



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

FIRST SECTION

CASE OF GEORGIOS PAPAGEORGIOU v. GREECE

(Application no. 59506/00)

JUDGMENT

STRASBOURG

9 May 2003

FINAL

09/08/2003

In the case of Georgios Papageorgiou v. Greece,

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

Mr G. BONELLO, *President*,

Mr C.L. ROZAKIS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 20 June 2002 and 10 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 59506/00) 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 a Greek national, Mr Georgios Papageorgiou (“the applicant”), on 29 May 2000.

2. The applicant was represented before the Court by Mr N. Frangakis, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by Mr M. Apossos, the Delegate of their Agent, Senior Adviser at the State Legal Council.

3. The applicant alleged, in particular, a violation of the right to a fair hearing within a reasonable time (Article 6 §§ 1 and 3 (d) of the Convention).

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. 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 (Rule 52 § 1).

5. By a decision of 20 June 2002 the Chamber declared the application partly admissible.

6. The applicant and the Government each filed written observations on the merits of the case (Rule 59 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1955 and lives in Aghios Stefanos (Attica).

8. On 30 May 1990 the Commercial Bank of Greece lodged a criminal complaint against a number of its employees, including the applicant, alleging suppression of documents, forgery and uttering, and fraud, offences which it claimed had caused it a loss of more than 20,000,000 drachmas. It accused the employees concerned of having debited the account of Greek Railways (“the OSE”) using seven cheques from a cheque book that had been produced in the railway company’s name but never actually issued to it. On 2 June 1990 the public prosecutor instituted proceedings against the applicant.

9. On 27 March 1991 the applicant was summoned to appear before the investigating judge and was placed in pre-trial detention. On 23 April 1991 he was released on bail, subject to court supervision entailing, among other things, a ban on leaving the country.

10. In a decision of 26 June 1992 the Indictment Division of the Athens Court of Appeal committed some of the accused, including the applicant, for trial in the Athens Court of Appeal, composed of three judges as is the rule for cases dealt with by courts of appeal at first instance.

11. The hearing, initially set down for 27 May 1994, was adjourned firstly until 26 January 1996 because of a strike by members of the Athens Bar and subsequently until 31 May 1996 because of the ill health of one of the other defendants. On that date the hearing was again adjourned, this time until 13 October 1997.

12. On 4 June 1996 the applicant, who before joining the bank had been an officer in the merchant navy, applied to have the ban on his leaving the country lifted so that he could work in the navy again. He argued that he needed to be in gainful employment in order to support his wife and three children and pointed out that the proceedings had been adjourned several times by the court itself. However, his application was refused by the public prosecutor and subsequently by the Indictment Division of the Court of Appeal, the Court of Appeal having earlier rejected a similar application.

13. The trial finally began on 13 October 1997 – five years, three months and seventeen days after the Indictment Division’s decision of 26 June 1992 and more than seven years after the complaint had been lodged and the proceedings instituted. Hearings were held on 13, 14, 15, 21 and 29 October 1997. One of the co-defendants requested the production in court of the back-up tape for the bank’s computer (but not the cheques in question). Counsel for the bank produced a declaration by the bank’s information technology department attesting that the copies of the computer tapes in the file were authentic. The declaration was read out at the hearing

without eliciting any reaction from the defendants. During the trial at least sixty-six documents were read out and evidence was heard from three witnesses.

The Court of Appeal gave judgment on 29 October 1997. It convicted the applicant and sentenced him to five years and four months' imprisonment, to be reduced by the period already spent in pre-trial detention, and ordered the confiscation and destruction of the seven cheques in question. Lastly, it ruled that if the applicant decided to appeal, the appeal would suspend the execution of the sentence.

14. The applicant appealed against the judgment to the appropriate court, namely the Athens Court of Appeal, sitting as a bench of five judges. On 20 February 1998 that court upheld the judgment delivered at first instance but reduced the sentence to four years and ten months' imprisonment.

15. During the trial the applicant had requested the production of certain extracts from the log file of the bank's computer and of the original cheques and had asked for a handwriting expert, Mr Chalkias, to be summoned and cross-examined in the presence of another handwriting expert.

16. The Court of Appeal refused those requests on the following grounds:

"The precision and authenticity of the extracts from the bank's central computer records, accompanied by declarations by senior executives of the bank, are beyond dispute, and the production of the extracts is unnecessary. Nor is there any need to summon and cross-examine Mr Chalkias, because he has drawn up a detailed report which was read out at the trial. Lastly, the photocopies of the relevant cheques, which none of the parties disputes are forged, satisfy the needs of the proceedings and production of the originals therefore serves no purpose."

17. The Court of Appeal read out the items of evidence that had already been adduced at first instance and heard evidence from twelve prosecution and five defence witnesses.

18. It noted that, contrary to what the applicant had maintained, the connection between the cheques in question and the OSE's account could not have been established by members of the bank's information technology department, which was empowered only to process data from branches. It further observed that on the date of the offence, the applicant had been the only person to use the computer on which the offence had been committed. The handwriting expert had concluded that characteristics of the applicant's handwriting and signature were visible on the cheques. Lastly, the Court of Appeal noted that the applicant was one of the very limited number of the bank's employees who knew the OSE's account number and the names of the OSE employees authorised to issue cheques.

19. The applicant appealed on points of law. On 20 October 1998 the Court of Cassation quashed the judgment appealed against in respect of the charges of suppressing documents and forgery and uttering, and remitted the case to the Court of Appeal in respect of the charge of fraud only.

20. The Court of Appeal held a hearing on 2 December 1998. The applicant again requested the production of extracts from the bank's log file and sought a declaration from counsel for the bank attesting that the photocopies of the cheques were authentic. The Court of Appeal refused those requests. With regard to the first request, it ruled that it was impossible to recover the extracts from the bank's log file because the relevant tape reels had not been kept, and added that the authenticity of the documents in question was clear from other pieces of documentary evidence. It construed the second request as an attempt to establish whether the defendant had had an accomplice, whereas his guilt was apparent from other evidence. The Court of Appeal also held that it had not been proved that the photocopies of the cheques had been falsified. It concluded that the defendant had committed the offence on the basis of a pre-defined plan, which he had intended to carry out several times in order to misappropriate funds from Greek Railways.

21. On 8 December 1998 the Court of Appeal found the applicant guilty of fraud within the meaning of Article 386 of the Criminal Code, holding that the loss sustained by the bank had resulted from deception on the part of its employees and that the question whether the computer had been used or not was irrelevant. It sentenced him to three years and six months' imprisonment (to be reduced by twenty-eight days, the period already spent in pre-trial detention) and ordered the destruction of the forged cheques.

22. On 30 November 1999 the Court of Cassation, on an appeal by the applicant, upheld the Court of Appeal's judgment.

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

30. The applicant ... alleged a violation of Article 6 § 3 (d) of the Convention, which provides:

“Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

31. The applicant submitted that his conviction had been based on seven forged cheques, the originals of which had never been adduced by the bank (a civil party to the proceedings) in the courts dealing with the case. He had asked all the courts concerned to order the production of the original cheques or of copies certified as authentic by the bank itself, but his requests had been refused each time. A handwriting expert had concluded that he was the person responsible for the forgery, but the courts had refused to have the expert cross-examined in the presence of another handwriting expert. Similarly, the courts had refused to order the production of originals or of certified copies of certain extracts from the log file of the bank's central computer listing the transactions carried out on the date on which the fraud had occurred. The documents produced had been considered credible and authentic by the courts solely on the basis of statements by executives from the bank which were, however, contradictory. The applicant argued that if the courts had ordered the production of the original cheques, there would have been proof that he had not been responsible for the fraud. He maintained that alterations had been made to the photocopies of the documents produced to the courts.

32. The applicant asserted that during the trial the national courts had deliberately prevented him from challenging in an effective manner the evidence which his accusers had been required to produce; an effective assessment of the authenticity and relevance of that evidence should have been carried out in order to satisfy the requirements of a fair and public hearing. All the other evidence had been contradictory and had not formed a sufficient basis for a conviction. Despite the fact that his conviction had been limited to fraud, it was clear from the courts' reasoning that that offence had been held to have been committed by means of forged cheques.

33. Relying on *García Ruiz v. Spain* ([GC], no. 30544/96, ECHR 1999-I), the Government submitted that the applicant's complaint under Article 6 § 3 (d) in practice amounted to challenging the national courts' assessment of the facts and the evidence. They pointed out that the case had been examined on five occasions by high-level courts (the Court of Appeal and the Court of Cassation) and that the applicant had been convicted of a single offence and not of the three with which he had initially been charged. The courts' assessment had been based not only on the evidence referred to by the applicant in his complaint but on a multitude of documents and witness accounts. On 20 February and 8 December 1998 the Court of Appeal, sitting as a bench of five judges, had accordingly given judgment after hearing evidence from several prosecution and defence witnesses, basing its findings, respectively, on eighty-four documents (the first judgment) and seventy-one documents (the second judgment) that had been read out before it.

34. The Government submitted that the facts of the present case, in particular the fact that the originals of the forged cheques and the tape from

the bank's computer had not been adduced in the courts, differed from those examined in *Barberà, Messegue and Jabardo v. Spain* (judgment of 6 December 1988, Series A no. 146). They pointed out that the Court of Appeal had based its findings on a large number of documents read out during the trial – more than sixty-six at first instance – and on several witness statements. When examining the case on appeal, the Court of Appeal had had regard to the same documentary evidence and to statements by an even larger number of witnesses than at first instance, and had based its decision on detailed and meticulous reasoning.

35. The Court reiterates that the guarantees in Article 6 § 3 (d) are specific aspects of the right to a fair trial set forth in Article 6 § 1. As a general rule, it is for the national courts, and in particular the court of first instance, to assess the evidence before them as well as the relevance of the evidence which the accused seeks to adduce. The Court must, however, determine whether the proceedings considered as a whole, including the way in which prosecution and defence evidence was taken, were fair as required by Article 6 § 1 (see *Barberà, Messegue and Jabardo*, cited above, p. 31, §§ 67-68).

36. It further reiterates that it is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, Article 6 § 1 requires that the prosecution authorities should disclose to the defence all material evidence in their possession for or against the accused (see *Fitt v. the United Kingdom* [GC], no. 29777/96, ECHR 2000-II).

37. The Court notes that, unlike *Fitt*, cited above, the instant case does not concern the concealment of evidence, but the refusal to order production of the originals of documents used as evidence for the prosecution. At no stage of the proceedings were the courts dealing with the case able to examine extracts from the log file of the bank's computer or the original cheques, or to check whether the copies submitted to them corresponded to the originals. Furthermore, the first-instance court ordered the destruction of the cheques presumed to have been forged, the crucial piece of evidence in the applicant's trial. The applicant's conviction for fraud was, moreover, based to a large extent on the photocopies of the cheques in question. It is also apparent from the Court of Appeal's judgment that the means used to carry out the fraud were the cheques and the computer, which was necessary to alter the data from the bank's central computer. In those circumstances, the Court considers that production of the original cheques was vital to the applicant's defence since it would have enabled him, as he himself pointed out, to show that the instructions for the payment in issue had been given by

employees of the bank other than him, which would have compelled the judges to conclude that the accusation of fraud was unfounded.

38. As to the numerous other items of documentary evidence referred to by the Government, the Court notes, as the applicant did, that the documents in question were very diverse and related to other defendants or did not serve as a basis for the applicant's conviction.

39. Having regard to the fact that, in spite of his repeated requests, essential pieces of evidence were not adequately adduced and discussed at the trial in the applicant's presence, the Court concludes that the proceedings in issue, taken as a whole, did not satisfy the requirements of a fair trial.

40. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant sought redress for pecuniary damage resulting from his loss of income throughout the entire proceedings. He pointed out that after criminal proceedings had been instituted against him, the bank had terminated his contract and he had become unemployed. Needing to support his family after being released on bail, he had applied to have the ban on his leaving the country lifted so that he could work as a captain in the merchant navy, his profession prior to joining the bank. He asserted that if at that time he had been able to resume his career as chief officer on a tanker, he would have received a monthly salary of 1,600,000 drachmas (GRD) for a period of thirty-six months, after which he would have been promoted to the rank of captain (class 1), receiving a monthly salary of GRD 2,800,000 for a period of sixty months. Consequently, the damage sustained as a result of the loss of those earnings amounted to GRD 225,600,000 (662,069 euros (EUR)).

43. The applicant submitted that the humiliation, social obloquy and loss of moral standing he had suffered for a continuous period of eleven years, during which he had been stigmatised as a criminal, and the constant fear that his professional and social acquaintances would find out about his situation had caused him and his family substantial non-pecuniary damage that could not be redressed by an award of compensation, regardless of the amount. His mother had died from a serious illness brought on by the

sadness and shame she had felt for her son. His sister had attempted to commit suicide several times because of the proceedings against him. He therefore claimed EUR 3,000,000 for non-pecuniary damage.

44. The Government contended that the death of the applicant's mother and his sister's condition were related to chronic illnesses which could not under any circumstances be linked to his conviction. They considered that if the Court were to find a violation, an award of EUR 10,000 for non-pecuniary damage would be sufficient. As to his claim for pecuniary damage, they were prepared to award him EUR 10,000. They pointed out that the applicant's work as a captain in the merchant navy was neither guaranteed nor permanent and noted, firstly, that he had not produced any proof of his income for the period from 1991 to 2001 and, secondly, that his income in 2002 had not exceeded EUR 2,935 per month. Furthermore, promotion from the rank of chief officer to that of captain (class 1) was not automatic but was conditional on passing an examination.

45. The Court considers that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 in the national courts. While it cannot speculate as to the outcome of the trial had the position been otherwise, it considers that the applicant must have sustained non-pecuniary damage as a result of the violation of Article 6 §§ 1 and 3 (d). Making its assessment on an equitable basis as required by Article 41, it awards the applicant EUR 20,000.

B. Other relief

46. The applicant asked the Court to order the Government to quash his conviction and to erase all its effects, in particular those relating to his criminal record.

47. The Court reiterates that it is not empowered under the Convention to order the measure sought by the applicant (see *Higgins and Others v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 62, § 50).

C. Costs and expenses

48. The applicant claimed the following amounts in respect of the costs and expenses incurred by him in the proceedings before the national courts: (1) GRD 400,000 for his pre-trial detention; (2) GRD 400,000 for the study of the case file in 1991; (3) GRD 300,000 for the appearance of his lawyer at two hearings which were subsequently adjourned; (4) GRD 800,000 for representation before the three-member Court of Appeal; (5) GRD 300,000 for the study of the case file by another lawyer at the appeal stage; (6) GRD 700,000 for representation before the five-member Court of Appeal; (7) GRD 500,000 for the study of the case file by another lawyer; (8) GRD 1,000,000 for representation before the five-member Court of

Appeal on 20 February 1998; (9) GRD 600,000 for the application for a stay of execution of his sentence; (10) GRD 600,000 for filing his first appeal to the Court of Cassation; (11) GRD 600,000 for filing his second appeal to the Court of Cassation; (12) GRD 600,000 for the hearing on his second appeal to the Court of Cassation; and (13) GRD 2,100,000 for the proceedings after the case had been remitted to the Court of Appeal. Those amounts came to a total of GRD 8,900,000 (EUR 26,119). In support of his claim the applicant produced five bills totalling GRD 2,900,000.

49. The applicant further claimed a sum of EUR 39,456 for lawyer's fees in the proceedings before the Court. In support of his claim he produced three bills totalling EUR 7,337 for fees that had already been paid.

50. Observing that the costs incurred before the national courts related to charges on which the applicant had been acquitted, the Government argued that he was not entitled to have those costs refunded. As to the costs incurred in the proceedings before the Court, the Government stated that they were prepared to reimburse the amount corresponding to the bills produced by the applicant, making a total of EUR 7,337.

51. According to the established case-law of the Court, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the violation established by the Court and to obtain redress for it. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see *Philis v. Greece (no. 1)*, judgment of 27 August 1991, Series A no. 209, p. 25, § 74).

52. The Court observes that the applicant expressly requested the Court of Appeal, both at first instance and on appeal, to order production of the originals of the items of evidence in issue, and that that court refused on each occasion, giving barely convincing reasons. The Court therefore considers that the applicant is entitled to reimbursement of his lawyers' fees in the domestic proceedings in respect of which he has produced the relevant bills. Those bills amount to GRD 2,900,000 (EUR 8,511) in total. As to the fees for the proceedings in Strasbourg, the amounts corresponding to the bills produced by the applicant (EUR 7,337 in total) appear reasonable to the Court, which awards them in full.

D. Default interest

53. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
3. *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, EUR 20,000 (twenty thousand euros) for non-pecuniary damage and EUR 15,848 (fifteen thousand eight hundred and forty-eight euros) for costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in French, and notified in writing on 9 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Giovanni BONELLO
President