CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ARVELAKIS v. GREECE

(*Application no. 41354/98*)

JUDGMENT

STRASBOURG

12 April 2001

FINAL

12/07/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Arvelakis v. Greece,

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

Mr A.B. BAKA, *President*,
Mr C.L. ROZAKIS,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 23 March 2000 and 22 March 2001,

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

PROCEDURE

1. The case originated in an application (no. 41354/98) against Greece 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 a Greek national, Mr Yeoryios Arvelakis ("the applicant"), on 16 March 1998.

2. The applicant was represented by Mr I. Anagnostopoulos, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent, Mr E. Volanis, President of the State Legal Council.

3. The applicant complained about the length of the criminal proceedings against him.

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 Second Section of the Court (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 of the Rules of Court.

6. By a decision of 23 March 2000 the Court declared the application admissible.

THE FACTS

7. On 17 March 1988 the applicant was arrested for homicide. On 15 November 1988 he appeared before the first instance criminal court of Heraklion, composed of judges and jurors (Μικτό Ορκωτό Δικαστήριο). On 16 November 1988 he was found guilty and given a life sentence. The applicant appealed on the same day.

8. On 23 July 1990 there was a fire in the public prosecutor's office and the case-file was destroyed. It was reconstituted at the end of October 1990.

9. On 6 December 1990 the Court of Appeal of Crete, composed of judges and jurors (Μικτό Ορκωτό Εφετείο), adjourned the examination of his appeal until 6 June 1991 because a number of key prosecution witnesses were not present.

10. On 6 June 1991 the examination of the appeal was further adjourned because the applicant's lawyer was on strike.

11. The appeal was heard on 9 January 1992 and the Court of Appeal upheld the applicant's conviction and sentence. On 19 February 1992 the applicant appealed in cassation.

12. On 11 May 1992 the applicant's lawyer applied for an adjournment of the hearing before the Court of Cassation because he needed more time to prepare the case. The court acceded to his request. On 17 November 1992 there was another adjournment because the applicant's lawyer was on strike. A further adjournment was ordered on the same ground on 9 February 1993. The appeal in cassation was finally heard on 11 May 1993.

13. On 1 July 1993 the Court of Cassation (Αρειος Πάγος) quashed the decision of the Court of Appeal on the ground that it did not contain proper reasons. The case was sent back to the Court of Appeal for re-examination.

14. On 24 August 1993 the applicant asked for his appeal not to be heard in Crete on public order and safety grounds. His request was unsuccessful.

15. On 7 April 1994 the Court of Appeal of Crete adjourned the hearing of the case because the applicant's lawyer was on strike. On 11 May 1995 the case was adjourned again because key prosecution witnesses were absent.

16. On 26 September 1996 the Court of Appeal found the applicant guilty of homicide, considered that there existed no mitigating circumstances and imposed on him a sentence of life imprisonment.

17. On 17 February 1997 the applicant appealed in cassation once more. He claimed, *inter alia*, that he had pleaded before the Court of Appeal that his sentence should be reduced because of the length of the proceedings but the court had tacitly rejected this plea.

18. On 10 September 1997 the applicant submitted an additional memorial to the effect that the Court of Appeal should have reduced his sentence *proprio motu* because of the length of the proceedings. He invoked in this connection Article 6 § 1 of the Convention.

19. The applicant's appeal was heard by the Court of Cassation on 26 September 1997 and was rejected on 7 November 1997.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant complains about the length of the criminal proceedings against him. He invokes Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

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

A. Period to be taken into consideration

21. The proceedings began on 17 March 1988, when the applicant was arrested, and ended on 7 November 1997, when the Court of Cassation rejected his appeal. They thus lasted more than nine years and seven months.

B. Reasonableness of the length of the proceedings

22. With reference to the principles set out in its established case-law in this area, the Court will assess the reasonableness of the impugned period in light of the complexity of the case, the applicant's conduct and that of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

23. The Government submit that the length of the proceedings does not disclose a breach of Article 6 § 1 of the Convention, given the seriousness of the case, the fact that it was examined twice by the Court of Cassation and the fact that many delays were caused by the lawyers' strike for which the Government are not responsible. The Government also point out that there are certain difficulties in constituting courts with jurors, that the applicant himself caused delays by asking for his case to be transferred to another appeal court and for the adjournment of the hearing of his appeal in cassation on 11 May 1992 and that some delays were caused by the fire in the public prosecutor's office and the absence of key prosecution witnesses. Finally, the Government point out that each time that a hearing had to be adjourned care was taken to limit the delays when fixing a new date.

24. The applicant replies that his case was not complex, as evidenced by the fact that the first trial hearing only lasted two days. In his view, the State cannot invoke the difficulties in the constitution of courts with jurors to justify the delay in the proceedings. Moreover, by the time the fire broke out in the public prosecutor's office, the hearing of his appeal had already been delayed by one year and eight months. Moreover, there was an eleven-month delay between the first decision of the Court of Cassation and the adjournment by the Court of Appeal of the re-examination of the applicant's case. The applicant also argues that the Government cannot justify the delays by referring to the need to adjourn hearings because prosecution witnesses were not present. In addition there was a fifteen-month delay between the adjournment of 10 May 1995 and the re-examination of his case by the Court of Appeal. His second appeal in cassation was heard one year after the second judgment of the Court of Appeal. The lawyers' strike did not cause major delays if compared with the overall length of the proceedings. The applicant cannot be blamed for making use of available remedies. Overall, the applicant submits that the particular circumstances of the case cannot justify the length of the proceedings, which exceeded nine years and seven months.

25. The Court considers that the case was not complex and that the applicant's conduct had been reasonable. It further notes that the adjournments which were ordered because of the absence of prosecution witnesses caused a twenty-two month delay in the proceedings, for which the State is responsible. Moreover, there was a two year period of inactivity between the first trial and the first appeal hearing (the fire invoked by the Government occurred twenty months after the applicant's conviction). No convincing explanation for these delays has been given by the respondent Government.

Finally, as regards the delays caused by the lawyers' strike, the Court recalls that there can be doubt that an event of that kind cannot render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with (see the Papageorgiou v. Greece judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2291, § 47). In the present case, the Court notes that the State made no serious efforts to speed up the proceedings.

26. The Court observes in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty 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, among many other authorities, the Duclos v. France judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2180-81, § 55 *in fine*). The evidence adduced in the

present case shows that there were excessive delays, which were attributable to the national authorities.

27. In conclusion, the length of the criminal proceedings in issue contravened Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claims that he suffered frustration and anxiety as a result of the length of the proceedings and seeks reparation for the non-pecuniary damage he had sustained, but leaves it to the Court to determine the amount.

30. The Government made no comments on the applicant's claim.

31. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant GRD 2,000,000 under that head.

B. Costs and expenses

32. The applicant claims 6,000 Euro for legal fees incurred before the Court of Cassation and the Court.

33. The Government did not make any observations under this head of claim either.

34. According to the Court's 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. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court firstly observes that there is no element in the file suggesting that the applicant has incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the legal costs and expenses incurred before it, the Court awards the applicant GRD 1,000,000.

C. Default interest

35. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) 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, the following amounts: in respect of non-pecuniary damage, 2,000,000 (two million) drachmas and 1,000,000 (one million) drachmas 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;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President