the proceedings.

30. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings against him. Making its assessment on an equitable basis, the Court awards the applicant 2,000,000 GRD as compensation for non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed reimbursement of legal costs and expenses incurred domestically and in Strasbourg. Each of the three trips to Komitini, the seat of the Court of Appeal, cost him GRD 30,000. The trip to Athens, the seat of the Court of Cassation, cost him GRD 200,000. Moreover, he paid his lawyer GRD 320,000 for the domestic proceedings, including approximately GRD 30,000 in respect of court fees, and GRD 100,000 for the proceedings in Strasbourg.

32. The Government pointed out that the Court rejected all the applicant's arguments concerning the fairness of the proceedings. It followed that the applicant could not claim costs and expenses in this respect, since these were the inevitable consequence of the proceedings in question. In any event, the applicant did not produce itemised particulars of his claims. As a result, the claim for costs and expenses has to be rejected as a whole.

33. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. The Court considers that the duration of the domestic proceedings has to some extent increased the applicant's legal expenses in these proceedings. Moreover, the applicant won his case in Strasbourg at least in part. In the light of all the above and making its assessment on an equitable basis, the Court awards the applicant GRD 300,000 in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 2,000,000 (two million) Greek drachmas for non-pecuniary damage and 300,000 (three hundred thousand) Greek drachmas for costs and expenses and that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 25 January 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Marc FISCHBACH
President