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

CASE OF PAPAGEORGIOU v. GREECE

(97/1996/716/913)

JUDGMENT

STRASBOURG

22 October 1997

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SUMMARY[1]

Judgment delivered by a Chamber

Greece – interference by legislature in the administration of justice and length of proceedings in the civil courts

I. GOVERNMENT'S PRELIMINARY OBJECTION (failure to comply with six-month time-limit)

Government had argued that application had been registered more than six months after Court of Cassation had delivered its judgment. Held: Commission's Rules of Procedure did not imply that applicant had to prove, as a prerequisite to registration of his application, compliance with the six-month time-limit – an application was lodged on date of applicant's first letter provided applicant had sufficiently indicated application's purpose.

Government had argued that applicant had failed to find out from Court of Cassation's registry when judgment was to be delivered. Held: parties to proceedings could not be required to enquire day after day whether a judgment that had not been served on them had been delivered.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 6 OF THE CONVENTION

A. Fair hearing

Effect of section 26 of Law no. 2020/1992 in conjunction with method and timing of its enactment: subsection (2) of that provision provided that any claims for reimbursement of contributions previously paid to the *OAED* were extinguished and any proceedings concerning such claims pending in any court whatsoever were to be struck out – section 26 was contained in a statute whose title bore no relation to that provision – enacted after appeal against judgment of Athens Court of First Instance, sitting as an appellate court, had been lodged with Court of Cassation by the *DEI*, and before latter court had held its hearing. Enactment of section 26 at such a crucial point in the proceedings had resolved substantive issues for practical purposes and made carrying on with the litigation pointless.

Conclusion: violation (unanimously).

B. Length of the proceedings

1. Period to be taken into consideration
Beginning: proceedings issued in Athens District Court.
End: delivery of Court of Cassation's judgment.
Length: five years and eleven months.

1. This summary by the registry does not bind the Court.

2. Reasonableness of length of the proceedings

Proceedings before Athens District Court (sixteen months) and Athens Court of First Instance sitting as an appellate court (seventeen months):certain delays had been due either to procedural requirements or to conduct of parties – early hearing dates had been given on each occasion and judgments delivered without delay – length of proceedings not excessive.

Proceedings in Court of Cassation (two years and eight months): hearing had been adjourned because of a strike by members of Athens Bar which lasted seven months – new hearing date set for thirteen months after initial hearing date – delay of that length was hard to reconcile with need to render justice with effectiveness and credibility required by the Convention.

Conclusion: violation (unanimously).

III. ARTICLE 6 § 1, IN CONJUNCTION WITH ARTICLE 14, AND ARTICLE 13 OF THE CONVENTION

Above findings meant that it was unnecessary to examine complaints in question.

Conclusion: unnecessary to rule on complaint (unanimously).

IV. ARTICLE 50 OF THE CONVENTION

A. Damage

Non-pecuniary damage because applicant had not had a fair hearing: compensation awarded.

Any non-pecuniary damage suffered because of length of proceedings: finding of a violation provided sufficient compensation.

B. Costs and expenses

Claim for costs and expenses dismissed because not quantified.

Conclusion: respondent State to pay applicant specified sum for non-pecuniary damage (unanimously).

COURT'S CASE-LAW REFERRED TO

24.10.1989, H. v. France; 27.10.1993, Monnet v. France; 9.12.1994, Stran Greek Refineries and Stratis Andreadis v. Greece

In the case of Papageorgiou v. Greece[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President,*
Mr R. MACDONALD,
Mr C. RUSSO,
Mr N. VALTICOS,
Mr I. FOIGHEL,
Mr M.A. LOPES ROCHA,
Mr J. MAKARCZYK,
Mr U. LŌHMUS,
Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 June and 23 September 1997,

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

PROCEDURE

1. The case was referred to the Court by the Greek Government ("the Government") on 12 August 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24628/94) against the Hellenic Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 by a Greek national, Mr Christos Papageorgiou, on 24 May 1994.

The Government's application referred to Articles 44 and 48 (b) and to Rule 32 of Rules of Court A. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 and Articles 13 and 14 of the Convention.

Notes by the Registrar

1. The case is numbered 97/1996/716/913. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d), the applicant stated that he wished to take part in the proceedings and designated the lawyers who would represent him (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 2 September 1996, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr C. Russo, Mr I. Foighel, Mr M.A. Lopes Rocha, Mr J. Makarczyk, Mr U. Lõhmus and Mr J. Casadevall (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 12 March 1997 and the applicant's memorial on 13 March.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 May 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr V. KONDOLAIMOS, Adviser,
Legal Council of State, *Delegate of the Agent*,
Mr K. GEORGIADIS, Legal Assistant,
Legal Council of State, *Adviser*;

(b) *for the Commission*
Mr C.L. ROZAKIS, *Delegate*;

(c) *for the applicant*
Mr D. NICOPOULOS, of the Salonika Bar,
Mr D. TSOURKAS, of the Salonika Bar, lecturer
at the University of Salonika, *Counsel*.

The Court heard addresses by Mr Rozakis, Mr Tsourkas and Mr Kondolaimos, and also their replies to its questions.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

A. Proceedings in the Athens District Court

6. On 23 December 1987 Mr Papageorgiou and 109 other persons brought an action in the Athens District Court (*Irinodikio*) against their employer, the Public Electricity Company (*Dimossia Epikhirissi Ilektrismou*, "the *DEI*"), to recover the sum of 268,800 drachmas (GRD). That was the amount which the *DEI*, relying on the provisions of Law no. 1483/1984, had deducted from their salaries between 1 January 1982 and 31 December 1987 for the benefit of the Manpower Employment Organisation (*Organismos Apaskholissis Ergatikou Dinamikou*, "the *OAED*"). The hearing before the District Court was set down for 8 February 1988.

7. On 4 February 1988 the *DEI* applied to the District Court for leave to serve a third-party notice *(anakinossi dikis meta prosepiklisseos is paremvassi*) on the *OAED*, arguing in particular that if it lost the case, it would be entitled to an indemnity from the *OAED*, for whose benefit it had deducted the sums claimed. A hearing was set down for 16 March 1988.

8. On 8 February 1988 the hearing of the first action was adjourned to 16 March 1988 so that the two actions could be joined. However, the hearing on 16 March 1988 was cancelled because the parties' lawyers failed to appear.

9. As he now wished to continue on his own with the action brought on 23 December 1987, the applicant applied to the District Court on 26 October 1988 for a new hearing, which was set down for 14 December 1988.

10. On 12 December 1988 the *DEI* made a further application to the District Court for leave to serve a third-party notice on the *OAED.* A hearing was set down for 7 February 1989.

11. On 14 December 1988 the hearing was adjourned to 7 February 1989 so that the two actions could be joined.

12. In a judgment (no. 749/1989) of 20 April 1989 the District Court allowed the applicant's claim in part and ordered the *DEI* to pay him the sum of GRD 190,383; in addition, it ordered the *OAED* to repay that amount to the *DEI*.

B. Proceedings in the Athens Court of First Instance

13. On 26 June and 10 July 1989 respectively the *DEI* and the *OAED* appealed to the Athens Court of First Instance (*Polymeles protodikio*) against that judgment. On an application by the applicant, a hearing was set down for 12 January 1990.

14. On that date the Court of First Instance noted that the applicant had himself obtained an expedited hearing, but had not served a summons on the *DEI* to attend because he had considered that the *OAED*'s appeal was inadmissible as it had also been brought against the *DEI*. It decided to declare the appeal against the *DEI* admissible and to adjourn the hearing of the appeal concerning Mr Papageorgiou in order to avoid the risk of delivering contradictory decisions (judgment no. 2371/1990).

15. On 3 April 1990 the applicant, having served summonses on both the *OAED* and the *DEI*, applied for a new hearing before the Court of First Instance, which was held on 28 September 1990.

16. In a judgment (no. 9189/1990) of 30 November 1990 the Court of First Instance reduced the amount awarded to the applicant by the District Court to GRD117,213.

C. Proceedings in the Court of Cassation

17. On 13 March 1991 the *DEI* appealed on points of law; the *OAED* intervened in the appeal proceedings in order to lend support to the *DEI*'s arguments. In one of its grounds of appeal the *DEI* challenged the Court of First Instance's jurisdiction; in its view, the issue over the obligation to make contributions was a matter of insurance law and therefore had to be decided by the administrative courts.

However, the hearing initially set down for 29 September 1992 had to be adjourned because of a strike by members of the Athens Bar. The strike lasted until April 1993.

18. On 21 October 1992 the applicant applied for a new hearing, which was set down for 19 October 1993.

19. On 19 November 1993 the Court of Cassation, relying on the provisions of section 26 of Law no. 2020/1992 – adopted by Parliament on 28 February 1992 (see paragraph 25 below) – set aside the judgment appealed against on the following grounds:

> "... 3. It results from the principle of separation of powers ... that the legislature is not precluded from abolishing by means of new legal rules – through extinguishment – rights acquired under legal rules that were in force in the past, even if those rights have been recognised by final court decisions. This, however, is not the

case with new rules which are not of general application and which consequently infringe the principle of equality (Article 4 § 1 of the Constitution) or the right of property (Article 17 of the Constitution); in such circumstances the courts may not give effect to such rules ... In the instant case, after the judgment under appeal had been delivered (30.11.1990) and the appeal on points of law lodged (14.3.1991), Law no. 2020 of 28 February 1992 was passed, section 26 of which provides ... In the judgment under appeal (no. 9189/1990) the Court of First Instance, sitting as a court of appeal, found that [the applicant] was a permanent employee of the *DEI*, which had given him a contract of employment and paid him a monthly salary; between 8 October 1984 and 31 December 1987 the relevant organs of the *DEI* had made deductions for the benefit of the *OAED* from his monthly income, which, as the additional insurance of *DEI* employees was incompatible with the aforementioned insurance branches ..., were illegal. The deductions comprised 1% of his income for unemployment benefit and 1% for the *DLOEM*, making a total of 117,213 drachmas that was paid to the *OAED*. [The Court of First Instance] subsequently awarded that amount to the [applicant]. However, after the entry into force of section 26 (2) of Law no. 2020/1992, which is not contrary to the provisions of Articles 4 and 17 of the Constitution, the judgment under appeal must be set aside and the proceedings struck out ..."

20. It would appear that this judgment was not served on the applicant, who claims that he became aware of it on 22 December 1993.

II. RELEVANT DOMESTIC LAW

A. The Constitution

21. Article 74 § 5 of the Constitution provides:

"A government or private member's bill containing provisions unrelated to the principal subject matter of the bill shall not be put before Parliament.

No additional provision or amendment shall be put before Parliament if it is unrelated to the principal subject matter of a government or private member's bill.

Disputes will be referred to the Chamber of Deputies for resolution."

B. The Code of Civil Procedure

22. The relevant provisions of the Code of Civil Procedure read as follows:

Article 108

"The parties shall be responsible for taking procedural steps on their own initiative unless the law provides otherwise."

Article 310

"1. The parties shall be responsible for the service of judgments.

2. Where a judgment is not final, it shall be deemed to have been served if the parties, their legal representatives ... or their lawyers were present at the hearing."

C. Provisions relating to employee contributions to the *OAED*

23. Section 18 (4) of Law no. 1346 of 13/14 April 1983 reads as follows:

"Employees subject to the provisions of Legislative Decree no. 3868/1958 ... who receive a monthly salary are not entitled to the aforementioned family benefits if and for so long as they are receiving from their employer – pursuant to statute, a collective agreement, an arbitration award, company regulations or any other provision ... – benefit for dependent children exceeding the amount of benefit paid by the *OAED* ..."

24. Contributions to the *OAED* are dealt with in section 20 of Law no. 1483/1984, which provides:

"(1) Employers' and employees' contributions to the *OAED* ... constitute welfare deductions for the benefit of the aforementioned bodies, which perform a welfare role, and the contributions shall continue to be payable notwithstanding any entitlement of beneficiaries who are employees to similar benefit from their employers or other institutions.

(2) Under no circumstances shall any claim be made for repayment of any contributions referred to in the preceding paragraph that have been paid to the *OAED* … before publication of this Law. Any pending proceedings concerning claims for repayment of such contributions shall be struck out.

..."

25. On 28 February 1992 Parliament enacted a law (no. 2020/1992) entitled "rules on the special tax on the consumption of petroleum products and other provisions". Section 26 of that Law provides:

"(1) Employers' and employees' contributions in the insurance branches under the responsibility of the *OAED* ... shall be deemed to be welfare deductions for the benefit of those bodies and shall be payable notwithstanding any entitlement of the insured to similar benefits from their employers or other institutions.

(2) No claims shall be made for repayment of contributions referred to in the preceding paragraph that have been paid to the *OAED* ... before publication of this Law and any claim relating to such contributions shall be extinguished and any claim pending in any court for the repayment of such contributions shall be struck out.

..."

It was indicated in the explanatory report that the purpose of the provision was to settle the issue whether contributions to the *OAED* (in particular those relating to benefit for dependent children) were "welfare deductions", that is to say contributions payable by those liable to make them even where the risk covered by the insurance would never materialise.

D. The Court of Cassation's case-law

26. In two judgments of 30 June 1988 (no. 1288/1988) and 17 December 1990 (no. 1989/1990), respectively concerning disputes between the Greek Post Office ("the *ELTA"*) and its employees and the Greek Railways Board ("the *OSE"*) and its employees, the Court of Cassation clarified the meaning of section 20 of Law no. 1483/1984 and especially of the words "continue to be payable" contained in section 20 (1). At the same time it upheld the decisions of the courts below in which the *OSE* and the *ELTA* had been ordered to pay compensation to some of their employees for the deductions from their salaries made for the benefit of the *OAED*.

More particularly, in its judgment of 30 June 1988, the Court of Cassation said:

> "...
>
> It is apparent from the aforementioned provisions and from the fact that *ELTA* staff are entitled to a State pension and to medical cover ..., that it is inconceivable and not intended by the legislature that staff should receive additional cover from the *OAED* for unemployment benefit and family benefit ... Before Law no. 1483/1984 was adopted and as the full court of the Court of Cassation held in its judgment no. 403/1981, the *ELTA*'s employees had no obligation under the Law to make contributions to the *OAED*; section 20 of the aforementioned Law – as indicated by the words 'continue to be payable' – does not impose any such obligation on employees. Consequently, that section does not apply where there is no obligation to make contributions, which is the position with the *ELTA*'s staff ..."

In its judgment of 12 December 1990 the Court of Cassation said that no obligation to make contributions was created by the entry into force of section 20 of Law no. 1483/1984, as it was provided that the contributions continued to be payable, which meant that where no contributions had been payable previously, the aforementioned Law did not create such an obligation.

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Papageorgiou applied to the Commission on 24 May 1994. He alleged that the enactment of Law no. 2020/1992 and its application in his case when his action was still pending amounted to violations of Article 6 § 1 and Articles 13 and 14 of the Convention, and Article 1 of Protocol No. 1.

28. On 24 October 1995 the Commission (First Chamber) declared the application (no. 24628/94) admissible as to Article 6 § 1 and Articles 13 and 14, and inadmissible as to the remainder. In its report of 15 May 1996 (Article 31) it expressed the unanimous opinion that there had been a violation of Article 6 § 1 with respect to the fairness and length of the proceedings and that no separate issue arose under Article 6 § 1, in conjunction with Article 14, or under Article 13 of the Convention[1].

FINAL SUBMISSIONS TO THE COURT

29. In their memorial, the Government invited the Court to "dismiss Mr Christos Papageorgiou's application in its entirety".

30. The applicant asked the Court to declare that the Hellenic Republic had

> "(1) offended against the principle of the rule of law;
>
> (2) infringed Article 6 § 1 of the Convention with regard to the right to a fair hearing, and more particularly (a) the right not to have a case removed from the court having jurisdiction under law; (b) the rule requiring that there should be equality of arms between parties before the courts; (c) the principle of the functional impartiality of the judicial system; and (d) the obligation to provide full and express reasons in judgments; and
>
> (3) infringed Article 6 § 1 relating to the right to the protection of the courts within a reasonable time …"

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

31. The Government submitted firstly, as they had done before the Commission, that the application was inadmissible for failure to comply with the six-month time-limit. The date of lodging of an application could not have any effect in law until the Commission had checked compliance with Rule 44 of its Rules of Procedure, a process necessary for registration purposes. The application in issue had been registered on 18 July 1994, in other words more than six months after the Court of Cassation had delivered its judgment of 23 November 1993 (see paragraph 19 above).

Even if the Commission's view were accepted that, for the purposes of determining whether an application had been made within the time-limit, time ceased to run when the application was lodged (24 May 1994), the condition laid down by Article 26 of the Convention had still not been satisfied by the applicant in the instant case. If, as the applicant alleged, he had not become aware of the Court of Cassation's judgment until 22 December 1993, that was due to his own negligence as he should have found out from the Court of Cassation's registry when judgment was to be delivered.

32. The Court cannot accept the Government's contentions on this point. Rule 44 § 3 of the Commission's Rules of Procedure does not imply that proof that the applicant has complied with the six-month time-limit is a prerequisite to registration of his application. An application is lodged on the date of the applicant's first letter, provided the applicant has sufficiently indicated the purpose of the application. Registration – which is effected when the Secretary to the Commission receives the full case file relating to the application – has only one practical consequence: it determines the order in which applications will be considered by the Commission.

As to the applicant's alleged negligence, the Court considers that parties to proceedings cannot be required to enquire day after day whether a judgment that has not been served on them has been delivered.

Like the Commission, it therefore holds that the objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant alleged two violations of Article 6 § 1 of the Convention, which provides:

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

Firstly, the enactment of section 26 of Law no. 2020/1992 and the fact that the Court of Cassation had applied it in his case had deprived him of a fair hearing. Secondly, the proceedings he had brought for recovery of the sum that his employer, the *DEI,* had deducted from his salary had taken more than a "reasonable time".

A. Fair hearing

34. The applicant complained of interference by the legislature in the judicial process with regard to both the determination of the competent judicial order and the actual merits of the dispute. By providing in section 26 that the contributions paid to the *OAED* were "welfare deductions", the Government had sought to remove pending and future disputes from the civil courts and to make them subject to the jurisdiction of the administrative courts. They had thus attributed to those disputes a public-law character, to which they had added retrospective effect, as it was indicated in the explanatory report that the section was intended to clarify the meaning of certain "misunderstood" provisions of Law no. 1483/1984 (see paragraph 25 above). Furthermore, in judgment no. 1120/1993 the Court of Cassation had, on the basis of that section, merely declared that the proceedings had been struck out; it had not given any reasons for its decision or considered the constitutionality of the provisions of that section.

35. The Commission too was of the view that the State had infringed Article 6 of the Convention with regard to the fairness of the proceedings as it had "used legislation to dispose of a case to which it was a party".

36. In the Government's submission, section 26 of Law no. 2020/1992 had not been enacted for the purposes of resolving the litigation between the applicant and the *DEI*. The section had been drafted in objective and impersonal terms; it governed any case falling within its scope and had applied in the applicant's case by accident and chance. The fact that the

courts had applied a provision that was unfavourable to Mr Papageorgiou could not amount to an infringement of Article 6 of the Convention as otherwise it would be necessary to find a violation every time legislation was passed altering an existing legal position to the advantage of one of the parties to proceedings. Lastly, the Government said that legislation, such as section 26, interpreting section 20 of Law no. 1483/1984 (see paragraph 24 above) had been necessary to consolidate the development of the welfare State in Greece; its purpose was to provide support for the unemployed and family benefit for employees who were not in receipt of such benefit from another source.

37. The Court agrees with the Government that in principle the legislature is not precluded from regulating by new provisions rights arising under laws previously in force.

However, in the Stran Greek Refineries and Stratis Andreadis v. Greece case (judgment of 9 December 1994, Series A no. 301-B) the Court held that the principle of the rule of law and the notion of fair trial enshrined in Article 6 precluded the interference by the Greek legislature with the administration of justice designed to influence the judicial determination of the dispute. It concluded that the State had infringed the applicants' rights under Article 6 by intervening in a manner which was decisive to ensure that the imminent outcome of proceedings in which it was a party was favourable to it (ibid., p. 82, §§ 49–50).

38. In the instant case, as in the aforementioned case, the Court cannot ignore the effect of section 26 of Law no. 2020/1992 in conjunction with the method and timing of its enactment.

Firstly, although subsection (1) of section 26 clarified the meaning of Law no. 1483/1984, subsection (2) provided that any claims for repayment of contributions previously paid to the *OAED* were extinguished and any proceedings concerning such claims pending in any court were to be struck out (see paragraph 25 above).

Secondly, section 26 was contained in a statute whose title ("rules on the special tax on the consumption of petroleum products and other provisions") bore no relation to that provision; as the applicant pointed out, the absence of such a connection is prohibited by Article 74 § 5 of the Greek Constitution (see paragraph 21 above).

Lastly and above all, section 26 was enacted after the appeal against the judgment of the Athens Court of First Instance, sitting as an appellate court, had been lodged with the Court of Cassation by the *DEI*, joined by the *OAED*, and before the latter court had held its hearing, which had initially been set down for 29 September 1992 (see paragraph 17 above). At that time it was certainly foreseeable that the Court of Cassation would follow its recent case-law (see paragraph 26 above), in which it had already clarified the meaning of section 20 of Law no. 1483/1984 and which was favourable to the applicant.

In the circumstances of the present case the enactment of section 26 at such a crucial point in the proceedings resolved the substantive issues for practical purposes and made carrying on with the litigation pointless.

39. As for the Government's contention that the dispute was not between Mr Papageorgiou and the State (as the *DEI* was a private-law, not a public-law, entity), the Court notes that the sums deducted by the *DEI* from its employees' salaries were paid to the *OAED*, a public social-security body. Had the Court of Cassation found in favour of the applicant, it was the Greek State which would have had to reimburse him.

40. Consequently, there has been a violation of Article 6 § 1 with respect to the right to a fair hearing.

B. Length of the proceedings

41. It remains to be determined whether, as the applicant maintained, the proceedings had taken more than a "reasonable time".

42. The Commission considered that there had been a violation, but the Government disagreed.

1. Period to be taken into consideration

43. The proceedings concerned started on 23 December 1987, when 110 employees of the *DEI* – including the applicant – brought proceedings in the Athens District Court (see paragraph 6 above) and ended on 23 November 1993, when the Court of Cassation delivered its judgment (see paragraph 19 above).

They therefore lasted five years and eleven months.

2. Reasonableness of the length of the proceedings

44. The reasonableness of the length of proceedings must be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case.

45. In the Government's submission, the proceedings had been protracted by the conduct of the parties – and of the applicant in particular – and by the strike by the members of the Athens Bar, an event that was beyond the control of the courts. In particular, the Government pointed to the adversarial nature of the civil proceedings instituted by the applicant: the parties were responsible for serving summonses on opponents, obtaining hearing dates, serving judgments and lodging appeals in time; it was therefore up to them to ensure that their case was heard without delay.

46. The Court reiterates that only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, among many other authorities, the Monnet v. France judgment of 27 October 1993, Series A no. 273-A, p. 12, § 30).

It notes that the length of the proceedings before the Athens District Court (sixteen months) and the Athens Court of First Instance sitting as an appellate court (seventeen months) was not excessive. Certain delays were due either to procedural requirements or to the conduct of the parties. More particularly, the hearing before the Athens District Court was adjourned on two occasions (see paragraphs 8 and 11 above) so that the actions could be joined on the *DEI*'s application for leave to serve a third-party notice on the *OAED*. In addition, it was also cancelled on one occasion because the parties' lawyers failed to appear (see paragraph 8 above). Lastly, the applicant waited almost seven months, from 16 March to 26 October 1988, before seeking a new hearing date (see paragraph 9 above). As to the hearing before the Athens Court of First Instance, it was adjourned on 12 January 1990 in so far as it concerned the applicant because he had not served a summons on the *DEI* (see paragraph 14 above).

On the other hand, early hearing dates were given on each occasion and the judgments were delivered without delay.

47. That leaves the proceedings in the Court of Cassation, which lasted from 20 February 1991 until 23 November 1993, that is to say two years and eight months. That is certainly a relatively lengthy period.

The Court notes that the hearing originally set down for 29 September 1992 was adjourned because of a strike by members of the Athens Bar, which started in September 1992 and ended in April 1993 (see paragraph 17 above).

There can be no doubt that an event of that kind cannot render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with.

48. On 21 October 1992, when the Court of Cassation could not reasonably have known when the end of the strike – which might have been imminent – would be, it set a new hearing date of 19 October 1993, that is to say twelve months later and thirteen months after the initial hearing date (see paragraph 18 above).

The Court is not unaware of the complications which strikes as enduring as the one that occurred in the present case can cause by overloading the list of cases to be heard by courts such as the Court of Cassation. Nevertheless, Article 6 § 1 requires that cases be heard "within a reasonable time".

A delay of this length in a case that had been pending in the Court of Cassation since 13 March 1991 is hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention (see the H. v. France judgment of 24 October 1989, Series A no. 162-A, p. 23, § 58).

49. The Court concludes that the applicant's case was not heard within a reasonable time and that there has therefore been a violation of Article 6 § 1 with respect to the length of the proceedings.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1, IN CONJUNCTION WITH ARTICLE 14, AND OF ARTICLE 13 OF THE CONVENTION

50. The applicant also alleged a violation of Article 6 § 1, in conjunction with Article 14, and of Article 13 of the Convention. Articles 13 and 14 read as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In particular, he complained that no effective remedy existed in Greek law for the enactment of Law no. 2020/1992 and its application in his case to be challenged, and that he had been a victim of discriminatory treatment.

51. In view of its findings in paragraphs 40 and 49 above, the Court considers that there is no need to rule on those complaints.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION

52. Article 50 of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicant sought reparation for the non-pecuniary damage he had sustained, but left it to the Court to determine the amount.

54. The Government submitted that any entitlement of the applicant was limited to GRD 117,213, that being the amount the *DEI* had deducted from his salary.

55. According to the Delegate of the Commission, the Court should award the applicant a reasonable sum for non-pecuniary damage if it were to find, in particular, a violation of his right to a fair hearing.

56. The Court holds that the applicant should be awarded compensation for non-pecuniary damage because he did not have a fair hearing; it awards him GRD 2,500,000 under that head. It considers, on the other hand, that a finding of a violation of Article 6 § 1 constitutes sufficient reparation for any non-pecuniary damage caused by the length of the proceedings.

B. Costs and expenses

57. Mr Papageorgiou also claimed reimbursement of the costs he had incurred before the Greek courts and the Convention institutions, but informed the Court that those costs had already been borne by the *DEI* trade union, of which he was the general secretary.

58. The Government said that they were ready to pay the costs and expenses incurred before the Greek courts and the Strasbourg institutions, provided that they had been necessarily and actually incurred and were reasonable.

59. According to the Delegate of the Commission, the applicant was right to claim the costs of the proceedings in the national courts. As he had not had legal aid before the Commission or the Court, he was also entitled to reimbursement of the costs he had incurred before them.

60. Having regard to the fact that Mr Papageorgiou did not quantify his claim for costs and expenses, the Court dismisses it.

C. Default interest

61. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of the right to a fair hearing, guaranteed by Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of the right to a hearing within a "reasonable time", also guaranteed by Article 6 § 1 of the Convention;
4. *Holds* that it is unnecessary to rule on the complaints made under Article 6 § 1, in conjunction with Article 14, and under Article 13 of the Convention;
5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, 2,500,000 (two million five hundred thousand) drachmas for the non-pecuniary damage sustained as a result of the unfairness of the proceedings; and
   (b) that simple interest at an annual rate of 6% shall be payable on that sum from the expiry of the above-mentioned period until settlement;
6. *Holds* that this judgment constitutes sufficient just satisfaction for the alleged non-pecuniary damage in respect of the length of the proceedings;
7. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 October 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar