



“Panteion case”: breach of Dimitrios Konstas’ right to presumption of innocence

In today’s Chamber judgment in the case of [Konstas v. Greece](#) (application no. 53466/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 2 (presumption of innocence) and of Article 13 (right to an effective remedy) of the European Convention on Human Rights

The case mainly concerns comments made by the Greek Prime Minister and two Greek ministers about the applicant (former university professor, Minister for the Press and Minister Plenipotentiary at the Council of Europe) in the context of criminal proceedings against him that were still pending on appeal.

Principal facts

The applicant, Dimitrios Konstas, is a Greek national who was born in 1946 and lives in Athens. From 1985 he was a professor at Panteion University in Athens, and its President from 1990 to 1995. In 1990 he was acting Minister for the Press and then from 1997 to 1999 Minister Plenipotentiary representing his country at the Council of Europe.

In 1998 the public prosecutor at the Athens Court of Appeal brought criminal proceedings against 54 members of the University’s teaching staff, including Mr Konstas, who had been President or Vice-President in the period 1992 to 1998. Mr Konstas was charged with being an accomplice to forgery, defrauding the State of more than 146,000 euros, misrepresentation and misappropriation of public funds. He was immediately committed to stand trial. On 7 September 2005 the Indictment Division of the Athens Court of Appeal endorsed that decision, finding that Mr Konstas had “played a major role in the commission of the offences”.

On 6 June 2007 the Athens Assize Court sentenced Mr Konstas to 14 years’ imprisonment for misappropriation of public funds, fraud against the State and misrepresentation. Mr Konstas immediately appealed and the enforcement of his sentence was stayed.

Five days later, during a debate before the Parliament, the Deputy Minister of Finance referred to the proceedings in question and addressed the Socialist Party MPs: castigating the “Panteion bunch of crooks”, he asked “didn’t you appoint them acting Ministers for the Press, Ministers Plenipotentiary at the Council of Europe, when the scandals concerning Panteion were coming to light?”, and added in particular “you even steal from each other”. On 2 July 2007, also during a debate in Parliament, the Prime

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Minister referred to the present case as an “unprecedented scandal of deliberate and planned embezzlement of 8,000,000 euros for the benefit of those involved, to the detriment of Panteion University”. On 12 February 2008 the Minister of Justice stated in Parliament, addressing the opposition MPs: “Remember the Panteion scandal. The Greek courts boldly and resolutely convicted all those you were always protecting”.

The case is still pending before the Athens Court of Appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 2, Mr Konstas complained that statements made in Parliament by the Prime Minister, the Deputy Minister of Finance and the Minister of Justice, in which he had been portrayed as guilty even though the judicial proceedings in the Court of Appeal had not yet been concluded, had breached his right to be presumed innocent. Relying on Article 13, he further alleged that no effective remedy was available to him in Greece in respect of his complaint.

The application was lodged with the European Court of Human Rights on 25 November 2007.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Peer **Lorenzen** (Denmark),
Khanlar **Hajiyev** (Azerbaijan),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Julia **Laffranque** (Estonia), *judges*,
Spyridon **Flogaitis** (Greece), *ad hoc Judge*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 6 § 2

The Court reiterated that the principle of the presumption of innocence required that no representative of the State should declare that a person was guilty of a criminal offence before he had been proved guilty according to law. Article 6 § 2 did not prevent the authorities from referring to a conviction decided at first instance, when the proceedings were still pending on appeal, but it required that they do so with all the discretion and circumspection necessary if the presumption of innocence was to be respected. If the presumption of innocence ceased to be applied on appeal simply because the first-instance proceedings had led to the defendant’s conviction, that would run counter to the role of the appeal proceedings, in which the court had to hear the case in both fact and law. Consequently, in spite of his conviction at first instance, Mr Konstas still had a right to be presumed innocent.

The Court thus examined in detail the statements of which Mr Konstas complained, ascertaining whether he was identifiable from the remarks in question and then analysing their content.

The remarks by the Deputy Minister of Finance had made Mr Konstas very easily identifiable, in particular the phrase “didn’t you appoint them acting Ministers for the Press, Ministers Plenipotentiary at the Council of Europe, when the scandals concerning Panteion were coming to light?”. The statements of the Prime Minister and Minister of

Justice did not, for their part, refer to Mr Konstas in person, but nevertheless made express reference to the criminal case in question and to the persons involved. In view of Mr Konstas' involvement in that case, with its wide media coverage in Greece, and given his status and the posts he had held in the past, the Court considered that the remarks of the Prime Minister and Minister of Justice related to Mr Konstas to a degree that was sufficient to render him identifiable.

Turning to the content of the remarks in question, the Court noted that in using the words "unprecedented scandal", the Prime Minister had made only a general reference to the subject matter of the case and that that could not be regarded as an attempt to prejudge the Court of Appeal's verdict.

There had therefore been no violation of Article 6 § 2 in respect of the Prime Minister's statements.

As regards the unequivocal and casual words of the Deputy Minister of Finance ("bunch of crooks" and "you even steal from each other"), they were, by contrast, likely to make the public believe that Mr Konstas was unquestionably guilty and seemed to prejudge a judgment of the Court of Appeal. As to the Minister of Justice's remarks, according to which the Greek courts had convicted "boldly and resolutely" those involved in the case, they could give the impression that this Minister was satisfied with Mr Konstas' conviction at first instance and was encouraging the Court of Appeal to uphold that judgment. Having regard in particular to the particular function of the Minister of Justice, representing the political authority with responsibility for the proper operation of the courts, the Court found that the words he had used seemed to prejudge the Court of Appeal's judgment.

Contrary to the argument of the Greek Government, the passage of time between the making of those remarks and the future judgment of the Court of Appeal was not a crucial factor in determining whether or not there had been a breach of the right to be presumed innocent. To accept that argument would lead to an unreasonable conclusion; that the longer the criminal proceedings, the more any disregard of the presumption of innocence at an earlier stage of the same proceedings could be minimised.

In conclusion, the remarks of the Deputy Minister of Finance and the Minister of Justice had gone far beyond a mere reference to Mr Konstas' conviction at first instance. The Court paid particular attention to the fact that the remarks had been made by high-ranking politicians and even, in the case of the Minister of Justice, by a person of authority who was supposed, on account of his position, to show particular restraint when commenting on judicial decisions.

There had thus been a violation of Article 6 § 2 on account of the statements by the Deputy Minister of Finance and by the Minister of Justice.

Article 13

The Greek Government argued that Mr Konstas had a remedy in domestic law by which he could have submitted in Greece his complaint about the presumption of innocence. They referred in particular to the possibility of bringing before the Greek courts an action for damages in cases of infringement of personality rights.

The Court observed that the principle of the presumption of innocence mainly constituted a procedural safeguard, being one of the features of a fair trial under Article 6. An action for damages, as invoked by the Government, could not have provided full redress for the alleged breach of the right to be presumed innocent.

There had thus also been a violation of Article 13.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Greece was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 for costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.