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

FIRST SECTION

CASE OF ARVANITAKI-ROBOTI AND OTHERS v. GREECE

(*Application no. 27278/03)*

JUDGMENT

STRASBOURG

18 May 2006

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED ITS JUDGMENT ON
15 FEBRUARY 2008

In the case of Arvanitaki-Roboti and Others v. Greece,

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

Mr L. LOUCAIDES, *President*,
Mr C.L. ROZAKIS,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 27278/03) against the Greek Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ninety-one Greek nationals ("the applicants"), listed in the Appendix, on 4 August 2003.

2. The applicants were represented by Ms Z. Tsiliouka-Mousmoula, of the Athens Bar. The Greek Government ("the Government") were represented by their Agent's delegate, Ms G. Skiani, Adviser, Legal Council of State.

3. On 12 November 2004 the Court decided to communicate the complaint concerning the length of proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. In their capacity as doctors, the applicants are members of the National Health System (Εθνικό Σύστημα Υγείας) and are employed by the public hospital "O Evangelismos".

5. On 28 April 1994 they applied to the Athens Administrative Court of Appeal seeking to have set aside the hospital's refusal to pay them an allowance for overtime work, set at 1/65th of their basic salary.

6. Initially scheduled for 11 March 1996, the hearing was postponed seven times, one of these being at the applicants' request. It was eventually held on 22 November 1999. On 16 December 1999 the Athens Administrative Court of Appeal set aside the disputed administrative decision (decision no. 2684/1999).

7. On 18 April 2000 the hospital lodged an appeal against that decision. Initially scheduled for 18 January 2001, the hearing was held on 18 October 2001, after four postponements. On 7 March 2002 the Third Division of the Supreme Administrative Court sent the case for examination by that court's seven-judge bench on account of the importance of a question concerning the way in which the document in dispute had been published (judgment no. 763/2002).

8. On 6 February 2003, following the postponement of one hearing, the Supreme Administrative Court overturned the Athens Administrative Court of Appeal's decision. It held that the ministerial decree on which the applicants based their claim to receive an allowance for overtime work had not been published in due form and was therefore without foundation (judgment no. 307/2003).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH REGARD TO THE LENGTH OF PROCEEDINGS

9. The applicants alleged that the length of the proceedings had breached the principle of a "reasonable time" as laid down in Article 6 § 1 of the Convention, which provides:

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

10. The Government submitted that, given the subject matter of the proceedings, the time taken before the Administrative Court of Appeal had been necessary. They also referred to the fact that, following sporadic strike action by lawyers of the Athens Bar from 23 January 1989 to 30 June 1994, the courts had a considerable backlog of cases at the material time. Finally, they noted that the applicants had not sought to speed up the proceedings either before the Court of Appeal or before the Supreme Administrative Court.

11. The period to be considered began on 28 April 1994, with the application to the Athens Court of Administrative Appeal, and ended on 6 February 2003 when the Supreme Administrative Court delivered

judgment no. 307/2003. It therefore lasted more than eight years and nine months at two levels of jurisdiction.

A. Admissibility

12. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

13. The Court reiterates that the "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other examples, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

14. The Court has examined cases raising similar issues to those in the instant case on numerous occasions and has found a violation of Article 6 § 1 of the Convention (see *Kalliri-Giannikopoulou and Others v. Greece*, no. 33173/02, 10 February 2005).

15. Having examined all the evidence submitted to it, the Court considers that the Government have not advanced any fact or argument which could lead to a different conclusion in the instant case. It notes that the applicants were responsible for only one postponement of the hearing before the Administrative Court of Appeal. It is obliged to note that the slowness of the proceedings resulted essentially from the conduct of the authorities and the courts examining the case. In this connection, it acknowledges that, on account of the successive postponement of hearings, a long strike by lawyers was likely to result in a temporary backlog in the courts' rolls. It reiterates, however, that it is for the Contracting States to organise their judicial system in such a way that their courts are able to guarantee everyone the right to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV). Accordingly, having regard to its case-law in this area, the Court considers that, in the instant case, the length of the impugned proceedings was excessive and failed to fulfil the "reasonable time" requirement.

There has therefore been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH REGARD TO THE FAIRNESS OF THE PROCEEDINGS

16. Relying on Article 6 § 1 of the Convention, the applicants complained that they had not had a fair hearing. They accused the courts to which the case was sent of failing to examine the merits of their case and alleged that the proceedings had been neither efficient nor convincing.

Admissibility

17. The Court reiterates that, under Article 19 of the Convention, it has a duty to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

18. In the instant case, the Court finds no trace of arbitrariness in the conduct of the proceedings, which complied with the adversarial principle and in the course of which the applicants were able to present all the arguments in support of their case. In conclusion, the Court considers that, taken as a whole, the disputed proceedings were fair within the meaning of Article 6 § 1 of the Convention.

19. Consequently, this part of the applicant is manifestly ill-founded and must be rejected in application of Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

20. The applicants further complained that there had been a breach of their right to peaceful enjoyment of their possessions. They alleged that the Supreme Administrative Court's judgment no. 307/2003 had deprived them of the overtime allowance to which they claimed to be entitled. They relied on Article 1 of Protocol No. 1, which provides:

> "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."

Admissibility

21. The Court considers that the applicants' claim cannot be regarded as a “possession” within the meaning of Article 1 of Protocol No. 1, since it was not established and calculated by a court decision that had become final. Yet this is the condition for a claim to be definite and immediately payable and thus protected by Article 1 of Protocol No. 1 (see, in particular, *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A, no. 301-B, p. 84, § 59). In particular, the Court notes that, while their case was pending before the domestic courts, the applicants did not actually have a recognised claim, but only the possibility of obtaining recognition of such a claim. Accordingly, the Supreme Administrative Court's judgment no. 307/2003, which dismissed the applicants' claims, could not have had the effect of depriving them of a possession to which they were not entitled.

22. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and must be rejected in application of Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicants listed under nos. 1-66 and 68-91 claimed various amounts, varying between 8,933 and 21,031 euros (EUR), in respect of the pecuniary and non-pecuniary damage which they alleged they had sustained. The applicant listed under no. 67 claimed EUR 6,895 under this head.

25. The Government found those claims excessive and invited the Court to dismiss them. They considered that a finding of a violation would in itself constitute sufficient just satisfaction. In the alternative, they considered that the sum awarded under this head should not exceed EUR 1,000.

26. The Court points out that its finding of a violation of the Convention was based exclusively on a failure to respect the applicants' right to have their case heard within a “reasonable time”. In those circumstances, it perceives no causal link between the violation found and any non-pecuniary damage which the applicants may have suffered (see *Appietto v. France*, no. 56927/00, § 21, 25 February 2003).

27. On the other hand, the Court considers that the extension of the disputed proceedings beyond a "reasonable time" undoubtedly caused the applicants non-pecuniary damage which would justify an award. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards, in respect of non-pecuniary damage, the entire sum claimed by the applicant listed under no. 67, namely EUR 6,895, and EUR 7,000 to each of the other applicants, plus any tax that may be chargeable.

B. Costs and expenses

28. Each of the applicants also claimed various amounts, ranging from EUR 660 to 1,050, for the costs and expenses incurred before the domestic courts and the Court. In this connection, they submitted ten bills for a total amount of EUR 29,120, without distinguishing between the proceedings before the domestic courts and those before the Court.

29. The Government considered that the applicants' claims were vague and unjustified. In the alternative, they considered that the sum awarded under this head should not exceed EUR 500.

30. According to the Court's consistent case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

31. Having regard to the above-mentioned criteria, the Court awards the applicants EUR 1,500 jointly for costs and expenses, plus any tax that may be chargeable.

C. Default interest

32. 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

1. *Declares,* unanimously, the application admissible as regards the complaint about the excessive length of proceedings and inadmissible as to the remainder;

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

3. *Holds*, by four votes to three,

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,895 (six thousand eight hundred and ninety-five euros) to the applicant listed under no. 67 and EUR 7,000 (seven thousand euros) to each of the other applicants in respect of non-pecuniary damage, and a total amount of EUR 1,500 (one thousand five hundred euros) in respect of 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* unanimously the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 18 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

– joint concurring opinion of Mrs Tulkens and Mr Spielmann;
– partly dissenting opinion of Mr Loucaides, Mr Rozakis and Mr Jebens.

L.L.
S.N.

JOINT CONCURRING OPINION OF JUDGES TULKENS AND SPIELMANN

(*Translation*)

1. In paragraph 27 of the judgment, the Court, ruling on an equitable basis in accordance with Article 41 of the Convention, rightly awards for non-pecuniary damage the entire amount claimed by the applicant listed under no. 67 (namely EUR 6,895) and EUR 7,000 to each of the other applicants, plus any tax that may be chargeable. This decision represents an *individualisation* of the non-pecuniary damage where multiple applicants express the same complaint, as, for example in the instant case, a violation of every person's right to have his or her case heard within a reasonable time.

2. Admittedly, in the *Kozyris and Others v. Greece* and *Charmantas and Others v. Greece* judgments of 10 February 2005, the Court awarded a specific sum for non-pecuniary damage to the applicants *jointly*, but without providing an explanation. In awarding joint compensation, the Court implicitly treated the one hundred and fifty-one applicants in the first case and the sixty-nine applicants in the second as though they were part of a group, and each group was awarded a global, non-individualised sum in compensation, in spite of the fact that each applicant could claim separate and personal non-pecuniary damage.

3. Since then the Court has developed its case-law and abandoned this "all-inclusive" approach; it now awards each applicant an individualised amount corresponding to those which it awards to individual applicants in similar cases. This case-law, which consists in compensating each applicant individually for the damage he or she has sustained, is fully consistent with the philosophy underlying the Convention, which perceives just satisfaction as redress for a violation found in respect of an individual applicant. Under the Convention system as it currently stands, it is each applicant, taken individually, who has sustained the non-pecuniary damage, irrespective of whether his or her application was lodged with the Court singly or jointly with others.

4. Generally speaking, the situation could be different if the Court were to recognise clearly, where this question genuinely arises, that is, in respect of Article 34 of the Convention, collective applications (which covers, at least partially, the concept of "*class action*"). However, this is not (yet) the case. In reality, the Court's case-law remains fixed in the sense that Article 34 of the Convention requires that applicants must be able to claim to be "victims" of the alleged violation, which supposes a sufficiently direct link between the applicant and the damage which he or she considers to have been sustained.

5. Whilst we believe that it would certainly be desirable in future for the Court to be able to recognise, in certain cases, a right to take action as a group, this is in order to increase protection of the rights and freedoms guaranteed by the Convention, rather than to restrict it[1]. It would be paradoxical to accept collective applications in respect of just satisfaction (for the purpose of limiting it) while refusing them in respect of the criteria governing the admissibility of applications.

6. In the instant case, the applicants each lodged an application on an individual basis. This cannot be reclassified as a "collective" application purely for the purpose of Article 41. The fact that several or even multiple applicants have lodged an application cannot be used to deprive them of the advantage of individual and individualised just satisfaction. This is the price to be paid for "*individual due process*"[2].

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1. Olivier DE SCHUTTER, *Fonction de juger et droits fondamentaux. Transformation du contrôle juridictionnel dans les ordres juridiques américain et européens*, Brussels, Bruylant, 1999, pp. 1059 et seq.

2. To borrow the expression used by Mauro CAPPELLETTI and Bryant GARTH, "Finding an Appropriate Compromise: A Comparative Study of Individualistic Models and Group Rights in Civil Procedure", 2 *Civil Justice Quarterly* (1983), pp. 111 et seq., p. 113.

PARTLY DISSENTING OPINION OF JUDGES LOUCAIDES, ROZAKIS AND JEBENS

We agree with the majority that there has been a violation of Article 6 § 1 with respect to the length of the proceedings. However, we are unable to accept the amounts awarded to the applicants in respect of non-pecuniary damage.

The applicants - 91 persons in total - are all doctors who were employed at the material time in the same public hospital. They participated together in administrative proceedings against the hospital in connection with the calculation of their overtime wages. The applicants' claim and the proceedings before the courts were thus of a truly collective nature.

In our opinion, excessively lengthy proceedings will normally affect individual litigants in different ways when they participate in a “class action”, as in the present case, and when they appear alone. This is so both with regard to the general concerns and worries and the increased procedural costs in the second case. In our opinion, therefore, it is not reasonable to apply the criteria for calculating non-pecuniary damage in lengthy proceedings where only one or a few persons are parties to proceedings which involve a large number of persons collectively (“*jugement collectif*”), as in the present case.

Applying different standards depending on the effects of lengthy proceedings on the litigants can, of course, create problems when it comes to how and where to draw the line between a typical individual party and a party who is participating in a “class action”. This, however, is a problem that must be dealt with by the Court if or when it arises. It should not be accepted as a valid argument for failure to differentiate between litigants who are affected differently, or in order to avoid placing excessive compensation burdens upon the States.

In our view, only a moderate sum should be granted to each of the 91 applicants in this case as compensation for non-pecuniary damage. This would be in harmony with the Court's recent case law – see, for example *Kozyris and others v. Greece* and *Charmantas and Others v. Greece*, both judgments of 10 February 2005.

List of applicants

1. Irini ARVANITAKI-ROBOTI
2. Panagiotis ALFARAS-MELAINIS
3. Aikaterini APOSTOLOPOULOU-TSAFOU
4. Konstantinos VASSILIOU
5. Emmanouil VAÏDAKIS
6. Emmanouil VAÏKOUSIS
7. Niki VASILOGIANNAKOPOULOU-ANZAOUI
8. Grigoris VERYKOKAKIS
9. Varvara-Georgia VLACHOPOULOU-SFYRA
10. Eleftheria GALANAKI-KOUTSOURELAKI
11. Ioannis GEORGILAS
12. Kritolaos DASKALAKIS
13. Dimitrios DIMITROGLOU
14. Anastasia DIAMANTOPOULOU
15. Spyros DRAKOPOULOS
16. Nikolaos EXARCHOS
17. Epaminondas ZAKYNTHINOS
18. Gérard-Louis JULLIEN
19. Penelope ILIADOU-KAPSALOPOULOU
20. Alfredos THEODOROU
21. Lazaros IOSIFIDIS
22. Vassilis KADAS
23. Kyriakos KALOGERAKIS
24. Christina KANDARAKI-SFARNA
25. Vassiliki KANELLOPOULOU
26. Dimitrios KARAMITSOS
27. Aristotelis KATSAS
28. Serafim KLIMOPOULOS
29. Evaggelos KOKKINAKIS
30. Athanasios KOLIOS
31. Vassilios KOMBOROZOS
32. Chrysostomos KONTAXIS
33. Despina KOROLANOGLOU
34. Ioannis KOUTSOUVELIS
35. Anastasia KRITHARA-KAFKIA
36. Georgios KONSTANTINOU
37. Koula KONSTANTINOU
38. Georgios KONSTANTINIDIS
39. Sophia LAMBROPOULOU-STAVROPOULOU
40. Konstantina LARIOU-MARGARI
41. Maria MATHIOUDAKI-AMARANTOU
42. Dimitrios MALOVROUVAS

43. Gerasimos MANTZARIS
44. Athanasios MASOURAS
45. Theodoros MAVROMATIS
46. Chrysanthi MITSOULI-MENTZIKOF
47. Dimitrios MINTZIAS
48. Maria MOUTSOPOULOU-MARAGGOU
49. Sotirios BARATSIS
50. Nikolaos BONTOZOGLOU
51. Petros DADIS
52. Aikaterini PANTELIDAKI-VASSILIOU
53. Georgios PAPAGEORGIOU
54. Konstantinos PAPAGIANNAKOS
55. Emmanouil PAPADAKIS
56. Vassilios PAPADAKOS
57. Alexandros PAPAKONSTANTINOU
58. Spyridon PAPANDREOU
59. Marios PARARAS
60. Georgios PARASKEVAS
61. Eleni PLESIA-GIAKOUMELOU
62. Christos PEPPAS
63. Konstantina PETRAKI
64. Prokopis PIPIS
65. Ersi PITSIGAVDAKI
66. Marinos PITARIDIS
67. Ioannis POULANTZAS
68. Athanasios PREKATES
69. Athanasios RAÏTSOS
70. Georgios REKOUMIS
71. Antonios SALMANIDIS
72. Florentia SOTSIOU-KANDILA
73. Ilias SOURTZIS
74. Epaminondas STATHIS
75. Michaïl STOKOS
76. Eleni STOFOROU
77. Evaggelos SYGGOUNAS
78. Christos SYRMOS
79. Georgios TSAOUSIS
80. Ioannis TSERONIS
81. Alexandra TSIROGIANNI
82. Konstantinos TSIROGIANNIS
83. Marina TSITSIKA
84. Dimitrios TSOUKATOS
85. Georgios FARMAKIS
86. Aggeliki FERTI-PASANTOPOULOU

87. Flora PHILIPPIDOU
88. Evaggelos CHATZIGIANNAKIS
89. Georgios CHATZIKONSTANTINOU
90. Nikolaos CHATZIS
91. Vassilios CHRISTIDIS