

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

FIRST SECTION

CASE OF KITSOS v. GREECE

(Application no. 21793/14)

JUDGMENT

STRASBOURG

22 September 2022

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



In the case of Kitsos v. Greece,

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

Krzysztof Wojtyczek, President,
Erik Wennerström,
Ioannis Ktistakis, Judges,
and Liv Tigerstedt, Deputy Section Registrar,

Having regard to:

the application (no. 21793/14) 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 14 March 2014 by a Greek national, Mr Dimitris Kitsos, born in 1943 and living in Corfu ("the applicant"), who was represented by Mr V. Chirdaris, a lawyer practising in Athens;

the decision to give notice of the complaint concerning the applicant's freedom of expression to the Greek Government ("the Government"), represented by their Agent's delegate, Ms O. Patsopoulou, Legal Counsellor at the State Legal Council, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 30 August 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the criminal conviction of the applicant for defamation of two persons who were exercising their duties as guardians of an adult.

2. On 13 December 2005 the applicant appeared on national television and made allegations against Th.G., the guardian of V.P., and M.V., a member of V.P.'s guardianship council ("the guardians"). In particular, the applicant alleged that the two individuals in question had managed to place V.P. under guardianship, thus implementing an "evil plan", had "caused V.P. to disappear", and – "by administering psychoactive medication to and exercising psychological violence on" V.P. – had organised the transfer of part of the latter's property to M.V. for a token amount (*έναντι ευτελούς αξίας*); he also called them "crooks" (*απατεώνες*).

3. In 2007 both Th.G. and M.V. were removed from their duties as guardian and member of the guardianship council respectively on account of acts and omissions which had not served the best interests of V.P., as they had exchanged part of V.P.'s real estate for a piece of property belonging to M.V. worth less than half its value. In criminal proceedings which followed and which ended in 2010, they were convicted of embezzlement in connection with the above-mentioned actions.

4. Following a criminal complaint by Th.G. and M.V., the applicant was convicted in 2012 at first instance of slanderous defamation on account of his statements on national television and received a suspended nine-month prison sentence. Following an appeal by the applicant, in 2013 he was given a suspended seven-month prison sentence for simple defamation. The appellate court considered that the applicant's statements concerning V.P.'s placement under guardianship and the transfer of part of his property to M.V. for a token amount were facts and that the rest of the statements either amounted to or closely resembled statements of fact, which were, moreover, untrue and had damaged Th.G.'s and M.V.'s reputation. The fact that they had been removed from their duties or that they had been convicted of embezzlement on account of the exchange of V.P.'s real estate did not, by itself, make them "crooks". However, the applicant had not known that his statements were untrue, so the appellate court changed the charges from slanderous defamation to simple defamation while rejecting the applicant's argument that he had said those things out of legitimate interest.

5. Following an appeal on points of law by the applicant, the Court of Cassation upheld the judgment of the appellate court. It considered that the latter had included sufficient reasoning in its judgment. There was nothing contradictory in the appellate court's acceptance of the fact that the real estate had been transferred at a low price, as that was different from the token amount referred to by the applicant. The Court of Cassation also rejected the applicant's argument that the appellate court had erroneously interpreted Article 362 of the Criminal Code. The applicant further alleged a violation of his rights under Article 10 in relation to the hearing procedure, which would have rendered the entire judicial proceedings null and void. The Court of Cassation rejected it as inadmissible, reasoning that that the grounds for annulment on account of a violation of the Convention related to the merits and not to the hearing procedure, as the applicant had erroneously argued. On those grounds, he was trying to reverse the appellate court's judgment which had concluded that the statements had been untrue and that he had consequently exceeded the limits of freedom of expression. In any event, his right to freedom of expression had not been violated.

6. The applicant complained before the Court that his criminal conviction amounted to a breach of his right to freedom of expression guaranteed by Article 10 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

7. The Government submitted that the applicant had failed to exhaust domestic remedies, as he had relied on Article 10 of the Convention only in relation to his submission that the hearing procedure was null and void. The Court observes that the applicant's plea of nullity did indeed relate to the hearing procedure and not to the allegedly erroneous interpretation of a legal provision; however, the Court of Cassation concluded that the applicant's right to freedom of expression had not been violated, thus examining the relevant grounds (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010). The objection must therefore be dismissed.

8. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

9. The Court notes from the outset that: the applicant's conviction amounted to an "interference by public authority" with his right to freedom of expression; the interference was prescribed by Article 362 of the Criminal Code; and it pursued the legitimate aim of protecting the reputation or rights of others.

10. The general principles for assessing the necessity of an interference with the exercise of freedom of expression have recently been summarised in *Balaskas v. Greece* (no. 73087/17, §§ 36-39, 5 November 2020).

11. Applying those principles in the circumstances of the instant case, the Court notes first that the applicant's statements were of such a nature that they could have tarnished the reputation of Th.G. and M.V. and that, consequently, they attained the requisite level of seriousness to attract the protection afforded by Article 8 of the Convention in relation to them. The domestic courts classified the impugned statements by the applicant as amounting to or closely resembling statements of fact and considered them to be untrue. However, they did not provide convincing reasons for that conclusion. In the Court's view, the applicant's comments contain a combination of statements of fact, as accepted by the domestic courts, and value judgments which had some factual basis, in so far as they were supported by the subsequent removal of the guardians from their duties and their criminal conviction for embezzlement. The domestic courts rejected the applicant's argument about the relevant factual basis without providing sufficient reasoning (see *Matalas v. Greece*, no. 1864/18, § 53, 25 March

2021). They merely assessed whether the expressions used in the official document had been capable of causing damage to the plaintiffs' personality rights and reputation, without assessing how the plaintiffs' criminal conviction and removal from their duties as guardians had affected the charges against the applicant.

12. Furthermore, the domestic courts did not take into account the context within which the statements were made. Contrary to the Government's arguments, the impugned characterisations did not merely concern a private dispute but touched upon issues of public interest (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 103, ECHR 2015 (extracts)), as was also demonstrated by the fact that the statements were made on national television. Th.G. and M.V. had assumed their duties as court-appointed guardians of a person who was well known in Corfu and they could therefore have expected a certain degree of public scrutiny concerning the way they had acted in that capacity. The domestic courts did not examine the interview given by the applicant as a whole, but rather focused on the characterisations used by him, detached from their context. Therefore, they failed to include in their assessment any considerations as regards the contribution of the applicant's interview to a matter of public interest and to the scrutiny the guardians should have expected regarding their actions. As regards the sentence imposed on the applicant, there were no exceptional circumstances in the instant case which would have justified the imposition of a prison sentence (see *Balaskas*, cited above, § 61).

13. The above elements lead the Court to conclude that the reasons adduced by the domestic courts to justify the interference with the applicant's right to freedom of expression were not "relevant and sufficient" and that the balancing exercise between his right to freedom of expression and the plaintiffs' right to respect for their private life was not carried out in conformity with the Convention standards. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 in respect of the costs and expenses incurred in the proceedings before the Court, requesting that the latter amount be deposited into the bank account of his lawyer.

15. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

16. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,210 for the costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant. As for the request for that sum to be deposited into the representative's account, the Court agrees with the Government that, having

regard to Law no. 4714/2020, which simplifies the procedure for payment of the awards made by the Court, there is no need to include such an indication in the operative part.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,210 (one thousand two hundred and ten 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;

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

Done in English, and notified in writing on 22 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President