



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

GRAND CHAMBER

**CASE OF GOROU v. GREECE (No. 2)**

*(Application no. 12686/03)*

JUDGMENT

STRASBOURG

20 March 2009

*This judgment is final but may be subject to editorial revision.*



**In the case of Gorou v. Greece (no. 2),**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,  
Christos Rozakis,  
Josep Casadevall,  
Volodymyr Butkevych,  
Vladimiro Zagrebelsky,  
Alvina Gyulumyan,  
Khanlar Hajiyeu,  
Ljiljana Mijović,  
Renate Jaeger,  
David Thór Björgvinsson,  
Ineta Ziemele,  
Mark Villiger,  
Isabelle Berro-Lefèvre,  
Giorgio Malinverni,  
András Sajó,  
Zdravka Kalaydjieva,  
Işıl Karakaş, *judges*,

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 11 June 2008 and on 4 February 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 12686/03) 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, Mrs Anthi Gorou (“the applicant”), on 23 January 2003.

2. The applicant was represented by Mr I. Mylonas, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by their Agent's delegates, Mr K. Georgiadis, Adviser at the State Legal Council, and Mr I. Bakopoulos, Legal Assistant at the State Legal Council.

3. The applicant's complaint concerned, in particular, under Article 6 § 1 of the Convention, the fairness and length of proceedings that she had initiated by filing a criminal complaint.

4. The application was allocated to the Court's First Section (Rule 52 § 1 of the Rules of Court). By a decision of 14 February 2006 a Chamber of that Section, consisting of Judges Loukis Loucaides, Christos Rozakis,

Françoise Tulkens, Peer Lorenzen, Nina Vajić, Dean Spielmann and Sverre Erik Jebens, and of Søren Nielsen, Section Registrar, declared the application partly admissible.

5. On 14 June 2007 a Chamber of that same Section, consisting of Judges Loukis Loucaides, Christos Rozakis, Nina Vajić, Anatoly Kovler, Elisabeth Steiner, Dean Spielmann and Sverre Erik Jebens, and of Søren Nielsen, Section Registrar, found unanimously that there had been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings, and, by four votes to three, that there had not been a violation of that provision in respect of the fairness of those proceedings.

6. On 1 September 2007 the applicant requested, in accordance with Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber. On 12 November 2007 a panel of the Grand Chamber accepted that request.

7. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

8. The applicant and the Government each filed observations on the admissibility and merits of the case.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 11 June 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr K. GEORGIADIS, Adviser  
at the State Legal Council, *Agent's delegate,*  
Mr I. BAKOPOULOS, Legal Assistant  
at the State Legal Council, *counsel.*

(b) *for the applicant*

Mr I. MYLONAS, Lawyer, *counsel.*

The Court heard addresses by Mr Mylonas and Mr Georgiadis.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. The applicant is a civil servant in the Ministry of National Education. At the relevant time she was on secondment to the Bureau for the primary education of Greek children abroad, in the city of Stuttgart. On 2 June 1998 she filed a criminal complaint for perjury and defamation against S.M., with an application to join the proceedings as a civil party, but without claiming compensation. S.M., a civil servant in the same Ministry, was the applicant's immediate superior. She alleged in particular that, in connection with an administrative investigation opened against her, S.M. had stated that she did not observe working hours and did not get on well with her colleagues.

11. On 26 September 2001, when the case was heard before the Athens Criminal Court, the applicant reiterated her civil-party application, claiming 1,000 drachmas (about 3 euros) and adduced her arguments. On the same day, the Athens Criminal Court acquitted S.M. of the charges against him, finding that the applicant's allegations were unsubstantiated. In particular, after examining all the evidence, the court considered that the offending remarks had been truthful and that it had not been the defendant's intention to defame or insult the applicant (judgment no. 74941/2001).

12. On 5 August 2002 this judgment was finalised and entered in the register of the Criminal Court.

13. On 24 September 2002 the applicant requested the public prosecutor at the Court of Cassation to lodge an appeal on points of law against the Athens Criminal Court's judgment no. 74941/2001, under Article 506 § 2 of the Code of Criminal Procedure. She alleged, in particular, that the judgment did not contain sufficient reasoning.

14. On 27 September 2002 the public prosecutor at the Court of Cassation returned the applicant's letter with the following handwritten comment on the actual request: "There are no legal or well-founded grounds of appeal to the Court of Cassation".

### II. RELEVANT DOMESTIC LAW

15. The Code of Criminal Procedure contains the following relevant provisions:

#### **Article 138**

“(1) The present Code specifies the instances in which a judge gives a decision or makes an order.

Orders shall also be made by the public prosecutor where he has a statutory obligation to take measures during a judicial investigation in a case or when hearings have been adjourned by the court ...”

#### **Article 139**

“Judgments, orders of the chamber of judges, and orders of the investigating judge or of the public prosecutor shall give specific and precise reasons ...

...

Even where it is not required by a specific provision, all judgments and orders shall include reasoning, whether they are final or interlocutory and whether or not they depend on the discretion of the judge hearing the case.”

#### **Article 463**

“Remedies may be used solely by persons who are expressly afforded such right by law ...”

#### **Article 505**

“(1) ... an appeal on points of law may be lodged (a) by the defendant; (b) by a third party whose civil liability has been engaged in the conviction judgment and who has acknowledged such liability; (c) by a civil party named in the conviction judgment, but only in respect of that part of the judgment in which he or she is awarded damages or is recognised as being entitled to compensation, or in which his or her claims have been dismissed as being devoid of legal basis; (d) by the public prosecutor.

The Principal Public Prosecutor at the Court of Cassation shall be entitled to appeal on points of law against any decision within the time-limit provided for in Article 479 § 2 ...”

#### **Article 506**

“The quashing of an acquittal on points of law may be sought: (a) by the defendant, if he or she has been acquitted for expressing remorse; (b) by the principal public prosecutor ... if the acquittal has been the consequence of a misinterpretation of a substantive criminal-law provision within the meaning of Article 510 of the Code of Criminal Procedure; (c) by the person who laid the charge or the complainant, if he or she has been ordered to pay damages and costs.”

#### **Article 513**

“(1) ... The Public Prosecutor at the Court of Cassation shall summon the appellant in cassation and other parties to the proceedings, by a summons served on them in accordance with Articles 155 to 161 and within the time-limit provided for in Article 166, before the Court of Cassation or its plenary assembly ...

(2) Where the appeal on points of law has been lodged by a public prosecutor, he shall not be summoned but shall be represented by the public prosecutor at the Court of Cassation.

...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION WITH RESPECT TO THE FAIRNESS OF THE PROCEEDINGS

16. The applicant complained that the decision in which the public prosecutor at the Court of Cassation had dismissed her request for an appeal on points of law had lacked reasoning. She relied on Article 6 § 1 of the Convention, the relevant parts of which read:

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

#### A. The Chamber judgment

17. In its judgment of 14 June 2007 the Chamber found that the public prosecutor at the Court of Cassation had upheld the Criminal Court's decision after a full examination of the case, espousing the reasoning of that court. It held that, having regard to the circumstances of the case and in particular the straightforward nature of the dispute and the clear findings of the Criminal Court, there had been no violation of Article 6 § 1 of the Convention.

#### B. The parties' submissions

##### 1. *Applicability ratione materiae of Article 6 § 1*

18. The Government submitted, as they had done before the Chamber, that Article 6 § 1 was not applicable in the present case for two reasons.

First, they argued that the applicant's behaviour throughout the criminal proceedings showed that her purpose in joining the proceedings as a civil party was primarily to obtain the defendant's conviction. The Government noted in this connection that, before the Athens Criminal Court, the applicant had merely claimed the symbolic amount of 1,000 drachmas (about three euros), without prejudice to the satisfaction of all her civil rights before the civil courts. The Government added that, in acquitting the defendant, the Athens Criminal Court had refused to decide on the applicant's civil claims. Accordingly, the sole purpose of her request to the public prosecutor at the Court of Cassation was to support the criminal charge and to have the Criminal Court's acquittal reversed, not to assert any civil right before a criminal court. For the Government, those facts left no doubt that the applicant had decided to join the proceedings as a civil party primarily in order to obtain the defendant's conviction and not for the protection or reparation of her civil rights. Referring to the case of *Perez*

*v. France* ([GC], no. 47287/99, §§ 70-71, ECHR 2004-I), they observed that the Convention did not guarantee the right to “private revenge”.

Secondly, the Government argued that Article 6 § 1 was not applicable in the present case as the civil party's request to the public prosecutor at the Court of Cassation could not, in their opinion, be characterised as a remedy. In particular, they asserted that Article 506 of the Code of Criminal Procedure did not grant a civil party the right to appeal on points of law. On this point the Government also referred to Article 463 of the Code of Criminal Procedure: “Remedies may be used solely by persons who are expressly afforded such right by law”. For the Government, the public prosecutor was by no means obliged to justify his decision not to accept the request, since there was no right to appeal on points of law under domestic law and, moreover, no such right could be relied upon against statutory provisions on the basis of any particular judicial practice. The lodging of an appeal on points of law fell exclusively within the public prosecutor's discretion.

19. The applicant submitted, first, that in joining the proceedings as a civil party she had claimed a certain sum. However symbolic that sum might have been, Article 6 § 1 was applicable in the present case because her application to join the proceedings as a civil party also had an economic aspect, in accordance with the principle set out in *Perez* (cited above). In addition, the applicant observed that, according to a longstanding and established domestic practice, the civil party was entitled to request the public prosecutor to appeal on points of law and could always expect a reply. Judicial practice thus confirmed the possibility for the civil party to appeal on points of law indirectly, that is to say through the intermediary of the public prosecutor at the Court of Cassation. The applicant added that the argument that her request to the public prosecutor did not concern a “civil right” was contrived, since that act was part of a whole set of proceedings in which she had participated, among other reasons, to obtain compensation. She pointed out that, under Article 513 of the Code of Criminal Procedure, if the public prosecutor granted the civil party's request to lodge an appeal on points of law, the civil party was also summoned to appear before the Court of Cassation and to take part in the proceedings thus reopened. Lastly, she observed that the case-law of the Court itself, as developed in other Greek cases, recognised as a “remedy” the request to the public prosecutor at the Court of Cassation and, accordingly, the applicability of Article 6 § 1 of the Convention in such cases.

## 2. *Merits*

20. The applicant submitted that, when the domestic legal order provided a litigant with a remedy, the State had an obligation to ensure that he or she enjoyed the fundamental guarantees of Article 6. She alleged that, according to the Court's case-law concerning Greek cases of the same kind,

the public prosecutor was obliged to give reasons for his decisions, such obligation implying that the injured party could expect his or her principal claims to be dealt with attentively. In the present case the applicant asserted that she had filed a request containing detailed arguments with the public prosecutor at the Court of Cassation, but that he had completely disregarded those arguments and rejected the request without giving any reasons whatsoever. Pointing out that the Convention enshrined rights that were not theoretical or illusory but practical and effective, she alleged that the total absence of reasoning in the decision of the public prosecutor at the Court of Cassation had made it impossible to verify that the decision was not improper or arbitrary.

21. The Government observed, first, that Article 139 of the Code of Criminal Procedure required reasoning only in orders made by public prosecutors. The rejection by the public prosecutor at the Court of Cassation of the applicant's request for an appeal on points of law was not, however, an order. Article 138 of that Code provided that public prosecutors made orders in the cases provided for by law at the pre-trial stage or during the court's recess. Accordingly, the Government contended that the refusal by the public prosecutor at the Court of Cassation to lodge an appeal on points of law in response to a request from the civil party did not need to contain reasoning, since it was not a judicial decision but an official note in which he expressed his preference not to use the remedy in question, this being left to his discretion. The Government added that, in any event, the public prosecutor's refusal in this case had been sufficiently reasoned. It being a simple libel and perjury case, it had been sufficient, in their opinion, for the public prosecutor to confirm the Criminal Court's decision merely by writing an observation on the applicant's letter.

### **C. The Court's assessment**

#### *1. The Government's preliminary objections*

22. It should be pointed out, first, that the Grand Chamber may examine issues relating to the admissibility of the application in so far as they concern complaints that were declared admissible by the Chamber (see *Üner v. the Netherlands* [GC], no. 46410/99, § 41, ECHR 2006-X, and *K. and T. v. Finland* [GC], no. 25702/94, § 141, ECHR 2001-VII).

23. In the present case, the Grand Chamber notes that the Court, in its decision on admissibility of 14 February 2006, declared admissible the complaints under Article 6 § 1 of the Convention concerning the length of the proceedings and the reasoning of the reply from the public prosecutor at the Court of Cassation. Moreover, the Government raised the same objections before the Chamber. In these circumstances the Grand Chamber finds it necessary to deal with those objections.

**(a) Civil nature of the proceedings**

24. The Court reiterates that the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Convention such right must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (see *Perez*, cited above, § 70).

25. The import of this case-law is that Article 6 § 1 of the Convention applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner (see *Perez*, cited above, § 66).

26. In the present case the applicant applied for civil-party status, claiming a sum equivalent to about three euros, in criminal proceedings concerning charges of perjury and defamation. Accordingly, Article 6 § 1 is applicable, above all because the impugned proceedings involved the right to a “good reputation” (see *Perez*, cited above, §§ 70-71, and *Schwarkmann v. France*, no. 52621/99, § 41, 8 February 2005). Moreover, the proceedings had an economic aspect, on account of the sum – however symbolic – of about three euros which the applicant claimed in joining them as a civil party.

Having regard to the foregoing, this preliminary objection of the Government must be dismissed.

**(b) Characterisation of the request to the public prosecutor**

27. The Court observes that the Government contested the applicability of Article 6 § 1, arguing that the applicant's request to the public prosecutor at the Court of Cassation could not be characterised as a “remedy”. The Court notes, however, that to be applicable Article 6 § 1 does not necessarily require the existence of a remedy that is formally recognised by law. That provision, under its “civil” head, is applicable when there is a dispute (“*contestation*”) over a “right” which can be said, at least on arguable grounds, to be recognised under domestic law (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 40, ECHR 2007-....). Such a dispute implies the existence of a disagreement (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 45, Series A no. 43) which must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the “civil right in question” (see, among other authorities, *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII, and *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 81, Series A no. 52).

28. In the present case, the Court has already acknowledged the civil nature of the proceedings in issue. It will accordingly examine the question

whether the “dispute” element was still present when the applicant submitted her request to the public prosecutor at the Court of Cassation.

29. In this connection, the Court reiterates that the spirit of the Convention requires that this word should not be construed too technically and that it should be given a substantive rather than a formal meaning (see *Le Compte, Van Leuven and De Meyere*, cited above, § 45). Moreover, in assessing whether there is a dispute over a civil right, one must look beyond the appearances and the language used and concentrate on the realities of the situation (see, *mutatis mutandis*, *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50) according to the circumstances of each case (see, *mutatis mutandis*, *Roche v. the United Kingdom* [GC], no. 32555/96, § 121, ECHR 2005-X).

30. On this point, the Court notes the particularity of the present case: the applicant's view is that the possibility of appealing on points of law through the intermediary of the public prosecutor at the Court of Cassation derives not from legislation but from an established judicial practice. This practice consists in recognition of the possibility for a civil party to request the public prosecutor at the Court of Cassation to appeal on points of law. Moreover, the public prosecutor is accustomed to replying, albeit in a summary manner, to such requests. The Government have not disputed the existence of such a practice.

31. The Court considers that, on account of that particularity and of a certain ambiguity as to the legal nature of the applicant's request, it is more appropriate to examine the real impact of her request by placing it in the context of the impugned proceedings as a whole. The Court will thus look at how the applicant's request fitted into the proceedings that began with her civil-party application with a view to obtaining compensation. In other words, it will seek to ascertain whether the initiative in question was an integral part of the civil-party application procedure and whether it was thus directly related to the initial “dispute”. For that purpose the Court must examine the role of the judicial practice in question, having regard in particular to domestic law.

32. In this connection, the Court reiterates that it has always attached a certain importance to judicial practice in the context of Article 6 § 1. Thus, in its case-law on equality of arms, it has often taken judicial practice into account in examining the compatibility of domestic law with Article 6 § 1. It did so in particular in its *Reinhardt and Slimane-Kaïd v. France* judgment (31 March 1998, § 106, *Reports of Judgments and Decisions* 1998-II), where it took the view that the practice of sending notes to the court in deliberations could remedy the parties' inability to respond to the advocate-general's submissions, provided the latter informed the parties' lawyers of the tenor of his submissions before the day of the hearing.

33. The Court took the same position in the cases of *Meftah and Others v. France* ([GC], nos. 32911/96, 35237/97 and 34595/97, ECHR 2002-VII)

and *Voisine v. France* (no. 27362/95, 8 February 2000). In addition, in the case of *Wynen v. Belgium* (no. 32576/96, ECHR 2002-VIII), it further referred to the practice before the Belgian Court of Cassation whereby the parties and their counsel could request the registry of that court to inform them in writing of the date of the hearing or to provide them with that information by telephone. The Court found that it was not unreasonable to require appellants to the Court of Cassation to avail themselves of these additional notification arrangements.

34. Having regard to the foregoing, the Court considers that it would be more faithful to the reality of the domestic legal order to take into consideration the practice in question and to accept that the applicant's request to the public prosecutor was a logical part of her challenge to the judgment in which her claim for compensation as a civil party had been rejected. In other words, her request to the public prosecutor at the Court of Cassation was made in the same context and pursued the same aim as her previous application to be joined to the proceedings as a civil party. In addition, the Court observes that if the public prosecutor at the Court of Cassation had lodged an appeal on points of law, the applicant's request would have been inextricably linked to the subsequent proceedings. It can be seen from Article 513 § 1 of the Code of Criminal Procedure that if the public prosecutor had acceded to her request by lodging his own appeal on points of law, the applicant would have been summoned to appear before the Court of Cassation as a “party to the proceedings”.

35. In the Court's view, it would be artificial, in these circumstances, to deny that the applicant's request to the public prosecutor arose from a real “dispute”, since the request formed an integral part of the whole of the proceedings that the applicant had joined as a civil party with a view to obtaining compensation.

36. Consequently, the applicant's request to the public prosecutor at the Court of Cassation related to a “dispute over a civil right” for the purposes of Article 6 § 1.

The Government's preliminary objection should therefore be dismissed.

## 2. *The merits*

37. The Court reiterates that Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of

the circumstances of the case (see, among many other authorities, *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288).

38. In the present case the Court notes that, when an acquittal has been decided, under domestic law the civil party is not, in principle, entitled to appeal directly on points of law or to seek redress from the public prosecutor at the Court of Cassation. The Court has nevertheless acknowledged that the existence of an established judicial practice cannot be disregarded in this case and that, in view of the specific features of the applicant's request to the public prosecutor at the Court of Cassation, Article 6 § 1 of the Convention is applicable. That same practice should be taken into account in assessing the extent of the reasoning to be given by the public prosecutor in his reply.

39. The Court has already observed that the public prosecutor is accustomed to responding, albeit in a summary manner, to requests from the civil party to appeal on points of law. In practice, the civil party draws the public prosecutor's attention to certain specific circumstances of the case, while the prosecutor remains free to take his decision after weighing up the arguments submitted.

40. Moreover, it should be noted that, under Article 506 of the Code of Criminal Procedure, a “positive” decision by a public prosecutor is not addressed to the civil party but gives rise to the prosecutor's own appeal on points of law. Similarly, a “negative” decision means that the public prosecutor declines to lodge an appeal on points of law himself. The Court further notes that, contrary to the applicant's assertions, no particular obligation to give reasons arises from the relevant domestic law, because the response of the public prosecutor at the Court of Cassation to the applicant's request was not issued in the form of an “order” within the meaning of Articles 138 and 139 of the Code of Criminal Procedure (see paragraph 15 above).

41. Lastly, the Court observes that, as regards the preliminary procedure for the examination and admission of appeals on points of law by an organ operating within the Court of Cassation, it has previously acknowledged that an appellate court is not required to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation (see *Salé v. France*, no. 39765/04, § 17, 21 March 2006, and *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II). The Court considers that the same principle may apply in the case of a public prosecutor at the Court of Cassation who is requested by the civil party to lodge an appeal on points of law in his own name.

42. To sum up, the handwritten note placed on the applicant's request simply gives information about the discretionary decision taken by the public prosecutor. Seen from that perspective, and having regard to the

existing judicial practice, the public prosecutor does not have a duty to justify his response but only to give a response to the civil party. To demand more detailed reasoning would place on the public prosecutor at the Court of Cassation an additional burden that is not imposed by the nature of the civil party's request for him to appeal on points of law against an acquittal. The Court therefore considers that, by indicating that “[t]here [were] no legal or well-founded grounds of appeal to the Court of Cassation”, the public prosecutor gave sufficient reasons for his decision to reject the request.

Having regard to the foregoing, there has been no violation of Article 6 § 1 of the Convention.

## II. THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

43. The applicant alleged that the length of the impugned proceedings had entailed a breach of the “reasonable time” requirement. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

44. The Chamber found in the present case that the length of the proceedings had been excessive and that there had been a violation of Article 6 § 1.

45. The Court notes that the applicant's request for referral to the Grand Chamber concerned only that part of the Chamber judgment that related to the complaint concerning the fairness of the impugned proceedings. However, given that the case referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 61, ECHR 2007-...), it is also appropriate to examine the complaint about the length of the proceedings.

46. For the reasons set out by the Chamber, the Court considers that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings as a whole.

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

47. 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. Chamber judgment

48. In its judgment, the Chamber considered that the applicant had clearly sustained non-pecuniary damage because the length of the impugned proceedings had exceeded a “reasonable time”, and that it was therefore appropriate to award her compensation. Ruling on an equitable basis, it awarded 4,000 euros (EUR) to the applicant under this head, plus any tax that might be chargeable. It also awarded the applicant EUR 2,300 for costs and expenses, plus any tax that might be chargeable.

#### B. The parties' submissions

49. In respect of the non-pecuniary damage the applicant alleged she had sustained on account of the length and unfairness of the proceedings, she claimed EUR 7,500 and EUR 10,000 respectively. She also claimed EUR 7,000 for the costs and expenses incurred in the proceedings before the Court. She produced two invoices for a total amount of EUR 2,300 corresponding to the fees she had already paid for her representation before the Court.

50. The Government did not comment on this matter.

#### C. The Court's assessment

##### *1. Non-pecuniary damage*

51. The Grand Chamber points out that its finding of a violation of the Convention resulted exclusively from a breach of the applicant's right to a hearing within a “reasonable time”. In those circumstances, it does not see any causal link between the violation found and any non-pecuniary damage the applicant may have suffered as a result of the alleged unfairness of the proceedings in question. The claims under that head should therefore be dismissed. It considers, however, that the applicant clearly sustained non-pecuniary damage in respect of her right to a hearing within a reasonable time. Ruling on an equitable basis, it awards her, like the Chamber, EUR 4,000 for non-pecuniary damage, plus any tax that may be chargeable on that sum.

## 2. *Costs and expenses*

52. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Ruling on an equitable basis, and in consideration of the fact that the applicant did not submit any specific claim for the costs and expenses she had incurred in the proceedings before it, the Grand Chamber, like the Chamber, awards her EUR 2,300 in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that sum.

## 3. *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

1. *Dismisses* unanimously the Government's preliminary objection that Article 6 § 1 is inapplicable because the proceedings in issue were not of a civil nature;
2. *Dismisses* by eleven votes to six the Government's preliminary objection that Article 6 § 1 is inapplicable on account of the characterisation of the applicant's request to the public prosecutor at the Court of Cassation;
3. *Holds* by thirteen votes to four that there has been no violation of Article 6 § 1 of the Convention in respect of the fairness of the proceedings;
4. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
5. *Holds* unanimously
  - (a) that the respondent State is to pay the applicant, within three months:
    - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of the non-pecuniary damage caused by the length of the proceedings;
    - (ii) EUR 2,300 (two thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 March 2009.

Vincent Berger  
Jurisconsult

Nicolas Bratza  
President

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

- (a) separate opinion of Judges Zagrebelsky, Hajiyev, Jaeger, Björgvinsson, Villiger and Berro-Lefèvre;
- (b) partly dissenting opinion of Judge Casadevall;
- (c) partly dissenting opinion of Judge Malinverni joined by Judge Sajó;
- (d) partly dissenting opinion of Judge Kalaydjieva.

N.B.  
V.B.

SEPARATE OPINION OF JUDGES ZAGREBELSKY,  
HAJIYEV, JAEGER, BJÖRGVINSSON, VILLIGER AND  
BERRO-LEFÈVRE

*(Translation)*

We voted with the majority in favour of finding that there had not been a violation of Article 6 as regards the complaint about a lack of reasoning in the reply of the public prosecutor at the Court of Cassation to the applicant's request for an appeal on points of law. We are of the view, however, that there was no “dispute” over a civil right, as required for the purposes of Article 6 § 1, and that this Article should not therefore have been found applicable in the circumstances. We wish to clarify our views on that particular question.

It is clear from the relevant legislation that the quashing of a judgment can be sought by a civil party only in a limited number of situations, which evidently do not include that of the present case. In particular, under Article 505 § 1 of the Code of Criminal Procedure, a civil party is entitled to appeal on points of law against a conviction only in respect of that part of the judgment in which he or she is awarded damages or is recognised as being entitled to compensation, or in which his or her claims have been dismissed as being without legal basis. Under Article 506 of that Code, the quashing of an acquittal may be sought by the complainant only if he or she has been ordered to pay costs.

To be sure, the relevant legislation is supplemented by judicial practice: the public prosecutor takes into account requests from civil parties and is accustomed to replying in a summary manner to their letters asking him to appeal on points of law.

We are nevertheless of the view that the majority should not have found Article 6 applicable simply on the basis of this practice, however established it may be, that runs counter to the provisions of legislation. If indeed such a practice, whereby the public prosecutor at the Court of Cassation responds to the civil party's request in the event of an acquittal, were to be regarded as creating a remedy available to the civil party, that would be incompatible with the clear and precise applicable law recognising the civil party's right to appeal on points of law only in the situation provided for in Article 506 of the Code of Criminal Procedure, which is not relevant to the present case.

Consequently, the applicant's request to the public prosecutor cannot be regarded as a “remedy” but rather as a means of inviting or urging him to lodge his own appeal on points of law.

It is not appropriate for an international court to infer, from the limited practice of answering letters, the much broader effects of a legal action, especially where the law enumerates an exclusive list of situations in which such legal action is available.

For the foregoing reasons we consider that the complaint concerning the lack of reasoning in the public prosecutor's reply to the applicant was incompatible *ratione materiae* with the provisions of the Convention.

## PARTLY DISSENTING OPINION OF JUDGE CASADEVALL

(Translation)

1. I voted with the majority in finding a violation of Article 6 § 1 on account of the length of the proceedings. However, I do not share their view as regards the fairness of the proceedings in connection with the public prosecutor's unreasoned rejection of the applicant's request that he appeal on points of law (by means of a mere handwritten note stating “There are no legal or well-founded grounds of appeal to the Court of Cassation”). The reasons for my disagreement are as follows.

2. The Court has observed on a number of occasions that “[w]hen the domestic legal order provides an individual with a remedy, such as a criminal complaint with an application to join the proceedings as a civil party, the State has a duty to ensure that the person using it enjoys the fundamental guarantees of Article 6” (see *Anagnostopoulos v. Greece*, no. 54589/00, § 32, 3 April 2003). In the present case, the right to appeal on points of law derived not from legislation but from an established and undisputed judicial practice (see paragraph 30 of the judgment). Furthermore, the applicant's request to the public prosecutor at the Court of Cassation “was made in the same context and pursued the same aim as her previous application to be joined to the proceedings as a civil party” (see paragraph 34 of the judgment).

3. Accordingly, since the Court found that the applicant's request concerned the “determination of ... civil rights” and that the said Article was therefore applicable, I find it difficult to accept, on the basis of the same considerations and the same logic, that the public prosecutor's reasoning – in rejecting that request – was in fact sufficient.

4. Starting from the principle that Article 6 § 1 of the Convention obliges courts to give reasons for their decisions (see, among other authorities, *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288), the Court has previously developed unambiguous case-law about the practice whereby Greek public prosecutors reject requests from individuals for appeals on points of law by means of terse, and therefore completely unreasoned, handwritten notes. Without claiming to be exhaustive, I would cite three recent cases – *Alija v. Greece*, no. 73717/01, 7 April 2005, *Gorou v. Greece (no. 4)*, no. 9747/04, 11 January 2007 and *Markoulaki v. Greece (no. 1)*, no. 44858/04, 26 July 2007 – which raise exactly the same question as in the present case and where the Court found that there had been a violation of Article 6 § 1 in respect of the fairness of the proceedings.

5. The judgment in the case referred to the Grand Chamber, which concerned the same applicant, Mrs Gorou, as the second of the three judgments cited above, but this time finding that there had been **no** violation, is dated 14 June 2007 and was thus delivered between the last two of those judgments, after *Gorou (no. 4)* and before *Markoulaki (no. 1)*. Incomprehensibly, the Chamber thus changed tack in June (perhaps accidentally?), only to revert to its previous course in July.

6. In addressing the question whether the public prosecutor at the Court of Cassation had to give reasons in replying to requests for an appeal on points of law, the Court's three above-mentioned judgments answered in the **affirmative** and found that there had been a violation of Article 6 § 1, explaining that this obligation derived from Article 139 of the Greek Code of Criminal Procedure and that “the reply to the applicant's request was not left to the public prosecutor's discretion” (see *Alija*, cited above, § 22, and *Gorou (no. 4)*, cited above, § 22) or that “the public prosecutors in question were supposed to have given reasons in their replies to the applicant's requests, even though the use of the remedies in question fell within their discretion” (see *Markoulaki (no. 1)*, cited above, § 23).

7. Now the Grand Chamber has answered this question in the **negative** and has not found a violation, in accordance – it states – with Articles 138 and 139 of the Code of Criminal Procedure (the same Articles of the same Code), after observing that “the response of the public prosecutor at the Court of Cassation to the applicant's request was not issued in the form of an 'order'” (see paragraph 40 of the judgment).

8. The Grand Chamber decided to endorse the Chamber's departure from case-law. In the absence of explanation, I fail to understand what reason, serious question or legal interest there is to justify this step backwards by the Court. It is clear that the Court, in its previous judgments, could have adopted a different approach to the issue – perhaps a less demanding or less formalistic one – but once it has decided to extend individuals' rights in a particular aspect of the right to a fair hearing, it should not – unless there has been a manifest mistake – reverse its decision. Acquired rights in the cause of human rights are at least as precious as acquired rights in other branches of the law and therefore the principle of non-regression must prevail.

9. In this connection I am reminded of the “standstill” technique. Also known as the “ratchet mechanism”, preventing a cogwheel from turning back once it has moved forward, the principle has been developed, particularly in legal opinion, in connection mainly with acquired social

rights. It is the principle whereby the legislature is supposed not to pass laws that would have the effect of lowering a level of social protection already achieved.

PARTLY DISSENTING OPINION OF JUDGE MALINVERNI  
JOINED BY JUDGE SAJÓ

(Translation)

1. I voted with the majority in favour of finding Article 6 applicable in the present case. However, I am not able to follow the majority in their finding that there was no violation of that Article.

2. Indeed, I have never understood why the Chamber, departing from the Court's previous case-law (see *Anagnostopoulos v. Greece*, no. 54589/00, 3 April 2003<sup>1</sup>; *Alija v. Greece*, no. 73717/01, 7 April 2005; *Gorou v. Greece (no. 4)*, no. 9747/04, 11 January 2007; and *Markoulaki v. Greece (no. 1)*, no. 44858/04, 26 July 2007<sup>2</sup>), held in its judgment of 14 June 2007 that there had not been a violation of Article 6.

3. That departure from case-law was all the more difficult to justify as the Court's earlier judgments had not been challenged by the respondent Government, at least not formally, for example by means of a request for referral to the Grand Chamber. It is also surprising in the sense that, as a rule, the Court departs from case-law in order to afford better protection to individuals. Here the opposite is true. Not only is the Court now of the opinion that there is no violation of Article 6 in this type of case, but a minority of judges (see the joint dissenting opinion) have even gone so far as to deny the applicability of the provision. The present judgment thus constitutes a step backwards in the protection of fundamental rights that I find both difficult to understand and regrettable.

4. In my opinion, the public prosecutor's refusal was insufficiently reasoned. The applicant had in fact requested him to appeal on points of law against the judgment of the Athens Criminal Court on the ground that it had not given sufficient reasons for its findings. The question that the applicant sought to submit to the adjudication of the Court of Cassation was thus an eminently legal one: namely, whether that judgment contained sufficient reasoning.

5. In Greece, appeals to the Court of Cassation are subject to the discretion of the public prosecutor at that court, by whom they are filtered. In the present case, the dismissal of the applicant's request was notified in a terse handwritten comment on her actual letter: "There are no legal or well-founded grounds of appeal to the Court of Cassation". These few words fall

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<sup>1</sup> In its *Anagnostopoulos* judgment (§ 32) the Court found as follows: "When the domestic legal order provides an individual with a remedy, such as a criminal complaint with an application to join the proceedings as a civil party, the State has a duty to ensure that the person using it enjoys the fundamental guarantees of Article 6".

<sup>2</sup> Rather curiously, the *Markoulaki* judgment was delivered a few weeks after the *Gorou (no. 2)* Chamber judgment.

below the requisite standard of reasoning under Article 6 in a number of respects.

6. First, although it is true that, under Greek law, appeals to the Court of Cassation are subject to the public prosecutor's discretion, it should nevertheless be pointed out that any authority which has such power is not thereby absolved from the duty of giving reasons for its decisions, as otherwise it could quite easily slide into arbitrariness.

7. In this perspective the public prosecutor's handwritten note is doubly deficient. In commenting that there were “no legal grounds of appeal to the Court of Cassation” the public prosecutor should at least have indicated the legal provisions to which he was referring. This is the least that could have been expected. And in stating that there were “no well-founded grounds of appeal to the Court of Cassation” he should have given, even if only in summary form, the reasons why the applicant's request was not well-founded.

8. Furthermore, according to the Court's established case-law on Article 6, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288, and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Admittedly, the extent of the reasoning may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B; and *Higgins and Others v. France*, 19 February 1998, § 42, *Reports of Judgments and Decisions* 1998-I).

9. It is true that, when giving reasons for decisions, a public prosecutor is probably not bound by the same obligations as a judge. Nevertheless, in the present case the applicant was unable to ascertain the reasons for which she met with a refusal, even though her letter of request extended to six pages. This situation, in my opinion, is totally unsatisfactory.

10. I would observe lastly that, in terms of the form, the writing of a few words on the applicant's actual request showed a lack of respect towards her. A decision of such importance for the applicant should not only have been more detailed but, as to the form, should have been set out in a separate, typed document. The form of the public prosecutor's decision sits uneasily, in my opinion, with the seriousness that should be a hallmark of all judicial acts, and could even be regarded as capable of undermining the confidence that the public must have in the proper administration of justice.

## PARTLY DISSENTING OPINION OF JUDGE KALAYDJIEVA

The Court's conclusion that Article 6 is applicable implies an expectation that the proceedings in question should be of a judicial nature and should afford the guarantees required by this provision at least to a certain minimum level. I voted with the majority in finding that Article 6 is applicable to the determination of the applicant's civil rights within criminal proceedings, but I was among the minority in finding that the absence of sufficient reasoning constituted a violation of that provision.

I share the concerns of Judge Casadevall about the effect of the majority's conclusion that there was no violation of Article 6 on the development of the Court's findings in similar cases. I also concur with the view of Judge Malinverni that the absence of requisite content and form from a decision which puts an end to judicial proceedings may be seen as arbitrary and may shake public confidence in justice.

In the present case the respondent Government argued that the applicant's request to a prosecutor may not be seen, in principle, as a remedy in respect of her complaints. I agree with this view. Indeed, the fact that the determination of the applicant's civil right to compensation is left to the discretion of a body which is not bound by procedural rules or requirements and which, furthermore, has no appellate jurisdiction, but acts as an intermediary between the applicant and the court, does not appear to be consonant with the institutional and procedural guarantees that are inherent in the judicial determination of a civil right. Having voted that Article 6 was applicable in these circumstances, I fail to see how proceedings of a non-remedial nature could meet the higher standards required by Article 6 as a matter of principle. I regard the length of these proceedings and the absence of minimum reasoning for their outcome as logical aspects of their non-judicial nature.