



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

FIRST SECTION

**CASE OF SMOKOVITIS AND OTHERS v. GREECE**

*(Application no. 46356/99)*

*JUDGMENT*

*STRASBOURG*

*11 April 2002*

**FINAL**

***11/07/2002***

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Smokovitis and Others v. Greece,**

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

Mrs F. TULKENS, *President*,

Mr C.L. ROZAKIS,

Mr G. BONELLO,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 22 March 2001 and on 14 March 2002,

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

## PROCEDURE

1. The case originated in an application (no. 46356/99) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-four Greek nationals (“the applicants”), whose names appear in the appendix, on 15 January 1998.

2. The applicants were represented before the Court by Mr D. Stranis, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by Mr V. Kyriazopoulos and Mr I. Bakopoulos of the Legal Council of the State, Acting Agents.

3. The applicants complained, under Articles 6 § 1 of the Convention and 1 of Protocol No. 1, of the legislative interference in their case that led to the extinction of their claims for payment of a supplement to their salary.

4. 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.

5. By a decision of 22 March 2001 the Court declared the application admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicants teach as temporary staff at the polytechnic school in Piraeus (Τεχνολογικό Εκπαιδευτικό Ίδρυμα Πειραιά) on the basis of private-law contracts. On 22 October 1992 they sued their employer for a supplement to their salary, as research allowance (ερευνητική χορηγία - hereinafter “the benefit”), that had been granted by ministerial decision no. 2023080/2538/0022/SHET.2057/1989 to “those teaching at polytechnics”. They served their action (επίδοση αγωγής) to the school on 27 October 1992.

9. The applicants relied on a number of decisions by the Court of Appeal in Piraeus granting the benefit in question to academic staff of the polytechnic school with the applicants’ status. Their action was one of several actions pending before the Piraeus courts at the time.

10. On 30 September 1993 the single-member first instance civil court (Μονομελές Πρωτοδικείο) of Piraeus considered that the applicants were entitled to the benefit. It awarded GRD 600,000 to applicant no. 1, GRD 570,000 to each of applicants nos. 2-5, GRD 380,000 to each of applicants nos. 6 and 7, GRD 300,000 to each of applicants nos. 8-12, GRD 450,000 to each of applicants nos. 13-20, GRD 330,000 to each of applicants nos. 21-23 and GRD 210,000 to applicant no. 24. The court also held that the applicants should be awarded legal interest on the above-mentioned sums from the date when they served their action to the school, namely from 27 October 1992.

11. On 11 February 1994 the school appealed.

12. On 31 August 1994 Parliament enacted Law no. 2233/1994. Article 2 § 2 of that law provided the following: the ministerial decision of 1989, according to its true meaning, concerned only permanent staff; any claims that had not been recognised by final decisions were statute-barred; all pending court cases were discontinued.

13. On 19 July 1995 the Court of Appeal of Piraeus upheld the school’s appeal (decision no. 1001/1995). The court considered that Article 2 § 2 of Law no. 2233/1994 “is truly interpretative and has retroactive effect (Article 77 § 1 of the Constitution)”, and that “it clearly results from these provisions that the temporary staff of the polytechnic schools are not entitled to the benefit provided for by the ministerial decision [of 1989]”. The court continued:

“Moreover... Articles 4 and 22 of the Constitution ... provide for equal pay for work of equal value rendered ... However, the principle of non-discrimination ... is relaxed when the differentiation in the pay for work of equal value is imposed by reasons of general public and social interest. Such a reason, which justifies the fixing by the legislator of a different pay among employees who render ... the same work, exists

when the ones work on the basis of public law contracts and the others on the basis of private law contracts, i.e. when each group belongs to a different category, ruled by a different legal status entailing different ... rights and obligations. Therefore the judgment under appeal which ... considered that [the applicants] as temporary staff of the school ... working on the basis of private law contracts, are entitled to receive the benefit ... was wrong and did not interpret correctly the law, which was in fact interpreted by the ensuing (truly) interpretative Law no. 2233/1994, and thus the doubt which was created due to its ambiguity has been removed. In view of the fact that by virtue of that law the benefit is given only to permanent staff and not to temporary staff ... like [the applicants], the constitutional principle of equal pay for work of equal value is not violated, given that this deviation is imposed by the general public and social interest, because a full equation of the pay of these different categories of working people would overrule the basic principle of free negotiation of the employment conditions in the public sector ...”

14. On 20 June 1996 the applicants appealed in cassation relying, *inter alia*, on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

15. On 25 July 1997 the Court of Cassation considered that the 1994 law simply interpreted the 1989 ministerial decision, did not have the purpose of resolving the litigation and did not interfere with the applicants’ rights under the Convention. It rejected their appeal (decision no. 1328/1997).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant provisions of the 1975 Constitution read as follows:

### **Article 77 § 1**

“The authentic interpretation of the laws shall rest with the legislative power.”

### **Article 93 § 4**

“The courts shall be bound not to apply laws, the contents of which are contrary to the Constitution”.

17. The District Court (Ειρηνοδικείο) of Piraeus in its decisions nos. 75/1993, 81/1993 and 153/1995 considered that the benefit provided for by the ministerial decision of 1989 concerned both permanent and temporary staff. The same line was followed by the single-member first-instance civil court of Athens in decisions nos. 229/1992, 882/1992, 551/1993 and 739/1993, the single-member first-instance civil court of Thessaloniki in decision no. 478/1990, the single-member first-instance civil court of Larissa in decision no. 618/1991, the multi-member first instance civil court (Πολυμελής Πρωτοδικείο) of Kavala in decision no. 123/1991, the Court of Appeal of Thessaloniki in decision no. 2117/1991, and the Court of Appeal of Piraeus in decisions nos. 164/1993 and 165/1993.

18. Law no. 2233/1994 provides the following:

**Article 2 § 2**

“a) The true meaning of the provisions of paragraphs 1 and 2 of Article 2 of decision no. 2023080/2538/0022/SHET.2057/1989 is that the benefit ... is paid only ... to the permanent staff of the schools ...

b) Any claims relating to the payment of such benefit also to the temporary staff ... shall be extinguished unless for cases in which, at the time of the publication of this law, a final judgment (αμετάκλητη δικαστική απόφαση) has been issued. Any claims pending in any court for the payment of such benefit shall be struck out ...”

19. The single-member first-instance civil court of Piraeus, in its decisions nos. 885/1994 and 889/1994, considered that Article 2 § 2 of Law no. 2233/1994 was clearly unconstitutional as it violated the principle of equality. Therefore it refused to apply it and allowed the plaintiffs' claims. The same line was followed by the District Court of Piraeus in decisions nos. 41/1997 and 42/1997.

## THE LAW

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

20. The applicants complain that the legislative interference in the litigation opposing them to the school amounts to a violation of their right to a fair trial under Article 6 § 1 of the Convention, which reads as follows:

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

21. The Government consider that the applicants could not criticise the legislature's adoption of the disputed provision. They submit that in principle the legislature is not precluded from regulating by new provisions rights arising under laws previously in force. They argue that Law no. 2233/1994 had not been enacted for the purposes of resolving the litigation between the applicants and the school. Article 2 § 2 of the law was of a general nature and the intention of Parliament was to remove the doubt that the 1989 ministerial decision had created. It therefore governed any case falling within its scope and not only the applicants' case. The Government further note that there were no decisions of the Court of Cassation on the matter. The fact that the case-law of the lower courts was favourable to the applicants cannot indicate that the Court of Cassation would also rule in their favour. Lastly, the Government note that the timing of the enactment of Law no. 2233/1994 was not suspicious and the State was not a litigant in the proceedings opposing the applicants to the school.

22. The applicants reply that, before the enactment of Law no. 2233/1994, the constant case-law of the lower courts was favourable to their claims, and that there was no need whatsoever to interpret the 1989 ministerial decision, which was perfectly clear. In any event, had there been a need of interpretation of the ministerial decision, the applicants do not understand why Law no. 2233/1994 was enacted only five years after the decision was taken. In their view, Article 2 § 2 of Law no. 2233/1994 was an arbitrary provision, contrary to the Constitution. This view was also shared by the domestic courts on several occasions. The applicants conclude that the 1994 law was not a genuinely interpretative provision but was enacted in order to prejudice their chances of success in the litigation opposing them to the polytechnic school, a public body.

23. The Court reaffirms that while in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute (see, among other authorities, *Zielinski and Pradal & Gonzalez Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999–VII).

24. In the instant case, as in the above-mentioned case, the Court cannot overlook the effect of Article 2 § 2 of Law no. 2233/1994, taken together with the method and timing of its enactment.

25. To begin with, while Article 2 § 2 b) expressly excluded from its scope court decisions that had become final, it settled once and for all the terms of the dispute before the ordinary courts and did so retrospectively.

26. Therefore, the adoption of Law no. 2233/1994 while the proceedings were pending in reality determined the substance of the dispute. The application of it by the Court of Appeal in its judgment of 19 July 1995 (see paragraph 13 above), made it pointless to carry on with the litigation.

27. As to the Government's argument that this was not a dispute between the applicants and the State (see paragraph 21 above), the Court notes that polytechnic schools are public bodies which perform a public-service mission and are subject to ministerial supervisory authorities. Consequently, the intervention of the legislature in the instant case took place at a time when legal proceedings to which the State was a party were pending.

28. In conclusion, the State infringed the applicants' rights under Article 6 § 1 by intervening in a manner which was decisive to ensure that the outcome of proceedings in which it was a party was favourable to it. There has therefore been a violation of that Article.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

29. The applicants further complain that the enactment of Article 2 § 2 of Law no. 2233/1994 had the effect of extinguishing their claims, which constituted “possessions”. They invoke Article 1 of Protocol No. 1, which is worded as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

30. The Government submit that Article 1 of Protocol No. 1 does not apply in the present case, since the applicants cannot claim to be owners of a “possession” within the meaning of that provision. None of their claims had been recognised and determined by a judicial decision having final effect. Yet that is the condition for a claim to be certain, enforceable and, accordingly, protected by Article 1 of Protocol No. 1. In the alternative, the Government claim that even if Article 1 of Protocol No. 1 were applicable in the present case, the requirements of that provision have been satisfied in full.

31. The applicants reply that their claims were enforceable. In accordance with the constant case-law at the time, they had “a legitimate expectation” that the courts would have found in their favour if they had applied the provisions of the relevant ministerial decision as they were understood prior to the legislative interference. They further maintain that Law no. 2233/1994 did not observe a reasonable relationship of proportionality between the objective to be achieved and the burden that was imposed on them.

32. In the present case the Court notes that, before the legislative interference, the applicants had obtained a first instance decision in their favour. In order to determine whether that decision had given rise to a debt in the applicants’ favour that was sufficiently established to be enforceable (see the *Stran Greek Refineries and Stratis Andreadis v. Greece* judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59), the Court may have regard to the jurisprudence of the domestic courts at the time of the alleged interference. In this respect, it notes that the domestic courts, which had been seized with similar cases, had considered on several occasions that the benefit provided for by the ministerial decision of 1989 concerned both permanent and temporary staff. They had therefore created “a legitimate expectation” that they would have found in favour of the applicants if they had applied the provisions of the relevant ministerial decision as they were understood prior to the legislative interference (see, *mutatis mutandis*,

Pressos Compania Naviera S.A. and others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, § 31). As a result, the Court is of the opinion that the applicants' claims can be regarded as "possessions" within the meaning of Article 1 of Protocol No. 1.

33. Moreover, the Court notes that Article 2 § 2 of Law no. 2233/1994 extinguished the applicants' claims. The interference in question was neither an expropriation nor a measure to control the use of property; it falls to be dealt with under the first sentence of the first paragraph of Article 1 of Protocol No. 1. It is therefore necessary to determine whether the interference was justified under that provision.

34. The Court considers that there is nothing in the facts of the case to justify legislating with retrospective effect with the aim and consequence of depriving the applicants of their claims for payment of the benefit. By choosing to intervene at that stage of the proceedings before the Court of Appeal, the legislature upset, to the detriment of the applicants, the balance that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (*Stran Greek Refineries and Stratis Andreadis v. Greece* judgment, *op. cit.*, pp. 87–88, §§ 69 and 74; *Pressos Compania Naviera S.A. and others v. Belgium* judgment, *op. cit.*, p. 24, § 43).

There has accordingly been a violation of Article 1 of Protocol No. 1.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicants claimed as pecuniary damage the amounts awarded by the first instance civil court of Piraeus in 1993, as well as the amounts they would have been awarded up to September 1996 (when a new method of calculating their salaries came into force), if it had not been for the legislative interference of 1994, plus interest at a flat rate of 6% per annum from 1989 (year of the adoption of the ministerial decision granting the benefit in question) to May 2001 (when they presented their claims for just satisfaction). In particular the applicants claimed the following sums:

Applicant no. 1: GRD 1,532,500; Applicant no. 2: GRD 2,283,792;  
Applicant no. 3: GRD 1,233,096; Applicant no. 4: GRD 1,478,670;  
Applicant no. 5: GRD 1,512,870; Applicant no. 6: GRD 1,546,118;  
Applicant no. 7: GRD 716,622; Applicant no. 8: GRD 1,194,370; Applicant  
no. 9: GRD 716,622; Applicant no. 10: GRD 1,546,118; Applicant no. 11:

GRD 1,546,118; Applicant no. 12: GRD 973,496; Applicant no. 13: GRD 1,546,118; Applicant no. 14: GRD 1,998,996; Applicant no. 15: GRD 713,896; Applicant no. 16: GRD 1,321,192; Applicant no. 17: GRD 1,802,992; Applicant no. 18: GRD 593,748; Applicant no. 19: GRD 689,622; Applicant no. 20: GRD 901,496; Applicant no. 21: GRD 1,298,244; Applicant no. 22: GRD 545,322; Applicant no. 23: GRD 1,132,818; Applicant no. 24: GRD 1,132,818.

The applicants also claimed GRD 1,000,000 each for non-pecuniary damage.

37. The Government submit that if the Court found a breach of Articles 6 § 1 of the Convention and 1 of Protocol No. 1, that finding would constitute sufficient just satisfaction.

38. Having regard to its finding at paragraph 34 and making its assessment on an equitable basis, the Court concludes that the applicants are entitled to the reimbursement of the sums which were awarded to them by the first instance civil court of Piraeus (see paragraph 10 above), plus interest. As regards the remainder of the applicants' claims, the Court notes that they concern the period from the entry into force of Law no. 2233/1994 onwards. However, that law excluded temporary staff from the grant of the benefit provided for by the ministerial decision of 1989. The applicants are not entitled to the payment of this benefit after the entry into force of the 1994 law. Their claims for this period must consequently be dismissed.

To sum up, the Court awards the applicants the following sums: EUR 1,761 to applicant no. 1, EUR 1,673 to each of applicants nos. 2-5, EUR 1,116 to each of applicants nos. 6 and 7, EUR 881 to each of applicants nos. 8-12, EUR 1,321 to each of applicants nos. 13-20, EUR 969 to each of applicants nos. 21-23 and EUR 617 to applicant no. 24, plus interest at a flat rate of 6% for the period running from 27 October 1992 to the date of judgment.

The Court further holds that the applicants should be awarded compensation for non-pecuniary damage because they did not have a fair hearing. It awards them EUR 2,900 each under that head.

## **B. Costs and expenses**

39. Each applicant claims various sums which range from GRD 68,147 to GRD 138,249 in respect of costs and expenses incurred in the proceedings in the national courts and before the Court.

40. The Government did not express a view.

41. The Court notes that the applicants were represented by the same lawyer throughout the proceedings before the domestic courts and the Court. On the basis of the information in its possession, the Court awards the applicants EUR 200 each in respect of costs and expenses.

### C. Default interest

42. 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* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*  
that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
  - (a) for pecuniary damage: EUR 1,761 (one thousand seven hundred and sixty-one euros) to applicant no. 1, EUR 1,673 (one thousand six hundred and seventy-three euros) to each of applicants nos. 2-5, EUR 1,116 (one thousand one hundred and sixteen euros) to each of applicants nos. 6 and 7, EUR 881 (eight hundred and eighty-one euros) to each of applicants nos. 8-12, EUR 1,321 (one thousand three hundred and twenty-one euros) to each of applicants nos. 13-20, EUR 969 (nine hundred and sixty-nine euros) to each of applicants nos. 21-23 and EUR 617 (six hundred and seventeen euros) to applicant no. 24, plus simple interest at 6% for the period running from 27 October 1992 to the date of judgment;
  - (b) for non-pecuniary damage: EUR 2,900 (two thousand nine hundred euros) to each applicant;
  - (c) for costs and expenses: EUR 200 (two hundred euros) to each applicant, plus any tax that may be chargeable;
  - (d) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Françoise TULKENS  
President

**APPENDIX**

1. Dimitrios SMOKOVITIS
2. Konstandinos GAROUFALIS
3. Ioannis BOULES
4. Ioannis MILONAS
5. Panagiotis SPILIOPOULOS
6. Paraskevi GALINOU
7. Evangelos KARALEKAS
8. Anna KOKKINOY
9. Despina PAPAFLORATOU
10. Xenofondas VARDAKIS
11. Pandleimon VARDAKIS
12. Olimbia VOULOGEORGI
13. Anastasia MAKELLARAKI
14. Georgios ALEXIS
15. Georgios MIRILOS
16. Christina DOUVRI
17. Athanassios SPIRIDAKOS
18. Maria KOUIMANI
19. Maria KARAGOUNI
20. Georgios PAPADOPOULOS
21. Maria ANASOGLU-KONIDARI
22. Panayiotis TSATSAROS
23. Kalliopi HINI
24. Ekaterini LABROPOULOU