



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

THIRD SECTION

CASE OF ANAGNOSTOPOULOS AND OTHERS v. GREECE

(Application no. 39374/98)

JUDGMENT

STRASBOURG

7 November 2000

FINAL

04/04/2001

In the case of Anagnostopoulos and Others v. Greece,

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

Mr J.-P. COSTA, *President*,

Mr C.L. ROZAKIS,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 1999 and 10 October 2000,

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

PROCEDURE

1. The case originated in an application (no. 39374/98) against the Hellenic Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Greek nationals, Mr Dimitrios Anagnostopoulos, Mr Athanassios Anastassopoulos, Mr Vassilios Anastopoulos, Mr Constantinos Zarkadakis, Mr Dimitrios Pantazopoulos, Mr Alexandros Paraskevopoulos and Mr Christos Vassilopoulos ("the applicants"), on 16 September 1997.

2. The applicants were represented by Mr I. Ktistakis, of the Thebes Bar. The Greek Government ("the Government") were represented by their Agent's Delegate, Mr G. Kanellopoulos, Adviser at the State Legal Council.

3. The applicants complained, in particular, of the unfairness and length of a set of proceedings in the Court of Audit.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. In a decision of 30 November 1999 the Chamber declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry.].

THE FACTS

7. The first applicant is a lawyer and retired major-general of the Greek army. The seventh applicant is a retired major-general of the Greek army. The other applicants are retired officers of the Greek police force.

8. In 1989 the Minister of National Defence and the Minister of Public Finances authorised the granting, from 1 January 1990, of an award for meritorious service (επίδομα ευδόκιμης παραμονής) to colonels and their superior officers. The award was fixed at 10% of the main salary. That ministerial decision was subsequently confirmed by the Greek parliament (Law no. 1881/1990).

9. The applicants accordingly lodged claims for an increase in their pensions in accordance with the provisions of Law no. 1881/1990. They lodged their applications on 3 October 1991, 22 October 1991, 24 December 1991, 11 September 1991, 19 November 1991, 12 September 1991 and 18 November 1991 respectively.

10. Their claims were rejected by the Forty-fourth Division of the Public Accounting Department (Γενικό Λογιστήριο του Κράτους) on 16 October 1991, 22 October 1991, 21 January 1992, 25 September 1991, 20 November 1991, 18 September 1991 and 3 December 1991 respectively, on the ground that the applicants had retired before 1 January 1990, the date on which Law no. 1881/1990 came into force.

11. The applicants appealed to the Second Division of the Court of Audit (Ελεγκτικό Συνέδριο), which dismissed their appeals as ill-founded (decisions nos. 1694/1994, 1446/1993, 1260/1995, 306/1994, 616/1994, 477/1994 and 940/1994 respectively). In particular, the Second Division considered that the award in question could not be considered to be part of the main salary. Accordingly, it could not be taken into account for the purpose of calculating the pensions of officers having retired before the entry into force of the statute providing for the award.

12. On 22 August 1995, 10 October 1994, 13 December 1995, 7 February 1995, 17 April 1995, 2 February 1995 and 17 April 1995 respectively, the applicants appealed on points of law to the Court of Audit, sitting as a full court, which was the court having jurisdiction to examine their appeal.

13. On 22 June 1995 the Greek parliament adopted Law no. 2320/1995, which excluded the award in question from the calculation of pensions paid to officers having retired before 1 January 1990, declared any relevant claim statute-barred and any relevant judicial proceedings pending in any court to be null and void. That Law was confirmed by Law no. 2512/1997 of 27 June 1997.

14. On 4 July 1995 the Court of Audit, sitting as a full court, upheld a claim lodged by another police officer who had also retired before 1 January 1990, and ordered that his pension should be increased (judgment

no. 1211/1995). That judgment marked a reversal of the case-law of the Court of Audit. It was followed by two other judgments along the same lines.

15. In judgments dated 26 March 1997 (applicants nos. 2, 4 and 6), 9 April 1997 (applicant no. 1), 14 May 1997 (applicant no. 3) and 26 May 1997 (applicants nos. 5 and 7), the Court of Audit, sitting as a full court, dismissed the applicants' appeals on the ground that they were ill-founded. The Court of Audit pointed out in particular that the award in question could not be considered as a general salary increase; accordingly, it could not be granted to officers having retired before the entry into force of Law no. 1881/1990. The Court of Audit noted, subsidiarily, that even supposing that the award in question could be considered as a general salary increase and the proceedings not declared null and void under to Law no. 2320/1995, the applicants' claims were manifestly ill-founded because the provisions of the above-mentioned statute applied retrospectively.

THE LAW

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

16. The applicants alleged that there had been a double violation of Article 6 § 1 of the Convention, which provides:

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

They submitted, firstly, that the adoption of Law no. 2320/1995 and its application to applicants nos. 2, 4, 5, 6 and 7 had deprived them of a fair trial and, secondly, that the length of the proceedings brought by the seven applicants to secure an increase in the amount of their pensions had exceeded a “reasonable time”.

A. Fair trial

17. Applicants nos. 2, 4, 5, 6 and 7 complained of an interference by the legislature in the judicial process. They complained, among other things, that they had not had a fair trial to determine their civil right to an increase in their pensions because the question submitted to the national courts had been settled by the legislature and not by the judiciary.

18. In the Government's submission, the impugned statute had not been adopted in order to resolve the dispute between the applicants and the authorities. Worded in objective and impersonal terms, it regulated the cases of thousands of retired officers and was mainly aimed at future proceedings.

In order to facilitate its implementation, proceedings which were already pending were also – inevitably – affected.

In any event, the Government maintained that the applicants could not complain of an unlawful interference by the legislature with the exercise of the judiciary's power because the Court of Audit had referred only subsidiarily to the statute in question in dismissing the applicants' appeals.

19. The Court reiterates that in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws (see, among other authorities, *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII).

20. However, it has already held that the principle of the rule of law and the notion of fair trial enshrined in Article 6 precluded any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute. In cases raising similar issues, the Court has found that the legislature had intervened at a time when court proceedings to which the State was a party were pending. Accordingly, it has concluded that the State had infringed the applicants' rights under Article 6 by intervening in a manner which was decisive to ensure that the – imminent – outcome of proceedings to which it was a party was favourable to it (see, *inter alia*, the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, and the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI).

21. In the instant case the Court considers that even if the proceedings in question were not declared null and void under Law no. 2320/1995, that statute did, nevertheless, influence the judicial determination of the dispute. While it is true that the Court of Audit dismissed the applicants' appeals after examining the merits of the case, the Court notes that it did nonetheless make reference to the provisions of the impugned statute in support of its decisions. In the Court's opinion, the fact that the Court of Audit's decision to dismiss the appeals was based even subsidiarily on the impugned statute amounts to an interference by the legislature with the judicial process designed to influence the determination of the dispute.

Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the right of applicants nos. 2, 4, 5, 6 and 7 to a fair trial.

B. Length of the proceedings

22. It remains to be determined whether or not the “reasonable time” has been exceeded as the seven applicants maintain.

23. The Government affirmed that the length of the proceedings in question had not been excessive, having regard, *inter alia*, to the complexity of the cases and the reversal of the Court of Audit's case-law on the subject.

1. Period to be taken into consideration

24. The Court notes that the proceedings in question began when the applicants lodged claims for an increase in their pensions in accordance with the provisions of Law no. 1881/1990, and ended with the judgments of the Court of Audit definitively dismissing their claims. They thus lasted for the following periods of time:

(i) applicant no. 1: from 3 October 1991 to 9 April 1997, that is, a period of five years, six months and six days;

(ii) applicant no. 2: from 22 October 1991 to 26 March 1997, that is, a period of five years, five months and four days;

(iii) applicant no. 3: from 24 December 1991 to 14 May 1997, that is, a period of five years, four months and twenty days;

(iv) applicant no. 4: from 11 September 1991 to 26 March 1997, that is, a period of five years, six months and fifteen days;

(v) applicant no. 5: from 19 November 1991 to 26 May 1997, that is, a period of five years, six months and seven days;

(vi) applicant no. 6: from 12 September 1991 to 26 March 1997, that is, a period of five years, six months and fourteen days;

(vii) applicant no. 7: from 18 November 1991 to 26 May 1997, that is, a period of five years, six months and eight days.

2. Reasonableness of the length of the proceedings

25. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the 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 relevant authorities (see, among many other authorities, the *Richard v. France* judgment of 22 April 1998, *Reports* 1998-II, p. 824, § 57, and the *Doustaly v. France* judgment of 23 April 1998, *Reports* 1998-II, p. 857, § 39).

26. The Court notes that the cases in question were not particularly difficult and considers that the applicants could not be deemed responsible for the delay found in the handling of their case. Consequently, it appears to the Court that the protractedness of the proceedings resulted mainly from the conduct of the relevant authorities.

27. The Court reaffirms that it is incumbent on the Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time.

Accordingly, the applicants' case was not heard within a reasonable time and there has been an infringement of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

28. Applicants nos. 2, 4, 5, 6 and 7 also complained of an infringement of Article 13 of the Convention, 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.”

They considered, more particularly, that they had not had an effective remedy to assert their rights and contest the adoption of Law no. 2320/1995.

29. Having regard to its finding in paragraph 21 above, the Court holds that it is not necessary to rule on the complaint in question.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

31. The applicants claimed 3,105,010 drachmas (GRD) each under the head of pecuniary damage. That amount corresponded to the sum they would have received if their case had not been determined by legislative action. They also claimed GRD 1,000,000 each under the head of non-pecuniary damage.

32. The Government did not express a view.

33. The Court holds that, even without an intervention by the legislature, the outcome of the proceedings in the Court of Audit would have been uncertain, particularly as it dismissed the applicants' appeals after an examination of the merits. It would therefore be mere speculation as to the nature of the Court of Audit's decision to assert that it would have upheld the applicants' appeals if it had not had to take into account the provisions of Law no. 2320/1995. Accordingly, the Court considers that, in the absence of a causal link between the pecuniary damage alleged and the violation found, no award should be made under that head. However, it considers that the applicants should be awarded compensation for the non-pecuniary damage resulting from the lack of a fair trial and the length of the proceedings. Having regard to its case-law on the subject and making its assessment on

an equitable basis as required by Article 41, it decides to award applicants nos. 2, 4, 5, 6 and 7 GRD 1,000,000 under that head, and applicants nos. 1 and 3 GRD 500,000 under that head.

B. Costs and expenses

34. The applicants also claimed reimbursement of the expenses they had incurred in the Court of Audit and subsequently before the Convention institutions, totalling GRD 977,000 each.

35. The Government did not express a view.

36. Although it is true that only costs necessarily incurred in the domestic courts with a view to obtaining redress for the matter found by the Court to constitute a violation can be reimbursed, the fact remains that in length of proceedings cases, the extension of the examination of a case beyond a “reasonable time” gives rise to an increase in costs to the detriment of the applicant (see *Scalvini v. Italy*, no. 36621/97, 26 October 1999, unreported, and *Bouilly v. France*, no. 38952/97, 7 December 1999, unreported). Consequently, having regard to its relevant case-law, the Court awards each of the applicants GRD 500,000 under this head.

37. With regard to the expenses incurred before the Convention institutions, the Court notes that the applicants, who were represented by a lawyer, were not awarded legal aid. It therefore awards each of them GRD 400,000 under this head.

C. Default interest

38. 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

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention as regards the right of the second, fourth, fifth, sixth and seventh applicants to a fair trial;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention as regards the applicants' right to a trial within a “reasonable time”;

3. *Holds* unanimously that it is not necessary to rule on the complaint under Article 13 of the Convention;
4. *Holds* by six votes to one
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, GRD 1,000,000 (one million drachmas) to the second, fourth, fifth, sixth and seventh applicants for non-pecuniary damage; GRD 500,000 (five hundred thousand drachmas) to the first and third applicants for non-pecuniary damage; and GRD 900,000 (nine hundred thousand drachmas) to each of the applicants for costs and expenses, together with any value-added tax that may be chargeable;
 - (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* unanimously the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 7 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Rozakis is annexed to this judgment.

J.-P.C.
S.D.

DISSENTING OPINION OF JUDGE ROZAKIS

(Translation)

I have voted against finding a violation in respect of the complaint about the unfairness of the proceedings. My reasons are as follows. The case-law of the Convention institutions recognises that in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws (see, among other authorities, *Zielinski and Pradel and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII). Accordingly, it is not the regulation by legislative action of matters subject to the examination of the national courts which is deemed to be contrary to the Convention, but the direct application of a new statute by a court to which a dispute has already been referred, with the result that the proceedings are declared null and void or the case dismissed on the merits, contrary to the case-law applied hitherto.

Unlike the position in the *Andreadis v. Greece* and *Papageorgiou v. Greece* cases, on which the applicants relied in support of their complaints, and in which pending proceedings were annulled in direct application of laws adopted by the Greek parliament (see the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, and the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI), in the instant case Law no. 2320/1995 did not directly affect the judicial outcome of the dispute. The Court of Audit did not annul the proceedings pursuant to the above-mentioned statute, but dismissed the appeals after having undertaken an examination on the merits of the parties' submissions. Its subsidiary reference to the provisions of the impugned statute should not lead us to conclude that the cases were dealt with by legislative action.

Consequently, I consider the complaint raised by the second, fourth, fifth, sixth and seventh applicants relating to the unfairness of the proceedings to be ill-founded.