

**APPLICATION N° 20339/92**

**Dimitrios TSOVOLAS v/GREECE**

**DECISION of 14 May 1996 on the admissibility of the application**

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**Article 25, paragraph 1 of the Convention**

- a) *It falls first to the national authorities to redress any alleged violation of the Convention*
- b) *Someone who has received adequate redress at the domestic level for the alleged violations of the Convention cannot claim to be a victim of those violations*

*In this case, the measures taken to rehabilitate the applicant (presidential pardon restoration of civic rights, deletion of his conviction from criminal record) constitute sufficient reparation*

- c) *Alleged hindrance of the effective exercise of the right of individual petition in that the Special Court (Greece) provided the applicant with transcripts of the hearings and a copy of the judgment more than three years after judgment was pronounced and two and a half years after the application had been introduced. Despite this regrettable delay, the applicant, who was present when judgment was pronounced was able to exercise his right of application effectively. No further action*
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**THE FACTS**

The applicant is a Greek national, born in 1942. He is a lawyer, and former minister of the Greek Government, and lives in Athens. He was represented before the Commission by Messrs Dionysios Gouskos and Georgios Moraitis, lawyers practising in Athens.

The facts of the case, as submitted by the parties, may be summarised as follows

1 *Particular circumstances of the case*

On 27 September 1989, the Members of the Greek Parliament (Vouli) voted, by 168 to 132, to commit the applicant for trial before the Special Court (Eidiko Dikastirio) for violating the law on ministerial responsibility (paravasi nomou perifthisis ipourgon, section 1 of Legislative Decree No 602/1971) and for disloyalty to his office (apistia shetki me tin ipresia, section 256 of the Criminal Code)

The trial began on 11 March 1991 Parliament appointed three of its Members to act as public prosecutors Two of these Members had previously voted to commit the applicant for trial

On 10 September 1991, the applicant sought to have the President of the Special Court removed from his case on the ground that, whereas he had been a mere judge when Parliament committed the applicant for trial on 27 September 1989, the Cabinet (Symvoulio Ypourgon) had subsequently appointed him President of the Court of Cassation (Areios Pagos) on 5 July 1990. Article 86 para. 1 of the Greek Constitution provides that the President of the Court of Cassation shall preside over the Special Court (see *Relevant domestic law, infra*). The applicant submits that given the timing of this appointment, it was clearly made for political reasons His application was dismissed on 13 September 1991

On 18 September 1991, the applicant sought to have one of the three Members of Parliament removed from his case on the ground of partiality His application was dismissed on 19 September 1991.

On 1 October 1991, the court ordered the applicant to be excluded from the courtroom for ten days on the ground that he was disrupting the proceedings (section 347 of the Code of Criminal Procedure) His application to have the exclusion order lifted was dismissed on 2 October 1991

On 4 October 1991, the applicant's lawyers also left the courtroom in protest at his exclusion The court then assigned three lawyers to represent the applicant during his exclusion, although the applicant had expressly opposed such assignment.

On 11 October 1991, the applicant filed a complaint against the officially-assigned lawyers for disloyalty (apistia dikigorou, section 233 of the Criminal Code)

On 15 October 1991, the court dismissed the applicant's request for all the measures taken while he was excluded from the courtroom to be set aside

On 17 January 1992, the applicant was sentenced to two years and six months' imprisonment, which he subsequently redeemed by paying 1,800,000 drachmas (approximately 36,000 French francs), and was stripped of his civic rights for three years

Following his conviction, the applicant intended to file an action, within the six-month legal time limit, with the court dealing with misuse of authority actions (Ειδικό Δικαστήριο Αγογών Κακοδικίας) for damages on account of the composition of the Special Court and the conduct of the persons who had dealt with his case. In order to do so, the applicant would have needed transcripts of the hearings and a copy of the court judgment.

On 3 March and 14 July 1992, the applicant requested these documents from the Special Court Registry.

On 21 July 1992, he requested them from the Ministry of Justice.

On 25 June 1993, the applicant filed a criminal complaint and claimed damages against the President and Registrar of the Special Court for breach of their duty to write the above-mentioned documents up neatly and release them. The Government submit that these documents should have reached the applicant by the end of January 1994 at the latest. The applicant received the documents, comprising more than 3,400 pages, in February 1995.

On 26 November 1993, pursuant to Article 47 para 2 of the Constitution, the Minister of Justice requested Parliament's consent to initiate proceedings to grant the applicant a pardon.

On the same day Parliament gave its consent for the President of the Republic to grant the applicant a pardon. Parliament stated in its resolution, which was proposed by 169 and supported by 161 Members, that

"The Greek Parliament considers it its duty to proceed, under the Constitution, fully and formally to restore D. Tsovolas to his former unblemished reputation and his legal and political rights.

It is generally acknowledged that D. Tsovolas was prosecuted and convicted in breach of the rule of law, since those proceedings were used to put a political opponent in the dock.

The Greek Parliament, representing the opinion of the overwhelming majority of the Greek people, DECLARES, in the most express and formal terms, that D. Tsovolas was and still is innocent, that his prosecution was political and the decision grossly unfair.

The Greek Parliament praises D. Tsovolas' conduct during the proceedings, as he dutifully observed the rules of legal order, despite the mental stress he was under as a result of a blatant miscarriage of justice.

For all these reasons, Parliament, expressing the will of the Greek people and applying its constitutional powers in fulfilment of the State's duty towards D Tsovolas,

#### RESOLVES

to revoke, under Article 47 para 2 of the Constitution, all consequences of D Tsovolas' conviction by the Special Court under Article 86 of the Constitution, in the interests of the very credibility of our legal order and this country's democratic parliamentary system "

On 3 December 1993, the President of the Republic, exercising his constitutional powers, granted the applicant a pardon by decree published in the Official Journal. The decree specifically revoked all consequences of the applicant's conviction and restored his civic rights to him forthwith.

After the applicant's rehabilitation, the reference to his conviction by the Special Court was deleted from his criminal record under section 578 para 1 (c) of the Code of Criminal Procedure, as amended by Law No 2172 of 16 December 1993 (see under *Relevant domestic law, infra*). The applicant states that he has not recovered the sum of 1,800,000 drachmas which he paid in order to redeem his sentence. There is nothing in the file, however, to show that the applicant claimed a repayment or that his claim was rejected. The Government, for their part, state that they are unsure that such a repayment can be obtained under Greek law.

#### 2 *Relevant domestic law*

a Article 86 of the Greek Constitution provides that the Special Court has jurisdiction to deal, at first and last instance, with charges laid against members of the Government. The court is presided over by the President of the Court of Cassation and is composed of twelve judges, whose names are drawn by lot in public session by the Speaker of the Parliament from among all the judges of the Court of Cassation and the presidents of the Courts of Appeal (Proedri Efteton). Under section 19 of Legislative Decree No 802/1971, Parliament appoints three of its Members to act as public prosecutors.

b Article 90 para 5 of the Greek Constitution provides that the President of the Court of Cassation shall be appointed by presidential decree following a Cabinet proposal.

c Article 99 of the Greek Constitution provides that the Court dealing with misuse of authority actions has jurisdiction over cases alleging misuse of authority by judges.

d Article 47 of the Greek Constitution is worded as follows:

"1 The President of the Republic may, following a proposal from the Minister of Justice and after consultation with a council composed principally

of judges, grant pardons, commute or reduce sentences pronounced by the courts and revoke all legal consequences of sentences pronounced and served

2 The President of the Republic may not pardon a Minister convicted under Article 86 save with the consent of Parliament

3 An amnesty for political offences shall be granted exclusively by presidential decree issued following a Cabinet proposal.

4 No amnesty can be granted, even by a Law, for ordinary criminal offences "

e Section 578 para 1 (c) of the Criminal Code of Procedure relating to the removal of entries from a criminal record, as amended by section 16 of Law No 2172 of 16 December 1993, now provides that.

"If a decision which has given rise to an entry in a criminal record is subsequently annulled by a final court decision or if the offender is granted an amnesty, or a pardon under Article 47 para. 2 of the Constitution, the conduct giving rise to the conviction shall be considered as no longer amounting to an offence "

The old section 578 para 1 (c) provided that entries in a criminal record would be removed "after the final court decision recorded therein is set aside or annulled by court order"

## COMPLAINTS

1 The applicant complains that his case was not heard by an "impartial tribunal" within the meaning of Article 6 para 1 of the Convention, given that two of the three Members of Parliament who were acting as public prosecutors had been chosen from among those who had previously voted to commit him for trial and that the President of the court's appointment, made after his committal for trial, was political.

2 Invoking Article 6 para 3 (d) of the Convention, the applicant complains further that he was excluded from the courtroom for ten days on the ground that he was disrupting the proceedings. This meant that he was unable to question witnesses whose evidence was crucial to his defence

3 As his lawyers also left the courtroom in protest at his exclusion, the applicant complains further that the court assigned of its own motion three other lawyers to represent him during that period, despite the fact that he had expressly opposed their appointment. He invokes Article 6 para 3 (c) of the Convention.

4 The applicant complains, lastly, of the delay by the President and the Registrar of the Special Court in providing him with transcripts of the hearings and a copy of the judgment. He alleges that this delay hindered the effective exercise of his right of application to the Commission.

## **PROCEEDINGS BEFORE THE COMMISSION**

The application was introduced on 15 July 1992 and registered on 21 July 1992

On 13 July 1993, the Rapporteur decided, pursuant to Rule 47 para 2 (a) of the Commission's Rules of Procedure, to request details from the Greek Government as to the date on which the applicant would be provided with transcripts of the hearings and a copy of the Special Court's judgment

On 21 September 1993, the Government supplied the information requested, which was sent to the applicant on 27 September 1993 for his comments. The applicant provided his comments in a letter of 2 November 1993

On 29 November 1994, the Commission decided, pursuant to Rule 48 para 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite them to submit to the Commission written observations on the admissibility and merits of the application

The Government submitted their observations on 8 February 1995 and the applicant replied on 12 and 15 May 1995, after an extension of the relevant time limit. On 28 June 1995, the Government submitted further observations. In a letter of 26 October 1995, the applicant's lawyer submitted further information

On 7 December 1995, the Commission decided, pursuant to Rule 50 of its Rules of Procedure, to invite the Government to submit further observations in writing on the *admissibility and merits of the application*

The Government submitted their further observations on 15 February 1996, after an extension of the relevant time limit, and the applicant replied on 22 April 1996

## **THE LAW**

1 The applicant complains that he was not given a fair trial. He invokes Article 6 para 1 and para 3 (c) and (d) of the Convention

The Government reply from the outset that, as the applicant was granted a presidential pardon, he can no longer be considered to be a "victim" of a violation of the Convention within the meaning of Article 25 of the Convention. The applicant contests this submission.

Under Article 25 para 1 of the Convention, the Commission may receive petitions addressed from any person claiming to be the victim of a violation of the rights set forth in this Convention

The Commission recalls its case law according to which it falls first to the national authorities to redress any alleged violation of the Convention (No 10668/83, Dec 13 5 87, D R 52 p 177) Thus, where the national authorities have explicitly or in substance recognised and subsequently redressed the alleged violation, the applicant can no longer claim to be the victim of a violation of the Convention (No 12719/87, Dec 3 5 88, D R 56 p 237)

In this case the Commission observes that the President of the Republic granted the applicant a pardon after first obtaining Parliament's consent The question therefore arises as to whether, in the light of the presidential pardon granted him, the applicant can still claim to be the victim of a violation of Article 6 of the Convention In particular, the Commission considers it necessary to examine whether the effects of the applicant's conviction subsisted after he was pardoned (see, *mutatis mutandis*, No 11457/85 Dec 4 5 87, D R 52 p 236)

The Commission observes that the presidential pardon granted to the applicant resembles an individual amnesty in 1993, Parliament, which in 1989 had decided to commit the applicant for trial before the Special Court, gave its consent for the applicant to be granted a pardon, with a formal declaration that he was innocent and had been the victim of a 'blatant miscarriage of justice' The remainder of the three year revocation of his civic rights was lifted Finally, Parliament passed a Law in December 1993 which included pardons under Article 47 para 2 of the Constitution as one of the grounds for removing entries in a criminal record, whereupon the applicant's conviction by the Special Court was deleted from his criminal record Regarding the applicant's complaint that he has been unable to recover the 1,800,000 drachmas which he paid to redeem his sentence, the Commission observes that there is nothing in the file to show that he ever requested a repayment or that this was refused him

In the light of the special circumstances of this case, the Commission considers that the Greek State did intend, in the most explicit terms, to eradicate the stigma attached to the applicant as a result of his conviction and that it did formally make appropriate and sufficient redress for the violations of Article 6 of the Convention which were allegedly committed during the proceedings before the Special Court

In the circumstances the Commission considers that the applicant has already obtained sufficient reparation at national level for the violations about which he now complains before the Commission It concludes that the applicant can no longer claim to be a victim of the violations which he alleges

It follows that this part of the application is manifestly ill founded within the meaning of Article 27 para 2 of the Convention

2 The applicant complains further of a delay by the President and Registrar of the Special Court in providing him with transcripts of the hearings and a copy of the judgment. He alleges that this delay hindered the effective exercise of his right of application to the Commission.

The Commission considers that this complaint should be examined under Article 25 para 1, last sentence, of the Convention, which guarantees the effective exercise of the applicant's right of application to the Commission.

The Commission observes that the applicant received the requested documents in February 1995, that is, more than three years after the Special Court gave judgment and two and a half years after he had introduced his application before the Commission.

The Commission finds this delay regrettable. It notes, however, firstly, that the applicant was present when judgment was pronounced and that there was no possibility of appeal against his conviction, and secondly, that the documents involved were very voluminous, comprising more than 3,400 pages. It finds further that the applicant was not thereby prevented from applying to the Commission and arguing his case effectively before it.

The Commission therefore considers that no further examination need be made of the applicant's allegations that he was hindered in the effective exercise of his right of application guaranteed by Article 25 of the Convention.

For these reasons, the Commission, by a majority,

DECIDES not to pursue its examination of the applicant's allegations of a hindrance of the effective exercise of his right of application as guaranteed by Article 25 of the Convention,

DECLARES THE APPLICATION INADMISSIBLE.