

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

THIRD SECTION

CASE OF KARANTALIS v. GREECE

(Application no. 67398/14)

JUDGMENT

STRASBOURG

31 January 2023

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



In the case of Karantalis v. Greece,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Yonko Grozev*, President*,
Peeter Roosma,
Ioannis Ktistakis*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 67398/14) 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") on 9 October 2014 by a Greek national, Mr Panagiotis Karantalis, born in 1973 ("the applicant") who was represented by Mr I. Papanastasopoulos, a lawyer practising in Patras;

the decision to give notice of the application to the Greek Government ("the Government"), represented by their Agent's delegates, Mr K. Georgiadis, Senior Adviser at the State Legal Council, and Ms I. Kotsoni, Legal Representative at the State Legal Council,

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the dismissal by the Court of Cassation of an appeal on points of law lodged by the public prosecutor at the applicant's request against an acquittal judgment delivered in criminal proceedings in which the applicant had participated as a civil party. The appeal on points of law was dismissed by the court as having been lodged out of time because it was considered that the time-limit for lodging such an appeal ran from the date of delivery of the judgment rather than the date on which the written judgment had been registered in the special book kept at the Registry of the court.

2. A criminal complaint was lodged by the applicant against a lawyer, Mr P.P., accusing him of infringing Law no. 2472/1997 on the protection of individuals with regard to the processing of personal data. The applicant joined as a civil party the proceedings before the Patras Court of Appeal for Misdemeanours (*Τριμελές Εφετείο Πλημμελημάτων*), acting as a first-instance court. By judgment no. 678a-837 of 29 April 2013 the court acquitted Mr P.P.

3. No appeal was lodged against the acquittal judgment, which was finalised and registered on 22 July 2013 in the special book kept at the Registry of the court.

4. On 30 July 2013 the applicant asked the prosecutor at the Court of Cassation to lodge an appeal on points of law against the acquittal judgment under Article 505 § 2 of the Code of Criminal Procedure, alleging that the court had wrongly interpreted or applied Law no. 2472/1997. The prosecutor lodged an appeal on points of law on 3 September 2013 before the Court of Cassation on the grounds of incorrect interpretation and application of the relevant provisions of Law no. 2472/1997.

5. The case was heard on 11 March 2014, and by judgment no. 528 of 11 April 2014 the Court of Cassation declared the appeal on points of law inadmissible as having been lodged out of time. In particular, the Court of Cassation held that, in accordance with Article 473 § 3 of the Code of Criminal Procedure, as the impugned judgment was subject to an ordinary appeal, the time-limit of thirty days for lodging an appeal on points of law ran from the date of the delivery of the judgment (29 April 2013) and not from the date of its registration in the special book kept at the Registry (22 July 2013). The registration of the judgment did not have any legal effect in the present case, where the judgment of the court of first instance was subject to an ordinary appeal. By contrast, if the impugned judgment had not been subject to an appeal or had been given on appeal, the time-limit of thirty days would have run from the date of registration.

6. Relying on Article 6 § 1 of the Convention, the applicant complained that the Court of Cassation had dismissed the appeal on points of law lodged at his request as having been lodged out of time. This dismissal had violated his right of access to a court as provided in Article 6 § 1 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

7. The Government argued that the applicant lacked victim status and in any event the application should be declared inadmissible as being manifestly ill-founded because the right to lodge an appeal on points of law belonged to the prosecutor, who had exercised that right, and not to the applicant. The applicant contested the above-mentioned arguments.

8. The Court notes that in substance, the Government raised a *ratione materiae* objection. The Court has rejected a similar objection in its judgment *Gorou (no. 2)* (no. 12686/03, 20 March 2009, §§ 24-36), in connection with a request to lodge an appeal on points of law against an acquittal dismissed by the public prosecutor at the Court of Cassation where it acknowledged the civil nature of the proceedings in issue.

9. In the present case, the Court notes that the applicant joined the criminal proceedings as a civil party. Following the acquittal of the accused, the applicant's request to the public prosecutor to lodge an appeal on points of law has been granted. The applicant's request thus became inextricably linked

to the subsequent proceedings (see, *mutatis mutandis, Gorou (no. 2)*, cited above, § 34), all the more so as he appeared and participated as a party before the Court of Cassation.

10. The Court sees no reason in the present case to depart from its conclusions in similar cases (see, *mutatis mutandis*, *Gorou (no. 2),* cited above, §§ 34-36). The case thus relates to a "dispute over a civil right" for the purposes of Article 6 § 1. The Government's preliminary objection should be dismissed. The application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

11. The applicant argued that, even for judgments which were subject to an appeal, the time-limit for lodging an appeal on points of law did not run from the date of their delivery but from the date of their registration in the special book kept at the Registry, as this was when the prosecutor acquired a complete view of the judgment's content and reasoning. Since in an appeal on points of law clear and specific grounds had to be raised so that the crucial legal elements of the impugned judgment could be challenged, the prosecutor needed to be aware of the exact wording of the part of the judgment to be challenged and the grounds on which it could be challenged. That being so, the appeal on points of law on 3 September 2013 had been lodged within the time-limit of thirty days from the registration of the judgment, taking into account the suspension of the relevant period during the month of August.

12. The Government maintained that before the amendment of Article 473 § 3 had been introduced by Law no. 4274/2014, there had been a difference between the point at which the time-limit began to run depending on whether the impugned judgment was subject to an appeal or not. As in the present case the judgment of 29 April 2013 had been subject to appeal, the time-limit of thirty days run from the delivery of the judgment. They further argued that the applicant had had access to a court as he had had participated as a civil party in the criminal proceedings against Mr P.P. and the acquittal judgment had contained full and sufficient reasoning. The applicant's case had been also examined by the Court of Cassation which had dismissed it for lack of compliance with procedural requirements with complete reasoning. As the applicant had not encountered any obstacle in his access to court or in submitting a request to the prosecutor, there had been no violation of Article 6 § 1.

13. The applicant joined the proceedings as a civil party and his claim was aimed at obtaining reparation for the damage sustained as a result of the offence allegedly committed by Mr P.P. Article 6 § 1 under its civil head applied to these proceedings (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, §§ 66 and 70-71, ECHR 2004-I, and *Gorou (no. 2)*, cited above, §§ 24-26). The general principles with respect to the right of access to a court have been set out in a long line of cases (see, for instance, *Baka v. Hungary* [GC], no. 20261/12, § 120, 23 June 2016, and *Lupeni Greek Catholic Parish*

and Others v. Romania [GC], no. 76943/11, §§ 84-90, 29 November 2016). A limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

14. As regards the general principles relating to the dismissal of an appeal on points of law as having been lodged out of time owing to the time-limit running from the date of delivery of the judgment rather than the date on which the written judgment became available, they have been set out in the Court's judgment in *Aepi S.A. v. Greece* (no. 48679/99, 11 April 2002), in which it found a violation of Article 6 § 1 of the Convention.

15. In the present case, in accordance with Article 505 § 2 and Article 479 § 2 of the Code of Criminal Procedure, the thirty-day time-limit for the prosecutor to lodge an appeal on points of law ran from the delivery of the impugned judgment. Article 479 § 2 specifically provides that when a judgment is not subject to an ordinary appeal, the time-limit runs from when it is finalised and registered in the special book. Judgment no. 678a-837 of 29 April 2013, which was subject to an appeal, had been registered on 22July 2013. The public prosecutor at the Court of Cassation lodged an appeal on points of law on 3 September 2013, further to the applicant's request made on 30 July 2013. Taking into account the suspension of the time-limit during the month of August, the appeal on points of law was lodged twelve days after the judgment had been finalised and registered. It is after that stage that, in principle, a judgment text is final and its content is official and fully accessible. This was not contested by the Government, nor did they maintain that the final and complete text of the judgment had been available at an earlier stage.

16. The Court thus considers that, independently from the opportunity to lodge an appeal, since the applicant wished to challenge elements of the legal reasoning and not the facts, and so did the prosecutor, the full text of the impugned judgment was necessary in order to formulate the grounds of the appeal with clarity and precision (see *Aepi S.A.*, cited above, § 26). Additionally, the appeal on points of law was lodged through the intermediary of the public prosecutor, who was familiar with the procedural questions within his sphere of competence. If the applicable law was as the Government described it, he would have refused to lodge the appeal (see *Aepi S.A.*, cited above, § 27).

17. Lastly, the Court notes that following the amendment of Article 473 § 3 of the Code of Criminal Procedure by Article 10 of Law no. 4274/2014 the starting-point of the time-limit for lodging an appeal of points of law for all judgments became the date of registration. This amendment was made in order to ensure harmonisation and to make it more feasible for the prosecutor to lodge an appeal on points of law.

18. The Court concludes that the applicant suffered a disproportionate burden in exercising his right to access to a court. By dismissing the appeal

on points of law, the Court of Cassation deprived the applicant of his right of access to a court.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage. The Government contended that this amount was excessive and not supported by specific arguments or by reference to any specific consequences proved to have been suffered and that the finding of a breach of the Convention would constitute sufficient just satisfaction. The Court finds that the applicant must have sustained non-pecuniary damage as a result of the violation of Article 6 § 1. Making its assessment on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

21. The applicant claimed EUR 1,000 in respect of costs and expenses for legal fees. The Government maintained that the amounts were not supported by any official receipts. According to the Court's case-law criteria, and regard being had to the documents in its possession, the Court does not consider it reasonable to make any award to the applicant in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 31 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Yonko Grozev President