

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

FIRST SECTION

CASE OF LYPARIS v. GREECE

(Application no. 6047/14)

JUDGMENT

STRASBOURG

10 November 2022

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



In the case of Lyparis 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. 6047/14) 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 31 December 2013 by a Greek national, Mr Antonios Lyparis ("the applicant"), born in 1946 and living in Chios, who was represented by Ms E. Parikaki, a lawyer practising in Chios;

the decision to give notice of the complaint under Article 10 of the Convention to the Greek Government ("the Government"), represented by their Agent's delegate, Ms Z. Chatzipavlou, Senior Adviser at the State Legal Council, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 4 October 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicant, a politician, was found liable in civil defamation proceedings for an article he had published in the local press in which he criticised I.G., who at the time of the article was an elected prefect, for acts and omissions of the political party he was leading.

2. On 24 March 2005 the applicant published an open letter in a local newspaper addressed to I.G. in his capacity as leader of the political party P. and dealing with alleged acts and omissions of the past years, after I.G. had referred to the applicant as a "bad adviser" to the prefect. In particular, the applicant referred to several projects that, in his view, had been left incomplete or had defects. He included phrases such as "the Greek people (through your doing) spent more than 200,000,000 drachmas on the port at Psara, half of which you donated(!) (to use a very mild expression)", "... but the only thing you were concerned about then was how to satisfy the whims of the high-flying doctor next door («*τα βίτσια του γείτονα μεγαλογιατρού*»)", "if even one of these things had happened to me I would have been embarrassed to move around in Chios". The applicant concluded his open letter stating that "it is obvious that you were not personally responsible for everything, but I am addressing you in your capacity as leader of the P. party and because you said things about me publicly without any reason".

3. In December 2005, I.G. lodged an action against the applicant, seeking compensation for the non-pecuniary damage he had allegedly suffered as a result of the applicant's letter. In judgment no. 105/2011 of 4 May 2011, the Aegean Court of Appeal held that the facts mentioned by the applicant had been true and concerned work carried out during the four years when I.G. had been a member of the council of the prefecture although he had only been prefect for a year. In addition, many of the comments related to financial misconduct without there being any proof that I.G. had been involved. The expressions used had not been objectively necessary or appropriate for the exercise of the applicant's right, as a politician, to criticise I.G., also a politician, or to reply to the comment that he had been a "bad adviser" to the prefect. It followed that the applicant had intentionally insulted I.G. and he was accordingly ordered to pay I.G. 10,000 euros (EUR) for the non-pecuniary damage he had suffered. In decision no. 1476/2013 of 8 July 2013, the Court of Cassation upheld the judgment of the appellate court.

4. The applicant complained to the Court that the civil proceedings for defamation in which he had been ordered to pay EUR 10,000 to I.G. because of the article he had published in the local press had violated his right to freedom of expression.

THE COURT'S ASSESSMENT

5. 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.

6. It is not in dispute between the parties that the civil defamation proceedings complained of amounted to an interference with the applicant's right to freedom of expression, or that they were "prescribed by law" and pursued the legitimate aim of "the protection of the reputation ... of others". It remains to be established whether they were "necessary in a democratic society" (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 160, 27 June 2017).

7. In this regard, the Government submitted that the domestic courts had concluded with detailed reasoning that the expressions used by the applicant had not been necessary for his legitimate criticism against I.G. personally or in his capacity as leader of a political party. On the contrary, they indicated an intention to insult without having a sufficient factual basis as regards I.G.'s responsibility during the relevant time period.

8. The general principles of the Court's case-law for assessing the necessity of an interference with the exercise of freedom of expression have been summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, §§ 48-54, 29 March 2016).

9. Applying those principles in the circumstances of the instant case, the Court notes at the outset that the applicant's statements were of such a nature

that they could have tarnished the reputation of I.G. and that, consequently, they attained the requisite level of seriousness to attract the protection afforded by Article 8 of the Convention. The domestic courts found that the facts mentioned by the applicant had been true, while there was no proof that I.G. had been involved in the alleged financial misconduct. Focusing on certain expressions (see paragraph 2 above), they concluded that the applicant had intentionally insulted I.G.; thus, they ruled for the claimant.

10. However, in the Court's view certain expressions, such as "if even one of these things had happened to me, I would have been embarrassed to move around in Chios", constituted value judgments which were not susceptible of proof. In addition, the domestic courts examined the disputed expressions outside the context of the article before concluding that the expressions used had not been necessary to convey the applicant's desire to protect the legitimate interest upon which he relied. Therefore, they failed to consider whether the context of the case, the public interest and the intention of the author of the impugned article justified the possible use of a dose of provocation or exaggeration. While the language used by the applicant could be considered provocative, the Court sees no manifestly insulting language in the remarks. Neither the impugned statements nor the article seen as a whole can be understood to be a gratuitous personal attack on, or insult to, I.G., taking into consideration that the applicant had supported his statements with a clear factual background and had made it clear that he was not holding I.G. responsible personally but in his capacity as the leader of a political party.

11. Moreover, the domestic courts acknowledged that both the applicant and I.G. were politicians, yet they failed to draw the relevant conclusions, namely that I.G. was an elected local official who inevitably and knowingly laid himself open to close scrutiny of his every word and deed by both journalists and the public at large, and that, consequently, he had to display a greater degree of tolerance. They also failed to acknowledge that the possible mishandling of State funds in relation to incomplete or defective works was a matter of public interest, which also called for a narrow interpretation of any restrictions on the applicant's right to freedom of expression.

12. Lastly, as regards the award of damages, the applicant was ordered to pay EUR 10,000 for non-pecuniary damage, in addition to EUR 2,700 for the claimant's costs and expenses before the Court of Cassation. However, in making their award of damages, the domestic courts gave only a general statement of the criteria that they had taken into consideration, without, for example, proceeding to consider the applicant's financial situation (see *Kapsis and Danikas v. Greece*, no. 52137/12, § 40, 19 January 2017).

13. Having carefully examined the case materials and the parties' submissions before it, the Court concludes that the domestic courts did not give due consideration to the principles and criteria laid down in the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. They thus exceeded the margin of appreciation

afforded to them and failed to demonstrate that there was a reasonable relationship of proportionality between the interference in question and the legitimate aim pursued. The Court finds nothing in the Government's submissions to alter the above conclusion. It has therefore not been shown that the interference with the applicant's right to freedom of expression was "necessary in a democratic society".

14. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed EUR 18,834 in respect of pecuniary damage, corresponding to the sum of EUR 15,834 that he had paid I.G. in damages, including statutory interest, and the sum of EUR 3,000 that he had been ordered to pay I.G. for the latter's costs and expenses before the Court of Cassation. He further claimed EUR 100,000 in respect of non-pecuniary damage. As regards costs and expenses, he claimed EUR 2,191.73 for those incurred in proceedings before the domestic courts and "a reasonable sum" for those incurred before the Court.

16. The Government contested the above-mentioned amounts, stating that the applicant had not provided any supporting evidence as to the calculation of the statutory interest on the sum of EUR 10,000 which he had been ordered to pay. In addition, the applicant submitted evidence that he had paid I.G. EUR 5,000 in cash and that he had given I.G. two cheques for the sum of EUR 10,834, but there was no evidence that the cheques had actually been redeemed. Lastly, as regards the claims for costs and expenses, the Government argued that they were not causally linked to the alleged violation, as the applicant would have had to pay his lawyer's fees irrespective of the outcome of the proceedings and, in any event, the Government considered them excessive.

17. The Court discerns a causal link between the violation found and the pecuniary damage claimed; it therefore awards the applicant EUR 18,534 in respect of pecuniary damage, of which EUR 15,834 that he paid I.G. in damages and EUR 2,700 that he paid I.G. for costs and expenses. It also awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

18. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,191.73 for costs and expenses in the domestic proceedings. Since no proof of cost and expenses before the Court has been submitted, it does not award any sum in this regard.

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 18,534 (eighteen thousand five hundred and thirty-four euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,191.73 (two thousand one hundred and ninety-one euros and seventy-three cents), 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 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President